2015 IL App (1st) 142517-U

THIRD DIVISION
September 16, 2015

No. 1-14-2517

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 JUDICIAL DISTRICT

HEARTLAND BANK AND TRUST COMPANY, an Illinois state bank, as successor assignee of WESTERN SPRINGS NATIONAL BANK AND TRUST, N.A., a failed banking association,	)	Appeal from the Circuit Court of Cook County.
Plaintiff/Counterdefendant-Appellee,	)	
v.	)	No. 12 CH 5680
KEVIN R. TIERNEY,	)	The Honorable Neil H. Cohen,
Defendant/Counterplaintiff-Appellant.	)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *HELD*: Trial court properly granted plaintiff's motion to dismiss defendant's affirmative defense and counterclaim to its suit for declaratory judgment where these were an improper collateral attack on a prior foreclosure suit over which the trial court had subject matter jurisdiction. Additionally, trial court properly granted plaintiff's motion for partial summary judgment where there was no genuine issue of material fact that defendant had no viable interest in the property involved herein.

¶ 2 Following the foreclosure and sale of property upon which defendant/counterplaintiff-appellant Kevin R. Tierney (defendant) purportedly held a lease with an option to purchase, plaintiff/counterdefendant-appellee Heartland Bank and Trust Company (Heartland), as successor assignee of Western Springs National Bank and Trust, N.A. (WSNB), filed a complaint for declaratory judgment and damages. Defendant responded with affirmative defenses and filed his own counterclaim for declaratory judgment with respect to the property. Heartland filed a motion to dismiss, and the trial court granted its motion. Defendant sought a modification of this decision, which was denied. Heartland then moved for partial summary judgment with respect to its complaint, and the trial court granted its motion.

¶ 3 Defendant appeals all of these orders, contending that the trial court erred in granting Heartland's motion to dismiss and motion for partial summary judgment. He asserts that the trial court which presided over the original foreclosure action lacked subject matter jurisdiction, rendering the orders entered in that matter void. He further asserts that, because of this, the trial court in the instant cause "misapplied Illinois law" and its orders, which depended on those of the foreclosure court, are also void and, therefore, unenforceable. He asks that we reverse these orders and restore his interest in the property. For the following reasons, we affirm.

¶ 4 BACKGROUND

¶ 5 The instant cause stems from a somewhat complex ownership interest relationship involving real property located at 5221 Central Avenue in Western Springs, Illinois.

¶ 6 The property's owner, Konstantinos D. Antoniou, allegedly agreed, via an oral statement, to lease a portion of the property to defendant with an option to purchase in return for a monthly rent of $500. Antoniou and defendant purportedly signed a lease to this effect on February 4,

2004. However, neither of them recorded the lease.

¶ 7 Later, in March 2004, Antoniou sought mortgage refinancing for the property from WSNB. As a condition of refinancing, WSNB required that the property be conveyed to a WSNB land trust and mortgaged to WSNB. On March 12, 2004, Antoniou signed a trust agreement naming WSNB the trustee and WSNB executed several loan documents, including a promissory note in the amount of $303,000.00, an assignment of rents and a mortgage to lender WSNB. Then, on March 31, 2004, WSNB executed a deed in trust, conveying the property into the land trust and giving WSNB, as trustee, full title to the property, both legal and equitable. See, *e.g.*, *Chicago Federal Savings & Loan Ass'n v. Cacciatore*, 33 Ill. App. 2d 131, 138-39 (1961). Antoniou was the sole beneficiary of the land trust, and his interest was a personal property interest only. See, *e.g.*, *Chicago Federal*, 33 Ill. App. 2d at 138-39. The deed was recorded on April 5, 2004.

¶ 8 Eventually, Antoniou defaulted on the mortgage loan. In June 2007, WSNB filed a foreclosure action and prevailed, obtaining a judgment of foreclosure on the property, which WSNB then purchased. The trial court approved the sale to WSNB on March 23, 2010.

¶ 9 Soon thereafter, it was discovered that two parties not named as defendants in the foreclosure action were living at the property: Antoniou's mother[1] and defendant. On March 31, 2010, defendant recorded a lease with the county recorder; it was dated February 4, 2004, named Antoniou as the landlord, provided for a monthly rent of $500, and contained a 10-year renewable lease term with an option to purchase.

¶ 10 Following defendant's recording of the six-year-old lease, WSNB filed a supplemental

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[1]Antoniou's mother is not involved in this appeal.

petition for possession against defendant. After briefing and hearing, the trial court awarded possession of the property to WSNB. In its Memorandum Opinion, the court found that, based on the evidence presented, defendant and Antoniou "did not have a lease agreement that predated the date of the mortgages at issue in this case, nor was there any written agreement between them entered into before the foreclosure lawsuit was filed." In addition, the court's written order stated that, accordingly, "any interest claimed or held by Kevin R. Tierney be and is hereby terminated."

¶ 11 Defendant appealed this decision to our court. In the meantime, and following WSNB's closure, Heartland became WSNB's assignee in interest, including its interest in the property at issue. In November 2011, we affirmed the trial court's decision awarding the property to WSNB, and now, to its assignee Heartland. See *Heartland Bank and Trust Co. v. Western Springs National Bank and Trust*, No. 1-11-0831 (Nov. 23, 2011) (unpublished summary order under Supreme Court Rule 23(c)(2) ¶ 14).

¶ 12 Defendant filed a petition for leave to appeal before the Illinois Supreme Court. In February 2012, while his petition was pending, and despite the trial and appellate court decisions declaring his interest in the property terminated, defendant recorded a "Notice of Exercise of Option to Purchase" and, days later, a subsequent "Amended Notice of Exercise of Option to Purchase." The Illinois Supreme Court denied his petition for leave to appeal. See *Heartland Bank & Trust Co. v. Western Springs National Bank & Trust*, No. 113610 (Ill. Mar. 28, 2012) (table).

¶ 13 In February 2012, Heartland filed a two-count complaint for declaratory judgment against defendant. Count I sought a declaration that the February 2004 lease between Antoniou and defendant is null and void and that defendant had no "option to purchase," and an order requiring

defendant to prepare and record all necessary documents to release the "Notice of Exercise of Option to Purchase" and "Amended Notice of Exercise of Option to Purchase." Count II sought damages for slander of title resulting from defendant's recording of the notice and amended notice after the trial and appellate court decisions and while his petition for leave to appeal with the supreme court was pending. In response, defendant filed an affirmative defense and counterclaim. He argued that all of the orders entered by the foreclosure court, including the judgment of foreclosure, the order approving sale, and the order for possession against him, were void for lack of subject matter jurisdiction because, he asserted, the WSNB mortgage was granted before the land trust had acquired the property. Thus, he claimed that WSNB, and Heartland as its assignee, had no viable interest in the property or standing, while he still had a valid lease with option to purchase. Defendant's counterclaim therefore asked the court to declare that he had a superior possessory interest and purchase rights pursuant to the lease. In reply, Heartland filed a section 2-619 motion to dismiss defendant's affirmative defense and his counterclaim.

¶ 14 In December 2012, the trial court granted Heartland's motion to dismiss. Citing the "after-acquired-title doctrine" of section 5/7 of Real Property Conveyances Act (765 ILCS 5/7 (West 2012)), which it confirmed applies to mortgages, the court acknowledged that, while WSNB did not have title to the property when the mortgage was executed, it did acquire valid title after the execution of the mortgage, thereby making the mortgage valid. Therefore, the court concluded, the foreclosure court did, indeed, have subject matter jurisdiction and its orders granting possession to WSNB and, subsequently, to Heartland as its assignee, were proper.

¶ 15 Defendant filed a motion to modify the trial court's December 2012 order. In March 2013, considering this to be a motion to reconsider, the court denied it, finding that defendant did

"nothing more than repeat" his already-rejected claims and failed to raise any newly discovered evidence, changes in the law or errors in the application of existing law.

¶ 16 Subsequently, Heartland filed a motion for partial summary judgment regarding its complaint for declaratory judgment. In January 2014, the trial court granted its motion with respect to Count I and denied it with respect to Count II. First, as to Count I, the court held that defendant "has no valid Lease option in the Property and no other valid legal interest in the Property," declared the lease "null and void," and ordered defendant to immediately prepare and record all necessary documents to release his notice and amended notice of exercise of option to purchase with the county recorder. As to Count II, the court found that defendant recorded his notice and amended notice–after the trial and appellate court holdings that he had no interest in the property and while his petition for leave to appeal to the supreme court was pending–"falsely and maliciously," creating a cloud on Heartland's title. However, the court denied summary judgment on this count to Heartland, concluding that, because Heartland failed to establish the existence of any special damages, it could not find slander of title.

¶ 17 Following this decision, defendant failed to immediately record the release of his notice and amended notice, as ordered by the trial court. Defendant later recorded a release entitled a "Release of Notice and Amended Notice of Exercise of Option to Purchase, Under Protest, With All Rights Reserved." Heartland filed a motion for rule to show cause against defendant. In April 2014, the trial court held that defendant's release as filed did not comply with its January 2014 mandate and ordered him to abide by its ruling. Defendant finally filed an absolute release of his notice and amended notice of exercise of option to purchase on April 18, 2014. Heartland eventually amended Count II of its complaint to allege special damages. However, it later filed a

motion to voluntarily dismiss this count, and the trial court granted its motion in July 2014.

¶ 18 ANALYSIS

¶ 19 Defendant appeals from three orders in this cause: the December 2012 grant of Heartland's motion to dismiss his affirmative defense and counterclaim, the March 2013 denial of his motion to modify (reconsider) that ruling, and the January 2014 grant of Heartland's motion for partial summary judgment.[2] His principle contention is that the trial court which originally foreclosed on the mortgage of the property involved herein lacked subject matter jurisdiction to do so because the mortgage was executed *ultra vires*, or before the trust agreement became effective and before WSNB became the land trustee with the required power and authority to act in that capacity to convey the property via the mortgage. According to defendant, because the mortgage was not valid, a justiciable issue was not created, the trial court did not have subject matter jurisdiction to foreclose on the property and, thus, its orders, and all subsequent orders entered in this cause, are null and void–resulting in the retention of his possessory interest and rights in the property and his option to purchase as stated in his lease. We disagree.

¶ 20 The parties do not dispute the applicable standard of review. Briefly, our reexamination of the grant of a section 2-619 motion to dismiss, such as that granted to Heartland here, is conducted

[2]Defendant's notice of appeal in this cause states that he is also appealing two other orders, namely, the trial court's April 2014 order requiring him to record an absolute release without equivocation and, inexplicably, the trial court's July 2014 order granting Heartland's motion to voluntarily dismiss Count II of its complaint for slander of title. However, he does not present any argument in his brief on appeal with respect to either of these two orders. Accordingly, pursuant to Illinois Supreme Court Rule 341(h)(7), we, too, need not address them.

de novo. See *Lutkauskas v. Ricker*, 2015 IL 117090, ¶ 29.[3] Similarly, we review the grant of summary judgment, which defendant also appeals, *de novo*. See *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). And, most significant to this cause, whether subject matter jurisdiction exists is a legal question which, again, we review *de novo*. See *In re Luis*, 239 Ill. 2d 295, 299 (2010).

¶ 21 We begin by noting that, contrary to his assertion, defendant has no interest in the property pursuant to the ruling in the original foreclosure action. As discussed earlier, Antoniou, the property owner, sought refinancing from WSNB, Heartland's predecessor in interest, on the property. Pursuant to WSNB's requirements to receive this financing, Antoniou, on March 12, 2004, signed a trust agreement naming WSNB the trustee and WSNB executed a promissory note, assignment of rents and mortgage to lender WSNB. Then, on March 31, 2004, WSNB executed a deed in trust, conveyed the property into the land trust and gave trustee WSNB full title to the property. The deed was recorded on April 5, 2004. Later, Antoniou defaulted on the mortgage, and WSNB filed a foreclosure action and prevailed, eventually purchasing the property at sale and obtaining the court's approval thereof. Pursuant to the Illinois Mortgage Foreclosure Law, " the interest in the mortgaged real estate of (i) all persons made a party in such foreclosure *** shall be terminated by judicial sale of the real estate, pursuant to a judgment of foreclosure, provided the sale is confirmed in accordance with this Article." 735 ILCS 5/15-1404 (West 2012). Thus, as a

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[3]We would note that, because defendant's motion to reconsider the trial court's grant of Heartland's motion to dismiss essentially asked it to reevaluate its application of the law to the case as it existed at the time of its judgment, and did not involve an assertion of newly discovered evidence or changes or misapplication of the law, the court's March 2013 denial of this is also reviewed *de novo*. See *Belluomini v. Zaryczny*, 2014 IL App (1st) 122664, ¶ 20.

party to the foreclosure action, Antoniou's interest in the property terminated with the judgment of foreclosure and confirmation of sale, which, incidentally, he never challenged or appealed.

¶ 22 Now, defendant was not mentioned as a party to the foreclosure action between WSNB and Antoniou because, in light of his and Antoniou's failure to record their purported February 2004 lease agreement, WSNB did not know at the time that defendant lived at the property. However, once WSNB discovered this (and following defendant's recording of the purported lease on March 31, 2010, six years after its alleged formation), WSNB filed a supplemental petition for possession against defendant. At this point, defendant, just as Antoniou, became, pursuant to the Illinois Mortgage Foreclosure Law, a party to the foreclosure action with respect to the property and, just as Antoniou, under section 15-1404, any interest he had was terminated by the judicial sale of the property due to the judicially-confirmed foreclosure and sale in favor of WSNB. See 735 ILCS 5/15-1404 (West 2012). As the trial court held in its ruling on WSNB's supplemental petition, "any interest claimed or held by Kevin R. Tierney be and is hereby terminated." Our court affirmed this ruling (see *Heartland Bank*, No. 1-11-0831 (Nov. 23, 2011) (unpublished summary order under Supreme Court Rule 23(c)(2) ¶ 14)), and the Illinois Supreme Court denied defendant's petition for leave to appeal that decision, rendering it final (see *Heartland Bank*, No. 113610 (Ill. Mar. 28, 2012) (table)).

¶ 23 Despite having no interest in the property, defendant, in February 2012, recorded a notice and amended notice of exercise of option to purchase, pursuant to his purported lease agreement with Antoniou. He contends this was proper, as he has a viable interest in the property, because the orders entered by the trial court in the original mortgage foreclosure action are void for lack of subject matter jurisdiction. He claims that the timing of the execution of the loan documents from

the land trust divested the trial court of jurisdiction because they were executed by WSNB *ultra vires*, that is, before the deed in trust was executed and effective, rendering the mortgage ineffective. He further asserts that, accordingly, the trial court lacked subject matter jurisdiction to order the foreclosure and confirm the sale of property which divested his interest, a challenge he may assert at any time.

¶ 24 The critical point here is that defendant confuses subject matter jurisdiction with standing. Subject matter jurisdiction refers to the "power of a court to hear and determine cases of the general class to which the proceeding in question belongs." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). Subject matter jurisdiction is conferred entirely by our state constitution and extends to all "justiciable matters." Ill. Const. 1970, art. VI, § 9. A justiciable matter is one that is "definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Belleville Toyota*, 199 Ill. 2d at 335. "A judgment entered without subject matter jurisdiction is void and may be attacked at any time, either directly or collaterally." *Zaferopulos v. City of Chicago*, 206 Ill. App. 3d 904, 908 (1990).

¶ 25 Meanwhile, lack of standing is an affirmative defense and is forfeited if it is not raised in a timely manner in the trial court. See *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252-53 (2010). Standing is " 'an element of justiciability.' " *Nationstar Mortgage, LLC v. Canale*, 2014 IL App (2d) 130676, ¶ 17, quoting *People v. Greco*, 204 Ill. 2d 400, 409 (2003). Yet, while standing is an element of justiciability, it is not a requirement for a "justiciable matter." See Ill. Const. 1970, art. VI, § 9 (subject matter jurisdiction is conferred entirely by the state constitution and extends to all "justiciable matters"); *Nationstar*, 2014 IL App (2d) 130676, ¶ 15.

Accordingly, standing is not an element of subject matter jurisdiction. See *Nationstar*, 2014 IL App (2d) 130676, ¶ 17. And, one who lacks standing may still assert a justiciable matter. See *Nationstar*, 2014 IL App (2d) 130676, ¶ 15.

¶ 26 Here, defendant's challenge to the validity of the mortgage involved herein is a challenge to the mortgagee's standing. See, *e.g.*, *Nationstar*, 2014 IL App (2d) 130676 (where the defendant's challenge that the complaint at issue did not allege a proper assignment of the mortgage, this was considered to be a challenge to the plaintiff's standing to bring the suit). As such, our recent decision in *Beal Bank v. Barrie*, 2015 IL App (1st) 133898, proves instructive. There, the defendant claimed that the trial court which had presided over the plaintiff's foreclosure case lacked subject matter jurisdiction because the plaintiff was not the holder of the mortgage at the time the foreclosure complaint was filed. See *Beal Bank*, 2015 IL App (1st) 133898, ¶ 18. However, upon review, we confirmed that legal deficiencies, such as standing, do not divest a court of subject matter jurisdiction. See *Beal Bank*, 2015 IL App (1st) 133898, ¶¶ 20-21. Rather, we noted that, as our supreme court had already firmly established, " 'the *only* consideration' " in determining whether a court has subject matter jurisdiction " 'is whether the alleged claim falls within the general class of cases that the court has the inherent power to hear and determine.' " *Beal Bank*, 2015 IL App (1st) 133898, ¶¶ 20, 21, quoting *Luis R.*, 239 Ill. 2d at 301 (emphasis in original). And, because foreclosure actions undoubtedly fall within that general class, we concluded that the trial court, indeed, had subject matter jurisdiction over the original foreclosure action. See *Beal Bank*, 2015 IL App (1st) 133898, ¶ 21, citing 735 ILCS 5/15-1101 *et seq.* (West 2012); see also *Nationstar*, 2014 IL App (2d) 130676, ¶ 14 (holding that foreclosure actions are unquestionably actions over which the trial court has subject matter jurisdiction).

¶ 27 From all this, it is clear that defendant here cannot now collaterally attack the judgment of foreclosure and subsequent order approving the sale, or the trial court's supplemental order finding that any interest claimed by him in the property be terminated, because those orders were entered in a case, namely, the original foreclosure action, over which the trial court had subject matter jurisdiction. See *Malone v. Cosentino*, 99 Ill. 2d 29, 32 (1983) (noting that " '[a] judgment rendered by a court having jurisdiction of the parties and the subject matter *** is not open to contradiction or impeachment, in respect of its validity, verity, or binding effect, by parties or privies, in any collateral action or proceeding' " (citation omitted)).

¶ 28 Despite the essential and broad principles of subject matter jurisdiction announced by our supreme court in *Belleville Toyota*, which we have directly applied here, defendant relies heavily on *Jenner v. Wissore*, 164 Ill. App. 3d 259 (1988), a Fifth District appellate decision which predates *Belleville Toyota* by some 14 years, and its progeny,[4] to insist that our supreme court's views have been "explicitly considered and rejected." Defendant's assertion is wholly incorrect.

¶ 29 In *Jenner*, the plaintiff sought an injunction against the defendant to prevent him from using public school funds in a campaign to support a tax increase. The plaintiff succeeded and, eventually, an order of contempt was issued against the defendant, who had refused to comply with the injunction. The defendant then moved to dismiss the contempt order for lack of subject matter jurisdiction, but the trial court denied his motion. He appealed and, even though the plaintiff argued that the trial court must have had subject matter jurisdiction since it was the type of dispute the court was authorized to decide, the reviewing court disagreed and found for the defendant. See

[4]This includes, via defendant's citations, *Diaz v. Provena Hospitals*, 352 Ill. App. 3d 1165 (2004), and *Guertin v. Guertin,* 204 Ill. App. 3d 527 (1990).

Jenner, 164 Ill. App. 3d at 264-66. In its decision, the Fifth District stated that, "before a court may properly exercise jurisdiction over the subject matter of a dispute, it must possess not only the power to determine the class of cases into which the dispute falls, but also the power to grant the particular relief requested in the case before it." *Jenner*, 164 Ill. App. 3d at 266. Thus, it declared that two concepts must be present for subject matter jurisdiction to exist: the power to determine the class of cases to which the matter belongs and the power to grant the relief requested. See *Jenner*, 164 Ill. App. 3d at 266. A few months before *Jenner*, the Fourth District applied this same view of subject matter jurisdiction in *City National Bank of Hoopeston v. Langley*, 161 Ill. App. 3d 266 (1987), a mortgage foreclosure case. There, the *Langley* court held that a trial court which had instituted a foreclosure lacked subject matter jurisdiction to do so because the plaintiff had failed to attach the note and mortgage to the complaint as required by the mortgage foreclosure statute. See *Langley*, 161 Ill. App. 3d at 275-77 (reasoning that because the pleading was thus defective, the trial court could not have had the power to grant the relief requested and, therefore, it lacked subject matter jurisdiction).

¶ 30 While *Jenner* has technically not yet been abrogated or overruled with respect to its view on subject matter jurisdiction, *Langley*, which presents the same view–and which involved a mortgage foreclosure situation just as in the instant cause–has already suffered this fate. In *Nationstar*, issued 27 years later, our Second District specifically found that "*Langley* rests on a defunct view of subject matter jurisdiction." *Nationstar*, 2014 IL App (2d) 130676, ¶ 12. Instead, citing our supreme court's decision in *Belleville Toyota*, the *Nationstar* court made clear that, to invoke subject matter jurisdiction, a pleading need only state a justiciable matter and, even if the pleading were defective, as long as the matter falls within the general class of cases that the trial

court has the inherent power to hear and determine, subject matter jurisdiction exists. See *Nationstar*, 2014 IL App (2d) 130676, ¶ 14; accord *Luis R.*, 239 Ill. 2d at 301. Therefore, and as we have discussed herein, this is the *only* consideration in determining whether a court has subject matter jurisdiction, nothing more. See *Nationstar*, 2014 IL App (2d) 130676, ¶ 14, citing *Belleville Toyota*, 199 Ill. 2d at 334; accord *Luis R.*, 239 Ill. 2d at 301; *Beal Bank*, 2015 IL App (1st) 133898, ¶¶ 20, 21. This is a broad view of subject matter jurisdiction, and it is one that has been established, implemented and upheld by our supreme court. See *Nationstar*, 2014 IL App (2d) 130676, ¶¶ 13-14; accord *Luis R.*, 239 Ill. 2d at 301; *Beal Bank*, 2015 IL App (1st) 133898, ¶¶ 20, 21. Any narrower view, such as the one urged by defendant that would impose other limiting requirements like the power of the trial court to grant the relief requested in order to confer subject matter jurisdiction–which is related to the irrelevant issue of standing–is erroneous. See *Nationstar*, 2014 IL App (2d) 130676, ¶¶ 13-14.

¶ 31 With all this said, we reiterate our holding here that, because the trial court had subject matter jurisdiction over the original foreclosure suit in the instant cause, defendant cannot collaterally attack the judgment of foreclosure and subsequent order approving the sale of the property at issue. Therefore, we affirm the trial court's grant of Heartland's motion to dismiss defendant's affirmative defense and counterclaim.

¶ 32 Because this is dispositive of the case at hand, we need not address the merits of defendant's assertions (as embodied in his affirmative defense and counterclaim) that WSNB, acting as trustee of the land trust, invalidly executed loan documents related to the property.

¶ 33 As a final note, we turn briefly to the trial court's January 2014 grant of partial summary judgment with respect to Count I of Heartland's complaint for declaratory judgment and its denial

of partial summary judgment with respect to Count II for slander of title. After having devoted the majority of his brief on appeal to the court's grant of Heartland's motion to dismiss, defendant only cursorily discusses these as part of the orders from which he appeals. As to Count I for declaratory relief, he alleges that there was "no ruling that the [l]ease was void" and that the grant of partial summary judgment "perpetuated the trial court's error as to subject-matter jurisdiction." As to Count II for slander of title, he claims that his February 2012 recording of the notice and amended notice of exercise of option to purchase "was merely that (a notice), not a title instrument *** capable to transferring, clouding , or slandering title." (Emphasis in original.)

¶ 34 Neither of defendant's arguments has merit. With respect to Count I, defendant is essentially asserting that he did not know he had no option to purchase under the lease. However, the record clearly belies this. First, when the foreclosure court was called upon to rule on Heartland's supplemental petition following the discovery of the originally-unnamed defendant living on the property, the court explicitly held that "any interest claimed or held by Kevin R. Tierney be and is terminated." Thus, at this early point in the litigation, defendant was aware that the trial court had declared the lease, which included the option to purchase, void. Moreover, we reviewed this decision on appeal and affirmed it. See *Heartland Bank*, No. 1-11-0831 (Nov. 23, 2011) (unpublished summary order under Supreme Court Rule 23(c)(2) ¶ 14). And, the Illinois Supreme Court denied defendant's petition for leave to appeal this issue. See *Heartland Bank*, No. 113610 (Ill. Mar. 28, 2012) (table). Accordingly, when the trial court, upon consideration of Heartland's motion for summary judgment on Count I, also explicitly stated that, based on the original foreclosure court's orders, defendant's lease was "null and void," it did so properly in

light of the record here.[5]

¶ 35 Furthermore, with respect to Count II, the trial court declined to grant summary judgment for slander of title, but made a finding that defendant "falsely and maliciously" recorded his notice and amended notice of exercise of option to purchase following the trial and appellate rulings that he did not have such an option and while his petition for leave to appeal was pending, effectively clouding Heartland's title to the property. We fail to completely comprehend defendant's argument on this point. Yes, he notes that he recorded his notice and amended notice while his petition for leave to appeal was still pending and, yes, we understand his claim that his notice and amended notice did not comprise title instruments. However, as is clear from the record, not only was the trial court's determination in this regard not a final and appealable order in that it did not dispose of a portion of the case (*i.e.*, the trial court allowed Heartland to amend Count II since it had failed to allege the required specific damages for slander of title), but Heartland itself moved to voluntarily dismiss Count II in its entirety, a motion which the trial court granted in July 2014. Thus, we fail to find why, upon defendant's current assertion, we must address anything with respect to Count II.

¶ 36 Before we conclude, we note one last item of interest. In the final pages of his brief on appeal, defendant urges us to reverse the trial court's decisions on the grounds of "unclean hands" and "bad faith." Mentioning a different property located at 4732 Central Avenue in Western

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[5]Also with respect to Count I, defendant asserts, in a very short paragraph in his brief on appeal, that the trial court erred in granting "a mandatory injunction for affirmative relief commanding recording a release of notice" because there was "no hearing to establish a right to this relief." However, as Heartland notes, defendant has waived this argument for our review, since he never objected in the trial court to this form of relief and never requested a hearing on the matter. See *State ex rel. Pusateri v. Peoples Gas Light & Coke Co.*, 2014 IL 116844, ¶ 22.

Springs, Illinois, he asserts that in March 2008, WSNB sold a promissory note and mortgage documents to a third party. However, simply put, whatever relationship defendant attempts to make here between that property and the property at issue is convoluted and severely underdeveloped. Instead, what is clear is that defendant never raised unclean hands or bad fath as defenses in the trial court in the instant matter. Thus, they are waived and we will not consider

¶ 37 CONCLUSION

¶ 38 Accordingly, for all the foregoing reasons, we affirm all the orders of the trial court issued in this cause, including its grant of Heartland's motion to dismiss defendant's affirmative defense and counterclaim, its denial of defendant's motion to modify (reconsider) that ruling, and its grant of Heartland's motion for partial summary judgment.

¶ 39 Affirmed.