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2015 IL App (3d) 140248-U

Order filed February 5, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

BANK OF AMERICA, N.A.,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-14-0248
)	Circuit No. 11-CH-4097
)	
ALEX GU,)	Honorable
)	Thomas Thanas,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice McDade and Justice Holdridge concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err in granting summary judgment in favor of plaintiff based on pleadings and affidavits.
- ¶ 2 Defendant Alex Gu appeals the circuit court’s decision to grant summary judgment in favor of plaintiff Bank of America, N.A., regarding its “Complaint to Foreclose Mortgage.” Plaintiff filed an affidavit in support of its motion for summary judgment and defendant failed to specifically deny relevant portions of plaintiff’s complaint and failed to file a counter-affidavit in opposition to plaintiff’s affidavit in support of summary judgment.

¶ 3 Additionally, we note that defendant filed an additional pleading with this court on December 22, 2014, entitled “Amended Pleading and Supplementary Evidence.” That pleading is improper and not in compliance with Supreme Court Rules, therefore, we strike that additional pleading.

¶ 4 We affirm.

¶ 5 BACKGROUND

¶ 6 On December 7, 2007, defendant executed a mortgage and promissory note for \$330,000 with plaintiff for his residence located in Bolingbrook, Illinois. On August 23, 2011, plaintiff filed a “Complaint to Foreclose Mortgage” alleging defendant defaulted on his payments under the December 7, 2007, mortgage and note. Plaintiff attached to the complaint, a copy of both the note, issued to defendant Alex A. Gu naming plaintiff Bank of America, N.A. as lender, and the mortgage, again listing defendant as borrower and plaintiff as lender. Defendant appeared *pro se* throughout all of the circuit court proceedings.

¶ 7 Plaintiff filed a motion for summary judgment on October 18, 2013, along with an affidavit executed by a bank officer of plaintiff Bank of America, N.A., verifying a summary of defendant’s account payments toward the mortgage and note, with attached bank business records demonstrating defendant defaulted on the full payments toward his note since October 1, 2010. Defendant filed an 11-page “Motion to Deny Plaintiff’s ‘Motion for Summary Judgment’ ” on December 13, 2012, claiming “multiple genuine issues and disputes: Breach Contract; Promissory Estoppel; Fraudulent Misrepresentation; Violation of ICFA.”

¶ 8 The trial court held a hearing on plaintiff’s motion for summary judgment on March 5, 2014. Defendant appeared *pro se* and plaintiff was represented by attorney Natalie Burris.

¶ 9 During the March 5 hearing, the trial judge stated he was first assigned to preside over this case on January 2, 2014. Consequently, the judge recited the following procedural history of the case on the record beginning with the filing of the original complaint in August 2011 to the date of the court hearing on March 5, 2014. The trial court carefully explained the procedural rulings of record to the *pro se* defendant. During this recitation, the court noted the following sequence of events of record. Defendant’s initial response to the complaint was stricken, pursuant to plaintiff’s motion, on September 26, 2012. However, the court granted defendant leave to file an amended answer within 28 days. Defendant filed a second amended response and a counterclaim on October 15, 2012, which was stricken on February 20, 2013, pursuant to plaintiff’s section 2-615 motion to strike (735 ILCS 5/2-615 (West 2012)). Thereafter, plaintiff filed a “prove-up affidavit” in the court file on April 23, 2013, as well as a “loss mitigation affidavit” on September 10, 2013. Subsequently, plaintiff filed this motion for summary judgment on October 18, 2013.¹ Consequently, defendant filed a “Motion to Deny Plaintiff’s ‘Motion for Summary Judgment’ ” on December 10, 2013.² Defendant also filed an additional “To Reply ‘Plaintiff’s Response to Defendant’s Motion to Deny Summary Judgment’ and Rebuttle [*sic*] of ‘Plaintiff’s Motion for Leave to Proceed to Summary Judgment’ ” on January 7, 2014, without any supporting affidavit.

¶ 10 On March 5, 2014, after outlining the procedural history of the case to date, the trial judge advised the parties that he read the briefs that were filed with the court regarding summary judgment prior to the hearing and also read defendant’s additional response filed on January 7, 2014. The trial judge said he also reviewed all the pleadings, affidavits, and briefs in the file.

¹ On October 18, 2013, plaintiff also refiled the April 23, 2013, prove-up affidavit in support of its motion for summary judgment, including business records of defendant’s payments.

² Defendant did not submit any sworn affidavit with this pleading.

The judge then allowed the parties to make any statements or arguments supporting their respective positions regarding the motion for summary judgment.

¶ 11 During this March 5, 2014, hearing, initially defendant claimed the court already denied defendant's motion to deny summary judgment in a January 15, 2014, order. Judge Thanas then read the January 15 order to defendant by stating, "It says, 'Plaintiff's motion for leave to proceed to summary judgment is granted,' " and repeatedly told defendant he did not yet rule on defendant's motion to deny summary judgment on January 15, 2014, because defendant's motion first had to be scheduled along with plaintiff's motion for summary judgment for a future hearing date. On March 5, 2014, the court reiterated that to date, it had not decided the merits of either party's pleadings regarding the motion for summary judgment. Judge Thanas further noted that, on January 15, 2014, he gave defendant 21 additional days to file any additional information or pleadings in response to plaintiff's motion for summary judgment, but defendant opted not to file any amended response.

¶ 12 At the close of the hearing, the court noted that defendant requested the court to find, as a matter of law, that the pleadings demonstrated genuine issues of fact. The judge clarified that he understood defendant's argument. However, the judge found that plaintiff's "prove-up affidavit" dated April 23, 2013, was not refuted with a counter-affidavit or proper pleading by defendant to "raise a genuine issue of material fact sufficient to preclude the entry of Summary Judgment in favor of Plaintiff." The court also agreed with plaintiff's argument and found defendant did not specifically deny paragraph 3J of plaintiff's complaint, in any response or answer, and the facts alleged in that paragraph were, therefore, a judicial admission by defendant.

¶ 13 Paragraph 3J of plaintiff's complaint provides: "Statement as to defaults: Mortgagors have not paid the monthly installments of principal, taxes, interest and insurance for 10/01/2010,

through the present; the principal balance due on the Note and the Mortgage is \$315,635.65, plus interest, costs, advances and fees. Interest accrues pursuant to the Note.” The record also shows defendant did not specifically deny that paragraph of the complaint or file *any* affidavit with the trial court to support his alleged facts in his trial pleadings or briefs. Accordingly, the court granted plaintiff’s motion for summary judgment regarding its foreclosure complaint.

¶ 14 Defendant filed a timely notice of appeal on March 20, 2014. Defendant’s notice of appeal challenges only the court’s “ ‘Final Judgment’ entered on March 5, 2014” regarding plaintiff’s motion for summary judgment. Additionally, defendant filed an additional pleading with this court on December 22, 2014, entitled “Amended Pleading and Supplementary Evidence.” We strike that additional pleading and affirm the judgment of the trial court.

¶ 15 ANALYSIS

¶ 16 Initially, we address plaintiff’s request to strike defendant’s appellant brief in its entirety because it does not comply with Rule 341 (Ill. S. Ct. R. 341 (eff. Feb. 6, 2011)). We agree that defendant’s brief does not comply with the Supreme Court Rules. Further, in Illinois, “a *pro se* litigant must comply with the rules of procedure required of attorneys, and a court will not apply a more lenient standard to *pro se* litigants.” *People v. Fowler*, 222 Ill. App. 3d 157, 163 (1991). However, based on the procedural history of this case and in the interests of justice, we will address the merits of the court’s March 5, 2014, ruling with respect to summary judgment. See *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 845 (2001). Our decision to deny plaintiff’s request to strike appellants’ brief, in this instance, should not be interpreted to suggest that this court, as a matter of course, will overlook violations of the Supreme Court Rules in future *pro se* appellate briefs. *Id.*

¶ 17 Next, we address defendant’s “Amended Pleading and Supplementary Evidence” filed with this court on December 22, 2014. We first note that defendant did not follow Supreme Court Rules to file that pleading as required by Rule 362 (Ill. S. Ct. R. 362 (eff. Feb 1, 1994)). It is also well established that, on appeal, a reviewing court is limited to the record of the trial court and cannot consider supplemental evidence that is not included as part of the trial record. *County Collector v. Goldman*, 23 Ill. App. 3d 923, 928 (1974). Therefore, we strike defendant’s supplemental pleading filed with this court on December 22, 2014, and will not consider it for purposes of this appeal.

¶ 18 Next, we acknowledge that plaintiff correctly argues that our jurisdiction is limited to a review of the specific order or issues identified in defendant’s notice of appeal, and any other orders that were a procedural progression leading to the judgment challenged in the notice of appeal. See *Burtell v. First Charter Service Corp*, 76 Ill. 2d 427, 433 (1979). Therefore, based on defendant’s notice of appeal, the only issue this court has jurisdiction to address is whether the trial court properly granted plaintiff’s motion for summary judgment on March 5, 2014. We will not consider any other issue unrelated to the March 5 order. We review the grant of a party’s motion for summary judgment *de novo*. *Lazenby v. Mark’s Construction, Inc.*, 236 Ill. 2d 83, 93 (2010).

¶ 19 Here, plaintiff’s complaint for foreclosure alleged defendant’s default in payments and included the necessary copies of the mortgage and promissory note. See *US Bank, N.A. v. Avdic*, 2014 IL App (1st) 121759, ¶ 37. Additionally, plaintiff filed an affidavit in support of its motion for summary judgment, executed by a Bank of America officer, documenting the affiant’s knowledge of the business records regarding defendant’s mortgage and promissory note, and that plaintiff defaulted in making the full payments according to the terms of the promissory note

beginning on October 1, 2010. It is well established where any well-pleaded facts contained in an affidavit in support of a motion for summary judgment are not contradicted by counter-affidavits to deny such motion, those facts stand as admitted and must be taken as true for purposes of a motion for summary judgment. *Id.* at ¶ 31. The opposing party may not stand on general denials in his or her pleadings to create a genuine issue of material fact. *Id.* (citing *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 49). Therefore, the facts in plaintiff's affidavit are unrefuted and taken as true in the case at bar.

¶ 20 Here, defendant attempted to present facts to the trial court to support his position that, based on alleged misrepresentations by Bank of America personnel regarding reduced payments, defendant did not default on his mortgage payments. However, defendant's conclusory assertions in his pleadings submitted for the court's consideration were not set out in an affidavit or included in a verified pleading as procedurally required to refute plaintiff's complaint and plaintiff's subsequently-filed affidavit in support of summary judgment.

¶ 21 In Illinois, a *pro se* litigant is not entitled to more lenient treatment than an attorney, and parties choosing to represent themselves without a lawyer must still comply with the same rules, procedures, and standards as required of licensed attorneys. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78. Consequently, the alleged facts in plaintiff's pleadings and affidavits must be taken as true and those facts have not been properly refuted by defendant. After our careful *de novo* review of the pleadings and affidavits in the record, we conclude the pleadings regarding the motion for summary judgment do not establish a disputed issue of material fact and plaintiff has proven its case. Therefore, we conclude the trial court properly granted the motion for summary judgment in favor of plaintiff with respect to plaintiff's "Complaint to Foreclose Mortgage."

CONCLUSION

¶ 22

¶ 23

For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 24

Affirmed.