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SIXTH DIVISION
March 31, 2015

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FUSION INTERIOR DESIGN, INC., an Illinois Corporation,)	Appeal from the
)	Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 11 CH 17383
)	
DEUTSCHE BANK NATIONAL TRUST COMPANY,)	
Trustee for Fremont Home Loan Trust No. 2006-1,)	
)	
Defendant-Appellee,)	
)	
(Village of Hazel Crest, Cook County, Illinois and)	
Bank Financial FSB, T/U/T/A Trust No. 01100,)	The Honorable
)	Lisa B. Curcio,
Defendants).)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶1 *HELD:* Where plaintiff entered into a settlement agreement related to its underlying complaint for a mechanic's lien with all but one of the named defendants and subsequently filed

a release of the mechanic's lien, plaintiff's contentions against the remaining defendant pursuant to the complaint were moot.

¶2 Plaintiff, Fusion Interior Designs, Inc. (Fusion), an Illinois corporation, appeals a number of findings entered by the circuit court in proceedings related to a complaint for a mechanic's lien filed against defendants, Deutsche Bank National Trust Company, trustee for Fremont Home Loan Trust No. 2006-01 (Deutsche Bank), Bank Financial FSB T/U/T/A Trust No. 01100 (Bank Financial), and Village of Hazel Crest, Cook County, Illinois (Hazel Crest). Fusion contends the circuit court lacked jurisdiction to vacate the default judgments entered against Deutsche Bank on January 5, 2012, and January 18, 2013. In the alternative, Fusion contends the circuit court erred in vacating the default judgments against Deutsche Bank. In addition, Fusion contends it was entitled to attorney fees. Based on the following, we dismiss this appeal as moot.

¶3 **FACTS**

¶4 On May 11, 2011, Fusion filed a verified complaint for the enforcement of its mechanic's lien pursuant to 770 ILCS 60/1 *et seq.* (West 2010). According to the complaint, on September 22, 2009, Fusion entered into an oral contract with Donna Richards for Fusion's interior decorating services of the property located at 17723 Dogwood Lane in Hazel Crest, Illinois. Fusion alleged that Deutsche Bank and/or Bank Financial owned the property and authorized Richards to manage and control the property as its agent. According to the complaint, Fusion's employee, Krista Boersma, researched, inspected, and presented materials for Richards' approval for use in the property. On or about October 30, 2009, Fusion sent an invoice to Richards for \$2,872.27. The invoice was not paid and Fusion did not complete the decoration of the property. On February 9, 2010, Fusion filed a verified notice and claim for lien claiming a lien on the

property. According to the complaint, Deutsche Bank and/or Bank Financial, as owner, breached the contract with Richards.

¶5 On January 5, 2012, Fusion filed a motion for default against Deutsche Bank and Financial Bank, requesting damages in the amount of \$2,872.27 plus interest, costs, and attorney fees. On the same date, the circuit court granted Fusion's motion for default and entered an order of default against Deutsche Bank and Financial Bank. The January 5, 2012, order additionally set the case for, *inter alia*, a determination of Fusion's costs, interest, and attorney fees. On March 13, 2012, the circuit court granted Fusion's request to include Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) language to the January 5, 2012, order. On April 2, 2012, Fusion filed a notice of *lis pendens* with the Cook County Recorder of Deeds.

¶6 On April 26, 2012, Richards filed a motion to intervene and a motion to vacate the January 5, 2012, default order and to dismiss Fusion's complaint. Financial Bank then filed its own motion to vacate the January 5, 2012, default order pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)). On August 17, 2012, the circuit court granted Bank Financial's petition to vacate the default order. In addition, the court *sua sponte* vacated the Rule 304(a) finding set forth in the March 13, 2012, order "in its entirety" "based on the court finding that 304(a) order was erroneously entered." Because the circuit court vacated the March 13, 2012, order, it concluded that section 2-1401 was not applicable to Bank Financial's petition to vacate. On September 24, 2012, Bank Financial filed a motion to dismiss Fusion's complaint for a mechanic's lien pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2010)), alleging Fusion named the wrong entity as the owner of the subject property. The circuit court denied Bank Financial's section 2-619 dismissal motion.

¶7 On December 18, 2012, Fusion filed a motion for entry of default judgment against Deutsche Bank requesting, *inter alia*, damages in the amount of \$2,872.27 pursuant to the contract for services and attorney fees and expenses of not less than \$45,967.50. On January 18, 2013, the circuit court entered an order granting Fusion's motion "and the relief requested." In response to Bank Financial's motion for clarification, on February 26, 2013, the circuit court entered an order stating that its January 18, 2013, default order applied only to Deutsche Bank. The February 26, 2013, order additionally denied Fusion's request for a Rule 304(a) finding without prejudice.

¶8 On June 25, 2013, Deutsche Bank filed an appearance and a motion to vacate the default judgment pursuant to section 2-1301 of the Code (735 ILCS 5/2-1301 (West 2010)). To its motion, Deutsche Bank attached a special warranty deed in trust, executed on May 13, 2009, and recorded in the Cook County Recorder of Deeds on August 4, 2009, conveying Deutsche Bank's interest in the property, as trustee, to Financial Bank, as trustee.¹ On August 8, 2013, over Fusion's objection, the circuit court granted Deutsche Bank's motion to vacate the default judgment. Also, on August 8, 2013, the circuit court entered an order "Approving Settlement Agreement" between Fusion, Richards, Bank Financial, and Hazel Crest. In relevant part, the settlement agreement provided that "the mechanics lien filed by Fusion with respect to the premises commonly known as 17723 Dogwood Lane, Hazel Crest, Illinois, 60429-2128 is hereby released and Notice of *Lis Pendens* filed with the Cook County Recorder of Deeds on April 2, 2012, related to that mechanics lien is hereby revoked." The order further provided that "[e]ach of the parties to this Settlement Agreement shall bear their own court costs." The release of the mechanic's lien was filed and recorded with the Cook County Recorder of Deeds on

¹The record also contains a special warranty deed, executed on April 16, 2009, conveying the subject property from Deutsche Bank, as trustee, to Richard.

August 22, 2013. On November 21, 2013, the circuit court entered an order granting Deutsche Bank's motion to dismiss it as a defendant pursuant to section 2-619(a) of the Code (735 ILCS 5/2-619(a) (West 2010)) and denying Deutsche Bank's motion for attorney fees. Finally, on January 3, 2014, the circuit court denied Fusion's motion to reconsider its November 21, 2013, order dismissing Deutsche Bank as a defendant and dismissed the entire matter with prejudice. This appeal followed.

¶9

ANALYSIS

¶10 Fusion contends the circuit court lacked jurisdiction to vacate the default judgments entered against Deutsche Bank on January 5, 2012, and January 18, 2013. In the alternative, Fusion contends the circuit court erred in vacating the default judgments against Deutsche Bank where Deutsche Bank failed to present a meritorious defense, namely, that it did not own the subject property. Fusion argues that the special warranty deed in trust allegedly conveying the property from Deutsche Bank as trustee to Bank Financial as trustee was not signed by Deutsche Bank, but, rather, was signed by an agent of Wells Fargo Bank, N.A. (Wells Fargo) as attorney-in-fact for Deutsche Bank without the requisite power-of-attorney having been recorded to authorize Wells Fargo to convey title on behalf of Deutsche Bank. Fusion, therefore, maintains that Deutsche Bank remained an owner of the subject property. Fusion additionally contends it is entitled to attorney fees because it prevailed in obtaining a mechanic's lien against Deutsche Bank.

¶11 We conclude that Fusion's contentions on appeal are moot based on the August 8, 2013, settlement agreement and the subsequent release of its mechanic's lien. Fusion's complaint requested a mechanic's lien resulting from the breach of an oral contract between itself and

Richards, acting as Deutsche Bank and/or Bank Financial's agent, for Fusion's interior decorating services of the subject property in the amount of \$2,872.27.

¶12 Fusion's contentions are confusing and ill-conceived. Fusion's complaint for a mechanic's lien stated that it was owed \$2,872.27 for services rendered. Within the one-count complaint, Fusion briefly stated that Deutsche Bank and/or Bank Financial, as owner of the subject property, breached the oral contract between Fusion and Richards, as agent of Deutsche Bank and/or Bank Financial, wherein Fusion provided services to Richards without payment in satisfaction of those services. Accordingly, Fusion's complaint did not allege an additional claim for breach of contract on a basis separate from the claim in support of the mechanic's lien.

There is no question that Fusion entered into a settlement agreement with Richards and Bank Financial and subsequently released the mechanic's lien, recording the release with the Cook County Recorder of Deeds. Fusion has not alleged the release was fraudulent (*see Rochelle Vault Co. v. First National Bank of De Kalb*, 5 Ill. App. 3d 354, 356 (1972)) or that the release was not properly supported (*Cf. Bricks, Inc. v. C & F Developers, Inc.*, 361 Ill. App. 3d 157, 161-6565 (2005)). In fact, Fusion does not challenge the release in any capacity.

¶13 The release was recorded in consideration of and satisfaction of the outstanding debt owed to Fusion as provided in the settlement agreement. Section 35 of the Mechanics Lien Act (770 ILCS 60/35 (West 2010)) provides:

"Whenever a claim for lien has been filed with the recorder of deeds, either by the contractor or sub-contractor, and is paid with cost of filing same, *** the person filing the same *** shall acknowledge satisfaction or release thereof, in writing ***.

(b) Such satisfaction or release may be filed with the recorder or Registrar of Titles in whose office the claim for lien had been filed and when so filed shall forever thereafter discharge and release the claim for lien and shall bar all actions brought or to be brought thereupon."

As a result, Fusion's filing of the release of the lien released the subject property from any claim Fusion might have against the property. *Rochelle Vault Co.*, 5 Ill. App. 3d at 356. Therefore, even if assuming, *arguendo*, we were to conclude that Deutsche Bank was somehow an owner of the subject property at the relevant time, Fusion accepted the settlement for the outstanding debt and released its claim against the property. Because Fusion has no basis for its claim against the property and Fusion never asserted a separate cause of action against Deutsche Bank, we conclude Fusion's appeal is moot. *State Farm Mutual Automobile Insurance Co. v. George Hyman Construction*, 306 Ill. App. 3d 874, 880 (1999); see *Stallings By & Through Stallings v. Fajardo*, 157 Ill. App. 3d 913, 917 (1987) ("[b]ecause the existence of a real controversy is an essential requisite to appellate jurisdiction, where a reviewing court has notice of facts that show no actual controversy or dispute involved, it will dismiss the appeal").

¶14 In terms of Fusion's contention regarding attorney fees, we further conclude that the issue has been rendered moot as a result of Fusion's voluntary release of the mechanic's lien. We recognize that the Mechanics Lien Act provides for the awarding of attorney fees pursuant to the language of the statute. See, *e.g.*, 770 ILCS 60/17 (West 2010)). However, because the enforcement of Fusion's mechanic's lien is no longer a justiciable issue, we additionally find Fusion's request for attorney fees pursuant to the Act is moot as well.

¶15 CONCLUSION

¶16 We conclude that Fusion's contentions are moot. This appeal must be dismissed.

1-14-0351

¶17 Dismissed.