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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

OXFORD BANK & TRUST,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellee,)	
)	
v.)	No. 10-CH-6879
)	
CHICAGO TITLE LAND TRUST COMPANY)	
FORMERLY KNOWN AS LaSALLE BANK)	
NATIONAL ASSOCIATION u/t/a Dated April)	
25, 2005, and known as trust 13461,)	
KORNERSTONE REALTY GROUP, INC., an)	
Illinois corporation, JOHN A. KANTOR,)	
UNKNOWN OWNERS, and NON-RECORD)	
CLAIMANTS,)	Honorable
)	Bonnie M. Wheaton,
Defendants-Appellants,)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Birkett concurred in the judgment.

ORDER

Held: No issue of material fact precluded summary judgment regarding liability on guarantees; award of attorney fees was not error; sheriff was authorized to conduct foreclosure sale; notice of sale was adequate, and terms of sale were not unconscionable.

¶ 2 Defendants, Chicago Title Land Trust Company (formerly known as LaSalle Bank National Association) under a trust agreement dated April 25, 2005, and known as Trust 13461, Kornerstone Realty Group, Inc. (the trust), and John A. Kantor, appeal the judgment of the circuit court of Du Page County foreclosing on certain real property that had been held by the trust and finding Kantor and Kornerstone liable for a deficiency judgment entered after the sale of the mortgaged property pursuant to guarantees they had executed. Defendants also contest the trial court's award of attorney fees to plaintiff. For the reasons that follow, we affirm.

¶ 3 II. ANALYSIS

¶ 4 Defendants raise three main issues, which we will address in the order they are presented in defendants' brief. This case comes to us following a grant of summary judgment; therefore, review is *de novo*. *Hawkins v. Nalick*, 2012 IL App (5th) 110553, ¶ 10. Summary judgment is appropriate if there are no disputed questions of material fact and the moving party is entitled to judgment as a matter of law. *Id.* It has often been stated that summary judgment is a drastic remedy that is proper only if the movant's entitlement to judgment is clear and free from doubt. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). The record must be construed strictly against the movant and liberally in favor of the opponent of the motion. *Axe v. Norfolk Southern Ry. Co.*, 2012 IL App (4th) 110277, ¶ 10. We will discuss the evidence and the record as it pertains to the individual issues raised in this appeal. Under the *de novo* standard of review, we owe no deference to the trial court's decision and may freely substitute our judgment for that of the trial court. *Miller v. Hecox*, 2012 IL App (2d) 110546, ¶ 29. Two issues—which we will identify when we come to them—require the application of the abuse of discretion standard, under which we must affirm the trial court unless no reasonable person could agree with its decision. *Schwartz v. Cortelloni*, 177 Ill. 2d 166, 176 (1997). On appeal,

it is the burden of the appellant (here, defendants) to affirmatively establish error in the trial court's decision. *In re Alexander R.*, 377 Ill. App. 3d 553, 557 (2007).

¶ 5 We will briefly set forth the following background information to facilitate an understanding of the discussion that follows. The trust mortgaged an undeveloped parcel of property (that had been subdivided into eight lots). Plaintiff was the mortgagee. The trust also executed a promissory note, which Kantor and Kornerstone guaranteed. The trust defaulted, and plaintiff initiated this action. A foreclosure sale was held on September 1, 2011. Kantor attended the sale. Plaintiff was the only bidder and won the auction, making a credit bid of \$1,050,000. The trial court confirmed the sale on October 24, 2011. It also entered a deficiency judgment of \$559,658.97 at that time. The next day, an appraiser inspected the property and provided a valuation of \$2,570,000. Defendants moved the trial court to reconsider its confirmation order. The trial court denied the motion. This appeal followed.

¶ 6 A. The Commercial Guarantees

¶ 7 A guaranty is a contract and is therefore interpreted as such. *Cohen v. Continental Illinois National Bank & Trust Co.*, 248 Ill. App. 3d 188, 192 (1993). Plaintiff's complaint alleges that Kantor and Kornerstone executed guarantees for the trust's debt on August 1, 2008, and re-executed the guarantees on February 1, 2010. Kantor and Kornerstone acknowledge executing guarantees on August 1, 2008, but deny re-executing them on February 1, 2010. Defendants attempt to raise several questions of fact as to why the guarantees are unenforceable. We find none of defendants' arguments persuasive.

¶ 8 Defendants first assert that a material fact exists regarding whether the guarantees had been re-executed after being initially executed and, if so, the date on which they were re-executed.

According to defendants, this means that “the validity of the ‘second’ guarantees was in doubt.” This does not raise a material question of disputed fact. Plaintiff points out that the guarantees provide that if plaintiff holds more than one guaranty, they are, by their plain language, cumulative, stating: “Lender’s rights under all guarantees shall be cumulative.” They also state that they “do not affect or invalidate any such other guarantees.” Defendants do not contend that they would not be liable under the first guarantees they executed, so even if the re-executed guarantees were not valid, they would still be liable under the first guarantees. Put differently, whether the re-executed guarantees are valid is not a *material* issue of fact, as defendants would be liable even if later guarantees were invalid. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (“Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.”). Moreover, as defendants set forth no authority for the proposition that the date a contract is executed has any bearing upon its enforceability, we will not address that portion of their argument any further. See *Law Offices of Nye & Associates, Ltd. v. Boado*, 2012 IL App (2d) 110804, ¶ 24.

¶ 9 Defendants also point out that sections of the headings of all of the guarantees are not completed as to principal, loan date, maturity, loan number, account, or initials. However, an examination of the text of the guarantees reveals that there is no doubt as to the debt the parties intended them to secure. They provide that the guarantor is guarantying the trusts “Indebtedness,” and they go on to define “Indebtedness” as “all of the principal amount outstanding from time to time and at any one or more times, accrued unpaid interest thereon and all collection costs and legal expenses related thereto permitted by law, attorney’s fees arising from any and all debts, liabilities

and obligations of every nature or form, now existing or hereafter arising or acquired that Borrower individually or collectively or interchangeably with others, owes or will owe Lender.” Guarantees are interpreted with reference to their plain language. *American National Bank & Trust Co. v. Mack*, 311 Ill. App. 3d 583, 588 (2000). The plain language of these guarantees indicate that Kantor and Kornerstone guaranteed all of the trust’s debts to plaintiff. Clearly, the fact that several boxes in a heading were left blank created no ambiguity regarding what Kantor and Kornerstone were guaranteeing. As such, no material issue of fact is present here.

¶ 10 Finally, defendants pose a number of questions, such as: “Since the guarantees do not include an expiration date, why was a second necessary?” Similarly, they ask, “Did the second guarantees replace the first?” If so, they continue, there would be no guarantee at all “[i]f the second guarantees are not valid.” As appellants, it was defendants’ burden to answer these questions and establish that, for example, the second guarantees replaced the first and that the new guarantees were not valid. It is defendants’ burden to show error in the proceedings below. *In re Alexander R.*, 377 Ill. App. 3d 553, 557 (2007). Such speculation is insufficient to carry this burden. *People v. Runge*, 234 Ill. 2d 68, 138 (2009) (“We do not reverse judgments on pure speculation.”).

¶ 11 In short, none of defendants’ arguments establish that the trial court erred in granting summary judgment on this issue. We therefore affirm this portion of the trial court’s judgment.

¶ 12 B. Attorney Fees

¶ 13 When it granted summary judgment, the trial court also awarded attorney fees in the amount of \$19,452.50 and costs in the sum of \$2,614.01. Whether to award attorney fees and costs are matters committed to the discretion of the trial court, and we will only interfere with an exercise of that discretion where it is abused. *In re Marriage of Bradley*, 2011 IL App (4th) 110392, ¶ 26;

Harris Trust & Savings Bank v. American National Bank & Trust Co., 230 Ill. App. 3d 591, 595-96 (1992). An abuse of discretion occurs only when no reasonable person could agree with the position taken by the trial court. *Schwartz*, 177 Ill. 2d at 176. Defendants argue that the trial court erred in awarding fees and costs.

¶ 14 Defendants rely exclusively on *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978 (1987). Defendants assert that *Kaiser* stands for the proposition that it is improper to “aggregate all work performed on a given day into a single hourly total for the day, as there is no reasonable and objective manner to determine the reasonableness of the charges.” See *Id.* at 988. Defendants further claim that the *Kaiser* court held that fees for the “review and organization of documents, office conferences and memoranda and for redrafts, revisions and corrections of drafted documents and pleadings” are *per se* improper. *Id.* They further contend that, under *Kaiser*, costs for computerized legal research may not be recovered where there is no indication of the time spent or the subject matter of the research and that the costs of “photocopying, delivery services and the like” are always encompassed in the hourly rate charged by an attorney. See *Id.* at 989.

¶ 15 Defendants ignore the context in which the *Kaiser* court made these observations, and, as a result, read *Kaiser* as standing for much more than it actually does. In *Kaiser*, the trial court denied a request for attorney fees and costs, and the appellate court affirmed the trial court’s exercise of its discretion (with a minor modification). *Id.* at 984, 990. Thus, the question before the *Kaiser* court was whether a reasonable person could agree with the trial court’s decision to deny fees and costs. See *Schwartz*, 177 Ill. 2d at 176 (holding that an abuse of discretion occurs only where no reasonable person could agree with the trial court). Therefore, what was set forth in the previous paragraph (and in *Kaiser*, 164 Ill. App. 3d at 988-89) were not immutable principles; rather, the court was merely

noting reasonable inferences that a person could draw that coincide with the trial court's exercise of discretion. Accordingly, *Kaiser* provides little direct support for defendants' arguments.

¶ 16 Our review is somewhat hampered by defendants' failure to identify with specificity what charges they find objectionable. Rather than identifying particular charges and explaining why plaintiff is not entitled to them, they rely on sweeping, general statements, such as: "[T]here are significant charges related to redrafts and revisions of pleadings as well as to drafting the Amended Complaint (because the original Complaint had errors). These charges should not have been deemed reasonable or proper by the [Trial] Court." *Kaiser*, however, does not stand for the proposition that all such charges are *per se* unreasonable and improper. Indeed, the *Kaiser* court noted that the trial court had found that "without a showing of the reasons for the multiple revisions and corrections they were not properly chargeable." *Id.* at 988. Defendants have not attempted to show that the reasons for any such "redrafts and revisions" were insufficient, as would have been necessary to carry their burden of demonstrating error on appeal (see *In re Alexander R.*, 377 Ill. App. 3d at 557). Moreover, it is not our proper role to comb the record on defendants' behalf to uncover possible errors. *Avery v. State Farm Mutual Auto Insurance Co.*, 321 Ill. App. 3d 269, 277 (2001), *rev'd in part on other grounds by Avery v. State Farm Mutual Auto Insurance Co.*, 216 Ill. 2d 100 (2005). We find none of defendants' general objections to the trial court's award of costs and fees well founded.

¶ 17 Defendants specifically object to two costs awarded by the trial court: \$1,273.14 for publication services which, they assert, "appear to be unnecessary, duplicitous, and excessive" and \$535 paid to "Accurate Clerking" without description of the services rendered. Defendants fail, however, to indicate where in the record these charges can be found, thus violating Supreme Court

Rule 341(h)(7) (eff. July 1, 2008). This would be enough to deem this argument waived. *Scoggin v. Rochelle Community Hospital*, 176 Ill. App. 3d 648, 650 (1988). Moreover, regarding the costs of publication, we note that in its reply filed in support of its motion for summary judgment, plaintiff modified its request for costs incurred for publication, removing \$427.80 for publication in one newspaper. Thus, it appears that the duplicative nature of the request was remedied. Defendants cite nothing to establish that the remaining costs for publication were otherwise “unnecessary” or “excessive.” As for the \$535 paid to accurate clerking, we note that the record contains affidavits from an employee of Accurate Clerking indicating that he is a process server and that he served process on each defendant. Accordingly, the trial court could have concluded that the \$535 was for these services.

¶ 18 Having considered and rejected defendants’ argument regarding attorney fees, we cannot conclude that the trial court abused its discretion in awarding them.

¶ 19 C. The Foreclosure Sale

¶ 20 Defendants raise three issues regarding the foreclosure sale. First, they contend that the Du Page County Sheriff was not properly authorized to conduct the sale. Second, they argue that notice of the sale was defective. Third, they assert that the terms of the sale were unconscionable. We find none of these arguments persuasive.

¶ 21 1. Whether the Sheriff had the Authority to Conduct the Sale

¶ 22 Defendants point out that the judgment of foreclosure states:

“The Judicial Sale to be conducted pursuant to this Judgment for Foreclosure shall be by public auction. Pursuant to 735 ILCS 5/15-1506(f) [(West 2010)], THE JUDICIAL SALES

CORPORATION is appointed Selling Officer of the sale at public auction of the Subject Premises.”

Defendants then cite *World Savings & Loan v. Amerus Bank*, 317 Ill. App. 3d 772, 778 (2000), where the First District held:

“Section 15-1507(b) of the Mortgage Foreclosure Law directs that ‘the real estate shall be sold at a sale * * * on such terms and conditions as shall be specified by the court in the judgment of foreclosure.’ 735 ILCS 5/15-1507(b) (West 1998). Where an order of the court directs the manner of the sale of real estate, *the officer making the sale derives his authority to do so from the order of the court alone.* [Citation.] It is his duty to conform to the court order, and, unless he follows the directions of the order or decree, his acts will be set aside.” (Emphasis added.)

From the italicized language, defendants argue that the judgement of foreclosure was the sole source of the selling agents authority and that, in turn, the Sheriff was not authorized to conduct the sale.

¶ 23 We disagree. Section 15-1506(f) of the Mortgage Foreclosure Law states:

“Special matters in judgment. Without limiting the general authority and powers of the court, special matters may be included in the judgment of foreclosure if sought by a party in the complaint or by separate motion. Such matters may include, without limitation *** an official or other person who shall be the officer to conduct the sale other than the one customarily designated by the court.” 735 ILCS 5/15-1506(f)(3) (West 2010).

It is axiomatic that a specific statutory section will control over a general one. *Szewczyk v. Board of Police & Fire Commissioners of the Village of Richmond*, 2011 IL App (2d) 100321, ¶ 30. Hence, on this issue of the authority of the selling agent, section 15-1506(f)(3) controls over the statute at

issue in *World Savings & Loan*. Indeed, that case involved the actions of the agent rather than the agent's authority. See *World Savings & Loan*, 317 Ill. App. 3d at 777. We note that the grant of authority in section 5-1506(f)(3) is prefaced with “[w]ithout limiting the general authority and powers of the court.” The portion of section 5-1507 discussed in *World Savings & Loan*, 317 Ill. App. 3d at 778, contains no similar language.

¶ 24 We also note that the judgment of foreclosure does not state that the Judicial Sales Corporation is the exclusive selling agent. Additionally, the trial court referenced an administrative order that states that the Du Page County Sheriff is authorized to conduct all judicial sales in Du Page County. As the inclusion of a “[s]pecial matter in judgment” does not purport to limit “the general authority and power of the court” (735 ILCS 5/15-1506(f)(3) (West 2010)), the trial court's appointment of the Judicial Sales Corporation did not affect the administrative order. Moreover, section 5/1506(f)(3) recognizes that a selling agent may derive its authority from something other than the judgment when it states the judgment may contain an appointment of an agent “other than the one customarily designated by the court” (735 ILCS 5/15-1506(f)(3) (West 2010)), and section 15-1507(b) expressly provides that “[a] sale may be conducted by any judge or sheriff” (735 ILCS 5/15-1507(b) (West 2010)). As the sheriff derived his authority from a source other than the judgment, defendants' reliance on *In re Fitch*, 102 B.R. 139, 141 (Bankr. N.D. Ill. 1989) is misplaced. That case is distinguishable, for the issue in that case was whether a selling agent could derive authority as a surrogate or agent of the individual appointed in the judgment rather than from an administrative order or statute.

¶ 25 Finally, we note that the *World Savings & Loan* court found that the agent's purportedly unauthorized actions did not result in prejudice to the defendant. *World Savings & Loan*, 316 Ill.

App. 3d at 779. Defendants do not identify how the fact that the Sheriff conducted the sale prejudiced them in any way. Moreover, the trial court stated that listing the Judicial Sales Corporation in the judgment was a mistake. This would seem to be the sort of error that could be corrected *nunc pro tunc*. See *Jayko v. Fraczek*, 2012 IL App (1st) 103665, ¶ 28 (“Clerical errors in an order, including the correct name of a party, may be modified at any time by entry of a *nunc pro tunc* or “now for then” order.”).

¶ 26 We therefore reject defendants’ arguments regarding the authority of the Sheriff to conduct the sale.

¶ 27 2. Notice

¶ 28 Defendants next contend that notice of the sale was defective. Section 15-1507(c)(1) specifies the contents of the notice of the sale:

“(1)The notice of sale shall include at least the following information, but an immaterial error in the information shall not invalidate the legal effect of the notice:

(A) the name, address and telephone number of the person to contact for information regarding the real estate;

(B) the common address and other common description (other than legal description), if any, of the real estate;

(C) a legal description of the real estate sufficient to identify it with reasonable certainty;

(D) a description of the improvements on the real estate;

(E) the times specified in the judgment, if any, when the real estate may be inspected prior to sale;

- (F) the time and place of the sale;
- (G) the terms of the sale;
- (H) the case title, case number and the court in which the foreclosure was filed;
- (H-1) in the case of a condominium unit to which subsection (g) of Section 9 of the Condominium Property Act applies, the statement required by subdivision (g)(5) of Section 9 of the Condominium Property Act;
- (H-2) in the case of a unit of a common interest community to which subsection (g-1) of Section 18.5 of the Condominium Property Act applies, the statement required by subdivision (g-1) of Section 18.5 of the Condominium Property Act; and
- (I) such other information ordered by the Court.” 735 ILCS 5/15-1507(c)(1) (West 2010).

Defendants have two complaints about the content of the notice of the sale. First, they contend that the notice improperly named the sheriff of Du Page County as the selling officer and the sheriff’s office as the location of the sale. We initially note that section 15-1507(c) does not require the notice to identify the person conducting the sale. See 735 ILCS 5/15-1507(c) (West 2010). In any event, the notice did correctly state that the sheriff would conduct the sale. Moreover, the sale was held at the sheriff’s office, so the notice was not inaccurate in that respect. Second, defendants argue that the notice did not contain an adequate description of the property.

¶ 29 Regarding the description of the property, section 15-1507(c) contains three requirements—notice must contain a common description, a legal description of the property, and a description of any improvements. Defendants do not dispute the fact that the notice contained both a legal and common description (indeed, they appear on the face of the notice). Defendants acknowledge that

“[t]he parcel in issue is over 266,000 square feet of *undeveloped* property subdivided into eight parcels.” (Emphasis added.) Since the property was undeveloped, there were apparently no improvements to identify (defendants point to no particular improvements in their brief).

¶ 30 Defendants do claim that the notice “infers [*sic*] that the parcel is a condominium.” They do not attempt to explain this assertion. We assume that they are referring to the following boilerplate language in the notice: “If the property is a condominium and the foreclosure takes place after 1/1/2007, purchasers other than the mortgagees will be required to pay any assessment and legal fees due under the Condominium Property Act.” This sentence clearly begins with the word “if,” and we fail to see how any reasonable person could interpret it as an assertion of fact. Moreover, we note that the legal description states—prominently in all capital letters—that the property consists of “LOTS 1 THROUGH 7 and LOT ‘A’ IN MEADOWBROOK PLACE SUBDIVISION.” Again, we see no potential for confusion.

¶ 31 In short, defendants’ arguments regarding the adequacy of the notice of the sale are wholly unpersuasive.

¶ 32 3. Unconscionability

¶ 33 Defendants’ final argument is that the terms of the sale were unconscionable. At the foreclosure sale, plaintiff made a credit bid of \$1,050,000. Plaintiff, being the only bidder, prevailed. The trial court confirmed the sale on October 24, 2011. On October 25, 2011, an appraiser inspected the premises on defendants’ behalf and conducted a formal appraisal, which valued the property at \$2,570,000.¹ Relying on the new appraisal, defendants moved the trial court to reconsider its order

¹We note that in the confirmation hearing, defendants presented an affidavit from Kantor reflecting his belief that the property was worth nearly \$4 million. In considering the affidavit, the

confirming the sale. In ruling on the motion, the trial court stated it was “putting aside any questions of due diligence.” It then accepted defendants’ new valuation and stated that it could not find that, “as a matter of law[,] *** a 41 percent sale price in a distressed foreclosure sale is unconscionable.”

¶ 34 Defendants now contend that the trial court should have held an evidentiary hearing. Generally, absent some additional irregularity, mere inadequacy of sale price does not provide a basis to disturb the result of a foreclosure sale. *Resolution Trust Corp. v. Holtzman*, 248 Ill. App. 3d 105, 113-14 (199). Public policy favors providing stability and permanency to the outcome of such sales. *Id.* at 114. Moreover, it is generally recognized that property is not typically sold for its full value at foreclosure sales due to various factors for which the debtor should expect to suffer a loss. *Id.*

¶ 35 Nevertheless, under certain circumstances, the trial court should conduct a hearing and examine whether the terms of a foreclosure sale are unconscionable. *JP Morgan Chase Bank v. Fankhauser*, 383 Ill. App. 3d 254, 264 (2008). However, an extended evidentiary hearing is not required after every foreclosure sale. *Deutsche Bank National v. Burtley*, 371 Ill. App. 3d 1, 6 (2006). The extent of the hearing depends on the circumstances of the individual case. *Resolution Trust Corp.*, 248 Ill. App. 3d at 115. This is a matter committed to the discretion of the trial court. *Deutsche Bank National*, 371 Ill. App. 3d at 6. We will only interfere with an application of that discretion if it is abused, that is, if no reasonable person could agree with the position taken by the trial court. *Schwartz*, 177 Ill. 2d at 176.

¶ 36 Here, we cannot conclude that the trial court abused its discretion by not conducting an evidentiary hearing. Quite simply, it is unclear to us what purpose such a hearing would serve. The

trial court noted Kantor’s “interest, bias and prejudice.” In any event, though not a full-fledged hearing, defendants were able to present evidence on the issue of valuation.

trial court accepted, for the purpose of its ruling, the value of the property set forth in defendants' belated appraisal. Hence, setting forth evidence that its new valuation was correct would not change the result at which the trial court arrived. Defendants do not explain what additional evidence they wished to present to the trial court. They reiterate their complaints about the content of the notice of the sale; however, we have already rejected those arguments. In short, defendants did not need an evidentiary hearing to prove a fact that the trial court accepted, and they point to no other facts they wished to prove. Thus, a reasonable person could agree that an evidentiary hearing was not necessary.

¶ 37 Defendants cite *Merchant Bank v. Roberts*, 292 Ill. App. 3d 925 (1997); however, that case is distinguishable. In that case, in addition to the sale price being substantially lower than the claimed value of the auctioned property, the defendants also asserted an additional meritorious defense. *Id.* at 931. Here, defendants rely merely on the claimed inadequacy of the sale price (putting aside their misplaced reliance on the purported inadequacy of the notice of the sale). In *Resolution Trust Corp.*, 248 Ill. App. 3d 115, in addition to an appraisal, there was evidence that there were actual buyers available in the two years preceding the sale and that on one occasion, a contract was in place, at prices that would have fully satisfied the defendant's indebtedness. In another case cited by defendants, *JP Morgan Chase Bank*, 383 Ill. App. 3d at 265, the court held that a sale price of approximately 10% of the appraised value of the property was so extreme as to require an evidentiary hearing. Ten percent is indeed an extreme case; however, other courts have confirmed sales where the price brought at auction was 33% of the appraised value (see *Resolution Trust Corp.*, 248 Ill. App. 3d at 115, citing *Glanz v. Taken*, 293 Ill. App. 634, 635-36 (1937)).

¶ 38 In sum, the trial court did not abuse its discretion by resolving this issue without conducting an evidentiary hearing.

¶ 39

III. CONCLUSION

¶ 40 In light of the foregoing, the judgment of the circuit court of Du Page County is affirmed.

¶ 41 Affirmed.