FOURTH DIVISION
August 4, 2016

No. 1-14-3197

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BAYVIEW LOAN SERVICING, LLC, a Delaware Limited Liability Company, Plaintiff-Appellee, v. DUANE JONES, Defendant-Appellant, (Steven Lick, and the United States of America, Department of the Treasury-Internal Revenue Service, Defendants).	)	Appeal from the Circuit Court of Cook County No. 07 CH 12976 Honorable Alfred Swanson Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justice Howse and Justice Cobbs concurred the judgment.

ORDER

¶ 1 *Held*: Affirmed. Trial court did not abuse its discretion in confirming judicial sale where defendant did not show that, under section 15-1508(b) of the Illinois Mortgage Foreclosure Law, "the terms of sale were unconscionable," "the sale was conducted fraudulently," or "justice was otherwise not done."

¶ 2 A judgment of foreclosure and sale on commercial property was entered in favor of plaintiff, Bayview Loan Servicing, LLC (Bayview). Defendant, Duane Jones appeals, seeking to

vacate the order of the circuit court approving the sale. We hold that the trial court did not abuse its discretion in approving the sale. We thus affirm the circuit court's judgment.

¶ 3 I. FAILURE TO COMPLY WITH APPELLATE PROCEDURE RULES

¶ 4 We first consider Bayview's claims that defendant's appeal should be summarily denied because his brief does not comply with Illinois Supreme Court Rule 341. Ill. S. Ct. R. 341 (eff. Feb. 6, 2013). Defendant is a *pro se* litigant, but he is not excused from complying with the appellate practice rules that dictate the form and content of appellate briefs. *Lewis v. Heartland Food Corp*., 2014 IL App (1st) 123303, ¶ 5; *Fryzel v. Miller*, 2014 IL App (1st) 120597, ¶ 26.

¶ 5 Bayview points out that defendant's brief does not include a proper introductory paragraph, statement of jurisdiction, or statement of facts. But defendant's lack of compliance with our supreme court rules is far more egregious. Defendant has also failed to include an appendix to the record, reference to the pages of the record on appeal, any citation to authority for most of his arguments, and has certainly not presented clear, cogent arguments.

¶ 6 Rule 341(h)(2) provides that the appellant's brief shall contain "[a]n introductory paragraph stating (i) the nature of the action and of the judgment appealed from and whether the judgment is based upon the verdict of a jury, and (ii) whether any question is raised on the pleadings and, if so, the nature of the question." Rule 341(h)(4) requires a "statement of jurisdiction." Rule 341(h)(6) requires a statement of facts section containing "the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, with appropriate reference to the pages of the record on appeal." Defendant's brief contains none of these requirements.

¶ 7 Defendant's brief also fails to comply with Supreme Court Rule 341(h)(7), which requires an appellant's brief to include:

> "Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on. Evidence shall not be copied at length, but reference shall be made to the pages of the record on appeal or abstract, if any, where evidence may be found. Citation of numerous authorities in support of the same point is not favored. Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." (Ill. S. Ct. R. 341(h)(7)(eff. Feb. 6, 2013).

We are not simply a repository into which the appellant may dump the burden of argument and research. *Lake County Grading Co., LLC v. Village of Antioch*, 2014 IL 115805, ¶ 36.

¶ 8 Finally, defendant's brief does not comply with Illinois Supreme Court Rule 342(a) (Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005)) which governs the requirements for the appendix to the brief and requires, among other things, a complete table of contents of the record on appeal. Defendant's appendix contains no table of contents to the record at all.

¶ 9 Supreme court rules pertaining to the content of briefs are mandatory, and failure to abide by them can result in dismissal of an appeal. *Northbrook Bank & Trust Co. v. 300 Level, Inc.*, 2015 IL App (1st) 142288, ¶ 13. The rules of procedure for appellate briefs are not mere suggestions or annoyances to be neglected at will. *In re Estate of DeMarzo*, 2015 IL App (1st) 141766, ¶ 16; *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 10. The purpose of the rules is to require parties before a reviewing court, which includes *pro se* litigants, to present clear and orderly arguments so that the court can properly ascertain and dispose of the issues involved. *Hall v. Naper Gold Hospitality, LLC*, 2012 IL App (2d) 111151, ¶ 7. As we have explained, "[t]he First District's docket is full and noncompliance with Rules 341 and 342 does not help us resolve appeals expeditiously." *In re Estate of Parker*, 2011 IL App (1st)

102871, ¶ 47; accord *Hall*, 2012 IL App (2d) 111151, ¶ 15. Reviewing courts will not search the record for purposes of finding error in order to reverse a judgment when the appellant has made no good-faith effort to comply with the supreme court rules governing the contents of briefs. *Id.*

¶ 10 Although we could justifiably strike defendant's brief or dismiss his appeal based on these supreme court rule violations, we choose to address the merits. See *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 19 (reviewing court has discretion to review appeal despite multiple Rule 341 violations).

¶ 11 II. BACKGROUND

¶ 12 As noted, defendant has failed to provide a statement of facts. It is not this court's function or obligation to act as an advocate or to comb the record to uncover possible errors. *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993). Nonetheless, we have searched the record, and the background that follows is a chronological summary of events based on the pleadings and other documents contained in the record. We also rely, in part, on the summary of the procedural background contained in our prior order in this matter. *Bayview v. Jones*, No. 1-09-2992 (2010) (unpublished order under Supreme Court Rule 23).[1]

¶ 13 The property that is the subject of the mortgage here is a one-story store located at 5602-24 South State Street in Chicago. Until March 2006, defendant had been the owner of the property where he had operated an auto repair shop for 15 years.

¶ 14 During 2004 and 2005, defendant began experiencing financial difficulties and incurred substantial personal and business debt. The real estate taxes on the subject property became delinquent, and defendant was unable to borrow money to pay them. According to defendant, after he was unable to obtain a mortgage commitment from a mortgage broker, American

[1] This is the third appeal defendant has filed regarding this 2007 action.

Resources Capital Corporation (ARCC), ARCC offered defendant the services of a third party, Steven Lick. In his *pro se* filings in this court, defendant now states "[s]omehow I came upon [Lick] or he came upon me" and that "[a] man named Mr. Lick came along with a proposal." Lick is also a defendant in the instant case, but he is not a party to this appeal.

¶ 15 In March 2006, defendant and Lick, represented by the same attorney, entered into a "Loan and Escrow Agreement." A copy of the agreement is in the record and, while we believe it has no direct bearing on the mortgage foreclosure action, we will summarize the relevant provisions as an aid to understanding more of the background of this case.

¶ 16 The "Loan and Escrow Agreement" between defendant and Lick (Jones-Lick loan agreement) involved defendant deeding the property to Lick in exchange for funds. The Jones-Lick loan agreement states that defendant wished to obtain funds to pay off his debt and use the property as collateral but could not do so based on his poor credit rating. But Lick would be able to obtain such a loan if he owned the property. Defendant and Lick, therefore, as part of the Jones-Lick loan agreement also entered into a so-called "sales contract" whereby defendant would "sell" the property to Lick for $700,000. (The Jones-Lick loan agreement puts those terms in quotation marks.) Defendant would deed the property to Lick "[f]or the purposes of this loan." Lick would then obtain a loan on the property for $525,000. The Jones-Lick loan agreement further states: "*All proceeds of this loan will be tendered to DUANE JONES.*" (Emphasis added.)

¶ 17 The Jones-Lick loan agreement further provided that defendant would then tender $107,921.16 to the attorney to be placed in an escrow account. This sum consisted of $82,721.16 for the payment on the loan, $24,000 to Lick for his efforts in obtaining the loan, and $1,200 to the attorney for administering the escrow. One week prior to the time a mortgage payment was

due, the attorney would disburse half of the escrow amount to Lick, minus an attorney fee of $100.

¶ 18 The Jones-Lick loan agreement stated that "[i]f during this 12-month period" defendant was able to pay off the loan obtained by Lick, the attorney would tender the balance of the escrow fund to defendant along with the deed. Defendant would be responsible for all costs, including transfer taxes, and attorney fees. The agreement stated defendant "understands and acknowledges that if this loan is not paid off in twelve months title will remain with STEVE LICK and DUANE JONES will have no further interest in this property." (Underlined emphasis in original.) The agreement allowed defendant to operate the premises during the escrow period.

¶ 19 On March 30, 2006, Lick obtained the mortgage on the property in the amount of $525,000 from Premier Mortgage Funding, Inc. This mortgage was assigned to Bayview on the same day. The closing also took place on March 30, 2006, at the offices of Greater Illinois Title Company.

¶ 20 On April 21, 2006, defendant deposited only $52,251.06 of the required $107,921.16 with the attorney. Defendant claimed that the amount was sufficient to cover the escrow expenses for 5 months, May 2006 through September 2006. On July 10, 2006, however, defendant received a letter from an attorney representing Lick informing defendant that he was in breach of the Loan and Escrow Agreement because he was "required to deposit the sum of $107,921.16" in the escrow account and that the amount he had deposited was "approximately $55,000 less than the amount required to fund the escrow." Defendant was advised that if he did not fund the additional amount, they would consider the breach to have resulted in a forfeiture of defendant's rights under the Loan and Escrow Agreement. Defendant was also advised to contact

the attorney who had drafted the Loan and Escrow Agreement if defendant was uncertain as to the exact amount due.

¶ 21 After receiving the letter from Lick's attorney, defendant engaged an attorney. On August 17, 2006, defendant's attorney wrote to the attorney who had drafted the Jones-Lick loan agreement, and requested that Lick provide an assumption of mortgage package for defendant to execute. The record is unclear as to what occurred afterwards, but defendant did not assume the mortgage.

¶ 22 On May 15, 2007, Bayview filed a mortgage foreclosure action against Lick, as the owner of the property. Bayview alleged that Lick was in default for failing to pay the monthly mortgage installment due September 1, 2006 and the subsequent monthly mortgage payments. Bayview also named defendant and the Internal Revenue Service as "persons who [were] joined as defendants and whose interest in or lien on the mortgaged real estate is sought to be terminated." Defendant was named based on the loan and escrow agreement that he had with Lick; the Internal Revenue Service was named as a defendant based on a federal tax lien it had recorded against Lick on March 14, 2007, in the amount of $263,143.68. Bayview alleged that both the loan and escrow agreement and the federal tax lien were subordinate to Bayview's mortgage.

¶ 23 On May 17, 2007, defendant filed a separate lawsuit against Lick, Greater Illinois Title Company and the mortgage broker, ARCC, alleging breach of contract, contract rescission, fraud and civil conspiracy. Relevant to the *instant* case, Bayview was *not* named as a defendant in that separate action nor implicated in the alleged fraudulent scheme.

¶ 24 On September 5, 2007, defendant, who was represented by counsel, filed an affirmative defense in this mortgage foreclosure action based on Lick's fraud. Bayview moved to strike the

affirmative defense, arguing that defendant's claims against Lick did not provide a defense to this mortgage foreclosure action. Bayview noted that defendant had not alleged that the property was fraudulently conveyed to Lick, Bayview was not implicated in any alleged fraudulent scheme, and there was absolutely no claim (fraud or otherwise) directed to Bayview in defendant's affirmative defense. Bayview further argued that defendant's claim that he had an interest in the subject property by virtue of the fact that he was going to try to get the property back and assume the mortgage if, or when, his finances improved, did not establish an affirmative defense to the mortgage foreclosure action. After full briefing and hearing "limited argument on the motion," the trial court granted Bayview's motion to strike defendant's affirmative defense. The record does not contain a transcript of the hearing. The order additionally granted defendant leave to file a third-party claim or counterclaim against Lick to quiet title in the mortgage foreclosure action. Defendant filed that counterclaim on May 13, 2008. On July 21, 2008, the court allowed defendant's attorney to withdraw.

¶ 25 On August 5, 2008, Bayview filed its motion for summary judgment. Bayview attached an affidavit from its agent, who stated that Lick had made a mortgage payment in August 2006 but had not made any further payments. The court thereafter entered several continuances, during which time a briefing schedule was set, defendant retained new counsel, new counsel withdrew, and defendant retained another counsel. On December 5, 2008, the trial court held a hearing on Bayview's motion for summary judgment. Defendant was represented by his new counsel. The motion was granted and the matter was continued to January 16, 2009, for the entry of the judgment of foreclosure. The record contains no transcript of the hearing.

¶ 26 On January 9, 2009, defendant filed a motion to vacate summary judgment and a motion for leave to amend his answer and affirmative defenses. A briefing schedule was entered, and a

hearing was held on February 20, 2009, during which defendant was represented by counsel. Both of defendant's motions were denied, and the matter was continued to March 10, 2009, for entry of the judgment of foreclosure. The record contains no transcript of the hearing.

¶ 27 On March 10, 2009, a judgment of foreclosure and sale was entered in favor of Bayview. In its written order the court noted defendant was being represented by counsel. The court also ordered that "any lien of or claim to said property by any other party to this proceeding is junior and inferior" to Bayview's mortgage lien.

¶ 28 Bayview proceeded to schedule the foreclosure sale, and it was held on June 11, 2009. On that day, defendant filed an emergency motion for stay of sale. Also, after the sale had taken place, Bayview was notified that defendant had filed a Chapter 13 bankruptcy (N.D. Ill. Case No. 09-19943). Bayview therefore filed a motion to vacate the sale, which the court granted on June 30, 2009.

¶ 29 Bayview attempted to reschedule the sale and sent defendant notice that a foreclosure sale was scheduled for September 22, 2009. On September 18, 2009, defendant filed another emergency motion to stay the sale, alleging that the property had been judicially deeded back to him. The circuit court allowed two stays but eventually, on October 20, 2009, ordered that the sale could proceed and that "[t]here shall be no further stays of the judicial sale." Defendant filed an appeal (No. 1-09-2992). We dismissed the appeal on January 10, 2011, for lack of jurisdiction.

¶ 30 Bayview again proceeded to schedule the sale, and defendant filed another emergency motion to stay the sale. The motion was denied on February 16, 2012. On February 17, 2012, the foreclosure sale proceeded, and Bayview was the highest bidder. That same day, defendant filed another notice of appeal (No. 1-12-0459), as well as an emergency stay of sale in this court. On

March 1, 2012, we granted a stay but later vacated that order. We then dismissed defendant's appeal for want of prosecution.

¶ 31 On August 15, 2012, Bayview filed its "Motion For Order Approving Sale." Defendant thereafter filed four additional bankruptcies (on June 5, 2013, August 28, 2013, February 2, 2014, and July 22, 2014).[2]

¶ 32 After confirming that there was no bankruptcy stay in effect, Bayview proceeded to once again schedule the hearing on its motion for the order approving sale. On September 15, 2014, the scheduled hearing date, defendant requested a briefing schedule, and the hearing was continued until October 21, 2014. Defendant then filed an "Answer," arguing that the sale should be vacated under federal law due to an "active bankruptcy." On October 21, 2014, the circuit court entered an order confirming the sale of the subject property.[3]

¶ 33 During the pendency of this third appeal, defendant continued to raise Lick's alleged "fraud" in an attempt to stay the trial court's order confirming the sale of the property. Because of defendant's *pro se* status, we entered an order advising defendant that "the Illinois Attorney General's office investigates cases where the property owners sign quit claim deeds to persons who promise to remedy property tax and other issues only to find out that no such action has

[2] We note that, during the pendency of this appeal, as defendant attempted additional stays of the circuit court's order, defendant filed various documents in this court. The documents show that, during the time period in which defendant filed the four bankruptcies, Bayview and defendant discussed settlement and apparently agreed to settle the matter for $100,000. But defendant indicated he was unable to complete his obligation due to health reasons. Although any settlement agreement has nothing to do with the issue on appeal, we note it only insofar as it sheds some light on defendant's attempt to raise an issue for the first time on appeal, *i.e.*, Bayview's purported breach of contract.

[3] Bayview states in its brief on appeal that the trial court confirmed there was no bankruptcy stay. The record contains no transcript of the hearing, and defendant does not dispute this contention; defendant filed no reply brief.

been undertaken by the quitclaim taker." In his brief, defendant continues to raise Lick's "fraud" and his lawsuit against Lick as grounds for vacating the sale of the property.

¶ 34 III. ANALYSIS

¶ 35 We first address forfeiture of issues. Bayview correctly notes that defendant's notice of appeal states that he is appealing the trial court's order approving the sale, yet he identifies three other "issues presented for review" that were not raised in the trial court. These can be summarized as follows: there was a valid, enforceable contract between Bayview and defendant (the attempted but unsuccessful settlement agreement we previously referenced); Bayview lacked standing to bring the foreclosure suit; and there was a lack of fairness in Bayview's and others' dealings with defendant. Defendant does not dispute Bayview's contention that he failed to raise these issues in the trial court, as he has failed to file a reply brief. And our review of the record also indicates that these arguments were not raised in the trial court. Issues not raised in the trial court are forfeited and may not be raised for the first time on appeal. See, *e.g.*, *Haudrich v. Howmedica*, 169 Ill. 2d 525, 536 (1996); *Dumas v. Pappas*, 2014 IL App (1st) 121966, ¶ 21. We agree with Bayview that these issues have been forfeited.

¶ 36 We now come to the only issue before this court—defendant's argument that the trial court's actions in approving the sale of defendant's property were "arbitrary, capricious, and against the manifest weight of the evidence." Section 15-1508(b) of the Foreclosure Law (735 ILCS 5/15-1508(b) (West 2010)) grants broad discretion to courts in approving or disapproving judicial sales. *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 15. We will find that a court abused its discretion only when its ruling is based on an error of law or where no reasonable person would take the view adopted by the court. *CitiMortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶ 57.

¶ 37 Defendant's argument against the circuit court's approval of the judicial sale, in its entirety, consists of the following:

> "Given the finding of massive fraud in *Duane Jones v. Steven Lick*, and other[s], 07 L 005107, Judge Bridget Mary McGrath, and [*sic*] gave Jones a deed back to his property, under Cook County Recorder of Deeds document #0916018014 (see Exhibits 'A' and 'B' in Jones' Motion of March 10, 2015, which is part of the Appellate Court's File. Plus see Jones' nine (9) pages of Appendix (A 01,02) for Judge McGrath's orders that spell out the actions against Lick and others. See files in Appellate Court, Judge McGrath, [], 07 L 005107] that gave Jones ownership of the property, in which this case lacked jurisdiction, since this property was Jones' by right of the Cook County Circuit Court Judge McGrath, 07 L-005107.[)]"

¶ 38 As Bayview notes, and we agree, defendant "appears to argue that the trial court abused its discretion and/or lacked jurisdiction to enter the Order Approving Sale because he obtained a Deed to the property in a separate suit filed against Steven Lick in Cook County Case No. 07-L-5107." We conclude that defendant has failed to show that the trial court lacked jurisdiction to enter the Order Approving Sale and has also failed to show that the court abused its discretion in entering the order.

¶ 39 Section 15-1508(b), of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1508(b) (West 2012)) governs the circuit court's approval or confirmation of a sale of property that has been foreclosed on, and states, in relevant part:

> "Upon motion and notice in accordance with court rules applicable to motions generally, which motion shall not be made prior to sale, the court shall conduct a

> hearing to confirm the sale. Unless the court finds that (i) a notice required in accordance with subsection (c) of [s]ection 15-1507 was not given, (ii) the terms of sale were unconscionable, (iii) the sale was conducted fraudulently or (iv) that justice was otherwise not done, the court *shall* then enter an order confirming the sale." (Emphasis added.) 735 ILCS 5/15-1508(b) (West 2010).

¶ 40 Although we deemed defendant's other issues forfeited, as we have noted, under his issues presented for review he states there was a lack of fairness in Bayview's and others' dealings with him. He also argues, without any support or cite to the record, that "when the entirety is considered as a whole," the dealings with him were fraught with "fraud, unjust [,] unconscionable, [and] that should have been noted and should have made the court deny confirmation of the sale."

¶ 41 Although defendant uses terms such as "unconscionable" and "fraud," he has failed to argue or show that, under section 15-1508(b)(ii), "the terms of sale were unconscionable" or show that, under section 15-1508(b)(iii), "the sale was conducted fraudulently." As to section 15-1508(b)(iv), and whether "justice was otherwise not done," our supreme court has explained that "[w]hat constitutes an injustice under section 15-1508(b)(iv) is not expressly defined in the statute." *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 19. But, as the court further explained, "it appears to merely codify the long-standing discretion of the courts of equity to refuse to confirm a judicial sale." *Id*. "Once a motion to confirm the sale under section 15-1508(b) has been filed, *** objections to the confirmation under section 15-1508(b)(iv) cannot be based simply on a meritorious pleading defense to the underlying foreclosure complaint." *Id*. ¶ 25. The trial court ruled that plaintiff had no meritorious defense. In fact, as Bayview notes,

defendant does not allege that any mistake, fraud or violation of any duty occurred with respect to the foreclosure sale.

¶ 42 Also, "[t]o vacate both the sale and the underlying default judgment of foreclosure, the borrower must not only have a meritorious defense to the underlying judgment, but must establish under section 15-1508(b)(iv) that justice was not otherwise done because either the lender, through fraud or misrepresentation, prevented the borrower from raising his meritorious defenses to the complaint at an earlier time in the proceedings, or the borrower has equitable defenses that reveal he was otherwise prevented from protecting his property interests." *Id.* ¶ 26. Defendant cannot argue that *Bayview*, through fraud or misrepresentation, prevented defendant from raising defenses at an earlier time, nor can defendant show he has equitable defenses that reveal that he was otherwise prevented from protecting his property interest. *Id*. ¶ 26. The record clearly indicates otherwise. Thus, defendant cannot show that justice was not done.[4]

¶ 43 Defendant's claims regarding the deed have no bearing on the mortgage foreclosure action or Bayview's motion for the order approving the sale. As Bayview notes, it is undisputed that Steven Lick was the owner of the subject property at the time Bayview filed its complaint for foreclosure, and the mortgage that Bayview sought to foreclose on was entered into with Lick. *After* the foreclosure proceedings started, defendant obtained the deed to the property in separate proceedings directed to Lick, but that deed obviously was subject to Bayview's prior recorded mortgage and the pending foreclosure action. The circuit court correctly approved the judicial sale.

¶ 44 III. CONCLUSION

[4] Bayview correctly notes that defendant did not respond to its motion for the order approving the sale other than to file an "Answer" stating that the foreclosure sale occurred when a bankruptcy stay was in effect, *an issue defendant does not raise on appeal*.

¶ 45 We agree with Bayview that the deed that defendant obtained in a separate action against the mortgagor, Steven Lick, had no effect on the subject mortgage or the foreclosure action and did not provide a basis to deny confirmation of the sale. Defendant did not show that, under section 15-1508(b) of the Illinois Mortgage Foreclosure Law, "the terms of sale were unconscionable," "the sale was conducted fraudulently," or "justice was otherwise not done." Thus, the circuit court did not abuse its discretion in approving the judicial sale and we affirm the decision.

¶ 46 Affirmed.