

2016 IL App (1st) 152075-U  
No. 1-15-2075  
June 30, 2016

SECOND DIVISION

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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WELLS FARGO BANK, N.A.,	)	Appeal from the Circuit Court
	)	Of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	Nos. 11 CH 38654
	)	
MARGARET BROWN BLAKEY a/k/a	)	The Honorable
MARGARET B. BLADY, and TROY	)	Darryl B. Simko,
BLAKEY,	)	Judge Presiding.
	)	
Defendants-Appellants.	)	

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JUSTICE NEVILLE delivered the judgment of the court.  
Justices Simon and Hyman concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Section 15-1509 (c) of the Illinois Mortgage Foreclosure Law is a complete bar to a section 2-1401 petition of the Illinois Code of Civil Procedure, if the petition is filed after the circuit court confirms the foreclosure sale and after the deed is conveyed to the purchaser.
- ¶ 2 On November 7, 2011, the plaintiff, Wells Fargo Bank, N.A., filed a mortgage foreclosure action against the defendants, Margaret Brown-Blakey, Troy Blakey, unknown owners, and nonrecord claimants, involving the property located at 4915 S. Forrestville

Avenue, Chicago, Illinois, because the defendants failed to make payments on their note and mortgage from December 1, 2009 to the present. On September 19, 2013, the circuit court entered a default judgment against Troy Blakey, unknown owners, and nonrecord claimants and granted Wells Fargo's motion for summary judgment on its complaint and on Margaret Brown-Blakey's affirmative defense. On September 19, 2013, the circuit court also entered a judgment of foreclosure and sale against the defendants. On November 8, 2013, the circuit court entered an order granting Wells Fargo's motion for summary judgment on the amended counterclaims. On March 14, 2014, the circuit court entered an order approving the report of sale and distribution, confirmed the sale, and entered an order of possession. The deed was subsequently conveyed to the purchaser on April 15, 2014.

¶ 3 On April 30, 2015, the defendants filed a section 2-1401 petition to vacate the judgment. At the July 10, 2015 hearing on the petition, the circuit court denied the petition. On July 20, 2015, the defendants filed a timely notice of appeal and filed an amended notice of appeal on August 6, 2015, both seeking review of the July 10, 2015 order and the orders entered prior to that date.

¶ 4 We find that defendants' section 2-1401 petition is barred by section 15-1509 (c) of the Mortgage Foreclosure Law because the petition was filed after the circuit court confirmed the foreclosure sale and after the deed was conveyed to the purchaser. *U.S. Bank National Association v. Prabhakaran*, 2013 IL App (1st) 111224, ¶ 30; 735 ILCS 5/15-1509 (c) (West 2010). Therefore, we affirm the circuit court's order denying the defendants' section 2-1401 petition.

¶ 5

## BACKGROUND

¶ 6

On November 7, 2011, Wells Fargo filed a mortgage foreclosure action against the defendants, involving the property located at 4915 S. Forrestville Avenue, Chicago, Illinois, because they failed to make payments on their note and mortgage from December 1, 2009 to the present. On November 13, 2011, Margaret Brown-Blakey was served with summons and a copy of the complaint at 4915 S. Forrestville Avenue, Chicago, Illinois 60615. After attempts to acquire jurisdiction by personal service on Troy on November 12, 2011 and November 13, 2011 and, after filing an affidavit that Troy could not be found upon a due and diligent search, Wells Fargo served Troy by publication on November 28, 2011. 735 ILCS 5/2-206 (West 2010). The notice was published in the Chicago Daily Law Bulletin on November 25, 2011, December 2, 2011, and December 9, 2011. On December 16, 2011, Lloyd Brooks, of The Brooks Law Firm, filed an appearance on behalf of Margaret.

¶ 7

On May 31, 2012, Wells Fargo filed a motion for entry of an order of default and judgment of foreclosure and sale against the defendants, but an order was entered withdrawing the motion from the call on June 29, 2012. The May 31, 2012 order also gave the defendants seven days to file an answer to the complaint. On July 26, 2012, Wells Fargo filed another motion for entry of an order of default and judgment of foreclosure and sale against the defendants, stating that the defendants had not filed an answer to the complaint.

¶ 8

On August 6, 2012, Margaret filed a motion for an extension of time to file an answer, affirmative defenses and counterclaim instant and attached a copy of her answer, her affirmative defense, and her counterclaims to the motion. In her affirmative defense for rescission, Margaret alleged that Wells Fargo only submitted one copy of the Truth in

Lending Disclosure Statement and that the failure to give each defendant a copy of the statement violated the Truth in Lending Act (15 U.S.C. § 1635 (West 2010)) and gives rise to an extended right to rescind the note and mortgage. She further maintained that the rescission of the loan voids the security interest Wells Fargo purportedly holds and removes Wells Fargo's basis to proceed with the foreclosure action.

¶ 9 In her counterclaims, Margaret had one count entitled rescission and another count entitled damages. Count I for rescission alleged that Wells Fargo's failure to give each defendant a copy of the Truth in Lending Disclosure Statement gives rise to an extended right to rescind the note and mortgage. Count II alleged that Wells Fargo's failure to provide each defendant with a copy of the Truth in Lending Disclosure Statement provided a basis for damages against Wells Fargo.

¶ 10 On August 14, 2012, the circuit court granted Margaret's motion to file her answer, affirmative defenses, and counterclaim instant. On February 15, 2013, Wells Fargo filed its answer to Margaret's counterclaims and replied to her affirmative defense.

¶ 11 On April 4, 2013, Wells Fargo filed a motion for summary judgment and a motion for judgment of foreclosure and sale against the defendants. In its motion, Wells Fargo maintained that: (1) defendants are in default on the note and mortgage and have failed to establish that they made payment from December 2009 to the present; (2) defendants claims under the Truth and Lending Act are time-barred because rescission was not sought within the three year statute of repose; and (3) under the Truth in Lending Act, assignees like Wells Fargo are only liable for violations that are apparent on the face of the loan documents

assigned and because the Truth in Lending violation was not apparent on the face of the documents received by Wells Fargo, summary judgment is proper.

¶ 12 On June 17, 2013, Margaret filed a response to Wells Fargo's motion for summary judgment. In her response, Margaret maintained that: (1) the affidavit of Amanda Weatherly that Wells Fargo attached to its motion for summary judgment violated Illinois Supreme Court Rule 191 (a) (Ill. S. Ct. R. 191(a) (eff. Jan. 4, 2013)); (2) the electronic payment history documents that Wells Fargo attached to the affidavits were inadmissible hearsay; (3) Wells Fargo failed to comply with Illinois Supreme Court Rule 114 (Ill. S. Ct. R. 114 (eff. May 1, 2013)), which requires Wells Fargo to comply with any loss mitigation program, that applies to the mortgage loan, and file a loss mitigation affidavit; and (4) Wells Fargo failed to respond to Margaret's discovery requests, prejudicing her ability to fully respond to Wells Fargo's motion for summary judgment.

¶ 13 On July 12, 2013, Wells Fargo filed its reply in support of its motion for summary judgment. In its reply, Wells Fargo maintained that: (1) Margaret never denied that she signed the note and mortgage, that Wells Fargo was the holder of the note and mortgage and may foreclose on the mortgage, that she has not made a payment on the note since November 2009, that her non-payment is a default on the note and mortgage, and that as a result of default, Wells Fargo may accelerate the note and foreclose the mortgage; (2) the Weatherly affidavit was competent and admissible and satisfied Rule 191(a) (Ill. S. Ct. R. 191 (a) (eff. Jan. 4, 2013)); (3) Rule 114 requiring Wells Fargo to file a loss mitigation affidavit was not in effect when Wells Fargo filed its motion for summary judgment; and (4) Margaret did not file her discovery requests until after Wells Fargo filed its motion for summary judgment.

¶ 14 On July 17, 2013, Wells Fargo filed a loss mitigation affidavit averring that the defendants had been denied entry into the federal Making Home Affordable Loss Mitigation program and that the defendants had not submitted all the information needed to perform a loss mitigation analysis to determine whether the defendants qualified for proprietary loss mitigation options.

¶ 15 Before the circuit court ruled on Wells Fargo's motion for summary judgment, Margaret filed her first amended counterclaim on August 9, 2013. In count I of her first amended counterclaim, Margaret alleged that she was entitled to rescission for the bank's violation of the Truth in Lending Act, and in count II she alleged that she was entitled to damages for a violation of the Truth in Lending Act.

¶ 16 On August 29, 2013, Margaret filed an additional response to Wells Fargo's motion for summary judgment. That same day, Wells Fargo filed its supplemental brief in support of its motion for summary judgment, answered Margaret's counterclaims, and argued that it was entitled to summary judgment on the amended counterclaims.

¶ 17 On September 19, 2013, the circuit court granted Wells Fargo's motion and entered a default judgment against Troy, unknown owners, and nonrecord claimants and granted Wells Fargo's motion for summary judgment on its complaint and on Margaret's affirmative defense. After entering the default judgment, the circuit court also entered a judgment of foreclosure and sale against the defendants on September 19, 2013, and construed Wells Fargo's supplemental brief as a motion for summary judgment on Margaret's amended counterclaims.

¶ 18 On November 8, 2013, the circuit court entered an order finding "no issues of material fact regarding any of [Margaret's] amended counterclaims" and granted Wells Fargo's motion for summary judgment on the amended counterclaims. The record does not contain a transcript or a bystander's report from the September 19, 2013 or the November 8, 2013 proceedings.

¶ 19 On November 27, 2013, the selling officer with the Judicial Sales Corporation filed a proof of mailing notice of sale to Margaret's attorney, to Troy, and to Wells Fargo's counsel. A public notice of sale was published in the Chicago Daily Law Bulletin on November 27, 2013, December 4, 2013, and December 11, 2013. A public notice of sale was also published in the Hyde Park Herald on December 4, 2013, December 11, 2013, and December 18, 2013. On January 3, 2014, the property was sold at public auction and the Judicial Sales Corporation filed both the receipt of sale and certificate of sale on January 14, 2014. On January 14, 2014, Wells Fargo filed a motion for order approving the report of sale and for distribution and entry of an order of possession.

¶ 20 On March 14, 2014, the circuit court entered an order approving the report of sale and distribution, confirmed the sale, and entered an order of possession. The circuit court also entered a memorandum of judgment against Margaret and in favor of Wells Fargo in the amount of \$73,600.32. The record does not contain a transcript or a bystander's report of the March 14, 2014 proceedings.

¶ 21 On April 14, 2014, Margaret filed a motion to vacate the order approving the sale and distribution, pursuant to section 2-1203 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1203 (West 2010)), and argued that the circuit court has discretion to vacate the judicial

sale and that the plaintiff may not be awarded any "post judgment" interest. In the section 2-1203 motion, Margaret's counsel admitted that he was approximately 15 minutes late to the hearing and by the time he arrived the order had already been entered. He did not explain the reason for filing the section 2-1203 motion to vacate on April 14, 2014, the 31st day, or the reason for failing to file the section 2-1203 motion within 30 days of the March 14, 2014 judgment as required by section 2-1203(a) of the Code. 735 ILCS 5/2-1203(a) (West 2010).

¶ 22 On May 20, 2014, the circuit court entered an order denying Margaret's motion to vacate and to stay the order of possession through June 20, 2014. The record does not contain a transcript or bystander's report from the May 20, 2014 proceedings.

¶ 23 On April 30, 2015, the defendants, Margaret Brown-Blakey and Troy Blakey, filed a *pro se* "Petition to Vacate Judgment and Vacate Orders Motion to Set Aside for Misrepresentation Pursuant to 735 ILCS 5/2-1401(f)" and attached both of their personal affidavits to the petition. In their petition, the defendants argued that the foreclosure orders are void "DUE TO LACK OF PLEA OF ASSIGNEE PURSUANT TO IMFL [ILLINOIS MORTGAGE FORECLOSURE LAW] § 15-1107 (A) AND ICCP [ILLINOIS CODE OF CIVIL PROCEDURE] § 2-403; FAILURE TO STATE A CAUSE OF ACTION." Specifically, the defendants argued that: (1) Wells Fargo failed to comply with section 15-1502.5(c) of the Illinois Mortgage Foreclosure Law by not providing the defendants with a grace period notice; (2) the defendants were not given any other advance notices of the selling of their property; (3) the defendants were not given the proper time and location of the place to redeem their property; (4) Wells Fargo failed to comply with loss mitigation obligations; (5) Wells Fargo submitted documents "to this Court in the Foreclosure



substantially different;" (6) Wells Fargo failed to follow the strict statutory pleading requirements as provided in *Skilling v. Skilling*, 104 Ill. App. 3d 213 (1982); (7) the foreclosure is outside of the statutory jurisdiction of the Illinois Mortgage Foreclosure Law; (8) the due diligence standard should be relaxed where a petition shows unconscionable behavior of the respondent; (9) the due diligence standard should be waived to avoid unfair, unjust, and/or unconscionable results; and (10) the foreclosure judgment is void pursuant to section 2-1401.

¶ 24 After a hearing on July 10, 2015, the circuit court denied the section 2-1401(f) petition "for reasons stated on the record."

¶ 25 At the hearing on July 10, 2015, after Wells Fargo indicated that section 15-1509 (c) of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1509 (c) (West 2010)) bars a section 2-1401 petition once a judicial sale deed has been entered, the circuit court stated:

"Unfortunately, Ms. Brown-Blakely [*sic*], that is the law. The order approving sale in this case has been entered March 14<sup>th</sup>. And the Appellate Court has precluded a petition such as yours, unfortunately. So the petition is to be dismissed."

¶ 26 On July 20, 2015, the defendants filed a timely notice of appeal and on August 6, 2015, the defendants filed an amended notice of appeal, both seeking review of the July 10, 2015 order denying their section 2-1401 motion to vacate and the orders entered prior to that date.

¶ 27

## ANALYSIS

¶ 28

A section 2-1401 petition provides relief from final orders and judgments after 30 days from the entry of the judgment. 735 ILCS 5/2–1401 (a) (West 2010). Subsection (f) permits a litigant to challenge a void order or judgment. 735 ILCS 5/2–1401 (f) (West 2012). Void orders or judgments can be challenged at any time or in any court, either directly or collaterally. *People v. Thompson*, 209 Ill. 2d 19, 25 (2004). Here, the trial court denied the defendants' motion based on the pleadings so we review the trial court's order denying the defendants' section 2-1401(f) petition *de novo*. *Warren County Soil and Water Conservation District v. Walters*, 2015 IL 117783, ¶ 29; (citing *People v. Vincent*, 226 Ill. 2d 1, 18 (2007)).

¶ 29

We note that the defendants' brief fails to comply with two requirements of Supreme Court Rule 341 (a), which dictates the "Form of Briefs." Ill. S. Ct. R. 341(a) (eff. July 1, 2008):

- (i) Margins must be at least 1½ inch on the left side (brief is slightly under 1 inch on left side); and
- (ii) Typeface must be 12-point or larger throughout the document, including all quoted material and any footnotes (brief uses a typeface under 12-point for the entire document including the footnotes).

¶ 30

We do not ignore litigants who file briefs which disregard the Supreme Court Rules. The Rules are not intended as either suggestions or aspirational statements, but serve as mandatory guidelines that must be followed. See *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. We put these defendants and other defendants with cases pending in this court on notice

that future violations of the Rules may result in this court striking their briefs on this court's own motion. However, we will consider the merits of this appeal.

¶ 31 The defendants raised a number of arguments in their brief and maintained that the circuit court erred when it denied their section 2-1401 petition that challenged: (1) the September 19, 2013 order granting Wells Fargo's motion for summary judgment on its complaint and Margaret's affirmative defenses; (2) the November 8, 2013 order granting Wells Fargo's motion for summary judgment on Margaret's amended counterclaims; and (3) the March 14, 2014 order confirming the sale and granting Wells Fargo possession.

¶ 32 We note that section 15-1509 (a) of the Mortgage Foreclosure Law provides:

"After (i) confirmation of the sale, and (ii) payment of the purchase price and any other amounts required to be paid by the purchaser at sale, the court \*\*\* shall upon the request of the holder of the certificate of sale \*\*\* promptly execute a deed to the holder or purchaser sufficient to convey title. Such deed shall identify the court and the caption of the case in which judgment was entered authorizing issuance of the deed. Signature and the recital in the deed of the title or authority of the person signing the deed as grantor, of authority pursuant to the judgment and of the giving of the notices required by this Article is sufficient proof of the facts recited and of such authority to execute the deed\*\*\*." 735 ILCS 5/15-1509 (a) (West 2010).

¶ 33 We also note that section 15-1509 (c) of the Mortgage Foreclosure Law provides:

"Any vesting of title by \*\*\* deed pursuant to subsection (b) of Section 15-1509, unless otherwise specified in the judgment of foreclosure, shall be an

entire bar of (i) all claims of parties to the foreclosure \*\*\*." 735 ILCS 5/15-1509 (c) (West 2010).

¶ 34 The record reveals that Margaret was served personally on November 13, 2011 and Troy was served by publication on November 28, 2011 and both have been parties in this case since the aforementioned dates. The record also reveals that an order confirming the foreclosure sale was entered on March 14, 2014. We take judicial notice of the fact that a deed was conveyed to the purchaser and reported by the Cook County Recorder of Deeds on April 15, 2014. See *Swieton v. Landoch*, 106 Ill. App. 3d 292, 299 (1982) (courts may take judicial notice of a deed filed with the recorder of deeds because the document is a public record); see also *Wells Fargo Bank, N.A. v. Simpson*, 2015 IL App (1st) 142925, ¶ 4 n. 1. The defendants filed their section 2-1401 petition to vacate the order approving the sale and the order of possession on April 30, 2015.

¶ 35 We find that the defendants' section 2-1401 petition was filed on April 30, 2015, after the court confirmed the sale and issued the order of possession on March 14, 2014, and after the deed was conveyed on April 15, 2014 to the purchaser. We also find that a section 2-1401 petition is barred by section 15-1509 of the Illinois Mortgage Foreclosure Law. 735 ILCS 5/15-1509 (West 2010). Illinois case law is clear that the defendants cannot "rely upon section 2-1401 as an alternative remedy once the circuit court confirmed the sale of the property. The clear and unambiguous language of section 15-1509 (c) of the Foreclosure Law bars the defendant's claims in her section 2-1401 petition." *Prabhakaran*, 2013 IL App (1st) 111224, ¶ 30. Accordingly, we affirm the circuit court's order denying the defendants' section

2-1401 petition and need not reach the remaining issues raised in this appeal. *Prabhakaran*, 2013 IL App (1st) 111224, ¶ 30.

¶ 36

#### CONCLUSION

¶ 37

The defendants' section 2-1401 petition challenging the foreclosure orders, which was filed after the circuit court confirmed the foreclosure sale and after the deed was conveyed to the purchaser, is barred by section 15-1509 (c) of the Mortgage Foreclosure Law. *Prabhakaran*, 2013 IL App (1st) 111224, ¶ 30; 735 ILCS 5/15-1509 (c) (West 2010). Accordingly, we affirm the circuit court's order denying the defendants' section 2-1401 petition.

¶ 38

Affirmed.