2017 IL App (2d) 160283-U
No. 2-16-0283
Order filed February 27, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CITIMORTGAGE, INC., Successor by Merger with ABN AMRO Mortgage Group, Inc.,	)	Appeal from the Circuit Court of McHenry County.
Plaintiff-Appellee,	)	
v.	)	No. 13-CH-340
KRUNOSLAV TRSINSKI, BOZENA LIHTER, JP MORGAN CHASE BANK, N.A., UNKNOWN OWNERS, and NONRECORD CLAIMANTS,	)	
Defendants	)	
(Krunoslav Trsinski and Bozena Lihter, Defendants-Appellants).	)	Honorable Suzanne C. Mangiamele, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: In this *pro se* appeal from a residential mortgage foreclosure action, defendants forfeited most of their issues by failing to timely raise them in the trial court and/or failing to present clear argument and citation to relevant authority in their brief. Also, defendants' purported rescission of the loan agreement did not provide a basis to vacate the confirmation of the sale, because they did not assert that the loan agreement lacked the required disclosures, and the rescission was untimely. We found no abuse of discretion in the manner in which the trial judge

ran the courtroom. Last, defendants' citation to the Fair Debt Collection Practices Act was not relevant. Therefore, we affirmed.

¶ 2 Defendants, Krunoslav Trsinski and Bozena Lihter, appeal *pro se* from the trial court's order confirming the judicial sale of their home. They raise twelve issues on appeal, which we subsequently detail. We conclude that defendants have forfeited most of these issues by failing to timely raise them in the trial court and/or failing to clearly argue them and cite relevant authority in their brief. Their remaining arguments also lack merit. Therefore, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On February 13, 2013, plaintiff filed its complaint to foreclose the mortgage on a home at 581 Clover Drive in Algonquin, Illinois. Plaintiff alleged that it was the holder of the note and mortgage dated July 15, 2005; that defendants were in default beginning in July 2012; and that defendants currently owed $246,262 plus interest, costs, and fees. The copy of the note attached to the complaint was endorsed in blank by ABN AMRO Mortgage Group, Inc. (ABN AMRO), the original lender. There was also a copy of a certificate of merger between ABN AMRO and plaintiff.

¶ 5 Plaintiff served defendants by publication on March 29, 2013. On June 20, 2013, plaintiff moved for a default judgment. The same day, defendants appeared *pro se*, and the trial court gave them 35 days to file an appearance and answer. On July 15, 2013, defendants filed a letter asking for documentation of the loan transfer and the original note. On September 5, 2013, defendants were given another 21 days to file an appearance and answer. The same day, plaintiff filed a motion again requesting a default judgment. In response, on September 25, 2013, defendants filed a motion that, among other things, repeated their request for documentation of the loan transfer and the original note.

¶ 6 Defendants filed their appearance, *pro se*, on October 3, 2013. They viewed the original

note and mortgage in open court, as reflected by the report of proceedings and the trial court's order.

¶ 7 On October 22, 2013, defendants filed a motion to dismiss the complaint for foreclosure. They alleged, among other things, that the note was falsified. On January 8, 2014, they filed a motion to "quash" the complaint, arguing, *inter alia*, that they never contracted with plaintiff; that plaintiff never provided all of the requested documentation; that no funds were transferred from the lender to them; that the trial court lacked jurisdiction; and that they had informed Pope Francis of the case. Defendants filed a "JUDICIAL AND AMINISTRATIVE NOTICE" on March 10, 2014, requesting verified and certified copies of the oath of office for the judge and clerk of the court, as well as other documents. They filed a second motion to quash on March 13, 2014. At the March 14, 2014, status hearing, defendant Lihter was removed from the courtroom mid-hearing for repeatedly interrupting the trial judge and repeatedly demanding the judge's sworn oath and plaintiff's attorney's credentials.

¶ 8 On April 10, 2014, plaintiff filed a motion to strike defendants' October 2013 and January 2014 motions; the trial court granted plaintiff's motion on June 13, 2014. It further gave defendants leave to file an answer with affirmative defenses, if any, to plaintiff's complaint within 28 days. Defendants filed a "notice" on July 11, 2014, stating that plaintiff was required to have a representative present at the next hearing who could be put on the witness stand. Defendants filed another "notice" on September 12, 2014, alleging that the judge had been partial to plaintiff and requesting that the circuit court clerk appear.

¶ 9 Also on September 12, 2014, plaintiff moved for summary judgment and filed amended motions for default and for judgment of foreclosure and sale. In the pleading, plaintiff construed defendants' September 25, 2013, filing as their answer.

¶ 10 On October 10, 2014, defendants filed a "notice" alleging that plaintiff's attorney was only a debt collector and that plaintiff should appear in court. Defendant filed a "notice of request" on November 5, 2014, and a "notice" on January 13, 2015, and March 11, 2015, with similar allegations.

¶ 11 Meanwhile, on January 30, 2015, plaintiff filed a motion to strike the January 2015 "notice," and it argued that defendants should be enjoined from further filings that failed to comply with Illinois Supreme Court Rule 137 (eff. July 1, 2013). Plaintiff also filed an amended motion for summary judgment. The trial court granted the former motion on May 8, 2015, and it enjoined defendants from filing further pleadings that did not comply with Rule 137 and the rules of civil procedure.

¶ 12 Defendants filed a "notice" on June 10, 2015, alleging that they had presented the trial judge with evidence that plaintiff had no standing to collect the alleged debt. Plaintiff demanded that the trial judge compensate them for their "pain and damages." Defendants attached a "NOTICE OF RECISSION" to their pleading.

¶ 13 On June 12, 2015, the trial court granted plaintiff's amended motion for summary judgment and its amended motion for judgment of foreclosure and sale.

¶ 14 On July 6, 2015, defendants filed a motion to reconsider. On September 24, 2015, defendants filed a notice of removal stating that the case had been removed to federal court. The trial court denied defendants' motion to reconsider on September 25, 2015. The order stated that plaintiff had a sale pending in three days, and that there was no stay of sale in effect.

¶ 15 Defendants filed a motion to void the sale on November 4, 2015. At a hearing the following day, the trial court noted that the case was pending in federal court, and it continued the case. On December 3, 2015, defendant filed a "notice" for the trial court to cease all actions

while the case was in federal court. Also that day, plaintiff's motion to confirm the sale was entered and continued.

¶ 16 On February 8, 2016, the case was remanded from the federal court. Two days later, plaintiff filed a motion for an order approving the report of sale and distribution, confirming the sale, and granting possession. According to the report of sale and distribution, the property was sold on September 28, 2015, at an auction to a third-party bidder for $226,171, and the total amount due from defendants was $354,987.10.

¶ 17 Also on February 10, 2016, defendants filed a notice to void the property's sale, listing 33 allegations. Defendants filed a similar motion on March 2, 2016. Defendants filed a motion on April 6, 2016, invoking the "International Covenant on Civil and Political Rights."

¶ 18 On April 8, 2016, the trial court entered an order approving the report of sale and distribution, confirming the sale, and granting possession. Defendants filed a notice of appeal on April 13, 2016.[1] They also filed a motion to reconsider the confirmation of the sale. The trial court denied the motion on April 18, 2016.

¶ 19 Also on April 18, 2016, defendants filed a motion requesting to stay in the home during the pendency of the appeal. On May 4, 2016, they filed a motion alleging that the sale was void. At a hearing the following day, the trial court stated that defendants could assert their allegations of error in the appellate court, and that the only motion properly before it was defendants' request to stay in the home during the appeal. It granted this request, though conditioned upon payment of a $9,470.70 surety bond, which defendants timely posted. Defendants have filed *pro*

[1] There is no jurisdictional problem arising from defendants' early filing of their notice of appeal, as a premature notice of appeal becomes effective after the order disposing of the last pending postjudgment motion is entered. Ill. S. Ct. R. 303(a)(2) (eff. Jan. 1, 2015).

se briefs on appeal.

¶ 20 II. ANALYSIS

¶ 21 We initially address plaintiff's argument that the appeal is moot because appellants state in their brief that they are "**not** fighting for the house." (Emphasis in original.) However, appellants follow that statement with, "This is not their main goal," but rather their main goal is to "expose banking frauds they found themselves in." Thus, it is clear that keeping the house is at least a secondary goal for defendants, so their appeal is not moot.

¶ 22 Turning to the merits, defendants raise the following 12 issues on appeal:

> "1. Did the circuit court err in ruling, granting [*sic*] the judgment to the Appellee and did the Appellee have standing and real interest in the property to foreclose?
>
> 2. Did the Circuit court err in ruling omitting [*sic*] Rescission mailed on June 3, 2015, by granting the judgment on June 12, 2015[,] and thus overruled the US Supreme Court?
>
> 3. Did the Circuit court err when it approved the sale even though the Circuit court had no jurisdiction at the time as the case was removed to the Federal Court that resulted in the sale of property on September 28, 2015[,] while the case was still in the Federal court?
>
> 4. Did the Circuit court err when it confirmed the sale of property knowing that the Rescission had been filed which voids [*sic*] deed and mortgage, hence disabling the substitute trustee to re-convey the property per the US Supreme Court?
>
> 5. Did the Circuit court err when it allowed the sale of property for which the Appellants were not notified at least 10 days before the sale per ILFC?

6. Did the court err claiming it had jurisdiction over the Appellant[s] as a man and woman, coming from the Office of Executor and denying almost all notices and motions, not letting Appellants speak and threatening them with criminal contempt of court if they speak or ask questions?

7. Did the Circuit court err in proceeding with the foreclosure even when the Appellants were offered the means to settle the matter on several occasions?

8. Did the Circuit court err in denying the International Covenant on Civil and Political Rights (ICCPR) which the Appellants invoked?

9. Is McHenry County court an arbitrary court?

10. Did McHenry County Court err when it allowed the foreclosure proceedings even though the Appellee has not stated the cause of action in which the remedy would be provided in their lawsuit?

11. Did McHenry County court err when it called the Supreme Court and ICCPR rules conclusionary?

12. Did McHenry County court err when it disregarded the Congressional Law which bars attorneys from collecting debt on behalf of and in the name of their clients?"

¶ 23 Although defendants have listed 12 issues for review, the argument section of their brief is not divided in any meaningful manner and is very difficult to comprehend. We recognize that defendants are *pro se* and have stated that English is not their first language. However, *pro se* litigants are not entitled to more lenient treatment than attorneys. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78. Parties who chose to represent themselves in Illinois courts must comply with the same rules as licensed attorneys, and they are held to the same standards. *Id.*

¶ 24 Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) states that argument in the appellant's brief shall state the appellant's contentions "and the reasons therefor, with citation of the authorities ***." A reviewing court is not a repository into which an appellant may dump the burden of argument and research, and the failure to clearly define issues and support them with authority results in forfeiture of the argument. *CE Design, Ltd. v. Speedway Crane, LLC*, 2015 IL App (1st) 132572, ¶ 18. The authority cited must be pertinent to the issues raised. *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56. Arguments raised for the first time in the reply brief are also forfeited. Ill. C. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); *Bank of New York Mellon v. Rogers*, 2016 IL App (2d) 150712, ¶ 46. It is not the court's obligation to act an advocate or seek error in the record. *CE Design, Ltd.*, 2015 IL App (1st) 132572, ¶ 18. Although defendants have forfeited almost all of their arguments by failing to clearly argue their points and cite relevant authority, for the sake of completeness we address the issues individually.

¶ 25 Defendants' first issue on appeal appears to challenge plaintiff's standing. To the extent that this issue implicates the trial court's grant of summary judgment for plaintiff, we briefly set forth the applicable standard of review. Summary judgment is appropriate only where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Gurba v. Community High School District No. 155*, 2015 IL 118332, ¶ 10. We review *de novo* an order granting summary judgment. *Id.*

¶ 26 In a civil case, lack of standing is an affirmative defense which will be forfeited if not timely raised. *Deutsche Bank National Trust Co. v. Iordanov*, 2016 IL App (1st) 152656, ¶ 34.

In a foreclosure action, a defendant must assert lack of standing in his or her answer, or else that affirmative defense is forfeited. *Id.* Here, despite being given several opportunities to do so, defendants never filed a formal answer to the complaint and therefore did not properly raise the defense of standing, thereby forfeiting the defense.

¶ 27 Even otherwise, as plaintiff points out, plaintiff demonstrated standing both as a successor mortgagee and as the holder of a note endorsed in blank. A successor bank that merges with the original mortgagee obtains the mortgage rights possessed by the original bank as a matter of law. *Standard Bank & Trust Co. v. Madonia*, 2011 IL App (1st) 103516, ¶ 19. Here, plaintiff's unrefuted allegations and exhibits established that it was the successor by merger to the original lender, ABN AMRO, and therefore had standing to file the foreclosure action.

¶ 28 Independently, attaching a copy of the note to the foreclosure complaint, as plaintiff did here, is *prima facie* evidence that the plaintiff owns the note (*Bayview Loan Servicing, LLC v. Cornejo*, 2015 IL App (3d) 140412, ¶ 13), and production of the original note is not a required element of proof in a foreclosure case (*U.S. Bank Trust National Ass'n v. Junior*, 2016 IL App (1st) 152109, ¶ 26). Once plaintiff filed a motion for summary judgment with a copy of the note and supporting affidavits, and it additionally produced the original note in open court, the burden shifted to defendants to prove that there was a genuine issue of material fact that plaintiff was not the note's holder. See *Bank of America, N.A. v. Adeyiga*, 2014 IL App (1st) 131252, ¶ 69. Defendant failed to meet this burden.

¶ 29 In defendants' second and fourth issues, they argue that the trial court erred in confirming the sale of the property even after defendants had filed a rescission of the loan agreement. The Truth in Lending Act (15 U.S.C. § 1601 *et seq.* (2012)) allows a borrower to rescind the loan in its entirety if the loan agreement failed to make required disclosures. 15 U.S.C. § 1635(a)

(2012); *U.S. Bank National Ass'n v. Manzo*, 2011 IL App (1st) 103115, ¶ 19. The right to rescind based on a lack of disclosures expires three years after the loan is consummated. 15 U.S.C. § 1635(f) (2012). Here, defendants did not assert that the loan agreement failed to include required disclosures. More significantly, they signed the note and mortgage on July 15, 2005, but did not file their notice to rescind until June 2015, well beyond the three-year limitation. Accordingly, defendants' argument is without merit.

¶ 30 Defendants' third issue on appeal is that the trial court lacked jurisdiction to approve the sale because the case had been removed to federal court. Defendants also argued that the trial court erred in confirming the sale because the sale took place on September 28, 2015, when the case was in federal court.

¶ 31 The record reveals that the case was remanded from the federal court to the trial court on February 8, 2016. The trial court did not confirm the sale until well afterwards, on April 8, 2016, when it clearly had jurisdiction. We recognize that defendants filed their notice of removal to the federal court on September 24, 2015, and that the property's sale took place on September 28, 2015. However, defendants have failed to cite any relevant case law regarding the effect of a notice of removal in general, much less its effect on the sale of a property conducted by a third party. Accordingly, they have forfeited this issue for review. See *CE Design, Ltd.*, 2015 IL App (1st) 132572, ¶ 18. Defendants assert that the third-party contractor conducting the sale was not registered in Illinois to conduct business, nor was it licensed or bonded. However, defendants have forfeited this issue by failing to point to evidence in the record showing that the business was not registered in Illinois, and by failing to cite any legal authority on the subject. See *id.*

¶ 32 As we have already addressed defendant's fourth issue (see *supra* ¶ 29), we turn to their fifth issue. Defendants argue that they were not notified of the property's sale at least 10 days

before the sale. Defendants have forfeited this issue by failing to argue it in their brief and by failing to cite any relevant legal authority. *Id*. Even otherwise, defendants' argument lacks merit. Illinois Supreme Court Rule 113(f)(1) (eff. May 1, 2013) states that, at least 10 business days before the foreclosure sale, the plaintiff shall send notice by mail to all defendants of the sale's date, time, and location. Here, the record reflects that plaintiff mailed notice to defendants on August 6, 2015, which was more than 10 business days before the scheduled September 15, 2015, judicial sale. Although the sale was subsequently postponed to September 28, 2015, section 15-1507(c)(4) of the Foreclosure Law (735 ILCS 5/15-1507(c)(4) (West 2014)) states than no additional notice is required if a rescheduled sale is to occur less than 60 days after the last scheduled sale date, which is the situation here.

¶ 33 Defendants' sixth issue is: "Did the court err claiming it had jurisdiction over the Appellant[s] as a man and woman, coming from the Office of Executor and denying almost all notices and motions, not letting Appellants speak and threatening them with criminal contempt of court if they speak or ask questions?"

¶ 34 Regarding the personal jurisdiction aspect of the issue, defendants have forfeited the argument by failing to clearly argue the issue in the brief and cite relevant authority. *CE Design, Ltd.*, 2015 IL App (1st) 132572, ¶ 18. As plaintiff points out, defendants additionally forfeited the argument by failing to timely raise it in the trial court. Section 15-1505.6(a) of the Foreclosure Law (735 ILCS 5/15-1505.6(a) (West 2014)) provides that in a residential foreclosure action, the deadline for filing a motion to dismiss the proceedings or quash service of process objecting to the trial court's personal jurisdiction is generally 60 days after the earlier of (1) the date the moving party filed an appearance, or (2) the date the moving party participated in the hearing without filing an appearance. Also, any objection to personal jurisdiction is forfeited

if the objecting party files a responsive pleading before filing a motion challenging jurisdiction. 735 ILCS 5/15-1505.6 (West 2014)). Defendants first appeared in court on June 20, 2013, and filed their appearance on October 22, 2013. They did not file their motion to quash until January 8, 2014, beyond the 60-day deadline set forth in section 15-1505.6(a).

¶ 35 The remainder of defendants' sixth issue deals with the trial court's alleged improper behavior towards defendants. Defendants ask that we obtain an audio record of the proceedings due to "irregularities" in the report of proceedings that cause the transcripts to "not show the real picture of the proceedings." However, defendants, as the appellants, have the burden to file a sufficiently complete record of the proceedings in the trial court to support a claim of error. *Keefe v. Allied Home Mortgage Corp.*, 2016 IL App (5th) 150360, ¶ 27. Relatedly, defendants have provided no basis to show that the transcripts are inaccurate. *Cf. People v. Vincent*, 165 Ill. App. 3d 1023, 1030 (1988) (testimony alone is insufficient to prove an inaccuracy in the record).

¶ 36 Defendants argue that they were not allowed to speak in court, present their case, or ask questions, thus showing the judge's partiality towards the plaintiff. A trial judge is presumed to be impartial, and the party making the charge of prejudice has the burden to overcome this presumption. *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). Furthermore, alleged erroneous rulings by the trial court are insufficient to show that the trial court has a personal bias for or against a litigant. *Id.* A trial judge's decision made in overseeing his or her courtroom is subject to an abuse-of-discretion standard of review on appeal. *People v. Bailey*, 405 Ill. App. 3d 154, 173 (2010).

¶ 37 We have reviewed the report of proceedings and have found no abuse of discretion in the trial judge's action. In fact, the trial judge was extremely patient with defendants, who repeatedly interrupted her and often continued to argue even after rulings had been made. For

example, the trial court had the bailiff escort defendant Lihter out of the courtroom on March 14, 2014, only after Lihter continued to argue with the trial judge and talk over her. The trial judge provided defendants with the basic information and explanations necessary, and it was not her role to do more. See *In re Marriage of Malinowski*, 211 Ill. App. 3d 536, 541 (1991) (a trial judge cannot presume to represent a *pro se* litigant); see also *Holzrichter*, 2013 IL App (1st) 110287, ¶ 78 (*pro se* litigants are required to comply with the same rules as licensed attorneys and are held to the same standards).

¶ 38 In defendants' seventh issue, they argue that the foreclosure should not have proceeded because they had offered to settle on several occasions. However, even assuming that defendants had made a concrete settlement offer, there is no indication that plaintiff had ever accepted their offer, so it would not provide a basis to halt the foreclosure proceedings.

¶ 39 Defendants' eighth and eleventh issues involve the International Covenant on Civil and Political Rights (ICCPR). Defendants have forfeited this argument by failing to clearly argue the issue in their brief and cite relevant authority. *CE Design, Ltd.*, 2015 IL App (1st) 132572, ¶ 18. Moreover, at least some federal courts have held that the ICCPR is not self-executing and confers no individually-enforceable rights. See, *e.g.*, *Serra v. Lappin*, 600 F.3d 1191, 1197 (9th Cir. 2010).

¶ 40 Defendants' ninth issue on appeal questions whether the "McHenry County circuit court [is] an arbitrary court." Insofar as this issue implicates jurisdiction, we have already addressed the subject. Insofar as the issue involves the trial judge's alleged partiality, we have discussed that topic as well.

¶ 41 In their tenth issue, defendants argue that plaintiff failed to state a cause of action "in which the remedy would be provided in [its] lawsuit." Plaintiff brought its action under the

Foreclosure Law, so it clearly stated a cause of action. The summons also included information for how homeowners in foreclosures could save their property. Defendants cite no authority for the position that such information had to be included in the complaint, thus forfeiting the issue for review. *CE Design, Ltd.*, 2015 IL App (1st) 132572, ¶ 18.

¶ 42 We have previously addressed the eleventh issue (see *supra* ¶ 39), so we look at defendants' last remaining issue on appeal, the twelfth issue. Defendants argue that the trial court erred by disregarding subsection 1692(6)(F) of the Fair Debt Collection Practices Act (15 U.S.C. § 1692(6)(F) (2012)). They argue that the subsection specifically states that attorneys cannot collect debts for their clients. However, aside from the fact that the subsection does not even contain the words "lawyers" or "attorneys," the subsection provides only definitions applicable to the rest of the act and does not, on its own, allow or prohibit any particular type of conduct. Accordingly, defendant's argument is without merit.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we affirm the judgment of the McHenry County circuit court.

¶ 45 Affirmed.