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FOURTH DIVISION  
December 11, 2014

No. 1-14-0743

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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PNC BANK, NATIONAL ASSOCIATION,	)	
	)	Appeal from the Circuit Court
Plaintiff-Appellee	)	of Cook County, Illinois,
	)	County Department, Chancery
v.	)	Division.
	)	
RAFAL ROGOWSKI,	)	No. 10 CH 30584
	)	
Defendants-Appellants.	)	
	)	The Honorable
	)	Alfred P. Swanson,
	)	Judge Presiding.

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PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Howse and Epstein concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court properly granted the plaintiff's section 2-615 motion to strike (735 ILCS 5/2-615 (West 2010) the defendant's third affirmative defense, where the defendant failed to plead sufficient facts to demonstrate that affirmative defense.

¶ 2 This cause of action arises from a mortgage foreclosure action filed by the plaintiff, PNC

Bank, National Association (hereinafter PNC) against the defendant mortgagee, Rafal Rogowski (hereinafter Rogowski). After Rogowski filed an answer to the mortgage foreclosure action, raising, *inter alia*, an affirmative defense of fraudulent inducement, PNC moved to strike that defense on the basis that it was insufficiently pleaded. The trial court granted PNC's motion to strike, and Rogowski now appeals. For the reasons that follow, we affirm.

¶ 3

### I. BACKGROUND

¶ 4

The record reveals the following uncontested facts and procedural history. On August, 7, 2006, Rogowski obtained a mortgage from MidAmerican Bank, FSB (hereinafter MidAmerican) for the purchase of the property located at 9406 South 76th Avenue, Hickory Hills, Illinois 60457 (hereinafter the subject property). Thereafter, beginning on February 2010, Rogowski failed to make the required monthly payments pursuant to the mortgage.

¶ 5

On July 16, 2010, PNC, as holder of the promissory note secured by the mortgage, filed a complaint to foreclose the mortgage. On November 10, 2010, PNC filed a motion for default judgment, noting that Rogowski was served with the summons and complaint on July 21, 2010, but failed to respond. On April 5, 2011, PNC's motion was stricken from the call because Rogowski filed a responsive pleading. On June 23, 2011, PNC filed a second motion for default judgment. On July 1, 2011, the circuit court granted PNC's motion and entered a default judgment and a judgment of foreclosure and sale against Rogowski.

¶ 6

On August 8, 2011, Rogowski filed a motion to vacate the default judgment and judgment of foreclosure and sale. On August 15, 2011, the circuit court granted Rogowski's motion and gave him 21 days, until September 5, 2011, to file an answer to the complaint. After Rogowski failed to file an answer, on December 30, 2012, PNC filed another motion for default judgment and

judgment of foreclosure and sale. On January 17, 2012, Rogowski filed his answer raising three affirmative defenses, including, pertinent to this appeal, an allegation of fraud in the inducement.

¶ 7 Specifically, Rogowski's third affirmative defense alleged that the mortgage was void and unenforceable because the appraisal provided at the loan closing was fraudulent. In support of his claim of fraud in the inducement, Rogowski set forth the following allegations:

"3. [Rogowski's] closing was based on an appraisal that was deceitful. The page listing the comps is attached, as well as a printout from Google Maps. The properties are far to the west from [Rogowski's].

4. [Rogowski's] property has \*\*\* [Interstate-] 294 (practically) in its backyard.

5. The comps are all due west, none to the north or south, and in secluded areas.

6. The comps are also over a mile from the subject property, or two miles.

7. Naturally the comps were priced what they were, and it is unreasonable to compare them to [Rogowski's].

8. [Rogowski] was induced to buy this property due to the fraud of the appraisal.

9. This is a fraud that is apparent from the face of the documents."

¶ 8 On January 25, 2012, over PNC's objection, the trial court denied the motion for default judgment and allowed Rogowski's answer and affirmative defense to stand even though they had been filed late.

¶ 9 On February 9, 2012, PNC filed a section 2-615 motion (735 ILCS 5/2-615 (West 2010)) to strike the second and third affirmative defenses. On July 3, 2012, the circuit court granted PNC's motion and, relevant for this appeal, struck the third affirmative defense, alleging fraud in the inducement, without leave to replead. The remaining contested issues were resolved on July 18, 2013, when summary judgment and judgment of foreclosure and sale were granted in PNC's

favor. On January 10, 2014, the property was sold at a public auction, and that sale was confirmed by the circuit court on February 11, 2014. Rogowski now appeals only the circuit court's grant of PNC's motion to strike his third affirmative defense alleging fraud in the inducement.

¶ 10

## II. ANALYSIS

¶ 11

We begin by noting that a motion to strike an affirmative defense pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 2/615 (West 2010)) challenges the legal sufficiency of an affirmative defense. See *Hartmann Realtors v. Biffar*, 2014 IL App (5th) 130543, ¶ 20; see also *Department of Healthcare and Family Services ex rel. Daniels v. Beamon*, 2012 IL App (1st) 110541, ¶ 15 (citing *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006)). In reviewing the sufficiency of such an affirmative defense, we must disregard any conclusions of fact or law that are not supported by allegations of specific fact. *Hartmann Realtors*, 2014 IL App (5th) 130543, ¶ 20. Our review of a court's order striking an affirmative defense on the basis of sufficiency is *de novo*. *Hartmann Realtors*, 2014 IL App (5th) 130543, ¶ 20.

¶ 12

On appeal, Rogowski solely argues that the circuit court should not have stricken his third affirmative defense of fraud in the inducement because he provided enough factual support to proceed with that defense.<sup>1</sup> We disagree.

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<sup>1</sup> We note that Rogowski nowhere before the circuit court requested leave to amend his third affirmative defense, once it was stricken. Nor does Rogowski attempt on appeal to argue that he should have been granted leave to do so, or that we should reverse and remand so that he be permitted leave to amend. Instead, he solely seeks reversal so as to proceed on the allegations already stated in his pleading. Accordingly, this appeal is limited to the issue Rogowski raises

¶ 13 In order to state the affirmative defense of fraud in the inducement, a defendant must allege the following elements of fraud: (1) a false statement of material fact; (2) by one who knows or believes it to be false; (3) made with the intent to induce action by another in reliance on the statement; (4) action by the other in reliance on the trustfulness of the statement; and (5) injury to the other resulting from that reliance. *JP Morgan Chase Bank, N.A. v. E.-W. Logistics, LLC*, 2014 IL App (1<sup>st</sup>) 121111, at ¶ 67; see also *Enterprise Recovery Systems, Inc. v. Salmeron*, 401 Ill.App.3d 65, 72 (2010) (noting that "[t]he elements of th[e] tort [of fraud in the inducement] are: a false representation of material fact, made with knowledge or belief of that representation's falsity, and made with the purpose of inducing another party to act or to refrain from acting, where the other party reasonably relies upon the representation to its detriment.").

¶ 14 "A high standard of specificity is imposed on pleadings asserting fraud." *Chatham Surgicore, Ltd. v. Health Care Serv. Corp.*, 356 Ill. App. 3d 795, 803 (2005) (citing *Hirsch v. Feuer*, 299 Ill. App. 3d 1076, 1085 (1998)). "The facts constituting the alleged fraud must be stated 'with sufficient specificity, particularity, and certainty to apprise the opposing party of what he is called upon to answer.'" *Chatham Surgicore*, 356 Ill. App. 3d at 803 (quoting *Hirsch*, 299 Ill. App. 3d at 1085)). The pleading " 'must contain specific allegations of facts from which fraud is the necessary or probable inference, including what representations were made, when they were made, who made the misrepresentations and to whom they were made.'" *Chatham Surgicore*, 356 Ill. App. 3d at 803-04 (quoting *Hirsch*, 299 Ill. App. 3d at 1085)). What is more, sufficient facts must be alleged to satisfy *each* element of the affirmative defense. *Hartmann Realtors*, 2014 IL App (5th) 130543, ¶ 20.

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before this court, namely, whether the facts, as pleaded in his third affirmative defense, sufficiently state an affirmative defense to PNC's mortgage foreclosure action.

¶ 15 In the present case, a review of Rogowski's pleading reveals that he failed in his burden to establish sufficient facts to plead a defense of fraud in the inducement.

¶ 16 Here, Rogowski alleged only that he was induced to buy his property and enter into the mortgage based on a "fraudulent" and "deceitful" appraisal of his property. Rogowski asserted that the appraisal was "fraudulent" on its face because the comparables used were at least a few miles away from his property and due west of Interstate-294, whereas his property had "294 (practically) in its backyard." In his pleading, Rogowski further asserted, and continues to do so now, on appeal, without citation to any legal authority, that as a result, the mortgage is void and unenforceable.

¶ 17 Rogowski's allegations, however, are insufficient to state the affirmative defense of fraud. "Ordinarily, erroneous statements as to matters of opinion, such as representations of the value of property, do not amount to fraud avoiding a contract made in reliance thereon." *James v. Lifeline Mobile Medics*, 341 Ill. App. 3d 451, 456 (2003) (citing *Wilkinson v. Appelton*, 28 Ill. 2d 184, 188 (1963)). In addition, our courts have previously held that, "within its conventional role as a lender of money," a financial institution, such as PNC, "owes no duty of care to the borrower when preparing an appraisal \*\*\*." *Northern Trust Co. v. VIII South Michigan Associates*, 276 Ill. App. 3d 355, 365 (1995). We explained that "[t]o impose upon the lender a duty of care in preparing an appraisal done solely for the lender's benefit would drastically alter the risk undertaken by the lender." *Northern Trust Co.*, 276 Ill. App. 3d at 365-66.

¶ 18 What is more, even assuming that the appraisal was, as Rogowski alleged, "deceitful," and therefore constituted a false statement of material fact, Rogowski's pleading completely failed to allege any of the remaining requisite elements of fraud so as to permit him to proceed with that affirmative defense. Rogowski nowhere asserted that the person who made the false statement

of material fact knew or believed that the statement was false, let alone that this person intended to induce Rogowski to sign the mortgage by having him rely on this false statement to his own detriment. Rogowski's pleading alleged no facts whatsoever implicating PNC or any of its employees or agents as knowingly making any false statements to him. In fact, Rogowski's pleading entirely failed to state the name of the party responsible for conducting the appraisal, the party's connection to PNC, or for that matter, that party's intent to induce Rogowski into executing the mortgage. Likewise, although Rogowski alleged that he was induced to enter the mortgage because of the "deceitful" appraisal, he failed to set forth any facts to support the notion that he relied on that appraisal. In fact, Rogowski's pleading made no statement whatsoever as to how Rogowski would have acted differently (*i.e.*, whether he would have decided not to purchase the property and execute the mortgage), if he had known of the alleged fraud in the appraisal. Finally, Rogowski nowhere pleaded the injury he suffered after relying on the allegedly "fraudulent" appraisal. Rogowski alleged no facts as to what the property should have been appraised to, or how, if it had been appraised differently, he would have acted in securing the mortgage on it.

¶ 19 Accordingly, under this record, we find that the circuit court properly concluded that Rogowski failed to sufficiently plead the affirmative defense of fraud in the inducement, and that the defense should therefore be stricken. 735 ILCS 5/2-615 (West 2010).

¶ 20 III. CONCLUSION

¶ 21 For the aforementioned reasons, we affirm the judgment of the circuit court.

¶ 22 Affirmed.