2024 IL App (1st) 231472-U

No. 1-23-1472

Order filed March 22, 2024

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

BYLINE BANK,	)	
	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
	)	Cook County.
v.	)	
	)	No. 18 CH 13221
FRANK BARRETT and DARLENE BARRETT,	)	
	)	Honorable
Defendants-Appellants.	)	Edward N. Robles,
	)	Judge presiding.

JUSTICE NAVARRO delivered the judgment of the court.
Presiding Justice Mitchell and Justice Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err when it: (1) denied the defendants' motion to dismiss; and (2) entered an order granting summary judgment to Byline Bank.

¶ 2 This appeal stems from a foreclosure action brought by Byline Bank (Byline) against Darlene and Frank Barrett (the Barretts) based on the Barretts' failure to pay the remaining balances on two promissory notes on the date of maturity. The trial court granted Byline summary

judgment on the foreclosure action and approved a judicial sale of the properties. The Barretts contend on appeal that all orders and judgments entered by the trial court should be vacated based on fraud committed by Byline. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 22, 2019, Byline filed an amended complaint for foreclosure against the Barretts, concerning two properties. Copies of the mortgages were attached. For the property at 1606 Westchester Boulevard, in Westchester, Illinois, the mortgage was dated February 16, 2005. The promissory note, dated February 16, 2005, was executed by the Barretts in favor of Plaza Bank in the original principal amount of $216,000. The note was secured by the mortgage and an assignment of rents. The 1606 Westchester property consisted of a one-story single-family residence that was occupied by the Barretts. The note matured on September 21, 2018.

¶ 5 On March 16, 2005, the Barretts executed a promissory note in favor of Plaza Bank in the original principal amount of $290,000. The note was secured by a mortgage dated March 16, 2005, against the property at 1600 Westchester Boulevard, in Westchester, Illinois. The note was renewed March 16, 2007, for the original principal amount of $282,021.59. The 1600 Westchester property consisted of a one-story medical office building that was owned by the Barretts and leased to several tenants. The note matured on September 16, 2018.

¶ 6 Plaza Bank merged into North Community Bank in 2013, and North Community Bank changed its name to Byline Bank in 2015.

¶ 7 Byline alleged in its complaint that the Barretts failed to pay the sums due and owing under the notes when they matured in September of 2018.

¶ 8 On April 11, 2019, Byline filed a motion to appoint a receiver for the property at 1600 Westchester. The Barretts argued that because the property was connected to their personal

residence (1606 Westchester), the property should be considered residential real estate, and the presumptive right to possession rested with them. On June 19, 2019, the court found that the Barretts did not show good cause as to why the receiver should not be appointed and appointed a receiver. No appeal was taken from that order.

¶ 9 On July 11, 2019, the Barretts filed their answer to the complaint as well as counterclaims. In their counterclaims, the Barretts claimed that Byline committed fraud when it overcharged their accounts for payments of taxes. The Barretts alleged that they told Byline that their property taxes had been reduced by the Cook County tax assessor, but that Byline "greatly increased the escrow for taxes." The Barretts argued that Byline misrepresented the balance due on the escrow account, causing an improper default.

¶ 10 Byline filed a motion to dismiss the counterclaims, arguing that with respect to fraud, there were no facts alleged showing that Byline overcharged the Barretts' accounts for payments of taxes that were not necessary, or that Byline made any demand for increased monthly payments from the Barretts.

¶ 11 The trial court granted Byline's motion to dismiss the counterclaims, finding in part that the count for common law fraud was conclusory and deficient of facts.

¶ 12 On May 10, 2021, the Barretts filed a "motion to vitiate this entire proceeding and vacate all already void orders for reason of criminal absurd physically impossible frauds upon the court." The motion sought dismissal of Byline's foreclosure complaint based on alleged fraud, including alleged fraudulent refusal to allow the Barretts to refinance their loans, "fraudulent foreclosure" and unclean hands perpetrated by Byline and its counsel. The motion seemed to be based on the notion that the Barretts had received a tax reduction for the 1606 property, as evidenced by an

exhibit from the Cook County Assessor's Office indicating that the reduction in taxes for the property would be reflected in the second installment of the 2017 taxes.

¶ 13 One of the exhibits attached to the motion was a letter from Byline dated May 8, 2018 (C890), stating that the last full year tax bill for the 1600 and 1606 Westchester properties was 2016, and that the current monthly tax escrow payment was $1,671.45. The letter stated that notwithstanding, "you have unilaterally decided to pay $400 a month towards the required estate tax escrow based on the Certificate of Error that you filed with the Cook County Assessor seeking to change the Property's classification" to a mixed-use commercial/residential building. The letter also stated that Byline's basis for calculation of the monthly escrow payment for 2018 is the "estimated amount of the 2017 real estate taxes," and that until that estimated amount "is verified to be different than as determined by" Byline, which would not occur "until the second installment of the 2017 real estate taxes are assessed," the Barretts could not unilaterally adjust the monthly escrow amount.

¶ 14 The letter also stated that despite continuing to default on the loan, as long as the monthly interest payments continued to be paid, Byline would not exercise its rights and remedies under the loan. Byline stated "if there is a shortfall in the real estate tax escrow when the 2nd installment tax bill is issued, you will have five (5) days to deposit additional funds in the tax escrow to enable the Bank to pay that 2nd installment tax bill."

¶ 15 Finally, the letter stated that two loans had a maturity date of September 21, 2018, and that Byline would not be extending the maturity date of the loans and would not be refinancing them.

¶ 16 Byline responded to the Barretts' motion to vitiate the proceedings, stating that while the Barretts "continue to complain about the manner in which Byline handled the tax escrow account,

there are no facts alleged supporting their conclusion that the account was mishandled." Byline reiterated that the case involved two matured loans that the Barretts failed to pay upon maturity.

¶ 17 The court issued a written order on the Barretts' motion to vitiate the entire proceeding. In that order, the court noted that the allegations seemed "to arise from a dispute about the amount of tax escrow payments that the Barretts were required to make under the loan documents versus what the Barretts were actually paying." The court found that the motion raised certain affirmative matters relating to the alleged fraudulent conduct by Byline and would thus be construed as a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2022)). The court found, however, that the motion failed to address how the alleged affirmative matters defeated Byline's claim for foreclosure based on the default of the subject loans. The motion failed to allege facts establishing that the loan was not in default or any acts establishing a defense to foreclosure. The court noted that a bank is not required to refinance a loan and their refusal to do so under the circumstances presented was not fraud.

¶ 18 The court further found that while the Barretts may have achieved a reclassification of their property from commercial to "single mixed use," "this has nothing to do with the allegations made in the complaint relating to the Barretts' alleged default of the loans in question." The court found that the reduction in tax liability that appeared to have resulted from the Barretts' efforts to get the properties reclassified "may be pertinent in calculating the nature and extent of the default, but has nothing to do with whether or not [the Barretts are] in default as alleged or whether [Byline] was entitled to file this foreclosure action based on the default alleged in the complaint." The court denied the motion to dismiss with prejudice.

¶ 19 Byline then filed a motion for summary judgment. Byline alleged that the promissory notes issued by Byline for both properties were in default as a result of non-payment when the notes matured, and requested the court to grant its motion for summary judgment.

¶ 20 The Barretts responded to the motion for summary judgment with the same arguments that appeared in their section 2-619 motion to dismiss that had been previously denied with prejudice by the trial court.

¶ 21 The court granted Byline's motion for summary judgment. In its written order, the court stated that the Barretts had, "using all of the same exhibits as in their prior pleadings, rehashed all of the same arguments that this Court summarily rejected in various prior rulings in this case, including among others, its order on Defendants' motion to [dismiss] and its order on Plaintiff's motion to dismiss counterclaims." The trial court found that the Barretts failed to establish a genuine issue of material fact that would prevent a finding that Byline was entitled to judgment as a matter of law. Judgments of foreclosure and sale as to both properties were entered by the court.

¶ 22 On June 28, 2022, a judicial sale of the properties occurred, with Byline as the successful bidder for both properties. Byline filed a motion to approve the judicial sale, which the trial court granted, finding that the Barretts had "failed to establish any cognizable defenses to the motion as required by 735 ILCS 5/15-1508(b)." The Barretts filed a motion to reconsider the order approving the sale, which the trial court denied. This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 As an initial matter, we must address the inadequacy of the Barretts' appellate brief. Procedural rules governing the content and form of appellate briefs are mandatory and not suggestions. *Ammar v. Schiller, Ducanto & Fleck, LLP*, 2017 IL App (1st) 162931, ¶ 11. Further,

self-represented litigants are not excused from following these rules. *Lewis v. Heartland Food Corp*., 2014 IL App (1st) 123303, ¶ 5.

¶ 25 Illinois Supreme Court Rule 341(h) (eff. Oct. 1, 2020), contains the requirements of an appellant's brief. It requires a table of contents, including a summary statement, entitled "Points and Authorities," of the points argued and the authorities cited in the Argument. Ill. S. Ct. R. 341(h)(1) (eff. Oct. 1, 2020). It requires an introductory paragraph stating "(i) the nature of the action and of the judgment appealed from and whether the judgment is based upon the verdict of a jury, and (ii) whether any question is raised on the pleadings and, if so, the nature of the question." Ill. S. Ct. R. 341(h)(2) (eff. Oct. 1, 2020). Briefs must have a statement of the issue or issues presented for review. Ill. S. Ct. R. 341(h)(3) (eff. Oct. 1, 2020). They must contain a "concise statement of the applicable standard of review for each issue, with citation to authority." *Id.* The rule also requires a statement of jurisdiction under the heading "Jurisdiction" that contains the basis for the appeal including the supreme court rule or other law which confers jurisdiction upon the reviewing court. Ill. S. Ct. R. 341(h)(4) (eff. Oct. 1, 2020). The Barretts' brief does not contain any of the above-listed requirements.

¶ 26 Additionally, Rule 341(h)(6) requires the Statement of Facts to contain the facts necessary to understand the case, stated accurately and fairly "without argument or comment, and with appropriate reference to the pages of the record on appeal in the format as set forth in the Standards and Requirements for Electronic Filing the Record on Appeal." Ill. S. Ct. R. 341(h)(6) (eff. Oct. 1, 2020). The Barretts' brief contains 38 pages of "facts" that are riddled with arguments about fraud and fabrication.

¶ 27 The rule also requires that the Argument section contain the contentions of the appellant and the reasons therefore, with citation of the authorities and the pages of the record relied on. Ill.

S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020). There are no citations to the record in the Barretts' Argument section.

¶ 28 When an appellant's brief fails to comply with the requirements of Rule 341, this court has the discretion to strike the brief and dismiss the appeal. *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 15; *Litwin v. County of LaSalle*, 2021 IL App (3d) 200410, ¶ 12 (court exercised its discretion to strike appellant's brief and dismiss appeal for failure to comply with the requirements of Rule 341). The failure to abide by the requirements of Rule 341(h) hinders our ability to understand the facts of the case and the Barretts' contentions of error. We will not search the record for the purpose of finding error where an appellant has made no good faith effort to comply with the supreme court rules governing the contents of briefs. *Id*. Nonetheless, we will consider the merits of this appeal, to the best of our abilities, based on the brief presented, finding that the Barretts' lack of compliance with Supreme Court Rule 341(h) does not preclude our review. See *In re Estate of Jackson*, 354 Ill. App. 3d 616, 620 (2004) (reviewing court has choice to review merits, even in light of multiple Rule 341 mistakes).

¶ 29 Turning to the merits of the case, the notice of appeal indicates that this appeal is from the judgment entered on December 19, 2022 (the trial court's order approving the report of sale and distribution), and July 21, 2023 (the trial court's denial of the Barretts' motion to reconsider the order approving the sale). Pursuant to section 15-1508(b) of the Mortgage Foreclosure Law, "[u]nless the court finds that (i) a notice required in accordance with subsection (c) of Section 15-1507 was not given, (ii) the terms of sale were unconscionable, (iii) the sale was conducted fraudulently, or (iv) justice was otherwise not done, the court shall then enter an order confirming the sale." 735 ILCS 5/15-1508(b) (West 2022). This court will not disturb the trial court's decision to confirm or reject a judicial sale absent an abuse of discretion. *Household Bank, FSB*, 229 Ill. 2d

173, 178 (2008). A trial court abuses its discretion if "no reasonable person would take the view adopted by the trial court." *Dawdy v. Union Pacific R.R. Co*., 207 Ill. 2d 167, 177 (2003).

¶ 30 Notably, however, the Barretts do not take issue with the judicial sale on appeal. Rather, their argument is that Byline caused the "fraudulent foreclosure" of the Barretts' property by "fraudulently preventing" the Barretts from "refinancing their Loans with Byline elsewhere." While that argument does not pertain to the judicial sale, the notice of appeal does contain a handwritten statement noting that the Barretts seek to "vacate the entire proceeding for reason of fraud upon the court by attorney Scott Kenig."

¶ 31 The Barretts raised this issue in their section 2-619 motion to dismiss, and in their response to Byline's motion for summary judgment. It is well settled that an appeal from a final judgment in a case entails review not only of the final judgment order, but of any interlocutory orders constituting "a step in the procedural progression leading" to that judgment. *In re D.R.*,354 Ill. App. 3d 468, 472 (2004). Both the denial of a section 2-619 motion to dismiss and the order granting a motion for summary judgment have been considered to be a procedural step toward a foreclosure order and a final judgment confirming the sale after the foreclosure. *CitiMortgage, Inc. v. Hoeft*, 2015 IL App (1st) 150459, ¶ 8 (denial of motion to dismiss "integrally related" to foreclosure order and final judgment confirming the sale); *CitiMortgage, Inc. v. Bukowski*, 2015 IL App (1st) 140780, ¶ 13 (defendants' appeal from the order confirming sale encompassed review of the trial court's order entering summary judgment for CitiMortgage because summary judgment order was a procedural step in the progression leading to that judgment).

¶ 32 We review *de novo* the circuit court's denial of a section 2-619 motion to dismiss. *DeLuna v. Burciago*, 223 Ill. 2d 49, 59 (2006). Section 2-619(a)(9) allows dismissal if "the claim asserted against defendant is barred by other affirmative matter." 735 ILCS 5/2-619(a)(9) (West 2022).

When ruling on a motion to dismiss under section 2-619, a court must accept all well-pleaded facts in the complaint as true and draw all reasonable inferences from those facts in favor of the nonmoving party. *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 24. Legal and factual conclusions unsupported by allegations of specifical facts are not deemed admitted. *Poo-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009).

¶ 33 Here, the Barretts' main contention in their motion to dismiss, and on appeal, appears to be that Byline committed fraud when it issued the May 2018 letter notifying the Barretts of their default and preventing the Barretts from refinancing their loans elsewhere before the notes matured. However, this remains a legal conclusion unsupported by allegations of specific facts.

¶ 34 The elements of fraud are: (1) a false statement of material fact; (2) knowledge or belief of the statement's falsity; (3) intent to induce the plaintiff to act or refrain from action on the falsity of the statement; (4) the plaintiff reasonably relied on the false statement; and (5) damage from such reliance. *Lagen v. Balcor Co.*, 274 Ill. App. 3d 11, 17 (1995). A claim "must allege, with specificity and particularity, facts from which fraud is the necessary or probable inference, including what misrepresentations were made, when they were made, who made the misrepresentations and to whom they were made." *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 496-97 (1996). "Conclusory allegations are insufficient." *Aasonn LLC v. Delaney*, 2011 IL App (2d) 101125, ¶ 28.

¶ 35 Here, the Barretts do not allege any of the elements of fraud with any specificity. The record contains a letter, dated October 9, 2017, from the Cook County Assessor's Office, stating that it determined the assessed valuation of the 1606 Westchester property should be reduced (C870). The letter stated that the reduction "will be reflected on the second installment of your 2017 real estate tax bill payable in 2018." In March 2018, the Barretts unilaterally began paying

$400 instead of $1,671.45 in monthly tax escrow payments, presumably to reflect the tax reduction. However, as explained in Byline's May 2018 letter, the last full year tax bill for the property was 2016, and the monthly tax escrow for the loan was $1,671.45, as listed in the loan documents. Byline's basis for calculation of the monthly escrow payment for 2018 was the "estimated amount of 2017 real estate taxes." Byline noted that until that estimated amount was verified to be different, which would not occur "until the second installment of the 2017 real estate taxes are assessed," the Barretts were not entitled to pay less than the amount listed in the loan documents. The facts alleged by the Barretts do not amount to a claim for fraud.

¶ 36 Moreover, both notes at issue in this case matured on September 21, 2018. The Barretts failed to pay Byline the amounts due on those two notes at that time, which formed the basis of Byline's foreclosure action. Accordingly, the trial court properly denied the Barretts' motion to dismiss based on alleged fraud.

¶ 37 The fraud claim is also insufficient to create a genuine issue of material fact, which would defeat Byline's entitlement to summary judgment. Summary judgment is appropriate when the pleadings, deposition, and admissions on file, together with any affidavits, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2022). A trial court's ruling on summary judgment presents an issue of law, which we review *de novo*. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008).

¶ 38 The Barretts raised the exact same arguments in their response to Byline's motion for summary judgment as they did in their motion to dismiss. A party opposing summary judgment is not entitled to rely on the allegations of his or her pleading to raise a genuine issue of material fact, but must affirmatively controvert evidence adduced by the moving party. *Bukowski*, 2015 IL App (1st) 140780, ¶ 19. As can be seen by the payment sheets sent to the Barretts, the Barretts began

unilaterally sending in $400 for their escrow payments in March of 2018, before Byline had verified there would be a change in the escrow tax payment for the second installment of 2017 taxes. The Barretts have not pointed to anything in the loan documents that could be construed as permitting such a unilateral lowering of payments. Lower payment aside, the promissory notes matured in September 2018, and the Barretts did not repay the amounts due and owing at that time, prompting the current litigation. The Barretts' claim that Byline fraudulently failed to lower the escrow payment amounts is wholly unsupported by the record and does not create a genuine issue of material fact so as to defeat Byline's entitlement to summary judgment on the foreclosure action. It follows that the identical unsupported claim raised by the Barretts on appeal must fail as well. See *Bukowski*, 2015 IL App (1st) 140780, ¶ 19.

¶ 39 To the extent the Barretts raise other arguments on appeal, either in relation to the judicial sale or the grant of Byline's motion for summary judgement, we are unable to decipher them from the Barretts' appellate brief. A reviewing court "is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research." *In re Marriage of Auriemma*, 271 Ill. App. 3d 68, 72 (1995); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Issues that are ill-defined and insufficiently presented are considered waived. *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 855 (2007).

¶ 40 III. CONCLUSION

¶ 41 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 42 Affirmed.