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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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COMMERCE CAPITAL, L.P., a Tennessee Limited Partnership,	)	Appeal from the Circuit Court of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09-L-1207
	)	
RON ERIKSEN and JULIE ERIKSEN,	)	
	)	
Defendants-Appellants,	)	Honorable
	)	John T. Elsner,
(Scott Wallis, Petitioner-Appellant).	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Justices Zenoff and Burke concurred in the judgment.

**ORDER**

*Held:* Defendants were not entitled to more lenient treatment than attorneys due to *pro se* status; defendants did not establish plaintiff's counsel violated rules of professional conduct or that trial judge was biased; defendants did not establish that the trial court erred in finding they received adequate notice of judicial sale; defendants did not establish trial court erred in failing to grant continuances or allow amendment to pleadings; and various arguments were forfeited due to failure to comply with relevant Illinois Supreme Court Rules.

¶ 2 Defendants, Ron and Julie Eriksen, appeal a judgment of the circuit court of Du Page County awarding plaintiff, Commerce Capital, L.P., \$583,362. Petitioner Scott Wallis also appeals, contending the trial court erred in denying his petition to intervene as a matter of right. For the reasons that follow, we affirm.

¶ 3

## II. BACKGROUND

¶ 4 Plaintiff made a loan to USA Baby, Inc., in the amount of \$1,180,000. Ron and Julie Eriksen executed a guarantee of the loan in favor of plaintiff. USA Baby defaulted and went into bankruptcy, triggering an automatic stay of actions against it by creditors. See *Williams Awning Co. v. Illinois Workers' Compensation Comm'n*, 2011 IL App. (1st) 102810WC, ¶ 11. Plaintiff obtained relief from the stay and conducted a public sale of the pledged collateral (plaintiff was the high bidder with a credit bid of \$ 1,000,000). A deficiency of \$180,000 remained, which plaintiff sought to recover in the instant case. Scott Wallis sought and was denied leave to intervene. Following a jury trial, the trial court entered a judgment of \$583,362 against the Eriksens (representing the deficiency plus interest and attorney fees). The parties are aware of the facts and the proceedings below, and defendants' complaints chiefly concern the conduct of the proceedings.<sup>1</sup> Accordingly, we will not

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<sup>1</sup>In contravention of Illinois Supreme Court Rule 341(h)(6) (eff. July 1, 2008), defendants' statement of facts contains substantial argument. We will not consider such inappropriate material in defendants' brief. Moreover, also in contravention of this rule, defendants provide few citations to the record to substantiate the purported facts they set forth in this section. Such assertions may be disregarded by a reviewing court. *Jeffrey M. Goldberg & Associates, Ltd. v. Collins Tuttle & Co., Inc.*, 264 Ill. App. 3d 878, 886 (1994) ("A party's failure to comply with Rule 341 is ground for disregarding its arguments on appeal based on un-referenced statement of facts.").

set forth any further facts at this point, and we will discuss relevant facts as they pertain to the issues raised below.

¶ 5

### III. ANALYSIS

¶ 6 The Eriksens' complaints can be grouped into four main categories. First, they contend that their *pro se* status entitled them to more lenient treatment. Second, they argue that plaintiff's attorneys violated the rules of professional conduct and committed a fraud upon the trial court. Third, they complain of judicial bias. Fourth, they assert that they were not provided with proper notice of the public sale of the USA Baby collateral. The Eriksens also briefly raise a number of additional issues that we will address at the end of this order.

¶ 7 Wallis argues he should have been allowed to intervene because Ron Eriksen "was medicated and unable to defend against a legal Goliath like" plaintiff's counsel. He provides no supporting legal authority for this point, thus forfeiting it. *People v. Ward*, 215 Ill. 2d 317, 332 (2005). Additionally, Wallis contends he has an interest in this case, "which will be further demonstrated in the Appellate Brief for Case No. 02-10-1098, a case currently pending before this court." He then "incorporates said brief by reference into this brief." We note that Appeal No. 02-10-1098 is not consolidated with this appeal; therefore, we will not consider that brief in this appeal. As Wallis has set forth no additional argument on this issue, we will not give it any further consideration here.

¶ 8 We also note that the Eriksens argue that the trial court lacked jurisdiction because of the pendency of the bankruptcy litigation involving USA Baby. Section 362(a)(1) of the Bankruptcy Code (11 U.S.C. § 362 (a)(1) (1995)) voids any judicial action taken against a debtor the moment the debtor enters bankruptcy. *Cohen v. Salata*, 303 Ill. App. 3d 1060, 1064-66 (1999). The Eriksens do not explain how the fact that USA Baby is involved in bankruptcy proceedings operates to stay

proceedings against them individually, and it is certainly not apparent to us how such proceedings could do so. We will now turn to the individual issues raised the by parties.

¶ 9 The Eriksens first argue that they should have been treated leniently due to their *pro se* status. Whether *pro se* status entitles a litigant to favorable treatment is a legal question, so our review is *de novo*. *Puritan Finance Corp. v. Bechstein Construction Corp.*, 2012 IL App. (2d) 112261, ¶ 4. A *de novo* review is one in which the reviewing court decides the issue in controversy without any deference accorded to the decision of the trial court. *Zebra Technologies Corp. v. Topinka*, 344 Ill. App. 3d 474, 480 (2003). It is well established in this state that parties choosing to proceed *pro se* must comply with the same rules and meet the same standards as licensed attorneys. *People v. Richardson*, 2011 IL App. (4th) 100358, ¶ 12 (“Finally, where a defendant elects to proceed *pro se*, he is responsible for his representation and is held to the same standards as any attorney.”); *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009) (“Further, we note that *pro se* litigants are presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules and procedures as would be required of litigants represented by attorneys.”); *Domenella v. Domenella*, 159 Ill. App. 3d 862, 868 (1987). The Eriksens cite *Haines v. Kerner*, 404 U.S. 519, 520 (1972), in arguing to the contrary. *Haines* states that pleadings filed by *pro se* litigants are held “to less stringent standards than formal pleadings drafted by lawyers.” *Id.* However, federal procedural rules are not controlling in state court. *Adams v. LeMaster*, 223 F.3d 1177, 1182 n. 4 (10th Cir. 2000); see also *Valencia v. Smyth*, 185 Cal. App. 4th 153, 167 (2010) (“Like other federal procedural rules, therefore, ‘the *procedural provisions of the [FAA] are not binding on state courts.*’ (Emphasis in original.)”); *Whitney v. Alltel Communications, Inc.*, 173 S.W. 3d 300, 306 (Mo. App. 2005); *Gonzalez v. State*, 118 Nev. 590, 594 n.12 (2002). Hence, the rule

announced in *Haines* is not controlling here, and we will apply the well-established law of this state. The case of *Oregon v. Hass*, 420 U.S. 714, 719 (1975), cited by defendants for the proposition that United States Supreme Court precedent is binding on state courts, is inapposite, as that case involved a constitutional rule.

¶ 10 Next, the Eriksens argue that plaintiff’s attorneys violated the rules of professional conduct and committed a fraud upon the trial court. This argument raises both legal and factual issues, so we will apply a mixed standard, conducting *de novo* review of questions of law and applying the manifest-weight standard to questions of fact. See *People v. Neal*, 2011 IL App. (1st) 092814, ¶ 11. A decision is contrary to the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *International Fraternal Order of Police Labor Council v. Illinois Local Labor Relations Board*, 319 Ill. App. 3d 729, 736 (2001). They assert a violation of Rule 3.3 of the Illinois Rules of Professional Conduct (Ill. Rs. Prof’l Conduct R. 3.3 (eff. Aug. 1, 1990)), contending that plaintiff’s attorney allegedly “held material evidence back from the court prior to ruling on a significant matter—a motion to dismiss.” Initially, we do not believe the conduct alleged by the Eriksens would fall within Rule 3.3, as the only thing that rule prohibits withholding is adverse legal authority. See Ill. Rs. Prof’l Conduct R. 3.3(a)(2) (eff. Aug. 1, 1990). Thus, defendants have not established a duty on behalf of plaintiff’s attorneys to disclose any information. For example, a duty might exist if defendants request this information during discovery. Defendants give no indication that this is the case.

¶ 11 Moreover, the relevance of the information purportedly withheld is not apparent to us. The Eriksens complain that plaintiff’s counsel did not reveal a settlement agreement had been reached on February 9, 2010. They do not discuss the nature of this agreement in the course of this

argument; however, from their statement of facts, it appears to have something to do with the disposition of the USA Baby collateral purchased by plaintiff in the public sale. It is not clear how the post-sale disposition of this property could have affected defendants' responsibility for the deficiency that remained following the sale. Defendants' debt was reduced by the amount the collateral was sold for in the public sale, and whether it was subsequently resold for more or less than that amount would have no bearing on the deficiency. Furthermore, the Eriksens acknowledge in their reply brief that the settlement was disclosed a week before trial. If it were relevant, the Eriksens should have had no trouble raising it during trial, as determining its effect on any judgment would have simply been a matter of performing a mathematical calculation. In any event, defendants, as appellants, bear the burden of demonstrating error on appeal. See *TSP-Hope, Inc. v. Home Innovators of Illinois, LLC*, 382 Ill. App. 3d 1171, 1173 (2008). Thus, it was incumbent upon the Eriksens to explain how the settlement agreement would have affected the outcome of the trial. Instead, they state only in a conclusory manner, "Said settlement agreement constituted a material fact that could directly alter those amounts allegedly owed by the Eriksens." In other words, defendants have not carried their burden on appeal.

¶ 12 Defendants further complain of judicial bias. The possibility of a biased trier of fact raises due process concerns (*People v. Johnson*, 199 Ill. App. 3d 798, 806 (1990)) and is thus reviewed *de novo* (*People v. Radcliff*, 2011 IL App. (1st) 091400, ¶ 22). Citing *Cricthon v. Golden Rule Insurance Co.*, 358 Ill. App. 3d 1137, 1150 (2005), defendants argue that they were "subjected to abuses of process, abuses of discretion, abuses of professional conduct and abusive demands of Judge Elsner." Defendants, however, do not identify any specific conduct of the trial judge that would support a claim of bias. Trial judges are presumed fair and impartial and a party claiming bias

must overcome this presumption. *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). Therefore, a party claiming bias must show personal bias arising from something outside of the litigation or comments made during the proceedings that show such a high degree of antagonism or favoritism as to make impartial judgment impossible. *Leshner v. Trent*, 407 Ill. App. 3d 1170, 1176 (2011). Defendants' general allegations fall far short of meeting this standard.

¶ 13 The Eriksens also argue that they did not receive proper notice of the sale of the USA Baby collateral. This issue is reviewed *de novo*. *Stewart v. Lathan*, 401 Ill. App. 3d 623, 626 (2010). The Eriksens acknowledge that “at some point [Ron Eriksen] did receive said notice, but he did not receive said notice prior to the sale in a form prescribed by law.” Thus, it appears defendants received actual notice. Generally, a party who has received actual notice must show prejudice to prevail on a claim based on a technical deficiency. *People ex rel. Douglass v. One Toyota Supra*, 202 Ill. App. 3d 797, 801 (1990). Defendant neither attempts to make such a showing nor tries to explain why such a showing is unnecessary. Finally, we note that this argument is not supported by authority, rendering it forfeited. *Kic v. Bianucci*, 2011 IL App. (1st) 100622, ¶ 23.

¶ 14 Furthermore, we note that the parties seem to agree that Tennessee law governs the issues of notice and the propriety of the sale of the USA Baby collateral. Under Tennessee law, a debtor may recover damages against a creditor where the disposition of collateral is not commercially reasonable. *Auto Credit of Nashville v. Wimmer*, 231 S.W. 3d 896, 899-900 (Tenn. 2007). One factor relevant to assessing whether a creditor's acts are reasonable is the notice provided to the debtor. See *Id.* at 899-903. Lack of reasonable notice to a guarantor is a relevant consideration; however, it is not conclusive, in itself, as to whether the sale of collateral was commercially reasonable. *R & J of Tennessee, Inc. v. Blankenship-Melton Real Estate, Inc.*, 166 S.W. 3d 195, 205

(Tenn. Ct. App. 2004), overruled on other grounds by *Auto Credit of Nashville*, 231 S.W. 3d at 902. Since lack of notice to a secondary obligor is not conclusive under Tennessee law, even if defendants are correct here, it would not be enough for us to disturb the judgment of the trial court.

¶ 15 Defendants briefly raise a number of additional arguments. They suggest an estoppel-like argument (see *Kullins v. Malco, a Microdot Co., Inc.*, 121 Ill. App. 3d 520, 527 (1984)), contending that plaintiff promised to assist defendants in a dispute with defendants' franchisees and that this caused defendants to make decisions that impaired their ability to emerge from bankruptcy. Defendants do not set forth what these decisions were or the specifics of plaintiff's alleged promises (or, more importantly, identify where in the record such things could be substantiated). To succeed on a promissory-estoppel claim, a party must show (1) an unambiguous promise; (2) reliance on that promise; (3) that the promisor foresaw and expected this reliance; and (4) that the reliance was detrimental. *Ross v. May Co.*, 377 Ill. App. 3d 387, 393 (2007). Absent specific facts, it is impossible for us to determine whether these elements were satisfied. Defendants' argument raises more questions than it provides answers. As such, we decline to consider this argument. See *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 493 (2002).

¶ 16 Defendants also assert that the trial court abused its discretion in failing to make accommodations for Ron Eriksen's physical and mental health. See *People v. Walker*, 232 Ill. 2d 113 (2009) (holding this issue is reviewed for an abuse of discretion). This argument is not supported by authority (save defendants' citation to *Crichton*, 358 Ill. App. 3d at 1150, which has no apparent relevance to this issue). It is therefore forfeited. *Kic*, 2011 IL App. (1st) 100622, ¶ 23. We also note that the Eriksens do not explain why these health problems were of such a magnitude that proceedings had to cease. Moreover, as pointed out by plaintiff, the only evidence in the record

indicating Ron Eriksen was not able to participate in further proceedings was a letter from his doctor dated January 11, 2010, which stated he would not be able to participate for 30 days. Based on this, the trial court granted a continuance. While the Eriksens provide some authority in their reply brief, none of it provides a basis for concluding that an open-ended request to essentially stay proceedings would be appropriate under circumstances such as we have here. We therefore find no abuse of discretion

¶ 17 In their reply brief, the Eriksens question plaintiff's ability as a foreign corporation to maintain a civil action in Illinois. See 805 ILCS 5/13.70 (West 2008). Such a defense may be waived if not asserted in a timely manner. *Cox v. Doctor's Associates, Inc.*, 245 Ill. App. 3d 186, 195-96 (1993). Moreover, new issues may not be raised on appeal in a reply brief. *People v. Pertz*, 242 Ill. App. 3d 864, 914 (1993). As the Eriksens did not raise this issue in their opening brief (depriving plaintiff of a chance to respond to it), we will not consider it. Similarly, the Eriksens now complain that plaintiff's counsel added language to an agreed order to which they had not agreed. The Eriksens also failed to raise this issue in their opening brief. The Eriksens also complain of the fact that they were found in default after failing to file a responsive pleading. However, those defaults were vacated and the case proceeded to trial. As such, that the Eriksens were held in default for a time had no bearing on the outcome of the litigation. Yet another issue raised for the first time in the reply brief concerns whether the USA Baby collateral was subject to various provisions of Bankruptcy law (though the Eriksens acknowledge plaintiff obtained relief from the automatic stay).

¶ 18 The Eriksens also argue for the first time in their reply brief—practically speaking—that the trial court erred in denying them leave to amend a counterclaim.<sup>2</sup> They do mention this issue in a

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<sup>2</sup>For several issues, defendants provided only minimal argument in their opening brief and

one-sentence assertion in their opening brief, simply stating that leave to amend “should have been liberally granted in the interests of justice.” In their reply, they cite *Lee v. Chicago Transportation Authority*, 152 Ill. 2d 432, 467-68 (1992), which sets forth the following factors to consider in determining whether to allow an amendment to the pleadings: “whether the amendment would cure a defect in the pleadings; whether the other party would be prejudiced or surprised by the proposed amendment; timeliness of the proposed amendment; and whether there were previous opportunities to amend the pleadings.” The only factor they actually address, however, is the final one. They point out that this was the first such request (they also argue, without supporting authority, that this factor alone requires that leave to amend be granted). Beyond that, they only claim to have “a solid factual basis to allow amendment.” They do not state what that factual basis is, much less explain how the proposed amendment would cure the deficiency in the pleadings (which they recognize exists: “Appellant Eriksen recognized the defects as identified by Appellee.”). Whether to grant leave to amend the pleadings is a decision we review for an abuse of discretion. *Old Salem Chautauqua Ass’n v. Illinois District Council of Assembly of God*, 13 Ill. 2d 258, 266 (1958). An abuse of discretion occurs where no reasonable person could agree with the trial court. *In re Marriage of Lichtenauer*, 408 Ill. App. 3d 1075, 1086 (2011). That one of four relevant factor favors amendment provides us with no basis to find an abuse of discretion.

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expansive argument in their reply brief. We strongly disapprove of this practice, as it deprives appellees of an opportunity to respond to an argument. Moreover, it violates the spirit of Illinois Supreme Court Rule 341(j), and we would be justified in finding such arguments forfeited (*cf. Cordeck Sales, Inc. v. Construction Systems, Inc.*, 382 Ill. App. 3d 334, 347 (2008) (“Initially, we note that First Midwest waived this argument by raising it for the first time in its reply brief.”)).

¶ 19

IV. CONCLUSION

¶ 20 To the extent that we can discern defendants' arguments, we do not find them well taken. More often, defendants' arguments are undeveloped, unsupported by legal authority or specific facts, and depend largely on conclusory allegations (for example, the Eriksens repeatedly complain that they were held to a higher standard without explaining how). We also note that the majority of the factual assertions made by defendants are not substantiated by citation to the record. It is often stated that "[t]he appellate court is not a repository into which an appellant may foist the burden of argument and research." *Lindemulder v. Board of Trustees of the Naperville Firefighters' Pension Fund*, 408 Ill. App. 3d 494, 501 (2011). Moreover, it is improper for a court to assume the role of advocate for a party. *Halpin v. Schultz*, 234 Ill. 2d 381, 390 (2009). Defendants have not presented this court with any legally sufficient reasons that would warrant us in disturbing the decision of the trial court; accordingly, we must affirm its judgment.

¶ 21 Affirmed.