

No. 14-0850

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 DISTRICT

THE BANK OF NEW YORK MELLON,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 11 CH 40338
)	
MAREK DERDAS,)	
)	Honorable Robert Senechalle
Defendant-Appellant.)	Judge Presiding

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant waived and forfeited all of the issues raised in this appeal. Regardless, all of the grounds for reversal asserted by defendant are without merit. The trial court properly entered judgment in favor of the plaintiff.

¶ 2 **BACKGROUND**

¶ 3 Plaintiff Bank of New York Mellon filed a complaint to foreclose the mortgage secured by the property commonly known as 726 N. Deer Run Drive, Palatine, Illinois. That property was Defendant Marek Derdas's primary residence. Derdas appeared through counsel in the case and, after his motion to dismiss was denied, answered the complaint and asserted affirmative defenses

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and a counterclaim. One of defendant's affirmative defenses was that the acceleration letter sent by plaintiff was improper so plaintiff could not proceed with the foreclosure. Another of defendant's affirmative defenses was that plaintiff made fraudulent representations to induce defendant to execute the mortgage and, thus, that plaintiff could not recover or alternatively should be equitably estopped from foreclosing the mortgage. Plaintiff filed a motion to dismiss the affirmative defenses and counterclaim pursuant to section 2-619 of the Illinois Code of Civil Procedure. The trial court granted plaintiff's motion to dismiss, but gave defendant 28 days to replead the affirmative defenses and counterclaim. Defendant did not replead.

¶ 4 Five months later, plaintiff moved for summary judgment. The only issue contested by defendant at the summary judgment stage was the sufficiency of the affidavit plaintiff submitted in support of its motion. The trial court entered judgment in plaintiff's favor and eventually issued all the attendant orders giving plaintiff ownership of the property. Defendant appeals the dismissal of his affirmative defenses. We affirm.

¶ 5 ANALYSIS

¶ 6 We need not toil long to dispose of defendant's arguments on appeal. Following the dismissal of his affirmative defenses, defendant did not replead them despite the express instructions from the trial court. Any argument concerning the dismissal of the affirmative defenses is waived and forfeited. *Larkin v. Sanelli*, 213 Ill. App. 3d 597, 602 (1991); *Bank of America, N.A. v. Basile*, 2014 IL App (3d) 130204, ¶ 25. There were no affirmative defenses on file at the summary judgment stage or in any pleading because they were dismissed and never repleaded. Thus, at this stage, defendant cannot challenge the initial dismissal of the defenses.

¶ 7 In any event, the arguments defendant raises on appeal are unpersuasive and entitle him to

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no relief. Defendant argues that the acceleration letter sent by plaintiff did not comply with the terms of the mortgage. However, the mortgage only requires that the letter set forth: (1) the default; (2) the action required to cure the default; (3) the date by which the default must be cured; and (4) that the failure to cure will result in an acceleration of the debt. The letter clearly meets all of these requirements. Defendant was not misled. Moreover, the letter was sent a full year before plaintiff filed this case and defendant did nothing to cure the default. This defense was ineffectual as a matter of law.

¶ 8 Defendant also argues that his defense that plaintiff should be precluded from recovering as a result of fraud should not have been dismissed. Defendant maintains that a fraud perpetrated by plaintiff should at least equitably estop plaintiff from foreclosing the mortgage. In the affirmative defense, plaintiff alleged that the same company acted as the mortgage broker and the appraiser, so the appraiser had an incentive to overvalue the property. Defendant also alleged that he did not receive a copy of the appraisal even though his HUD-1 statement indicated he received one. But these allegations, if proved, would do nothing to impede plaintiff's right to foreclose. Alleging that the broker "*had incentive* to inflate the value of the property" does not mean that the broker did inflate it. And defendant provides no authority that would support his position that a lender is precluded from foreclosing because the borrower was not given a copy of the appraisal. The trial court properly dismissed the affirmative defenses.

¶ 9 CONCLUSION

¶ 10 Accordingly, we affirm the judgment of the circuit court.

¶ 11 Affirmed.