

No. 1-15-1400

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).

CRE VENTURE 2011-1, LLC, as Assignee of the)	Appeal from the
Federal Deposit Insurance Corp., as Receiver for)	Circuit Court of
Ravenswood Bank,)	Cook County
)	
Plaintiff-Appellee,)	
)	
v.)	
)	
DRAGAN KECMAN,)	No. 12 CH 44664
)	
Defendant-Appellant)	
)	
(Kecman-Cosovic Developers, Inc., an)	
Illinois Corporation; City of Chicago;)	
Kedzie Byron Condominium Association;)	
Unknown Owners and Non-Record Claimants,)	Honorable
)	Loretta Eadie-Daniels
Defendants).)	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Simon concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order confirming sale of a foreclosed property and entry of a deficiency judgment against defendant Dragan Kecman is affirmed.

¶ 2 Plaintiff filed this action to foreclose a mortgage encumbering a series of condominium units in a property developed by defendant Dragan Kecman, under the entity, Kecman-Cosovic

Developers, Inc. (KCD). The mortgage was personally guaranteed by defendant Kecman. KCD and Kecman were served via publication and answered the complaint. Upon motion, the trial court entered summary judgment against Kecman and KCD, and ordered judicial sale of the property. At the sale, plaintiff bought the property for \$440,000. Upon motion, the trial court confirmed the judicial sale, entered an order of possession, and entered a deficiency judgment against KCD and Kecman. Kecman appeals the judgment arguing: (1) plaintiff did not have standing to bring this action against Kecman; and (2) the property was sold at an "unconscionably low" price. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 On April 27, 2005, Kecman purchased a mixed use building located at 3901-03 North Kedzie Avenue in Chicago, Illinois. On October 21, 2005, a quit claim deed was executed by Kecman and Milan Cosovic to convey the property to KCD. On the same day, KCD, Kecman and Ravenswood Bank executed a series of documents including: (1) a construction mortgage which encumbered the Kedzie property for \$1,628,000.00; (2) a promissory note for the full amount of the mortgage; and (3) a commercial guaranty between Kecman and Ravenswood Bank. Pursuant to the guaranty Kecman was personally responsible for KCD's obligations under the mortgage and promissory note. The guaranty explicitly provided that it could be assigned or transferred by the lender "in whole or in part," and that it "shall be binding upon and inure to the benefits of the parties, their successors and assigns."

¶ 5 On August 6, 2010, Ravenswood Bank was closed by the Illinois Department of Financial and Professional Regulation. The Federal Deposit Insurance Corporation (FDIC) was appointed as receiver of the Bank. As receiver, the FDIC assumed all rights, titles, and powers

and privileges of Ravenswood Bank.

¶ 6 On October 19, 2011, the FDIC assigned all of its rights and interests in the KCD mortgage to CRE Venture through an assignment of mortgage effective August 10, 2011. The assignment of the mortgage was recorded on November 7, 2011 with the Cook County Recorder of Deeds. The FDIC also assigned all of its rights and interests in the promissory note to CRE Venture through an allonge dated August 10, 2011.

¶ 7 On December 19, 2012, CRE Venture brought an action to foreclose on the mortgage, for breach of the promissory note, and for Kecman's breach of commercial guaranty. Kecman and KCD filed their respective appearances on August 16, 2013. Thereafter, KCD and Kecman answered the complaint. On July 23, 2014, plaintiff filed a motion for summary judgment. Kecman responded to CRE's motion, challenging CRE's right to pursue an action for breach of the guaranty, arguing that the guaranty was not properly assigned. On November 13, 2014, the trial court entered summary judgment in favor of CRE. The court also entered an order for the judgment of foreclosure and sale, and an order appointing a selling officer.

¶ 8 The judicial sale of the property occurred on January 30, 2015, with CRE Venture purchasing the property with a bid of \$440,000. On March 10, 2015, CRE filed a motion seeking to confirm the sale and for entry of a deficiency judgment against Kecman for the remaining obligations on the mortgage. In response, defendant argued that the sale should not be confirmed because the sale price was inadequate. Defendant supported his contention with an "Opinion Letter" prepared by a real estate sales broker who reviewed other property sales in the area and opined that the lowest market value of this property was \$1,550,000. Plaintiff then filed a reply which included an appraisal by a registered appraisal management company which

concluded that the "As Is-Discounted Sell-off Value" of the property to be \$490,000, which is \$50,000 more than the winning bid for the property at the judicial sale. On April 21, 2015 the trial court entered an order approving the sale and entered a deficiency judgment against Kecman in the amount of \$1,060,594.34.

¶ 9

ANALYSIS

¶ 10 Defendant appeals from the trial court's confirmation of the judicial sale and entry of the deficiency judgment. He argues: (1) the commercial guaranty was not properly assigned to the plaintiff, and therefore, no judgment should have been entered against Kecman; and (2) the trial court failed to properly apply section 15-1508 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1508 (West 2012)) when it confirmed the sale over defendant's objection to the adequacy of the sale price, without an evidentiary hearing.

¶ 11 First, defendant argues that plaintiff lacked standing to bring this action against defendant Kecman for breach of guaranty.

¶ 12 Lack of standing is an affirmative defense that must be pled and proven by the defendant. *U.S. Bank National Ass'n v. Sauer*, 392 Ill. App. 3d 942, 946 (2009). Failure to raise lack of standing in a timely and appropriate manner, will result in waiver of this defense. *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1, 6 (2010). Lack of standing is properly addressed by a defendant in a motion to dismiss brought under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2012)). *Glisson v. City of Marion*, 188 Ill. 2d 211, 220 (1999). If not addressed by defendant in a motion to dismiss, he may also raise lack of standing in his motion for summary judgment or cross-motion for summary judgment. *Aurora Bank FSB v. Perry*, 2015 IL App (3d) 130673, ¶ 18.

¶ 13 In this case, defendant did not move to dismiss the action for lack of standing, did not raise standing as an affirmative defense, and did not file a motion or cross-motion for summary judgment arguing plaintiff lacked standing to collect on the guaranty. Defendant's only mention of standing was in response to plaintiff's motion for summary judgment. By failing to raise this matter affirmatively, defendant forfeited his purported standing defense.

¶ 14 We also find that defendant has forfeited our review of this contention because his appellant brief, without citation to the common law record, asserts argument regarding the substance of plaintiff's documents supporting its position as to standing, the substance and terms of the guaranty and allonge, and the trial court's findings. Supreme Court Rule 341(h)(7) (eff. July 1, 2008) requires that the argument section of an appellate brief contain citations to legal authority and to the pages of the common law record relied on. As we have repeatedly noted, Supreme Court rules are not suggestions, but rather, they are mandatory guidelines and rules that must be followed. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8; *Niewold v. Fry*, 306 Ill. App. 3d 735, 737 (1999). Defendant has failed to include citations to the record to support his contention results in the forfeiture of this issue on appeal. *Collier v. Avis Rent A Car System, Inc.*, 248 Ill. App. 3d 1088, 1095 (1993); *Soter v. Christoforacos*, 53 Ill. App. 2d 133, 137 (1964) (we will not consider points merely stated without argument and citations of support to the record).

¶ 15 Next, defendant argues the trial court erred in confirming the judicial sale over his objection that the sale price was unconscionably low and without an evidentiary hearing. In his appellant brief, defendant's argument supporting this contention consists of one sentence, without any citation to the record, asserting that, an evidentiary hearing "should have [been] mandated"

because the winning bid at the judicial sale "was only 35% of the receiver's valuation as well as the Defendant's Broker's Price Opinion."

¶ 16 As stated above, Supreme Court Rule 341(h)(7) (eff. July 1, 2008) requires that an appellant present a fully developed legal argument with adequate legal and factual support and citations to the common law record. *Housing Authority of Champaign County v. Lyles*, 395 Ill. App. 3d 1036, 1040 (2009); *Collier*, 248 Ill. App. 3d at 1095. The failure to present a well-reasoned argument is a violation of rule 341(h)(7). *Sakellariadis v. Campbell*, 391 Ill. App. 3d 795, 804 (2009). Here, defendant's conclusory statement does not provide any substance to support his contention and does not demonstrate that the trial court erred. Therefore, we find defendant forfeited review of this contention. In addition, we also admonish defendant that citations to unpublished Rule 23 orders do not further his cause, as citations to such orders are strictly prohibited. Ill. S. Ct. R. 23(e) (eff. Jan. 1, 2011).

¶ 17 Forfeiture aside, the trial court is given broad discretion to approve or disapprove a judicial sale (*Id.*) and we will only reverse a trial court's confirmation of sale pursuant to section 15-1508(b) if the trial court abused its discretion. *CitiMortgage, Inc. v. Lewis*, 2014 IL App (1st) 131272, ¶ 31. Section 15-1508 of the Illinois Mortgage Foreclosure Law provides that an order approving a judicial sale shall be upheld unless: (1) the required notice is not given; (2) the terms of the sale are unconscionable; (3) the sale was fraudulent; or (4) that "justice was otherwise not done." 735 ILCS 5/15-1508 (West 2012).

¶ 18 A court will find a sale price unconscionable where a "current appraisal or other current indicia of value" is substantially different from the judicial sale price of the property. *Deutsche Bank National v. Burtley*, 371 Ill. App. 3d 1, 9 (2006). There is no requirement under Illinois

law that the price of judicial sale be equal to the property value. *Illini Federal Savings & Loan Ass'n v. Doering*, 162 Ill. App. 3d 768, 771 (1987). The price a property is sold at a judicial sale is dependent on a number of factors, and Illinois courts have acknowledged that these properties are not always sold for their full value. *Nationwide Advantage Mortgage Co. v. Ortiz*, 2012 IL App. (1st) 112755 ¶ 35. Absent fraud or an irregularity in the foreclosure proceeding, the sale price of the property is conclusive of the value of the property. *Id.* at 771. The fact that the property does not bring its full value at a judicial sale is not enough to set aside a judicial sale. *Id.*; see *Ortiz*, 2012 IL App (1st) 112755 at ¶ 35.

¶ 19 Defendant asserts that the sale price in this case is unconscionable because, when compared to an "Opinion Letter" obtained by defendant, it represents less than 35% of the value of the property at the time of the sale and that the trial court should have held an evidentiary hearing to determine property value. At the trial court, defendant advanced his argument that the sale price was "unconscionably low" based on an "Opinion Letter" prepared by a real estate broker. That letter included a list of "Current Sales in the area" but did not provide an appraised value of the property. In response to defendant's "Opinion Letter," plaintiff provided the trial court with an appraisal of the property by a registered appraisal management company, which valued the property's "As Is-Discounted Sell-off Value" at \$490,000. Based on this record, we cannot conclude that the trial court abused its discretion by failing to hold an evidentiary hearing and abused its discretion in confirming the sale.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.