

2014 IL App (2d) 130692-U
No. 2-13-0692
Order filed February 10, 2014

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
SECOND DISTRICT

WELLS FARGO BANK, N.A., as Trustee for)	Appeal from the Circuit Court
the Certificate Holders of Bank of America)	of Du Page County.
Funding Corporate Mortgage Pass-Through)	
Certificates, Series 2007-5,)	
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CH-882
)	
FRANCES ENDENCIA,)	Honorable
)	Robert G. Gibson,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Burke and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order confirming the judicial foreclosure sale is affirmed.

¶ 2 The plaintiff, Wells Fargo Bank, N.A. (Wells Fargo) sought to foreclose on the defendant's, Frances Endencia's, property, and the circuit court of Du Page County granted summary judgment in its favor. Wells Fargo proceeded to a sheriff's sale of the property, and, on June 10, 2013, the trial court confirmed the sale. Endencia appeals *pro se* from this order. We affirm.

¶ 3

BACKGROUND

¶ 4 On May 16, 2007, Endencia mortgaged an apartment building at 235 S. Hale Street in Addison to Bank of America, N.A. (BOA), to secure payment of a note from BOA. BOA sold the loan to Wells Fargo. The loan eventually fell into default, and on February 18, 2010, Wells Fargo filed a complaint to foreclose.

¶ 5 On March 16, 2010, Endencia, *pro se*, filed a response to the complaint. Therein she argued that the building was not properly appraised and that she could never earn enough rental income to pay the mortgage. She asked that the trial court release the outstanding loan. She also noted that Wells Fargo had changed the locks on the property and “winterized” the property, causing damage to door frames and to plumbing. She requested reimbursement for those damages.

¶ 6 On March 29, 2010, she filed a motion to produce, requesting that Wells Fargo produce evidence of that it was the owner of the subject note. There is no indication in the record that this motion was ever ruled on.

¶ 7 On June 2, 2010, Endencia filed a motion for summary judgment. She argued that BOA proceeded with the loan despite the negative cash flow from the rental property. She argued that the loan was based on a mutual mistake of fact, namely an incorrect appraisal. She asked that the loan be forgiven, the foreclosure and sale be set aside, to be relieved of any deficiency judgment and to be reimbursed for damages caused by Wells Fargo due to changing locks and winterizing.

¶ 8 On August 17, 2010, Wells Fargo filed a response to the motion for summary judgment and a cross-motion for summary judgment. Wells Fargo argued that any appraisal was merely an expression of opinion about the value and could not be the basis for a cause of action sounding in fraud or mistake. Wells Fargo further argued that, regardless, Endencia entered the mortgage

and loan agreements and breached the terms, resulting in this foreclosure action. Wells Fargo requested that the trial court deny Endencia's motion for summary judgment. It further insisted that the pleadings, admissions and affidavits on file showed that there was no genuine issue of material fact and that it was entitled to judgment in its favor as a matter of law.

¶ 9 On May 17, 2012, Wells Fargo filed a motion for judgment of foreclosure and sale.

¶ 10 On July 19, 2012, Endencia filed a motion to add the Village of Addison (Village) as a third-party to the suit. Endencia argued that the tax assessor for the Village overinflated market values, that the Village improperly assessed fees, and that there was organized crime within the Village police department that resulted in frequent theft of her property. She asked that the Village be accountable for her cumulative financial losses, which, she alleged, resulted in this foreclosure suit.

¶ 11 On August 13, 2012, the Village filed a response to Endencia's motion to add it as a party. The Village argued that the motion was an attempt to seek contribution and that such an action was barred by the statute of limitations. Additionally, the Village argued that the motion should not only be denied, but should be stricken because it contained scandalous and unfounded allegations.

¶ 12 On August 13, 2012, the trial court entered numerous orders. The trial court entered an order denying the motion to add the Village "for the reasons stated on the record." The trial court entered another order denying Endencia's motion for summary judgment because it failed to establish a genuine issue of material fact as to the alleged mutual mistake of fact. In another order, the trial court granted summary judgment in favor of Wells Fargo. Finally, the trial court entered a judgment of foreclosure and sale. In this judgment, the trial court indicated that there was an assignment of mortgage attached to the complaint to foreclose. The record does not

contain a report of proceedings for any of the hearing or hearings related to the August 13, 2012 orders.

¶ 13 On June 10, 2013, Wells Fargo filed a motion to confirm the sale. On that same day, following a hearing, the trial court confirmed the sale. Endencia filed a timely notice of appeal from that order.

¶ 14 ANALYSIS

¶ 15 On appeal, Endencia appears to argue that the confirmation of sale should be set aside pursuant to section 15-1508(b) of the Code of Civil Procedure (Code) (735 ILCS 5/15-1508(b) (West 2010)) because (1) she did not receive proper notice of the sale; (2) the terms of the sale were unconscionable; (3) the sale was conducted fraudulently; and (4) justice was not otherwise done. The latter argument appears to be based on allegations of fraud against Wells Fargo and the Village. Endencia also moves to reopen discovery.

¶ 16 At the outset, we note that Endencia has failed to provide coherent arguments to any of the claims raised in her *pro se* brief. “A reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research.” *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986). Illinois Supreme Court Rule 341(h)(7) (eff. Sept. 1, 2006) requires that arguments raised on appeal be supported by citation to authority and the pages in the record relied upon. “An issue not clearly defined and sufficiently presented fails to satisfy the requirements of Supreme Court Rule 341(h)(7) and is, therefore, waived.” *In re Lieberman*, 379 Ill. App. 3d 585, 610 (2007). A civil litigant appearing *pro se* is not entitled to special consideration and is bound by the rules to the

same extent as any other litigant represented by counsel. *Athens v. Prousis*, 190 Ill. App. 3d 349, 356 (1989).

¶ 17 Moreover, it is well-established that the failure to raise an argument in the trial court forfeits the argument on appeal. *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill. App. 3d 669, 695 (2010). Here, Endencia forfeited most of her arguments because she failed to raise them in the trial court. She did not file a response to the motion to confirm the sale and, at the hearing, she argued only that the note was “unsecured.” Accordingly, not only are Endencia’s arguments forfeited for lack of development and support in her briefs, but even if they had been supported the arguments could not be raised for the first time before this court. *Id.*

¶ 18 As noted, the only argument Endencia raised before the trial court at the hearing to confirm the sale was that the subject note was unsecured. However, the record does not support this assertion. The judgment of foreclosure indicated that there was an appropriate assignment of the mortgage from BOA to Wells Fargo. Moreover, a defendant has the burden in a foreclosure case to plead and prove lack of standing as an affirmative defense, and the issue is forfeited if not timely raised in the trial court. *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1, 6-7 (2010). Endencia did not raise the issue of standing in her answer to the complaint for foreclosure or in her motion for summary judgment. We acknowledge that, shortly after she filed her answer, she filed a motion to produce requesting that Wells Fargo produce evidence that it was the assignee of the subject note. However, there is no indication that the trial court ever ruled on this motion and Endencia never renewed the motion. Accordingly, this motion was abandoned. See *People v. Van Hee*, 305 Ill. App. 3d 333, 335 (1999) (when no ruling has been made on a motion, the motion is presumed to have been abandoned). Under

these circumstances, Endencia forfeited any argument as to Wells Fargo's standing to foreclose. *Barnes*, 406 Ill. App. 3d at 6-7.

¶ 19 Moreover, even absent forfeiture, Endencia's arguments have no merit. After a motion to confirm the judicial sale has been filed, a defendant seeking to set aside a judgment of foreclosure may only do so by filing objections to the confirmation of the sale under the provisions of section 15-1508(b). *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 18. At this stage of the proceedings, objections to the confirmation under section 15-1508(b)(iv) cannot be based simply on a meritorious pleading defense to the underlying foreclosure complaint. *Id.*, ¶ 25. Rather, the borrower must establish under section 15-1508(b)(iv) that justice was not otherwise done because either the lender, through fraud or misrepresentation, prevented the borrower from raising her meritorious defenses to the complaint at an earlier time in the proceedings, or the borrower has equitable defenses that reveal she was otherwise prevented from protecting her property interests. *Id.*, ¶ 26.

¶ 20 In the present case, the record shows that Endencia received proper notice of the judicial sale. In asserting that the sale was unconscionable, Endencia argues that there was never an assignment of mortgage. However, we have already found any argument as to lack of standing waived. In asserting that the sale was conducted fraudulently, Endencia states only that "neither Wells Fargo nor Banc [*sic*] of America is capable of providing the new owner a mortgage since the mortgage is a security instrument for security by Certificate Holders of Banc [*sic*] of America Funding Corp. Mortgage Pass through Series 2007-5." Endencia does not explain how the issue of whether Wells Fargo is capable of providing the new owners a mortgage would lead to a determination that the judicial sale was conducted in a fraudulent manner.

¶ 21 In asserting that justice was not otherwise done, Endencia attempts to set forth arguments based on constructive fraud against the Village and mortgage fraud against Wells Fargo and BOA in relation to entering the initial note and mortgage. However, these arguments purportedly challenge only the underlying foreclosure judgment. They fail to establish, under section 15-1508(b)(iv), “that justice was not otherwise done because either the lender, through fraud or misrepresentation, prevented the borrower from raising his meritorious defenses to the complaint at an earlier time in the proceedings, or the borrower has equitable defenses that reveal he was otherwise prevented from protecting his property interests.” See McCluskey, 2013 IL 115469, ¶ 26. As such, these arguments are insufficient to challenge the trial court’s order confirming the judicial sale of her property. *Id.*

¶ 22 Finally, Endencia’s motion to reopen discovery must be denied. Any argument after a judicial sale and a motion to confirm the sale has been filed is limited to the four grounds specified in section 15-1508(b). *Id.*, ¶ 18. As she has not successfully raised a challenge to the sale on those grounds, there is no basis to reopen discovery.

¶ 23 CONCLUSION

¶ 24 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 25 Affirmed.