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FIRST DIVISION  
May 31, 2016

No. 1-15-2547  
2016 IL App (1st) 152547-U

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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JP MORGAN CHASE BANK, NATIONAL ASSOCIATION,	)	
	)	
Plaintiff-Appellee,	)	Appeal from the
	)	Circuit Court of
	)	Cook County.
v.	)	
	)	
JAY JEWAN CHARLES a/k/a JAY J. CHARLES	)	10 CH 25311
a/k/a JAY CHARLES, JP MORGAN CHASE	)	
BANK, N.A., as purchaser of the loans and other	)	
assets of Washington Mutual Bank, f/k/a	)	Honorable
Washington Mutual Bank, FA from the FDIC,	)	Loretta Eadie-Daniels,
acting as receiver for the Savings Bank and	)	Judge Presiding.
pursuant to the Federal Deposit Insurance Act,	)	
	)	
Defendants-Appellant.	)	
	)	

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JUSTICE CONNORS delivered the judgment of the court.  
Presiding Justice Cunningham and Justice Harris concurred in the judgment.

**ORDER**

*Held:* Defendant's section 2-1401 petition was properly dismissed as barred by section 15-1509(c) of the Foreclosure Law.

¶ 1 This cause of action stems from the mortgage foreclosure complaint filed by JP Morgan Chase Bank, N.A. (Chase) against defendant Jay Jewan Charles. Defendant did not file an

answer to the foreclosure complaint, and Chase moved for an order of default and for judgment of foreclosure and sale, which were entered. An order confirming the sale and possession was entered, and the deed of judicial sale was delivered and recorded. Defendant subsequently filed a section 2-1401 petition (735 ILCS 5/2-1401 (West 2008)), seeking to vacate the order confirming sale and the default judgment, alleging that Chase failed to establish standing to bring the foreclosure action in the first place. Chase moved to dismiss the section 2-1401 petition, which the circuit court granted. Defendant filed a motion to reconsider, which the circuit court denied. Defendant now appeals, arguing that the circuit court improperly dismissed his section 2-1401 petition, and improperly denied his motion to reconsider. For the following reasons, we affirm.

¶ 2

#### BACKGROUND

¶ 3 On June 14, 2010, Chase filed a foreclosure action against defendant involving property located at 2600 Dundee Road in Northbrook, Illinois, pursuant to sections 15-1504(a)(1)-(a)(3) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1504(a)(1)-(a)(3) (West 2006)). Chase filed a motion for entry of an order of default and judgment of foreclosure against defendant on three separate occasions. On January 10, 2013, the circuit court entered an order of default against defendant, and judgment for foreclosure and sale.

¶ 4 On February 8, 2013, an attorney for defendant filed a motion to vacate the default judgment, but did not notice the motion for presentment. The circuit court later struck this motion indicating that defendant's attorney had not filed an appearance.

¶ 5 On March 8, 2013, the Judicial Sale Corporation provided notice of the sale of the property, which was scheduled for April 12, 2013, and mailed notice of the sale to defendant at the property address. However, the sale did not take place on April 12, 2013.

¶ 6 On April 15, 2013, an attorney for defendant filed an emergency motion for leave to file an appearance and to stay the sale. The motion stated that defendant had entered into an agreement to sell the property for \$560,000. The notice of motion stated that the emergency motion would be presented on April 24, 2013. However, there is no ruling on this motion in the record.

¶ 7 On May 28, 2013, defendant filed for bankruptcy protection, but his bankruptcy case was dismissed on August 21, 2013, for unreasonable delay.

¶ 8 On December 23, 2013, the Judicial Sales Corporation provided notice of the sale of the property, which was scheduled for January 22, 2014, and mailed notice to defendant at the property address. Presumably that sale never took place because on February 26, 2014, the Judicial Sales Corporation provided notice of the sale of the property, scheduled for March 27, 2014, and mailed a copy to defendant at the property address.

¶ 9 The property was sold to Chase at a judicial sale on March 27, 2014, for \$521,275.74.

¶ 10 On April 4, 2014, a new attorney filed an appearance on behalf of defendant.

¶ 11 On April 11, 2014, Chase moved for an order approving sale, and provided defendant with notice of the motion at the property address. At the presentation of Chase's motion, an order that was drafted by defense counsel was entered allowing defendant time to respond to Chase's motion. No response was ever filed, and on August 27, 2014, the circuit court entered an order approving sale and for possession.

¶ 12 On October 31, 2014, another attorney filed an appearance on behalf of defendant, along with a section 2-1401 petition to set aside the default judgment and other judgments, including the order approving sale. Chase moved to dismiss the petition pursuant to section 2-619 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619.1) (West 2008)), because it was not

properly served, did not set forth facts demonstrating the required diligence, did not set forth a meritorious defense, did not set forth any section 15-1508 (735 ILCS 5/15-1508) (West 2008)) basis attacking the order approving the sale, and was barred by section 15-1509 (735 ILCS 5/15-1509 (West 2008)) of the Foreclosure Law.

¶ 13 Defendant responded that he had done his due diligence, that he had a prospective purchaser, and that his section 2-1401 petition should be granted so he could sell his property to that purchaser.

¶ 14 The circuit court granted Chase's motion to dismiss defendant's section 2-1401 petition. The order stated that "the petition raises no basis to vacate the court's orders under 2-1401," and that the petition was "dismissed on the merits." The circuit court's order stated that the section 2-1401 petition was barred by section 15-1509(c) of the Foreclosure Law "because the judicial foreclosure deed has already been recorded against the subject property, which the court takes notice of." The court stated that the petition raised no arguments "properly considered by the court under [section 15-1508]," and was thus barred. The court noted that the petition did not establish diligence on the part of defendant in defending the lawsuit, and that the petition did not raise a meritorious defense. The circuit court stated that "most – if not all – of the arguments the defendant raises are contrary to well-founded principles of law in Illinois." The circuit court also noted that there was no record "of the petition having been properly served on [Chase]" and that "the petition could be properly stricken for lack of personal jurisdiction."

¶ 15 Defendant timely moved for reconsideration. The circuit court heard argument, but denied defendant's motion because it failed to demonstrate any error of law, and because defendant's defenses were "contrary to well-settled law" and were not "previously unavailable." The circuit court stated that "lack of standing – contrary to the defendant's contention – is an

affirmative defense that does not impact the court's jurisdiction, would not render the underlying judgment void, and may not be raised for the first time in a post-judgment motion."

¶ 16 Defendant now appeals from the circuit court's dismissal of his section 2-1401 petition and from the circuit court's denial of his motion to reconsider.

¶ 17 ANALYSIS

¶ 18 Initially, we note that defendant's appellate brief does not comply with the requirements set forth in Illinois Supreme Court Rule 341 (eff. Jan. 1, 2016). Rule 341(h)(9) states that an appellant's brief must have "an appendix as required by Rule 342." Rule 342 states that an appellant's brief "shall include, as an appendix, a table of contents, a copy of the judgment appealed from, \*\*\* and a complete table of contents, with page references, of the record on appeal." Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005). Here, there was neither an appendix at all to defendant's brief, nor a complete table of contents of the record on appeal. "Adherence to Illinois Supreme Court Rule 342(a) is not an inconsequential matter." *Kulhavy v. Burlington Northern Santa Fe R.R.*, 337 Ill. App. 3d 510, 514 (2003). Additionally, defendant's brief fails to cite to the record in the argument section. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (argument shall contain the contentions of the appellant with citations of the authorities and "the pages of the record relied on"). Where an appellant's brief fails to comply with the rules, this court is within its authority to dismiss the appeal for noncompliance. *LaGrange Memorial Hospital v. St. Paul Insurance Co.*, 317 Ill. App. 3d 863, 876 (2000). Although we elect to consider this appeal on the merits, we stress that we could dismiss this appeal because of the lack of appendix, as well as the lack of proper citations to the record. *Kulhavy*, 337 Ill. App. 3d at 514.

¶ 19 On appeal, defendant contends that the order confirming the sale in favor of Chase was void because Chase did not have legal title to the underlying mortgage at the time Chase filed the complaint. Chase responds that defendant's section 2-1401 petition was properly dismissed as barred by section 15-1509(c) of the Foreclosure Law. Section 2-1401 petitions provide relief from final orders and judgments after 30 days from entry thereof. 735 ILCS 5/2-1401 (West 2008). A petitioner is entitled to relief under section 2-1401 if the petition sets forth specific factual allegations supporting each of the following elements: "(1) the existence of a meritorious defense or claim; (2) due diligence in presenting the defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition for relief." *Fiala v. Schulenberg*, 256 Ill. App. 3d 922, 929 (1993). We review this issue *de novo*. See *People v. Vincent*, 226 Ill. 2d 1, 18 (2007) ("when a court enters either a judgment on the pleadings or a dismissal in a section 2-1401 proceeding, that order will be reviewed, on appeal, *de novo*.")

¶ 20 Here, defendant did not file an appeal challenging the confirmation of sale within the 30-day period required by Illinois Supreme Court Rule 303(a)(1) (eff. May 30, 2008) (the notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from). A section 2-1401 petition is not a timely appeal, but rather a new action in the circuit court that seeks to vacate a final judgment. See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002).

¶ 21 We now turn to whether section 15-1509(c) of the Foreclosure Law bars defendant's section 2-1401 petition. Section 15-1509(c) states, "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 2008). "Delivery of the deed executed on the sale of the real estate, even if the purchaser

or holder of the certificate of sale is a party to the foreclosure, shall be sufficient to pass the title thereto." 735 ILCS 5/15-1509(b) (West 2008).

¶ 22 This court recently discussed the applicability of section 15-1509(a) of the Foreclosure Law to a section 2-1401 petition in *U.S. Bank National Association v. Prabhakaran*, 2013 IL App (1st) 111224. In that case, U.S. Bank National Association (U.S. Bank) brought a foreclosure action against the defendant, Prabhakaran. The circuit court granted U.S. Bank's motion for summary judgment and the property was subsequently sold to U.S. Bank by judicial sale. On January 5, 2010, the circuit court confirmed the sale, which the defendant did not appeal. A judicial sale deed to U.S. Bank was executed on January 19, 2010. *Prabhakaran*, 2013 IL App (1st) 111224, ¶ 9. On May 20, 2010, the defendant filed a section 2-1401 petition alleging that the circuit court's summary judgment order was invalid and void. U.S. Bank claimed in response that the defendant could "no longer attack [the] judgment in this case because the judicial deed has been delivered to the successful bidder and as a result, any claim by her is barred" as a matter of law pursuant to section 15-1509(c) of the Code. *Id.* at ¶ 15.

¶ 23 On appeal, this court noted in *Prabhakaran* that it had dealt with this issue in a similar context involving motions for default judgment under section 2-1301(e) (735 ILCS 5/2-1301(e) (West 2008)) of the Code, which provides that the circuit court may, in its discretion, before final order or judgment, set aside any default, and may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable. See *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1 (2010). The *Barnes* court recognized that section 15-1508(b) of the Foreclosure Law (which provides that after the foreclosure judgment and judicial sale, the circuit court shall confirm the sale unless the court finds that: (i) a required notice was not given, (ii) the terms of the sale were

unconscionable, (iii) the sale was conducted fraudulently, or (iv) that justice was otherwise not done) was more restrictive, and thus inconsistent with section 2-1301(e) because it limited the circuit court's discretion to refuse confirmation of the sale to the four statutory grounds. The *Barnes* court denied the defendant relief under section 2-1301(e). *Pabhakaran*, 2013 IL App (1st) 111224, ¶ 29.

¶ 24 Applying the same reasoning in *Barnes*, this court found in *Pabhakaran*:

"From a procedural posture alone, the instant case presents a more compelling example of an attempt to circumvent the Foreclosure Law because here, the judicial sale was completed and confirmed by the circuit court on January 5, 2010. The defendant did not challenge the confirmation of the sale within the 30-day period to appeal. There is simply no Illinois authority to support the defendant's argument that she can utilize section 2-1401 to circumvent \*\*\* section 15-1509(c) of the Foreclosure Law after the circuit court confirmed the sale of the property. If there is no relief available to the defendant under section 2-1301(e), it follows logically that there can be no relief under section 2-1401. It is undisputed that the defendant was a party to the foreclosure from its inception and 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 and is dispositive." *Id.* at ¶ 30.

¶ 25 Because the same circumstances present in *Prabhakaran* are present in the instant case, we are compelled to reach the same conclusion: that defendant's claims in his section 2-1401 petition are barred by section 15-1509(c) of the Foreclosure Law. We note that defendant does



not acknowledge *Prabhakaran* in his brief, and did not file a reply brief on appeal. Because we find that defendant's claims are barred, we need not reach the issue of whether his section 2-1401 petition raised a meritorious defense. See *Prabhakaran*, 2013 IL App (1st) 111224, at ¶ 30.

¶ 26

#### CONCLUSION

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

¶ 28 Affirmed.