

2016 IL App (2d) 150260-U  
No. 2-15-0260  
Order filed May 18, 2016

**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  
SECOND DISTRICT

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SUNTRUST MORTGAGE, INC.	)	Appeal from the Circuit Court
	)	of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11—CH—3622
	)	
FREDERICK JACOBS,	)	Honorable
	)	Robert G. Gibson,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE Birkett delivered the judgment of the court.  
Justices Burke and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* Appellant forfeited any review of the propriety of the trial court's orders when he provided no argument or authority for the issues he raised, in violation of Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 26, 2010). In addition, we did not address appellant's arguments regarding the retroactivity of Public Act 99-0113 because those issues were not ripe for appeal. The judgment of the trial court was affirmed.

¶ 2 In this mortgage foreclosure proceeding, appellant, Frederick Jacobs, appeals from the following orders of the trial court entered in favor of the appellee, Suntrust Mortgage (Suntrust): (1) the entry of summary judgment and judgment of foreclosure; (2) the denial of Jacobs' motion to vacate the order of summary judgment; (3) the order approving the sale and order of

possession; and (4) the denial of his motion to reconsider the order approving the sale and order of possession. For the following reasons, we affirm.

¶ 3

#### I. BACKGROUND

¶ 4 The record reflects that on July 18, 2008, Jacobs executed a promissory note with Suntrust in the amount of \$240,000. The note was secured by a mortgage on a property located at 3120 West 35th Street in Oak Brook, IL (the note and mortgage are collectively referred to as the loan). Defendant defaulted on the loan in April 2011. In August 2011, Suntrust filed a foreclosure action against Jacobs. In April 2013, Jacobs filed a motion to dismiss, which was denied. Jacobs filed his answer to the foreclosure action, and Suntrust moved for summary judgment. On October 10, 2013, summary judgment and a judgment of foreclosure were entered against Jacobs. Jacobs moved to vacate the summary judgment order, and on April 1, 2014, that motion was denied. On April 18, 2014, Jacobs filed a motion to obtain Supreme Court Rule 304(a) (eff. Feb. 26, 2010) language *nunc pro tunc* to April 1, 2014, the date his motion to vacate was denied. That motion was also denied.

¶ 5 On June 30, 2014, Jacobs filed a notice of appeal. This court later allowed Jacobs to dismiss his appeal because the order he appealed from lacked any Rule 304(a) language. On August 4, 2014, Jacobs filed a second notice of appeal pursuant to Supreme Court Rule 307 (eff. Feb. 26, 2010). We later affirmed in part and dismissed in part Jacobs' appeal, holding that we lacked jurisdiction over the majority of the appeal, and that Jacobs had forfeited the rest of the appeal by not briefing issues over which this court did have jurisdiction. *Suntrust Mortgage, Inc., v. Jacobs*, 2014 IL App (2d) 140749-U.

¶ 6 While that appeal was pending, Suntrust filed a motion for an order approving the sale with the trial court. In response to that motion, for the first time, Jacobs asserted that Suntrust

was not authorized or licensed to originate the subject loan, which, according to Jacobs, rendered the loan void, and required the summary judgment order to be vacated<sup>1</sup>. Jacobs argued that the loan was void because in Suntrust's application with the Illinois Department of Financial and Professional Regulation (Department), Suntrust did not specify that it originated mortgages, it only reported that it serviced mortgages. As support for this proposition Jacobs relied upon a case from this district, *First Mortgage Company, LLC v. Dina*, 2014 IL App (2d) 130567. The *Dina* court held that a mortgage made by an entity that lacked authorization under the Act to conduct the business of residential mortgage lending because it was an unlicensed mortgagor was void as against public policy. *Id.* ¶ 21.

¶ 7 The trial court rejected Jacobs' claim, finding that there was insufficient evidence to support Jacobs' assertion of a *Dina* violation. In January 2015, an order approving the sale and an order of possession were entered against Jacobs. In February 2015, Jacobs filed a motion to reconsider those orders. In the motion he again claimed that Suntrust was not licensed or authorized to originate the loan in question. The trial court again rejected Jacobs' claim that Suntrust's act of listing that it serviced mortgages but did not originate them in its application to the Department constituted a *Dina* violation. His motion to reconsider was denied. Jacobs timely appealed.

¶ 8 While the instant appeal was pending, the Illinois General Assembly passed Public Act 99-0113, which amended section 1-3(e) of the Act. Pub. Act 99-0113 (eff. July 23, 2015), (amending 205 ILCS 635/1-3(e) (West 2014)). The amendment added language which specified

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<sup>1</sup> In his brief Jacobs states that he argued below that the loan and the summary judgment order were *voidable*. However, it is clear from reading the record that Jacobs instead argued in his motion that the loan was *void* and therefore the summary judgment order should be vacated.

the penalties for violating the Act. Section 1-3(e) of the Act now provides (with the amendment in italics):

“Any person, partnership, association, corporation or other entity who violates any provision of this Section commits a business offense and shall be fined an amount not to exceed \$25,000. *A mortgage loan brokered, funded, originated, serviced, or purchased by a party who is not licensed under this Section shall not be held to be invalid solely on the basis of a violation under this Section. The changes made to this Section by this amendatory Act of the 99th General Assembly are declarative of existing law.*”

¶ 9

## II. ANALYSIS

¶ 10 In his opening brief Jacobs raised the following issues: (1) Public Act 99-0113 is a substantive change in the law and, by extension, the public policy of Illinois; (2) Public Act 99-0113 should not be applied retroactively; (3) Public Act 99-0113 is, on its face, unconstitutional “special legislation” or otherwise violative of a class of Illinois homeowners’ equal protection and/or due process rights; (4) Public Act 99-0113, as applied to Jacobs, is unconstitutional “special legislation” or otherwise violative of his equal protection and/or due process rights; (5) if Public Act 99-0113 is not applied retroactively, the subject mortgage is void or voidable pursuant to the ruling in *Dina* because Suntrust made material misstatements regarding its mortgage origination activity on its application; and (6) the trial court erred in entering summary judgment for Suntrust, in confirming the sale, and in its orders denying Jacobs’ motions to vacate and reconsider the same, due to issues 1 through 5.

¶ 11 In his opening brief, Jacobs also moved for further briefing on the constitutional issues of special legislation, equal protection, due process and facial and as-applied challenges as they pertained to Public Act. 99-0113. His motion was granted. In his supplemental brief, Jacobs

continued to argue, as he did in his first brief, that Public Act 99-0113 should not be applied retroactively.

¶ 12 In his supplemental opening brief Jacobs argued that this court should deny retroactive application of Public Act 99-0113 because such an application would constitute unconstitutional “presumptively impermissible retroactive legislation” which violates Illinois homeowners’ vested rights to a defense. Jacobs also argued that Public Act 99-0113 violated the separation of powers doctrine by infringing on the judiciary’s inherent right to void contracts as contrary to public policy, as well as the judiciary’s right to invoke the *stare decisis* doctrine. He also traced some history of *ex post facto* laws in this country, and the law pertaining to the impairment of contracts, in arguing that Public Act 99-113 should not be applied retroactively. Finally, Jacobs cited to a recent supreme court case, *LVNV Funding, LLC v. Trice*, 2015 IL 116129, for the proposition that the only truly void judgment is one created without personal or subject matter jurisdiction. *Id.* ¶ 38.

¶ 13 In reply, Suntrust argues: (1) Jacobs has forfeited any issue with regard to the trial court’s orders because in his briefs on appeal he did not discuss the trial court’s findings from these hearings below and he provided no argument to support his claim that the trial court’s orders were in error; and (2) this court lacks jurisdiction to hear Jacobs’ remaining arguments raised in his original and supplemental opening briefs because all those arguments pertained to Public Act 99-0113, which was never raised in the trial court *because it did not exist at that time*.

¶ 14 Illinois Supreme Court Rule 341(h)(7) (eff. Feb.6, 2013) provides that an appellant’s brief shall contain “[a]rgument, 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.” Moreover, “[t]he appellate court is not a repository into which an appellant may foist the burden of argument and

research.” *Carlson v. Rehabilitation Institute of Chicago*, 2016 IL App (1st) 143853, ¶ 36 (quoting *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 37). Bare contentions in the absence of argument or citation of authority do not merit consideration on appeal and are deemed forfeited. *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993).

¶ 15 We agree with Suntrust that Jacobs has forfeited any issue with regard to the orders from which he has appealed. Jacobs’ briefs are based upon the presumption that he has met his burden of establishing Suntrust’s failure to comply with the Act. At the hearing on Suntrust’s motion to confirm the sale, Jacobs argued that the mortgage was void pursuant to *Dina* because Suntrust’s application with the Department did not specify that it originated mortgages, only that it serviced mortgages. However, the trial court rejected that claim and found that there was insufficient evidence to support Jacobs’ assertion of a *Dina* violation. It did so again when it rejected Jacobs’ motion to reconsider the confirmation of the sale. On appeal, Jacobs does not address the trial court’s findings, and does not provide any case law for the proposition that Suntrust’s act in not listing that it originated mortgages when it applied for a license with the Department would serve to make Suntrust an unlicensed mortgagor, and therefore the mortgage void, pursuant to *Dina*. Instead, Jacobs’ entire focus is on Public Act 99-0113, a law that was not even in existence when the proceedings in the trial court took place. For these reasons, we find that Jacobs has forfeited the issue of trial court error in the granting of summary judgment to Suntrust, confirming the sale, denying Jacobs’ motion to vacate the summary judgment order, and denying his motion to reconsider the confirmation of the sale.

¶ 16 Next, we disagree with Suntrust that we have no jurisdiction to hear Jacobs’ many arguments regarding the application of the amendment to the Act and its constitutionality. However, although we do have jurisdiction over these issues, they are not ripe for appeal. The

doctrine of ripeness does not implicate a reviewing court's subject matter jurisdiction. See *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252-53 (2010). Here, all the issues Jacobs raises with regard to Public Act 99-0113 are not ripe for appeal because they do not present an "actual controversy" between Suntrust and Jacobs since this amendment did not exist at the time of the trial court proceedings. *Id.* at 252 (the doctrine of ripeness seeks to insure that courts decide actual controversies and not speculative or abstract questions). The retroactivity issue would not be ripe unless we were to reverse the trial court's ruling that Jacobs did not prove a *Dina* violation. Since we have held that Jacobs has forfeited any argument regarding his *Dina* violation claim, we will not address the retroactivity issue because it is not ripe for appeal, and any decision on the merits would be an advisory opinion or the giving of legal advice as to future events. See *Gregory v. Farmer's Auto Insurance Ass'n*, 392 Ill. App. 3d 159, 161-62 (2009).

¶ 17 Finally, we note that during the pendency of this appeal Suntrust filed a motion to have Jacobs' notice of appeal dismissed. We took the motion with the case, and we now deny the motion as moot based upon this disposition.<sup>2</sup>

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 20 Affirmed.

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<sup>2</sup> We also note that in his notice of appeal Jacobs requested a review of the April 2, 2013, trial court order denying his motion to dismiss. However, he did not raise this issue in his briefs, and he has therefore forfeited this issue. *Donovan v. County of Lake*, 2011 IL App (2d) 100390, ¶ 65 (issues raised in a notice of appeal but not raised before the appellate court are forfeited).