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2015 IL App (3d) 140708-U

Order filed June 19, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

CITIMORTGAGE, INC.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Plaintiff-Appellee,)	Tazewell County, Illinois.
)	
v.)	Appeal No. 3-14-0708
)	Circuit No. 12-CH-475
DEMION HARIFORD and DOMANIQUE)	
HARIFORD,)	Honorable
)	Paul P. Gilfillan
Defendants-Appellants.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court properly granted summary judgment to mortgagee where mortgagors generally denied allegations of foreclosure complaint but failed to file an affidavit contesting the facts set forth in mortgagee's complaint and affidavit.

¶ 2 Plaintiff, Citimortgage, Inc., filed a complaint to foreclose mortgage against defendants Demion Hariford and Domanique Hariford. Defendants filed an answer denying the allegations of the complaint. Plaintiff filed a motion for summary judgment. Defendants filed a response, asserting that plaintiff failed to accept payments from them. The trial court granted plaintiff's

motion for summary judgment. Defendants filed a motion to reconsider, which the trial court denied. Defendants appeal the trial court's entry of summary judgment in favor of plaintiff and the denial of their motion to reconsider. We affirm.

¶ 3

FACTS

¶ 4

In January 2006, defendants obtained a mortgage and note from Citicorp Trust Bank for a home in Peoria. Thereafter, Citicorp Trust Bank assigned the mortgage and note to plaintiff. One month later, plaintiff filed a complaint to foreclose mortgage against defendants. The complaint alleged that defendants defaulted on their payments in June 2012, by failing to pay the principal and interest due under the terms of the note.

¶ 5

In March 2013, defendants filed an unverified answer to plaintiff's complaint, denying each and every allegation. Thereafter, plaintiff filed a motion for summary judgment, arguing that defendants' general denials did not raise a genuine issue of fact. In support of the motion, plaintiff filed an affidavit from one of its bank officers setting forth the amount due and owing under defendants' mortgage, along with business records demonstrating defendants' default. Defendants filed a response to plaintiff's motion for summary judgment, arguing that they attempted to make timely payments to plaintiff but that plaintiff refused to accept them. No affidavits were attached to defendants' response.

¶ 6

The trial court granted plaintiff's motion for summary judgment and entered a judgment of foreclosure and order of sale. Defendants filed a motion to reconsider the trial court's summary judgment order, arguing that a question of fact existed regarding whether they made payments that plaintiff refused to accept. Defendants also filed an "amended verified answer to complaint to foreclose mortgage," denying all of the allegations of plaintiff's complaint and stating, "Plaintiff failed to accept their payments on multiple occasions." The answer was signed

by Benjamin Lawrence “as POA” for defendants. The trial court denied defendants’ motion to reconsider.

¶ 7 Defendants filed an emergency motion for stay of sheriff’s sale, which the trial court denied. A public sale was held, and the trial court entered an order confirming the sale.

¶ 8 ANALYSIS

¶ 9 I

¶ 10 Summary judgment is proper when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2012). In reviewing a motion for summary judgment, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the moving party to determine whether a genuine issue of material fact exists. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). A trial court’s ruling on a motion for summary judgment is subject to *de novo* review. *PNC Bank, National Ass’n v. Zubel*, 2014 IL App (1st) 130976, ¶ 13.

¶ 11 To survive a motion for summary judgment, the nonmoving party must present some evidentiary facts that would arguably entitle him to judgment. *Horwitz v. Holabird & Root*, 212 Ill. 2d 1, 8 (2004). “Denials in a defendant’s answer do not create a material issue of genuine fact to prevent summary judgment.” *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 49; see also *Carruthers v. B.C. Christopher & Co.*, 57 Ill. 2d 376, 380 (1974) (even if an answer purports to raise issues of material fact, summary judgment is appropriate if such issues are not further supported by evidentiary facts through affidavits). When a party moving for summary judgment files supporting affidavits, and the party opposing the motion files no counteraffidavits, the facts set forth in the movant’s affidavits are deemed admitted. *Korzen*,

2013 IL App (1st) 130380, ¶ 49. The opposing party may not simply stand on his pleadings in order to create a genuine issue of material fact. *Id.*; see also *Koukoulomatis v. Disco Wheels, Inc.*, 127 Ill. App. 3d 95, 101 (1984) (“In order to prevent the entry of a summary judgment, the nonmoving party must present a *bona fide* factual defense.”).

¶ 12 The plaintiff in a foreclosure action should include with the mortgage foreclosure complaint a copy of the mortgage and the note, as well as relevant information concerning the mortgage, such as the date of the mortgage, the names of the mortgagor and mortgagee, the amount of the indebtedness, a statement as to defaults, and requests for relief. 735 ILCS 5/15-1504(a) (West 2012). A mortgagee establishes a *prima facie* case for foreclosure by introducing the mortgage and note, after which the burden of proof shifts to the mortgagee to disprove the allegations of the complaint. See *Zubel*, 2014 IL App (1st) 130976, ¶ 19.

¶ 13 Here, plaintiff’s complaint contained all pertinent information concerning the mortgage at issue, including the date of the mortgage, identification of the parties to the mortgage, a legal description of the mortgaged premises, and statements as to defendants’ default. Furthermore, plaintiff identified itself as the current legal holder of the mortgage and requested a judgment of foreclosure and sale of the property. To substantiate its claim of defendants’ default, plaintiff attached copies of the mortgage and note to the complaint, and provided an affidavit from one of its employees containing details of defendants’ default. Attached to the affidavit was documentary evidence showing defendants’ payments and default.

¶ 14 Defendants contend that the denials contained in their answer to plaintiff’s foreclosure complaint raise a genuine issue of material fact sufficient to preclude summary judgment. We disagree.

¶ 15 It is well settled that parties cannot rely on their pleadings to create a genuine issue of material fact. See *Carruthers*, 57 Ill. 2d at 380 (1974); *Korzen*, 2013 IL App (1st) 130380, ¶ 49; *Koukoulomatis*, 127 Ill. App. 3d 95, 101 (1984). Since plaintiff filed a motion for summary judgment supported by an affidavit, defendants were required to file a counteraffidavit to create a genuine issue of material fact. See *Carruthers*, 57 Ill. 2d at 380 (1974); *Korzen*, 2013 IL App (1st) 130380, ¶ 49. Since defendants did not file a counteraffidavit, they failed to establish a genuine issue of material fact. See *id.*

¶ 16 Based on plaintiff's complaint, which was supported by an affidavit and documentary evidence, plaintiff presented sufficient evidence to establish a *prima facie* case that defendants defaulted on their mortgage obligations and that foreclosure was warranted. See *Zubel*, 2014 IL App (1st) 130976, ¶ 23. Defendants' answer failed to raise a genuine issue of material fact. See *id.* The trial court properly granted plaintiff's motion for summary judgment.

¶ 17 II

¶ 18 The purpose of a motion to reconsider is to bring to a court's attention (1) newly discovered evidence, (2) errors in the law, or (3) errors in the court's application of existing law. *State Farm Mutual Automobile Insurance Co. v. Progressive Northern Insurance Co.*, 2015 IL App (1st) 140447, ¶ 68. A motion to reconsider is not the proper place to raise a new issue or factual argument. *Id.* It is also not an opportunity to simply reargue the case and present the same arguments the court has already considered. See *Chesrow v. Du Page Auto Brokers*, 200 Ill. App. 3d 72, 78 (1990). The decision to grant or deny a motion to reconsider lies within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. *State Farm Mutual Automobile Insurance Co.*, 2015 IL App (1st) 140447, ¶ 69.

¶ 19 Here, after the trial court granted summary judgment to plaintiff, defendants filed a motion to reconsider, along with an amended answer, alleging that they attempted to make mortgage payments but that plaintiff refused to accept them. Defendants contend that based on the information supplied in their motion to reconsider and amended answer, the trial court should have granted their motion. We disagree for several reasons.

¶ 20 First, defendants' motion to reconsider was improper because it did not bring to the court's attention newly discovered evidence, an error in the law, or an error in the court's application of existing law. See *id.* ¶ 68. Instead, the motion set forth a factual argument that defendants knew about and previously raised in their response to defendants' motion for summary judgment. Since a motion to reconsider is not the place for parties to raise facts that are not "newly discovered" or arguments that the trial court has already considered and ruled upon, the trial court properly denied defendants' motion to reconsider.

¶ 21 Furthermore, defendants' amended answer was not properly before the court. In order to amend a pleading, a party must file a motion and seek leave from the trial court to do so. See *Joyce v. Blankenship*, 399 Ill. 136, 139-40 (1948); *International Ampitheatre Co. v. Vanguard Underwriters Insurance Co.*, 177 Ill. App. 3d 555, 572 (1988). Here, defendants never filed a motion seeking leave from the court to file their amended answer. Thus, the amended pleading was not properly before the court. Since there were no "new" facts or evidence for the court to consider, the court properly denied defendants' motion to reconsider.

¶ 22 Finally, even if defendants had been granted leave to file their amended answer and the court had considered it, the trial court still properly denied the motion to reconsider. As set forth above, an answer that denies the allegations of a plaintiff's complaint and/or purports to raise issues of fact is insufficient to prevent the entry of summary judgment. See *Carruthers*, 57 Ill.

2d at 380; *Korzen*, 2013 Ill. App. (1st) 130380, ¶ 49; *Koukoulomatis*, 127 Ill. App. 3d at 101. Instead, defendants were required to present affidavits showing the existence of a genuine issue of material fact. See *Carruthers*, 57 Ill. 2d at 380. Since defendants failed to do so, the trial court properly denied their motion to reconsider.

¶ 23 The judgment of the circuit court of Tazewell County is affirmed.

¶ 24 Affirmed.