

No. 1-11-3166

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CIT GROUP/CONSUMER FINANCE, a Corporation,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee.)	Cook County.
)	
v.)	No. 08 CH 24576
)	
BARRY MORRISON,)	Honorable
)	Jesse Reyes,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justice Cunningham concurred in the judgment. Justice Delort specially concurs.

ORDER

¶ 1 **Held:** Where appellant failed to present an adequate record on appeal and to comply with rules applicable as to the form of appellate briefs, we affirmed the judgment of the circuit court.

¶ 2 Defendant, Barry Morrison, *pro se* seeks review of the orders confirming sale and quieting title entered in this mortgage foreclosure proceeding brought by plaintiff, CIT Group/Consumer Finance (CIT)¹. Defendant, however, failed to provide a complete record on appeal and violated

¹The caption on the notice of appeal and on the covers of the appellate briefs filed by the appellant and appellee misidentify Barry Morrison as the plaintiff and CIT as the defendant. We

rules relating to the forms of appellate briefs. We affirm.

¶ 3

BACKGROUND

¶ 4 Plaintiff commenced its suit for foreclosure on July 9, 2008. Defendant was served on July 18, 2008. Plaintiff's complaint and the attached exhibits are not in the record on appeal. A *lis pendens* filed by plaintiff, which is in the record, reveals that this action is based on a mortgage dated September 21, 2005, as to the property located at 4348 Mayfair Court, County Club Hills (the property); the mortgagor was Barry Morrison; the mortgagee was BNC Mortgage, Inc.; and CIT was making the instant claim based on the mortgage.

¶ 5 Plaintiff subsequently, with notice to defendant, moved for entry of a default judgment against him. In support of its motion, plaintiff presented an affidavit averring that plaintiff had been assigned the mortgage and corresponding note executed by defendant, and defendant had failed to make payments for the months of November 2007 through September 2008. The circuit court entered a default judgment of foreclosure against defendant on January 30, 2009. The order included findings by the court that the complaint included true and correct copies of the note and mortgage; defendant had failed to meet his obligations under the mortgage and note; and plaintiff was entitled to relief. The judgment directed that the property be sold at auction.

¶ 6 On December 7, 2009, plaintiff served defendant with a notice of sale which was to be conducted on January 30, 2009. The sale did not go forward on that date. A second notice of sale, to be conducted on May 5, 2010, was mailed to defendant on April 7, 2010. Defendant then noticed a motion for hearing on April 26, 2010 seeking to vacate the judgment and to stay the sale, and

correct the caption so as to properly identify Mr. Morrison as the defendant and CIT as the plaintiff.

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requesting a jury trial. This motion, however, is not in the record. The circuit court denied defendant's request for a jury trial but set a briefing schedule on defendant's motion to vacate. Thereafter, defendant filed various documents which were titled: "Notice, Affidavit Land Patents, Ejectment, and Estoppel, Declaration of Land Patent." Defendant indicated that his name had been changed from Barry Morrison to Jo El Nero Ali. Defendant argued that Jo El Niro Ali possessed a land patent which had been recorded against the property and, under federal law, this land patent was superior to all other interests and claims, except that of the "United States Government." On July 13, 2010, the case was stayed and placed on the court's bankruptcy call based on defendant's oral representations before the court that he had filed for bankruptcy.

¶ 7 Plaintiff, in its brief, suggests that the sale of the property was delayed because defendant filed for bankruptcy three times and filed an action for fraud in the law division of the circuit court which was removed to federal court and was later dismissed by that court. The property ultimately was sold to plaintiff as the highest bidder at a public auction held on December 28, and December 29, 2010, pursuant to the judgment of foreclosure. A report of sale and distribution was filed on January 24, 2011.

¶ 8 However, on December 30, 2010, defendant had filed a motion which claimed the sale was fraudulent and sought "[t]o have the court Redress the action on the property or remove the case from chancery court because of the pending federal case dated January 13, 2011." (Underlining in original.) The motion was dismissed without prejudice for defendant's failure to appear on the notice date of January 25, 2011.

¶ 9 On April 18, 2011, plaintiff filed a motion to quiet title and a motion to confirm sale. The

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motion to quiet title stated that after plaintiff had executed the mortgage at issue (on September 21, 2005), a quit claim deed was recorded (on February 9, 2010) purporting to convey the property from Barry J. Morrison to Barry Morrison ARR Trust; a quit claim deed was recorded (on March 8, 2010) purporting to convey the property from Barry Morrison to Jo El Nero Ali; a warranty deed was recorded (on March 16, 2010) purporting to convey the property from Barry J. Morrison to Jo El Nero Ali; a quit claim deed was recorded (on June 1, 2010) purporting to convey the property from Jo El Nero Ali to Jo El Nero Ali Trust; and a deed in trust was recorded (on December 28, 2010) purporting to convey the property from Jo El Nero Ali to Chicago Title Land Trust Company. In support of its motion, plaintiff attached a copy of the title policy issued as to the property by Chicago Title Insurance Company which stated that an examination of the public record revealed these conveyances were improper. Plaintiff sought an order quieting title and finding the above described transactions were fraudulent. The court ordered that plaintiff give defendant notice of a hearing on the motions to quiet title and confirm sale. Plaintiff, therefore, gave notice that a hearing on the motions would be held on May 17, 2011.

¶ 10 On May 13, 2011, defendant filed a motion for stay of the proceedings based on his contention that the Internal Revenue Service (IRS) was conducting a "[c]riminal [i]nvestigation on the [p]laintiff[s] for [w]agering [m]onetary [i]nstrument [m]ortgage [f]raud." Attached to the motion were various exhibits including a form defendant had filed with the IRS complaining that plaintiff had received monies from him unlawfully because he had not entered into a loan agreement with plaintiff. Defendant stated in his motion that he would bring other relevant but personal documents to court when he presented the motion. Defendant's motion was also noticed for hearing on May 17,

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2011.

¶ 11 On that date, the circuit court entered an order granting plaintiff's motion to quiet title and denying defendant's motion for a stay. The court also entered an order approving the report of sale, confirming the sale, and directing that defendant be evicted from the property.

¶ 12 Thereafter, on June 9, 2011, defendant filed a motion for "[a]ffidavit to [r]econsider." The motion argued that the orders of May 17, 2011, should be overturned because of defendant's alleged "[m]ortgage [f]raud and ROBO [s]igning." The motion to reconsider was denied on September 30, 2011. Defendant filed a notice of appeal on October 20, 2011.

¶ 13 Although defendant in its original brief lists several issues that he contends are raised by his appeal, the brief contains only a single argument. The gist of defendant's argument appears to be that the circuit court erred in granting plaintiff's motions to quiet title and confirm the sale where the foreclosure action was based on fraudulent assignments of the mortgage. Defendant, however, does not dispute that he, in fact, had entered into a mortgage as to the property, and that he had defaulted on that mortgage due to hardships.

¶ 14 Plaintiff asks that we affirm the orders of the circuit court because the record on appeal is inadequate and does not contain evidence or facts to support defendant's argument. Plaintiff also argues that defendant's brief fails to comply with Supreme Court Rule 341 (Ill. S. Ct. R. 341 (eff. July 1, 2008)) and does not present cogent arguments with record support. We agree.

¶ 15 As the appellant, defendant "has the burden of presenting a sufficiently complete record of the proceedings *** to support a claim of error." *Midstate Siding and Window Co., Inc. v. Rogers*, 204 Ill. 2d 314, 319 (2003) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). In the absence

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of a complete record, a reviewing court presumes that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 392. "In fact, when the record on appeal is incomplete, a reviewing court should actually 'indulge in every reasonable presumption favorable to the judgment from which the appeal is taken, including that the trial court ruled or acted correctly.'" *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 757-58 (2006) (quoting *People v. Majer*, 131 Ill. App. 3d 80, 84 (1985)).

¶ 16 The record on appeal does not contain a copy of the complaint with copies of the mortgage and note, upon which this suit is based. Plaintiff included a copy of the complaint, without exhibits, in an appendix to its appellee's brief. However, documents in an appendix which are not in the record, cannot be considered. *Geary v. Telular Corp.*, 341 Ill. App. 3d 694, 697 n.1 (2003). We can think of no more crucial pleading than the pleading that commenced this lawsuit and framed the issues. The complaint and the attached mortgage, which were found by the circuit court to be true and correct, would be central both to a determination as to whether the mortgage had been properly assigned, and whether the challenged orders and judgment were correct. Without the complaint, mortgage, and note in the record, we are required to presume the court ruled correctly in entering its orders and rejecting any objections as to the validity of the assignments of the mortgage.

¶ 17 Further, plaintiff failed to file any reports of the many proceedings in the circuit court or, in the absence of such reports, bystander's reports or agreed statements of facts pursuant to Supreme Court Rule 323(c), (d). Ill. S. Ct. R. 323(c), (d) (eff. Dec. 13, 2005). Therefore, we do not have a record of the issues that were addressed or the arguments and evidence that were presented or considered by the circuit court in finding plaintiff had a right to its requested relief, granting plaintiff

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a judgment of foreclosure, entering the orders quieting title, confirming the sale, and denying reconsideration to defendant. Under these circumstances, and based on the insufficiency of the record on appeal, we again must presume the orders and judgment of the circuit court of which defendant complains were "in conformity with law and had a sufficient factual basis." *Foutch*, 99 Ill. 2d at 392.

¶ 18 Additionally, defendant has not obeyed the rules as to the form of his appellant's brief. Specifically, defendant has filed an appellant's brief that fails to comply with Rule 341(h)(6), (h)(7) and (h)(9). Rule 341(h)(6) states that the appellant's brief "shall contain [a statement of] the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008). Rule 341(h)(7) states that the appellant's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Rule 341(h)(9) (Ill. S. Ct. R. 341(h)(9) (eff. July 1, 2008)) requires that the appellant's brief contain an appendix which complies with Rule 342. Ill. S. Ct. R. 342 (eff. Jan. 1, 2005). Rule 342(a), in turn, requires that the appendix include "a complete table of contents, with page references, of the record on appeal" with a description of the nature of the document, and date of filing, where relevant. Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005).

¶ 19 Our supreme court has stated that supreme court rules " ' 'are not aspirational. They are not suggestions. They have the force of law, and the presumption must be that they will be obeyed and enforced as written." ' ' *Rodriguez v. Sheriff's Merit Com'n of Kane County*, 218 Ill. 2d 342, 353 (2006) (quoting *Roth v. Illinois Farmers Insurance Co.*, 202 Ill. 2d 490, 494 (2002) (quoting *Bright*

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v. Dicke, 166 Ill. 2d 204, 210 (1995)).

¶ 20 Defendant's statement of facts fails to comply with Rule 341(h)(6) as it is wholly devoid of citations to the record, does not clearly set forth the proceedings in the trial court, and is replete with arguments. Defendant has failed to present a concise recitation of the facts, procedural background, or history of the litigation. The title of defendant's fact section is "Statement of Facts By Affidavit." Although defendant does not explain the use of the "By Affidavit" language, such language would lead us to conclude that defendant was not relying solely on the record when drafting the purported statement of facts.

¶ 21 The argument section of the brief similarly fails to comply with Rule 341(h)(7) by failing to include any citation to the pages of the record relied on. Furthermore, the argument refers to matters outside of the record by presenting generalities about the banking industry, mortgages, and foreclosure proceedings. Defendant, in his argument, presents a number of rhetorical questions which are left unanswered, and do nothing to advance defendant's contention that the assignments were improper. A reviewing court is "entitled to have briefs submitted that are articulate and organized and that present cohesive legal argument in conformity with our Supreme Court rules." *Eckiss v. McVaigh*, 261 Ill. App. 3d 778, 786 (1994). Defendant failed to do so.

¶ 22 Finally, defendant has failed to provide a table of contents of the record on appeal as required by Rule 341(h)(9) and Rule 342 by presenting a purported index which lists only points of argument. Without a table of contents of the record as a guide to this court, and without references to the record in the brief, we are unable to fully decipher defendant's arguments or review his claims of error.

¶ 23 We understand defendant has proceeded *pro se* throughout much of this litigation and here

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on appeal. However, *pro se* litigants must comply with the applicable court rules. See *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.") Defendant's failure to comply with Rule 341 results in forfeiture of his argument on appeal. See *First National Bank of LaGrange v. Lowrey*, 375 Ill. App. 3d 181, 211 (2007).

¶ 24 Affirmed.

¶ 25 JUSTICE DELORT, specially concurring:

¶ 26 I concur completely with the panel's order. I write separately, however, to express my concern about several troubling aspects of this case.

¶ 27 The defendant, acting under the alias of "Jo El Nero Al," claims to be "[a]n Ancient One of the Aboriginal indigenous Muurs/Moors." In the court below, he filed a barrage of paperwork of a style rather familiar to judges handling collection cases. The documents espouse various legal theories which are too frivolous to enumerate in detail. Just one example is his filing claiming that the property was immune from foreclosure because of a "land patent" signed by President Zachary Taylor in 1850. See *Pathway Financial v. Beach*, 162 Ill. App. 3d 1036, 1040 (1987) (rejecting land patent defense in foreclosure case). Needless to say, such tactics are never successful, as they are not based in American law. See generally Bernard Sussman, A Casebook for Dealing with Extremist Legal Arguments, available at <http://archive.adl.org/mwd/suss1.asp> (last visited February 4, 2013).

¶ 28 There is a significant disconnection between the arguments Morrison made in the court below and those he makes here. However, Morrison cannot litigate entirely new defenses here that he did

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not first present below. Morrison's contention in this court that signatures on the documents transferring his mortgage were not genuine merits a brief discussion. If the point was not simply forfeited because it was not timely presented below, his belated "evidence" to support it is unauthenticated, pure speculation, and unsupported by anything in the record. He suggests that because of the manner in which the assignments were signed, the plaintiff never had standing to foreclose. However, as this court recently held in *Bank of America National Ass'n v. Bassman FBT, L.L.C.*, 2012 IL App (2d) 110729, ¶ 23, defendants, not plaintiffs, in foreclosure cases have the full burden to prove lack of standing by the plaintiff. *Bassman* stands for the proposition that the court's real focus should be whether the foreclosure plaintiff was truly unauthorized to act on behalf of the principal, not whether the defendant can poke technical holes in the plaintiff's paper trail. *Id.*

¶ 29 I further note my concern with the state of the incomplete record, which is missing several documents which were undoubtedly filed by various parties below. As the panel correctly notes, Morrison had the burden to provide us with a sufficient record of the trial proceedings to support a claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of such a record, we must presume that the trial court acted in conformity with the law with a sufficient factual basis for its findings. *Id.* Any doubts arising from an incomplete record will be resolved against the appellant. *Id.*

¶ 30 This court should be able to rely that the clerk's record on appeal is complete. If it is not, the parties should utilize the supreme court rules which provide a mechanism for parties to supplement the record, something which Morrison—and quite astonishingly, counsel for the bank—failed to do here. Ill. S. Ct. R. 329 (eff. Jan. 1, 2006). This continuing pattern of incomplete records has

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surfaced in numerous appeals in mortgage foreclosure cases. *See, e.g., Standard Bank and Trust Co. v. Madonia*, 2011 IL App (1st) 103516, ¶ 24; *First Bank of Highland Park v. Coe*, 2012 IL App (1st) 120517-U, ¶ 16; *U.S. Bank, N.A. v. Brown*, 2012 IL App (1st) 110832-U, ¶¶ 35-38. The briefs and truncated record here sufficiently illustrate the issues for us to properly adjudicate them, but the same may not be true in some future case. Because this court sets precedents to guide lower courts, the foreclosure bar, who most often represent appellees, would do well to carefully proof the appellate record prepared by the circuit clerk and to ensure that we are always provided with complete records.