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2013 IL App (3d) 120349-U

Order filed March 27, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

JP MORGAN CHASE BANK,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-12-0349
)	Circuit No. 10-LM-1983
B. MICHAEL SCHNEIDER,)	
)	Honorable
Defendant-Appellant.)	Michael J. Powers,
)	Judge, Presiding.
)	

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* Summary judgment in favor of a bank in a forcible entry and detainer action for possession of a home was affirmed because the bank's right of possession was based upon a foreclosure judgment and the defendant presented facts to attack the foreclosure judgment but no evidence that he was entitled to possession.
- ¶ 2 The plaintiff, JPMorgan Chase Bank N.A. (the Bank), brought a forcible entry and detainer action against the defendant, B. Michael Schneider, seeking possession of property in New Lenox, Illinois. Schneider filed a counterclaim alleging a violation of the Illinois Consumer

Fraud and Deceptive Business Practices Act. The trial court granted summary judgment in favor of the Bank on the forcible entry and detainer action, and granted the Bank's motion to strike the counterclaim. Schneider appealed.

¶ 3

FACTS

¶ 4 On July 16, 2010, the Bank filed its forcible entry and a detainer action against Schneider, the occupant of a residence in New Lenox, Illinois. The Bank alleged that it was entitled to exclusive possession of the subject property pursuant to a sheriff's deed issued following a foreclosure sale in 2007. Schneider's motion to dismiss, filed pursuant to section 2-619(9) of the Code of Civil Procedure (735 ILCS 5/2-619(9) (West 2010)), was denied. Schneider answered the complaint, and filed a counterclaim alleging a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 et seq. (West 2010)). Thereafter, the trial court granted the Bank's motion to strike the counterclaim, and it denied Schneider's motion to reconsider that order. It also granted summary judgment in favor of the Bank and entered an order of possession against Schneider. Schneider appealed both orders.

¶ 5

ANALYSIS

¶ 6 Schneider argues that the trial court abused its discretion in granting summary judgment in favor of the Bank. Schneider argues that the trial court also abused its discretion in granting the motion to strike Schneider's counterclaim. The Bank contends that the trial court was correct in concluding that Schneider failed to plead sufficient facts to allege a claim under the Illinois Consumer Fraud and Deceptive Practices Act. The Bank also contends that summary judgment was proper because Schneider failed to present a genuine issue of material fact that would preclude summary judgment.

¶ 7 Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2010). In determining whether a genuine issue as to any material fact exists, pleadings, depositions, and admissions are construed against the party moving for summary judgment. *Williams v. Manchester*, 228 Ill. 2d 404 (2008). Summary judgment is inappropriate "where the material facts are disputed or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts." *Williams*, 228 Ill. 2d at 417. Summary judgment is appropriate where the plaintiff cannot establish an element of the cause of action. *Williams*, 228 Ill. 2d at 417. We review *de novo* the granting of summary judgment. *Id.*

¶ 8 Schneider argues that there was sufficient evidence to support a jury verdict in his favor on both the possession claim and his counterclaim, thereby precluding summary judgment in favor of the Bank. Schneider argues that there was a pending motion to vacate the underlying judgment of foreclosure and sale, on the basis that the plaintiff in the foreclosure case lacked standing. On the issue of possession, the Bank argues that Schneider had no standing in the foreclosure action, so had no basis to raise the standing issue in this court. In addition, the Bank argues that any issue of standing in the foreclosure action was not proper in a forcible detainer action.

¶ 9 The Forcible Entry and Detainer Act provides a summary statutory procedure for determining the sole issue of possession. 735 ILCS 5/9-101 *et seq.* (West 2010); *Yale Tavern v. Cosmopolitan Nat'l Bank*, 259 Ill. App. 3d 965 (1994). Issues not germane to possession may not be litigated in a forcible entry and detainer action. *Yale Tavern*, 259 Ill. App. 3d at 971-972.

Claims that are germane to the issue of possession are closely related to possession and generally fall into one of four categories: (1) claims asserting a paramount right of possession; (2) claims denying the breach of the agreement vesting possession in the plaintiff; (3) claims challenging the validity or enforceability of the agreement on which the plaintiff bases the right to possession; and (4) claims questioning the plaintiff's motivation for bringing the action. *Avenaim v. Lubecke*, 347 Ill. App. 3d 855 (2004). Title disputes cannot be determined in a forcible entry and detainer proceeding. *Avenaim*, 347 Ill. App. 3d at 862. Thus, the only factual questions which need be answered in such a proceeding are which party is entitled to immediate possession and whether a defense which is germane to the issue of possession defeats the plaintiff's claim. *First Illinois Bank & Trust v. Galuska*, 255 Ill. App. 3d 86 (1993).

¶ 10 In this case, the trial court had before it a judgment of foreclosure that clearly entitled the Bank to possession. Schneider acknowledged the existence of that judgment, and, in fact, argued that he had filed a motion to vacate that judgment. Schneider presented no evidence that he had a legal interest in the property, or that he was entitled to possession. Thus, since the matters asserted by Schneider in opposition to the Bank's motion for summary judgment were not germane to the issue of possession but, rather, constituted a collateral attack on the mortgage foreclosure judgment, summary judgment was proper. *Wells Fargo Bank, N.A. v. Watson*, 2012 IL App (3d) 110930 (2012).

¶ 11 With respect to the counterclaim, Schneider alleged that the Bank was a founder and owned shares of Mortgage Electronic Registration Systems, Inc. (MERS), the plaintiff in the foreclosure action. Schneider alleged that MERS lacked standing to bring the foreclosure action, so the circuit court lacked jurisdiction to enter the judgment of foreclosure. Thus, Schneider

alleged, the Bank's claim for possession was based upon the fraud perpetuated by MERS.

¶ 12 A motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)) challenges the legal sufficiency of a pleading. *Green v. Rogers*, 234 Ill. 2d 478 (2009). The relevant question is whether the allegations of the pleading, when construed in the light most favorable to the plaintiff, are sufficient to state a claim. *Green*, 234 Ill. 2d at 491. We review *de novo* a dismissal on the pleadings. *Id.*

¶ 13 The elements of a claim under the Illinois Consumer Fraud and Deceptive Practices Act are: (1) a deceptive act or unfair practice, (2) the defendant intended for the plaintiff to rely on the deception, (3) the deception occurred in the course of conduct involving trade or commerce, (4) the plaintiff sustained actual damages, and (5) such damages were proximately caused by the defendant's deception. *Dubey v. Public Storage, Inc.*, 395 Ill. App. 3d 342 (2009).

¶ 14 Schneider alleged that the plaintiff in the underlying foreclosure proceeding lacked standing, but Schneider was not a party to that action. Also, Schneider failed to allege specific facts regarding any misrepresentations made to him by the Bank. See *Lipinski v. Martin J. Kelly Oldsmobile, Inc.*, 325 Ill. App. 3d 1139 (2001) (A violation of the Illinois Consumer Fraud and Deceptive Practices Act must be pled with the same heightened factual particularity as required for common law fraud claims). Since the counterclaim failed to allege facts to state a claim against the Bank, the dismissal of the counterclaim is upheld.

¶ 15 CONCLUSION

¶ 16 The judgment of the circuit court of Will County is affirmed.

¶ 17 Affirmed.