2015 IL App (2d) 140384-U
No. 2-14-0384
Order filed March 5, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CITIMORTGAGE, INC., as Successor by Merger to ABN AMRO Mortgage Group, Inc.,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 12-CH-4497
STEVEN R. VERZI and LEE ANN VERZI,	)	
Defendants-Appellants	)	
(JPMorgan Chase Bank, N.A., Unknown Owners, and Nonrecord Claimants, Defendants).	)	Honorable Leonard J. Wojtecki, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Schostok and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Without an official account of the relevant hearing, we could not say that the trial court abused its discretion in denying defendants' motion to vacate a default judgment of foreclosure; (2) defendants could not raise for the first time on appeal a claim that the mortgagee lacked a required license.

¶ 2 Steven R. Verzi and Lee Ann Verzi appeal after the confirmation of the judicial sale of their property. They argue first that the court should have granted their motion to vacate the

default judgment of foreclosure. They also argue, for the first time on appeal, that under our holding in *First Mortgage Co. v. Dina*, 2014 IL App (2d) 130567, we should remand to allow them to raise the mortgagee's alleged lack of license as a defense. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff, CitiMortgage, Inc., as successor by merger to ABN AMRO Mortgage Group, Inc. (AAMG) filed this residential foreclosure action. The mortgagor-defendant was Steven R. Verzi. Lee Ann Verzi, Steven's wife, was also named a defendant, as was JPMorgan Chase Bank, a possible lienholder. The property at issue was 1544 Jobe Street in St. Charles. The mortgage documents showed that AAMG was the original lender. The last page of the note bore what appears to be an endorsement in blank by an officer of AAMG, but the complaint made no reference to this.

¶ 5 Plaintiff filed the complaint on December 14, 2012. A date for a case-management conference set at the time of filing was June 3, 2013; this date appeared in a notice positioned as if it were stamped at the bottom right of the complaint's first page. The Verzis were served with their summonses on December 23, 2012, and December 26, 2012. Plaintiff filed a motion for a default judgment on February 14, 2013. The court granted the motion and entered a judgment of foreclosure on March 5, 2013.

¶ 6 After delays, the judicial sale was set for February 20, 2014. The Verzis entered an appearance through counsel on February 14, 2014, and, on the same day, filed a motion under section 2-1301 of the Code of Civil Procedure (735 ILCS 5/1301 (West 2012)) to vacate the default. The motion stated that the Verzis "intende[d] to challenge the standing of Plaintiff to sue *** based on conflicting pleadings of an alleged blank endorsement stamp and a purported succession by merger." The court denied the motion in a written order dated February 19, 2014,

which did not state the court's reason for the denial. The sale took place as scheduled and the court, on plaintiff's motion, confirmed the sale on March 17, 2013. The Verzis timely appealed.

¶ 7 II. ANALYSIS

¶ 8 On appeal, the Verzis first argue that the trial court should have vacated the default. In support of this, they assert that they "were defaulted ninety days before the return date even occurred" and were "unaware of the need to plead within thirty days." They further assert that their "redemption period even expired before their original return date." Thus, the core of their first argument is that the stamp-like notice on the complaint, which set a case-management conference date, lulled them into thinking that they had until June 3, 2013, to decide how to respond to the complaint. They also assert that they had a meritorious defense in that, as they "stated in oral arguments through counsel the *** [e]ndorsement present on the face of the Note is evidence that the Note was negotiated prior to the merger of [AAMG] and [plaintiff]."

¶ 9 Plaintiff responds that the Verzis have failed to provide a sufficient record to support their first claim of error. We agree.

¶ 10 We review a trial court's denial of a motion to vacate a default judgment for an abuse of discretion. *Steiner v. Eckert*, 2013 IL App (2d) 121290, ¶ 16. Under the rule in *Foutch v. O'Bryant*, 99 Ill. 2d 389 (1984), when a court's ruling is discretionary, we generally cannot reverse that ruling in the absence of a record sufficient to show the basis for the court's decision. The "appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch*, 99 Ill. 2d at 391-92. "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch*, 99 Ill. 2d at 392. The supreme court

ruled in *Foutch* that, where the record showed that the trial court, in denying a motion to vacate a judgment, considered material adduced at the hearing, but the record did not show what those matters were, the reviewing court was required to presume that the material adduced was sufficient to support the denial. *Foutch*, 99 Ill. 2d at 393-94.

¶ 11 The record, lacking as it does any transcript (or transcript substitute) of the hearing on the motion to vacate, tells us nothing of the court's basis for denying the motion. Therefore, under the principles of *Foutch*, we must presume that the court had a proper basis for the denial. Moreover, the Verzis themselves inform us that the hearing addressed substantive matters. They suggest that their counsel raised the possibility that plaintiff was not the note's owner, but they do not tell us how plaintiff responded. Plaintiff's response might have satisfied the court that any defense based on plaintiff's nonownership of the note would be in vain. As we do not know what happened, we cannot say that the court abused its discretion.

¶ 12 In their reply brief, the Verzis imply that, even on the record before us, we should hold that fairness required the trial court to give them a chance to "litigate the underlying facts of their case." We do not agree. The summons here should have been understandable even to a lay reader:

> "**To Each Defendant:** YOU ARE SUMMONED and required to file an answer in this case, or otherwise file your appearance in the Office of the Clerk of this Court, within 30 days after service of this summons, not counting the day of service. IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT[.]"

The stamp-like notice, which the Verzis describe as setting a "return date," did no such thing. That notice, which was all capital letters and was set apart from the text of the complaint as if it were a stamp, states:

> "BY ORDER OF COURT THIS CASE IS HEREBY SET FOR CASE MANAGEMENT TO CONFERENCE BEFORE THE ABOVE NAMED JUDGE ON 6•3•13, AT 9 A.M. FAILURE TO APPEAR MAY RESULT IN THE CASE BEING DISMISSED OR AN ORDER OF DEFAULT BEING ENTERED."

The notice made clear that it set a date for a case-management conference, a time for the court to review the progress of the case. This notice thus did not conflict with the summons, which set a deadline for the defendant to answer or appear. If more than one mention of a default puzzled the Verzis, they could have sought an explanation or taken the safe course of assuming that the earlier date was the relevant date. There was thus no unfairness in the court entering judgment before the date set for the case-management conference.

¶ 13 The Verzis' second argument, raised for the first time on appeal, is that our holding in *Dina* is an independent basis for vacatur. In *Dina*, we held that a mortgage made by a lender that lacks a State-mandated license is void as contrary to public policy. Applying that holding to the facts at issue, we held that a mortgage's enforceability was sufficiently doubtful to preclude summary judgment. *Dina*, 2014 IL App (2d) 130567, ¶¶ 18-23. The Verzis argue that their mortgage might also be void, asserting that, "[u]pon a search of the Illinois Department of Financial and Professional Regulation (DFPR) database, [they] could not find a *** license for ABN AMRO Mortgage Group Inc. of Troy, Michigan." They ask that the "judgments be vacated and remanded for further proceedings," arguing that plaintiff "would have ample opportunity to respond" to their licensure claim on remand.

¶ 14 In response to the Verzis' licensure argument, plaintiff moved for us to take judicial notice of certain records that it asserts demonstrate that AAMG was an operating subsidiary of a bank and therefore not subject to the relevant licensing laws. We granted that motion; however, given the basis on which we affirm, we need not consider those records.

¶ 15 The defendants in *Dina* persuaded this court that the lender's licensure was sufficiently doubtful that the trial court had erred in granting the plaintiff's motion for summary judgment. *Dina*, 2014 IL App (2d) 130567, ¶ 13. The Verzis here suggest that, were they given a second chance, they, likewise, could raise a question of the mortgage's validity. But they come before us without having raised the matter to the trial court, a critical difference. In *Dina*, the only procedural flaw at issue was the defendants' failure to raise the licensure issue in an answer. See *Dina*, 2014 IL App (2d) 130567, ¶ 5 (reciting that the legality issue was raised in response to a motion for summary judgment.) In addressing the merits of the issue, we suggested that the public interest in refusing to enforce illegal contracts was a greater consideration than the strict enforcement of pleading rules. See *Dina*, 2014 IL App (2d) 130567, ¶ 25. That does not mean that every procedural rule must give way to a defendant's wish to test a contract's validity. Here, the Verzis did not raise the issue below, and we decline to address it for the first time on appeal. See *K & K Iron Works, Inc. v. Marc Realty, LLC*, 2014 IL App (1st) 133688, ¶ 25 ("[A]rguments not raised before the circuit court are forfeited and cannot be raised for the first time on appeal.").

¶ 16 Furthermore, even if we were to overlook the forfeiture, the Verzis' mere suggestion that AAMG might have lacked a required license is not a basis for a remand. Under the Residential Mortgage License Act of 1987 (Act), " '[n]o [nonexempt person or entity] shall engage in the business of brokering, funding, originating, servicing or purchasing of residential mortgage loans

without first obtaining a license" from the State.' " *Dina*, 2014 IL App (2d) 130567, ¶ 26 (quoting 205 ILCS 635/1-3(a) (West 2006)). Exempt entities include state and federally chartered banks and their "first tier" subsidiaries—in other words, a large group of standard mortgage lenders. 205 ILCS 635/1-4(d)(1)(i), (ix) (West 2012). The Verzis speculate that AAMG did not have a license, but have not addressed whether AAMG was exempt from the licensure requirements. Thus, their mere suggestion that AAMG might have lacked a required license is insufficient to support a claim that the mortgage was illegally made.

¶ 17 III. CONCLUSION

¶ 18 For the reasons stated, we affirm the foreclosure judgment and the ensuing confirmation of the sale.

¶ 19 Affirmed.