

No. 1-12-1487

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

DEUTSCHE BANK NATIONAL TRUST)	Appeal from the
COMPANY, as Trustee for Long Beach Mortgage)	Circuit Court of
Loan Trust 2004-1,)	Cook County
)	
Plaintiff-Appellee,)	
)	
v.)	No. 04 CH 09787
)	
ROSTISLAV MITACEK; UNKNOWN OWNERS)	Honorable
and NONRECORD CLAIMANTS, BOBBIE)	Robert Senechalle,
BINION, CREDIT ASSET SERVICING &)	Judge Presiding.
SECURITIZATION, JOHN HEMPHILL, THE)	
STATE OF ILLINOIS, THE CITY OF CHICAGO,)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
BOBBY BINION d/b/a BOBCHIQ,)	
)	
Defendants-Appellants.)	

JUSTICE STERBA delivered the judgment of the court.
Justices Hyman and Pierce concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in dismissing a property purchaser's counterclaim asserting that he was the property's rightful owner where he purchased the property after it was encumbered by a mortgage and the recording of a *lis pendens*.

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¶ 2 Defendant Bobby Binion purchased property that was subsequently sold at a foreclosure sale and purchased by plaintiff Deutsche Bank National Trust Company at that sale. Prior to the foreclosure sale, Binion renovated the property that he believed he owned at a cost of \$166,570.04. On appeal, Binion claims that the circuit court erred in dismissing his counterclaim pursuant to section 2-619.1 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2010) because Deutsche Bank was unjustly enriched by his renovation of the property and that he was a *bona fide* purchaser of the property. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 On November 26, 2003, Rostislav Mitacek executed a note and mortgage in the amount of \$492,000 with Long Beach Mortgage Company relating to the purchase of a multi-unit building containing two to six apartments located at 2333 W. Adams Street in Chicago, Illinois. The mortgage was recorded with the Cook County recorder of deeds (recorder of deeds) on April 19, 2004. On June 18, 2004, Deutsche Bank filed a complaint to foreclose the mortgage naming Mitacek, unknown owners and non-record claimants as defendants. On June 21, 2004, Deutsche Bank recorded a *lis pendens* and notice of foreclosure with the recorder of deeds. Mitacek sold the property to John Hemphill on July 26, 2004, and the warranty deed was filed with the recorder of deeds. An assignment of the mortgage from Long Beach Mortgage Company to Deutsche Bank was recorded with the recorder of deeds on August 12, 2004. On September 22, 2004, the circuit court entered a judgment for foreclosure and sale on the property. On November 2, 2004, Binion purchased the property from Hemphill, and the warranty deed was filed with the recorder of deeds. On November 9, 2004, a "United States Mortgage Release

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Deed" executed by Hemphill was filed with the recorder of deeds.

¶ 5 On January 31, 2005, Binion's attorney filed an emergency petition for intervention claiming to be the record owner of the property. At the hearing on the petition, the circuit court granted Binion leave to intervene in the cause and continued the matter to March 17, 2005 for status. On March 16, 2005, Binion filed a counterclaim alleging that Deutsche Bank's mortgage had been released, that he invested funds to renovate the property and it would be unjust to conduct the foreclosure sale. On May 18, 2005, Deutsche Bank filed a section 2-619.1 motion to dismiss asserting that Binion acquired the property after the bank recorded its *lis pendens* and that the mortgage release relied upon by Binion was not recorded. The motion to dismiss also stated that Hemphill was never a recorded owner of the property, he was not an agent or employee of Deutsche Bank and he was not authorized to execute a release of the mortgage. On July 7, 2005, Binion applied for and received a mortgage on the property in the amount of \$160,000, and the mortgage was filed with the recorder of deeds on July 25, 2005. On August 9, 2005, the circuit court granted Deutsche Bank's motion to dismiss Binion's counterclaim.

¶ 6 On February 16, 2006, Deutsche Bank filed an amended complaint to foreclose (amended complaint), which named as additional defendants any party who received a deed or made a mortgage on the subject property after the mortgage's release was recorded. The amended complaint now named Binion as a defendant. On July 26, 2006, Deutsche Bank filed a motion for default order against Binion because he failed to answer or otherwise plead to the amended complaint, which the circuit court granted on August 2, 2006.

¶ 7 Deutsche Bank filed a motion seeking the entry of amended judgment of foreclosure and

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sale (amended judgment), which the circuit court entered on December 23, 2009. The foreclosure sale of the property was scheduled for January 28, 2010. Before the scheduled sale, Binion filed a motion to vacate and for leave of court to retain alternative counsel because his retained counsel was disbarred when he represented Binion. He also asserted that the amended judgment should be vacated because he has an ownership interest in the property. Deutsche Bank filed a reply to the motion to vacate asserting that Binion was granted leave to intervene in the case approximately five years ago on January 31, 2005 and the only pleading that he filed was the counterclaim, which the circuit court dismissed on August 9, 2005. Deutsche Bank also asserted that Binion failed to allege a valid basis to vacate the amended judgment, such as the mortgage was not in default or that the bank was not entitled to the judgment. In Binion's response, he asserted that he was not aware that the case was still pending because his attorney informed him that he prevailed on his intervening counterclaim even though the circuit court had dismissed the counterclaim. Binion also asserted that he had a meritorious defense because a title company examined the chain of title and concluded that the title was proper, in addition to obtaining a mortgage on the property from a bank.

¶ 8 During a hearing on the motion to vacate, the circuit court noted that Binion filed a notice of appeal "to stay the Judicial Sale scheduled for January 28, 2010 and seek legal representation based on disbarred attorney not giving good legal advise or representation regarding the chancery case #04CH09787." At the circuit court's direction, Deutsche Bank filed a brief in response to the notice of appeal that Binion filed on January 20, 2010, and asserted that the circuit court retained jurisdiction over the matter because a final appealable order had not yet been entered in

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the case. Deutsche Bank also asserted that the amended judgment did not include a finding pursuant to Supreme Court Rule 304(a), that there is no just reason for delaying enforcement or appeal. On March 25, 2010, Binion filed a reply asserting that Deutsche Bank did not file a formal motion challenging his notice of appeal. On April 1, 2010, the circuit court entered an order finding that the notice of appeal was improper and that it retained jurisdiction over the matter. On October 12, 2010, this court dismissed the appeal for want of prosecution.

¶ 9 The circuit court denied Binion's motion to vacate and for leave to retain alternative counsel on May 18, 2010 and also ruled that the judicial sale of the property may occur after 30 days. The judicial sale was scheduled for June 15, 2011. Binion filed an emergency motion to stay the judicial sale, which the circuit court denied on June 15, 2011. The judicial sale, however, was continued to July 15, 2011. Binion filed a notice of appeal and the sale was cancelled. Deutsche Bank filed a motion to dismiss the appeal, and this court granted that motion on December 15, 2011.

¶ 10 The judicial sale occurred on February 14, 2012, and Deutsche Bank purchased the property for \$159,500. On February 21, 2012, Deutsche Bank filed a motion for an order approving the sale and requested an *in rem* judgment in the amount of \$575,300.97, with interest, representing the deficiency of the total amount due to the bank. On March 8, 2012, the circuit court entered an order approving the sale. On March 22, 2012, Binion filed a *pro se* motion to reconsider the order approving the sale of the property and its previous order dismissing his counterclaim, which the trial court denied on August 2, 2010. Binion timely filed this appeal. In his amended notice of appeal, Binion stated that he was seeking to "vacate judgement of

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foreclosure and sale and order confirming the sheriff sale on 3/8/12 and denial of motion to reconsider on May 8, 2012."

¶ 11

ANALYSIS

¶ 12 Before addressing the merits of Binion's claims on appeal, we must first address Deutsche Bank's multiple jurisdictional and forfeiture claims. Deutsche Bank contends that we are precluded from reviewing Binion's claims based on the following grounds: (1) inadequate notice of appeal; (2) *res judicata*; (3) law of the case; and (4) forfeiture of claims not adequately argued on appeal. We will separately address each of those claims below.

¶ 13 Deutsche Bank contends that the notice of appeal fails to list the dismissal of his counterclaim as the order that Binion is seeking review of by this court. Deutsche Bank claims that Binion's brief focuses on the circuit court's dismissal of the counterclaim, but review of that order is outside the scope of the notice of appeal. Because the notice of appeal does not include Binion's counterclaim, Deutsche Bank maintains that we are precluded from reviewing the circuit court's ruling on that motion to dismiss.

¶ 14 Generally, this court lacks jurisdiction to review "judgments or parts of judgments that are not specified in or inferred from the notice of appeal." *Fitch v. McDermott, Will & Emery, LLP*, 401 Ill. App. 3d 1006, 1014 (2010). An exception exists that permits this court to review nonspecified judgments that are a "step in the procedural progression leading" to the judgment listed in the notice of appeal. *Id.* The notice of appeal's purpose is to inform the prevailing party that its opponent is seeking review of the circuit court's judgment. *Id.* A notice of appeal confers jurisdiction to this court "when it fairly and adequately sets out the judgment complained of and

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the relief sought, advising the successful litigant of the nature of appeal." *Id.* Absent prejudice to the litigants, a notice of appeal is liberally construed by this court. *Id.*

¶ 15 In the case *sub judice*, the amended notice of appeal states that the relief being sought from this court is to "vacate judgment of foreclosure and sale and order confirming the sheriff sale on 3/8/12 and denial of motion to reconsider on May 8, 2012." Although Deutsche Bank is correct that the notice of appeal does not expressly state that Binion is appealing the circuit court's ruling dismissing his counterclaim, the motion to reconsider specified in the notice of appeal, however, incorporates that ruling. In the motion to reconsider, Binion sought the circuit court's reconsideration of its ruling dismissing his counterclaim on the basis that it failed to consider his unjust enrichment claim and that an agreement between the parties is not necessary to prevail on an unjust enrichment theory. The motion to reconsider also alleged that the circuit court erred in dismissing his counterclaim because he was a *bona fide* purchaser of the property in good faith and received a document releasing the mortgage before he purchased the property. Since the motion to reconsider specified in the notice of appeal incorporates Binion's counterclaim, this court has jurisdiction to review the circuit court's ruling on the motion to dismiss his counterclaim. *Id.* Moreover, the notice of appeal sufficiently informed Deutsche Bank about the relief that Binion sought and the nature of his appeal. Construing the notice of appeal liberally, it is evident that Binion was seeking review of the amended judgment, as well as the rulings forming the basis of his motion to reconsider, which incorporated review of the order dismissing his counterclaim. Accordingly, the notice of appeal is sufficient to confer jurisdiction to this court to review Binion's claims.

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¶ 16 Next, we address Deutsche Bank's *res judicata* claim. Deutsche Bank contends that the doctrine of *res judicata* bars review of the amended judgment because that doctrine applies not only to claims actually raised, but also to claims that should have been raised but were not by the litigant. Deutsche Bank claims that because Binion failed to contest the foreclosure action in the proceedings below by not filing either an answer or affirmative defenses to the amended foreclosure complaint, he is now barred from raising claims relating to the entry of that judgment.

¶ 17 Deutsche Bank correctly states that Binion did not file an answer or assert affirmative defenses in response to the amended judgment; however, he did file various motions reflecting his objections to the foreclosure sale, which the circuit court allowed in the amended judgment. First, Binion filed a motion to vacate and for leave of court to retain alternative counsel before the scheduled date of the foreclosure sale. In that motion, Binion argued that he had an ownership interest in the property, that his attorney was disbarred at the time of his representation and that he did not receive notice of Deutsche Bank's motion for entry of the amended judgment. Binion claimed that his interest in the property was severely prejudiced because he was represented by an attorney facing disbarment proceedings and he requested 28 days to find alternative counsel. Binion also subsequently filed a *pro se* emergency motion to stay the sale, which the circuit court denied. Binion then filed a notice of appeal to stay the sale, which Deutsche Bank moved to dismiss and this court granted the motion to dismiss Binion's appeal. The foreclosure sale occurred on February 14, 2012 and the circuit court confirmed the sale on March 18, 2012. Following the sale, Binion filed a motion for reconsideration requesting the

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circuit court to vacate the order approving the sale and vacate the order dismissing his counterclaim entered on August 10, 2005. Based on these pleadings, we disagree with Deutsche Bank that Binion failed to assert any claim or defense in the underlying proceedings against the foreclosure action and that he is raising his claims for the first time on appeal. The record reveals that subsequent to Deutsche Bank filing its amended complaint, Binion filed various motions asserting his claim that Deutsche Bank was not entitled to the amended judgment and that he had an ownership interest in the property. Because Binion did raise his claim of superior ownership in the property during the underlying proceedings, he, contrary to Deutsche Bank's assertions, is not now raising claims on appeal that should have been raised below but were not raised.

Moreover, a circuit court's entry of judgment of foreclosure is not a final and appealable order.

In re Marriage of Verdung, 126 Ill. 2d 542, 555 (1989). *Res judicata*, however, only applies to a final judgment on the merits of a claim. *Wilson v. Edward Hosp.*, 2012 IL 112898, ¶9. Here, Binion is not seeking to relitigate the claims underlying the amended judgment, but is, instead, now requesting review of that judgment, which became final and appealable only after the circuit court entered an order confirming the foreclosure sale and directing the distribution of the funds. *In re Marriage of Verdung*, 126 Ill. 2d at 555. Thus, Deutsche Bank's basis for claiming that *res judicata* applies to Binion's claims is rejected.

¶ 18 The third basis that Deutsche Bank raises to claim that our review is barred is that the law of the case doctrine applies. Deutsche Bank contends that Binion is seeking to litigate the issues that were previously decided by the circuit court when it entered its judgment on the complaint and amended complaint. Deutsche Bank asserts that because the foreclosure issues were

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previously ruled upon by the circuit court, the rulings became the law of the case and Binion may not now litigate the issues relating to the foreclosure.

¶ 19 The law of the case doctrine precludes relitigation of an issue previously decided in the same case. *Krautsack v. Anderson*, 223 Ill. 2d 541, 552 (2006). The doctrine's purposes are to avoid indefinite relitigation of the same issues and to ensure that consistent results are obtained in the same litigation. *In re Christopher K.*, 217 Ill. 2d 348, 365 (2005). The doctrine, however, is not a jurisdictional limitation on a court's power to address an issue; rather, it reflects the court's practice of declining to reopen matters that have already been decided by the court. *Id.*

¶ 20 We disagree with Deutsche Bank that the law of the case doctrine precludes review by this court. Deutsche Bank is correct that the circuit court adjudicated the claims it raised in its amended foreclosure complaint and entered judgment as to those claims, but, again, Binion is now seeking review of that ruling. Binion is not seeking to relitigate the issues previously decided by the circuit court in that court, but is seeking review by this court of the circuit court's ruling. The doctrine of the law of the case does not preclude this court from reviewing for the first time the circuit court's rulings. See generally, *People v. Triplett*, 108 Ill. 2d 463, 488 (1985) (recognizing that "[s]ince this is the first time this case has been before us, we may review all matters which were properly raised and passed on in the course of the litigation.") Moreover, this court has not previously reviewed the circuit court's rulings that Binion is now appealing, which would have then rendered the doctrine of the law of the case applicable and bar this court from adjudicating the issues that we previously addressed and adjudicated. See *Petre v. Kucich*, 356 Ill. App. 3d 57, 63 (stating that "[r]ulings on points of law made by a court of review are

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binding in that case upon remand to the trial court and on subsequent appeals to that same reviewing court unless a higher court has changed the law.") Because the foreclosure rulings are now before this court for review for the first time, the law of the case doctrine is inapplicable.

¶ 21 Lastly, Deutsche Bank contends that Binion forfeited review of the circuit court's order confirming the foreclosure sale because his brief does not address that order. Deutsche Bank acknowledges that the notice of appeal includes the circuit court's order confirming the sale, but maintains that Binion failed to raise claims as to that motion on appeal.

¶ 22 Illinois Supreme Court Rule 341(h)(7) (Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008)) requires the argument section of the appellant's brief to include "the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on. *** Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Although we agree with Deutsche Bank that Binion's appeal focuses on his claims as to the counterclaim, we, however, note the substance of those claims mirror the arguments that he raised in his motion for reconsideration regarding his motion to vacate both the order approving the sale and the order dismissing his counterclaim. Even though Binion does not explicitly state the order approving the sale in the argument section of his brief, it is apparent that he is seeking review of that order in addition to the order dismissing his counterclaim. We know this to be true because the introductory paragraph of his brief on appeal references both the counterclaim and the motion to reconsider, which incorporates the order approving sale. Binion relies on unjust enrichment and his classification as a *bona fide* purchaser as the basis for reversing both the motion dismissing his counterclaim and the ruling denying his motion to

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reconsider. To the extent that Binion on appeal raises claims of error attributable to the circuit court's ruling dismissing his counterclaim that are intertwined with claims of error relating to the entry of the order confirming the foreclosure sale, we will address the merits of those claims. Any claims of error relating specifically to the circuit court's entry of the order confirming the foreclosure sale that are independent from Binion's claims of error in dismissing his counterclaim that are not raised in the argument section of his brief, however, are forfeited for our review.

¶ 23 Having addressed Deutsche Bank's jurisdictional and forfeiture claims, we now turn to address the merits of Binion's claims on appeal. Binion contends that the circuit court erred in dismissing his counterclaim because the court did not adequately consider his unjust enrichment count or his affirmative defense that he was a *bona fide* purchaser of the property. Binion claims that he acted in good faith in an arm's length transaction between himself and the property's seller, who provided a warranty deed to the property. Binion also claims that he had no knowledge that Deutsche Bank had a mortgage on the property because the property's seller produced a mortgage release for the prior encumbrance, and neither the title or mortgage company discovered an outstanding mortgage on the property.

¶ 24 Deutsche Bank responds that the circuit court did not abuse its discretion in denying Binion's motion to reconsider because Binion failed to state a sufficient basis to reverse its prior rulings. Deutsche Bank contends that Binion did not present in his motion to reconsider newly discovered evidence, changes in the law or errors in application of the law. Deutsche Bank also notes that Binion first raised a claim of error regarding the dismissal of his counterclaim in his motion for reconsideration, which was filed six years after the circuit court ruled on the motion to

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dismiss.

¶ 25 As an initial matter, the circuit court's dismissal of Binion's counterclaim was not a final and appealable order when it entered its ruling on that motion. An order is final and appealable if the judgment adjudicates all of the claims, all of the rights and liabilities of all of the parties. *Ferguson v. Riverside Medical Center*, 111 Ill. 2d 436, 442 (1985). Thus, despite the fact that the circuit court entered its ruling on that motion on August 9, 2005, we were not at liberty to review that ruling until the circuit court entered a final and appealable order, which, in a mortgage foreclosure action, is the order confirming the sale, and Binion filed a timely notice of appeal. Both of those requirements have now been satisfied and we may review Binion's claims of error regarding the circuit court dismissing his counterclaim.

¶ 26 In a motion to reconsider, a party seeks the court's review of its prior ruling based on: "(a) newly discovered evidence; (2) changes in the law; or (3) errors in the court's previous application of existing law." *River Plaza Homeowner's Ass'n v. Healey*, 389 Ill. App. 3d 268, 280 (2009). This court reviews a circuit court's ruling on a motion to reconsider adopting an abuse of discretion standard. *Koczor v. Melnyk*, 407 Ill. App. 3d 994, 1002 (2011). In general, a circuit court "abuses its discretion when its decision is fanciful, arbitrary, or unreasonable to the degree that no reasonable person would agree with it." *People v. Ortega*, 209 Ill. 2d 354, 359 (2004).

¶ 27 In Binion's motion to reconsider, he raises unjust enrichment and his status as a *bona fide* purchaser as the basis for the circuit court to reconsider its prior ruling, which were the two same claims that he raised in his counterclaim. As support for his unjust enrichment claim in his

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motion to reconsider, Binion asserted that the circuit court failed to consider that unjust enrichment is a fundamental principle based in equity that one should not unjustly enrich himself at another's expense. After stating basic contract law principles, Binion raised the same factual allegations that he previously raised in his counterclaim that he invested \$166,570.04 in the property's renovation and the bank would be unjustly enriched to retain the benefit of the renovation to his detriment. Binion also asserted that the circuit court did not take into account the fact that unjust enrichment is not based on any agreement between the parties and that it is based on notions of fairness. A circuit court judge, however, is presumed to know and follow the law, and nothing in this record rebuts that presumption or provides a basis to reverse the circuit court's ruling on the motion to reconsider. *People v. Robinson*, 368 Ill. App. 3d 963, 976 (2006).

Moreover, as to both the unjust enrichment and *bona fide* purchaser claims in the motion for reconsideration, Binion does not allege how the circuit court misapprehended the law, presuming that is the basis he relied upon to file the motion since he clearly did not allege any new evidence or recent changes in the law. In fact, Binion makes no reference to the circuit court or its ruling in the motion to reconsider where he claims that he was a *bona fide* purchaser. Instead, Binion defined generally who is a *bona fide* purchaser and discussed the concepts of actual and constructive notice. Binion again, similar to his allegations in the counterclaim, asserted that he purchased the property without notice that a mortgage or lien were recorded on the property. Because Binion raised the same claims in his motion to reconsider that he previously raised in his counterclaim without alleging newly discovered evidence, misapprehension of the law or changes in the law, the circuit court did not abuse its discretion in

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denying Binion's motion to reconsider.

¶ 28 The circuit court also did not err in granting Deutsche Bank's section 2-619.1 motion to dismiss. A section 2-619.1 motion to dismiss is a combined section 2-615 and section 2-619 motion to dismiss. *In re County Treasurer*, 2012 IL App (1st) 101976, ¶28. A motion to dismiss pursuant to either a section 2-615 or a section 2-619 presents a question of law and therefore is reviewed *de novo*. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). A section 2-615 motion to dismiss challenges the legal sufficiency of the nonmovant's pleadings whereas a section 2-619 motion to dismiss admits the legal sufficiency of the nonmovant's pleadings, but asserts certain defects or defenses. *Id.* If after construing the pleadings and supporting documents in the light most favorable to the nonmoving party, the circuit court finds that no set of facts can be proved upon which relief could be granted, a motion to dismiss should be granted under section 2-615. *Canel v. Topinka*, 212 Ill. 2d 311, 317-18 (2004). A section 2-619 motion to dismiss serves to dispose of issues of law and easily proved issues of fact at the outset of a case. *Arriola v. Time Insurance Co.*, 296 Ill. App. 3d 303, 306 (1998). A section 2-619 dismissal is similar to a motion for summary judgment because the reviewing court must determine whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law. *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 254 (2004).

¶ 29 To state a claim for unjust enrichment, "a plaintiff must allege that the defendant has unjustly retained a benefit to the plaintiff's detriment, and that defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience." *HPI Health Care*

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Services, Inc. v. Mt. Vernon Hospital, Inc., 131 Ill. 2d 145, 160 (1989). In his counterclaim, Binion pled in the unjust enrichment count that he acquired title to the property for value without notice of any mortgage or pending foreclosure action, no mortgage existed when he purchased the property, a release to the property was recorded on November 9, 2004, and he invested \$166,570 in renovating the property. Based on these facts, Binion alleged that Deutsche Bank would be unjustly enriched by the funds he spent renovating the property. In response, Deutsche Bank alleged that Binion was not an innocent purchaser of the property and that any interest in the property that he had was subject to its interest. Although at first blush it appears that a material factual dispute exists about whether Binion was an innocent purchaser of the property and justly made improvements to property that he believed he owned; Binion's counterclaim, however, dispels the notion that a genuine issue material fact does, in fact, exist.

¶ 30 Closely examining Binion's counterclaim, we note that he pled in paragraph six that he purchased the property on November 2, 2004. He also acknowledged in paragraph nine that Deutsche Bank had a mortgage on the property because the paragraph states in part that "there was a release of the Plaintiff's mortgage on November 9, 2004." Paragraph nine not only concedes that Deutsche Bank recorded a mortgage on the property, but the paragraph also states that the mortgage was released on November 9, 2004. Thus, Binion's own counterclaim reveals that he purchased the property before Deutsche Bank's mortgage was allegedly released. Moreover, Binion failed to plead sufficient facts supporting an allegation that Deutsche Bank's retention of his improvements to the property would be unjust and violate the fundamental principles of justice, equity and good conscience. Construing the pleadings in a light most

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favorable to Binion, we conclude that the circuit court did not err in dismissing this count pursuant to section 2-619.1 because no set of facts can be proved upon which relief could be granted.

¶ 31 The circuit court also did not err in dismissing the *bona fide* purchaser allegations set forth in count II of Binion's counterclaim. In count II, Binion alleged that he performed a title search on the property in December 2004, and the search revealed that no mortgage on the property was recorded. Because no mortgage existed on the property, Binion requested that liens encumbering the property be removed by the circuit court. Although inartful, Binion appears to assert that because he was a *bona fide* purchaser of the property, he purchased the property free and clear of any encumbrances. Binion's claim resonates as one of equity because he claims that he made improvements to the property under the justified belief that he was the true owner of the property that was not encumbered by a mortgage.

¶ 32 This court's decision in *Worley v. Ehret*, 36 Ill. App. 3d 48, 58 (1976) reiterated the applicable standard of care, which was established by the Illinois Supreme Court in *Clark v. Leavitt*, 335 Ill. 184 (1929), that must be met to recover the value of improvements mistakenly made on the land of another. In *Clark*, the Illinois Supreme Court stated the following:

" If a purchaser in good faith and without notice of defects in his title makes improvements on land belonging to another, under the honest belief that he is the true owner, he is generally allowed for reasonable improvements which are of a permanent character and of benefit to the estate (citation.) Whether he is a purchaser in good faith depends upon whether he had reason to suppose that his title was good. Where parties

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make improvements upon premises, having notice of the condition of the title, they have no claim upon a court of equity to be reimbursed for improvements.' " *Worley*, 36 Ill. App. 3d at 58, quoting *Clark*, 335 Ill. at 187.

Applying this standard to the allegations Binion pled in his counterclaim clearly establishes that dismissal of his counterclaim was warranted under section 2-619.1. A purchaser of property "is not a *bona fide* purchaser if he had constructive notice of an outstanding title or right in another person." *In re County Collector*, 397 Ill. App. 3d 535, 549 (2009). Constructive notice is defined as "knowledge that the law imputes to a purchaser, whether or not he had actual knowledge at the time of the conveyance." *US Bank National Ass'n v. Villasenor, Jr.*, 2012 IL App (1st) 120061, ¶59.

¶ 33 In the counterclaim, Binion pled that he purchased the property on November 2, 2004, Deutsche Bank's mortgage was released on November 9, 2004 and a title search was performed at his request in December 2004 that revealed that there were no liens or mortgages on the property. Regardless of the validity of the release and whether Binion should have been suspect of the fact that the seller of the property was also the same individual who executed the release of Deutsche Bank's mortgage, when Binion purchased the property on November 2, 2004, the bank's mortgage had not yet been released according to his own allegations in his counterclaim. Moreover, not only was a mortgage recorded on the property when Binion purchased the property, but Deutsche Bank filed its complaint to foreclose the mortgage on June 18, 2004, which was prior to Binion's purchase of the property on November 2, 2004. Deutsche Bank also filed a *lis pendens* and notice of foreclosure on June 21, 2004 with the recorder of deeds

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indicating the mortgage previously recorded with the recorder of deeds on April 19, 2004 was being foreclosed. Additionally, the circuit court's entry of a judgment for foreclosure and sale was entered on September 22, 2004, which was also prior to Binion's purchase of the property on November 2, 2004. These filings both with the circuit court and the recorder of deeds provided Binion with constructive notice that the property he purchased, and when he purchased it, was subject to an encumbrance and lien. Tellingly, Binion's counterclaim does not plead facts stating that he arranged for a title search of the property before he purchased the property. Instead, the title search that he relies upon was completed after he purchased the property. Binion's request for relief pursuant to equity principles is rejected because Binion purchased the property with constructive notice that it was previously encumbered by Deutsche Bank's mortgage and the *lis pendens* recorded in the property's chain of title with the recorder of deeds. See 735 ILCS 5/15-1503 (West 2010) (stating "a notice of foreclosure, whether the foreclosure is initiated by complaint or counterclaim, made in accordance with this Section [notice of foreclosure] and recorded in the county in which the mortgaged real estate is located shall be constructive notice of the pendency of the foreclosure to every person claiming an interest in or lien on the mortgaged real estate, whose interest or lien has not been recorded prior to the recording of such notice of foreclosure.") Accordingly, the circuit court did not err in dismissing Binion's count that he was a *bona fide* purchaser and his title to the property was unencumbered and free of liens thereby entitling him to reimbursement for the improvements that he made to the property.

¶ 34 In sum, neither of Binion's two claims of unjust enrichment or his claimed status as a *bona fide* purchaser were sufficiently pled to withstand a section 2-619.1 motion to dismiss.

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Although not separately addressed by Binion in the argument section of his brief, Binion's claims of unjust enrichment and *bona fide* purchaser that he raised relating to the dismissal of his counterclaim also do not provide grounds to reverse the circuit court's entry of the order confirming the foreclosure sale for the reasons previously specified in this order.

¶ 35 Accordingly, the judgment of the circuit court is affirmed.

¶ 36 Affirmed.