SIXTH DIVISION
JUNE 29, 2018

No. 1-17-0279

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CITIMORTGAGE, INC., and JP MORGAN CHASE BANK, N.A.,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellees,	)	
v.	)	
VALERY VINAROV, Under Mortgage Recorded as Document Number 0634522061 and Under Modification Agreement Recorded as Document Number 072907116, UNKNOWN OWNERS, and Nonrecord Claimaints,	)	No. 10 CH 27778
Defendants,	)	
(JP Morgan Chase Bank, N.A., Plaintiff and Counterdefendant-Appellee; Valery Vinarov, Defendant and Counterplaintiff-Appellant).	)	Honorable Freddrenna M. Lyle, Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err by entering summary judgment in favor of plaintiff Citimortgage or by denying the defendant leave to file amended counterclaims against plaintiff Chase. The defendant does not have standing to challenge the

trial court's order denying Irina Vinarov leave to file an amended petition to intervene.

¶ 2 Plaintiff-Appellee Citimortgage, Inc. (Citi) and plaintiff/counterdefendant-appellee JP Morgan Chase Bank (Chase) filed separate foreclosure actions against *pro se* defendant/counterplaintiff Valery Vinarov, which were consolidated in the trial court. The court entered summary judgment in favor of Citi, who possessed the superior mortgage, and denied Vinarov's motion for leave to file amended counterclaims against Chase. The court also denied a motion for leave to file an amended petition to intervene by Vinarov's sister, Irina Vinarov (Irina). Vinarov now appeals. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 In 1997, Vinarov acquired property located at 2410 Brockway Street, Palatine, Illinois (the property). In 2003, Vinarov obtained a loan from Citi[1] secured by a mortgage on the property (the 2003 mortgage). In 2006, Vinarov obtained a home equity line of credit from Washington Mutual Bank (WaMu) secured by a second mortgage on the property (the 2006 mortgage). In 2008, the Federal Office of Thrift Supervision closed WaMu. Chase then assumed the 2006 mortgage pursuant to a Purchase and Assumption Agreement (the PAA) with the Federal Deposit Insurance Corporation (the FDIC).

¶ 5 On June 29, 2010, Chase filed a complaint against Vinarov to foreclose on the property. On September 22, 2010, Citi filed a separate complaint against Vinarov to foreclose on the property. The trial court consolidated the two foreclosure actions.

[1] The original mortgagee was ABN AMRO Mortgage Group, Inc., which was purchased by and merged with Citi in 2007.

¶ 6 In 2012, the court granted Citi leave to amend its complaint to add a count for reformation. Citi's amended foreclosure complaint now sought to reform the legal description in the 2003 mortgage due to an alleged scrivener's error. Specifically, Citi's amended complaint alleged that the 1997 warranty deed contained the following legal description:

> "THE WEST 133.00 FEET (EXCEPT THE NORTH 76.44 FEET) OF LOT 2 IN BLOCK 39 IN ARTHUR T. MCINTOSH & CO.'S PALATINE ESTATES UNIT NO. THREE, BEING A SUBDIVISION OF PART OF SECTION 26 **AND 27**, TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS."
>
> (Emphasis added.)

Citi further alleged that, due to a mutual mistake, the legal description in the 2003 mortgage omitted the "AND 27" language, and sought reformation.

¶ 7 Vinarov filed an answer and affirmative defenses to Citi's amended complaint. Citi then moved to strike them. In response, Vinarov argued, *inter alia*, that the PIN and legal description on the 2003 mortgage were incorrect and so the 2003 mortgage was invalid. The court struck his affirmative defenses.

¶ 8 In May 2013, Citi filed a motion for summary judgment. In its motion and its reply in support of summary judgment, Citi alleged that Vinarov's answer contained only "mere denial to the material allegations [in Citi's amended complaint] *** without factual basis or support, and this appears to be a simple case of payment default by [Vinarov]." Citi asserted that all of Vinarov's affirmative defenses had been stricken, that he had admitted in his answer that the copy of the 2003 Mortgage attached to Citi's amended complaint was correct, and that there was

a clear basis for reformation given the scrivener's error that resulted in the omission of "AND 27" from the legal description in the 2003 mortgage. Citi claimed that "the mere general denials" in Vinarov's answer were "insufficient to create a material issue of fact *** [a]s such, summary judgment is proper in this case." In Vinarov's responses,[2] he argued, *inter alia*, that there was a material issue of fact because Citi had "unilaterally modified" the 2003 mortgage after its execution, rendering it invalid. On October 21, 2015, the trial court granted Citi's motion and entered summary judgment in favor of Citi.

¶ 9 Meanwhile, Vinarov had filed six counterclaims[3] against Chase and the FDIC,[4] primarily based on alleged fraudulent conduct by WaMu in connection with the 2006 mortgage. Vinarov alleged that in 2006, he sought financing for his business, and that a WaMu employee advised him that a home equity line of credit with a lien against the property would be "simpler" and would have a "larger operating capital" than a business loan. He further alleged that in 2008, Chase, after acquiring the mortgage from WaMu, reduced and then closed his line of credit due to a decrease in the property's value. He concluded: "By closing the line of credit, without notice, Chase stopped Vinarov from being able to continue his business, without which, he was unable to pay for the debt against his property." Counts I and II sought declaratory relief, requesting the court to find Chase or the FDIC, respectively, liable for WaMu's alleged conduct. Count III alleged that the FDIC violated the fifth amendment of the United States Constitution. Count IV alleged a violation of the Illinois Consumer Fraud Act (IFCA) against either Chase or the FDIC based on Vinarov's allegations that the loan was for business purposes. Count V

[2] The record indicates that Vinarov filed multiple responses to Citi's motion for summary judgment throughout several different erroneously titled documents, one of which is not included in the record on appeal.

[3] The counterclaims were erroneously titled "Third Party Complaint."

[4] The FDIC is not a party to this appeal.

asserted a claim against Chase or the FDIC under the Illinois Residential License Act based on WaMu's funding of the line of credit, "[d]espite knowing that Vinarov did not have the income or any resources other than the equity in his property to pay for the [line of credit]." Count VI asserted a violation of the Illinois High Risk Home Loan Act (HRHLA) and Illinois Fairness in Lending Act (IFLA) against Chase or the FDIC based on WaMu's failure to consider Vinarov's ability to repay the credit line and the alleged equity stripping.

¶ 10 Chase moved to dismiss all the counts against it, counts I and IV-VI, arguing that it did not acquire WaMu's liabilities pursuant to the PAA. The court granted Chase's motion and dismissed the four counterclaims against Chase. However, the court allowed the two counterclaims solely against the FDIC to remain. The court also permitted Vinarov to seek leave to file amended counterclaims against Chase, but only by motion citing legal authority.

¶ 11 Vinarov then filed a motion for leave to file amended counterclaims, arguing that "[t]he crucial issue regarding this counterclaim is the effect of the [PAA]." His motion stated: "Throughout the country, courts have found counter-claims like the one Vinarov originally filed to be valid and have allowed for adjudication on such claims" and cited to a California case, *Jolley v. Chase Home Financing, LLC*, 213 Cal. App. 4th 872 (2013). Vinarov proposed eight amended counterclaim counts against Chase and the FDIC: Count I sought a declaration that Chase and/or the FDIC is liable for WaMu's alleged conduct; Count II alleged that Chase or the FDIC violated IFLA based on WaMu's origination of the loan; Count III alleged Chase or the FDIC violated IFCA based on WaMu's alleged violations of IFLA and HRHLA; Counts IV and V respectively alleged that Chase breached the line of credit agreement and breached the duty of good faith and fair dealing by suspending Vinarov's line of credit in April 2009; Count VI alleged a violation of ICFA against Chase based on an alleged violation of the HRLA as a result

of Chase's reduction and termination of Vinarov's line of credit; Count VII alleged a violation of ICFA against Chase based on WaMu's alleged violations of IFLA and HRHLA regarding the origination of his loan; and Count VIII alleged a breach of contract by Chase for terminating the line of credit and stated that any contract "designed to accomplish an unlawful purpose is illegal and void." Following a hearing on October 21, 2015, the trial court denied Vinarov's motion for leave to file the amended counterclaims.

¶ 12 On November 4, 2015, the court entered a judgment of foreclosure and sale in favor of Citi, finding that Chase's mortgage was subordinate.

¶ 13 On December 8, 2015, Vinarov's sister, Irina,[5] filed a petition to intervene. Irina's petition claimed that she has a constructive and equitable lien on the property based on monetary contributions she made towards the down payment and the construction, totaling around $276,000. Irina's petition further alleged that her lien was superior to any other liens, including Citi's mortgage. Both Citi and Chase objected to Irina's petition to intervene. On November 9, 2016, the court denied Irina's petition because it did not comply with section 2-408 of the Code of Civil Procedure (Code) (735 ILCS 5/2-408 (West 2014)). On December 28, 2016, Irina filed a motion for leave to file an amended petition to intervene, again alleging that she has the superior lien on the property. The court denied her motion on January 5, 2017, stating that it was untimely under section 15-1501(e)(3) of the Code (735 ILCS 5/15-1501(e)(3) (West 2014)) and failed to meet the requirements for intervention under section 2-408 of the Code.

¶ 14 The property was sold at a judicial sale, and on January 5, 2017, the court confirmed the sale of the property. Vinarov then filed a notice of appeal, stating that he was appealing, *inter*

[5] Irina is not a party to this appeal.

alia[6], the trial court's orders on October 21, 2015 granting Citi's motion for summary judgment and denying Vinarov's motion for leave to file his amended counterclaims against Chase.

¶ 15 ANALYSIS

¶ 16 We note that we have jurisdiction to review this matter as Vinarov filed a timely notice of appeal following the trial court's order confirming the sale of the property. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. Jan. 1, 2015). Orders and judgments in a foreclosure action are not final and appealable until a judgment confirming the sale has been entered. *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 11.

¶ 17 Vinarov presents the following three issues for our review: (1) whether the trial court erred by entering summary judgment in favor of Citi; (2) whether the trial court erred in denying Vinarov leave to file amended counterclaims against Chase; and (3) whether the trial court erred in denying Irina leave to file an amended petition to intervene. We note that Vinarov's arguments are, at times, rambling and convoluted. We take each argument in turn in an effort to resolve this appeal.

¶ 18 Vinarov first argues that the court erred in granting summary judgment in favor of Citi because there is a material issue of fact. Specifically, Vinarov claims that the mortgage document he executed in 2003 did not contain a PIN number or a legal description for the property, rendering the mortgage invalid. He further claims that the mortgage document attached to Citi's complaint, which does contain a PIN number and a copy of the legal description, was "unilaterally modified" with that information by Citi after he signed it because the PIN was handwritten on the first page and the legal description was attached to the last page. Vinarov

[6] Vinarov's notice of appeal states that he is appealing three other orders from the trial court, but he does not raise those issues in his briefs. Therefore, those issues are forfeited. S. Ct. R. 341(h)(7) eff. Nov. 1, 2017.

avers that if he could prove at trial that Citi unilaterally modified the 2003 mortgage document, then he might be entitled to a rescission of the mortgage, and consequently, summary judgment was improper here.[7] He additionally argues that the court should not have entered summary judgment on Citi's count seeking reformation of the legal description in the 2003 mortgage because there is no scrivener's error. Instead, he claims that the legal description in the 2003 mortgage matches the legal description in the 1997 warranty deed and that reforming the 2003 mortgage would "fundamentally reform[] the subject matter of the mortgage."[8]

¶ 19 "Summary judgment is appropriate 'if the pleadings, depositions, and admissions on file, *** show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' [Citations.] In determining whether the moving party is entitled to summary judgment, the court must construe the pleadings and evidentiary material in the record strictly against the moving party." *Morrissey v. Arlington Park Racecourse, LLC,* 404 Ill. App. 3d 711, 724 (2010). "A foreclosure complaint is deemed sufficient if it contains the statements and requests called for by the form set forth in section 15–1504(a) of the Mortgage Foreclosure Law (735 ILCS 5/15–1504(a) (West 2008))." *Standard Bank & Trust Co. v. Madonia*, 2011 IL App (1st) 103516, ¶ 20. And a court may reform a contract when the written

[7] Vinarov also argues, without any citations to the record, that summary judgment on Citi's complaint seeking foreclosure is improper because that lien was discharged in bankruptcy and he no longer has a financial obligation to Citi. However, we will not entertain this argument as a discharge in bankruptcy does not act as a release of liens or security interests in property. *Farmers State Bank of Sherrard v. Hansen*, 196 Ill. App. 3d 295, 297 (1990).

[8] While this appeal was pending, Citi filed a motion for judicial notice, requesting us to take judicial notice of a certified copy of the 2003 mortgage executed by Vinarov and recorded in the official records of the Office of Cook County Recorder of Deeds on February 17, 2004. This court may take judicial notice of matters that are readily verifiable from sources of indisputable accuracy. *People v. Alvarez-Garcia*, 395 Ill. App. 3d 719, 726 (2009). The Recorder of Deeds office is such a source and Vinarov does not dispute the authenticity of the document. Therefore, we grant this motion and take judicial notice of the 2003 mortgage recorded on February 17, 2004.

agreement does not reflect the parties' intent. *CitiMortgage, Inc. v. Parille*, 2016 IL App (2d) 150286, ¶ 29. A scrivener's error in an instrument is a mutual mistake justifying reformation. *Roots v. Uppole*, 81 Ill. App. 3d 68, 72 (1980).

¶ 20 Here, the court entered summary judgment on Citi's amended complaint, which sought to foreclose and to reform the legal description in the 2003 mortgage. As to the foreclosure count, Vinarov does not dispute Citi's allegation that he defaulted on payment. Instead, he argues that the mortgage is invalid because the version he signed did not contain a PIN number or legal description. However, the 2003 mortgage document that was attached to Citi's complaint, as well as the 2003 mortgage document that was filed with the Office of Cook County Recorder of Deeds on February 17, 2004, contains a PIN and a legal description. And both copies of the document were initialed by Vinarov on every page, except for the page containing the legal description attached to the last page, and signed by him on the last page. Vinarov has not provided any evidence to support his argument that Citi modified the mortgage with the PIN number and legal description after he signed it, except for a blank mortgage document which was not signed or initialed by him or anyone else. It cannot be said that this creates an issue of fact rendering summary judgment improper. "The mere suggestion that a genuine issue of material fact exists without supporting documentation does not create an issue of material fact precluding summary judgment." *In re Marriage of Palacios*, 275 Ill. App. 3d 561, 568 (1995).

¶ 21 As to the reformation count, Vinarov contends that there is no scrivener's error to reform because the legal description in the 2003 mortgage matches the legal description in the deed. The 1997 warranty deed conveying the property to Vinarov contains the following legal description:

> "THE WEST 133.00 FEET (EXCEPT THE NORTH 76.44 FEET) OF LOT 2 IN BLOCK 39 IN ARTHUR T. MCINTOSH & CO.'S PALATINE ESTATES UNIT NO. THREE, BEING A SUBDIVISION OF PART OF SECTION 26*, TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.
>
> * AND 27"

The legal description in the 2003 mortgage matches the warranty deed exactly *except* that it is missing the "AND 27" language. And considering that the "AND 27" language is not immediately apparent within the legal description in the deed, but was inconspicuously placed with an asterisk below the rest of the legal description, it is completely reasonable that the missing language in the 2003 mortgage is a scrivener's error which did not reflect the parties' intent. Vinarov is incorrect in his claim that the 2003 mortgage matches the warranty deed. Accordingly, there was no genuine issue of material fact here, and summary judgment was appropriate.

¶ 22 Vinarov next contends that the trial court erred in denying him leave to file amended counterclaims against Chase.[9] He argues that he should have been granted leave to file his proposed amended counterclaims because they are not barred by the PAA. He concedes that the PAA does limit Chase's liability to some extent, but stresses that his claims are based on fraudulent and illegal activity by WaMu, which he claims the PAA was not intended to cover.

[9] Vinarov wavers between challenging the court's original dismissal of his counterclaims and challenging the court's denial of his motion for leave to file amended counterclaims. Because his notice of appeal states that he is appealing the court's October 21, 2015 order denying him leave to file amended counterclaims, that is what we will review.

¶ 23 As a preliminary matter, we address Chase's motion to strike pages 20-22 from Vinarov's reply brief because he failed to raise the argument on those pages in his opening brief and has therefore forfeited it. In that portion of his reply brief, Vinarov argues that the PAA cannot bar his amended counterclaims because several of his claims, specifically counts IV-VI and VIII, arose out of conduct *by Chase itself* after Chase acquired the mortgage from WaMu. However, in his opening brief, Vinarov did not raise this issue, instead limiting his argument to whether the PAA bars claims arising *solely out of WaMu's conduct*. Vinarov counters that he did not forfeit this argument because he cited to the amended counterclaim, including all counts, in his opening brief. However, that is insufficient to properly raise the argument for this court's consideration. See *Vancura v. Katris*, 238 Ill. 2d 352, 370 (2010) (an issue that is merely listed or included in a vague allegation of error is not "argued" and will not satisfy the requirements of the rule). Supreme Court Rule 341(h)(7) requires the parties to raise arguments in their opening briefs, otherwise they are forfeited. S. Ct. R. 341(h)(7) (eff. July 1, 2017). Accordingly, we grant Citi's motion, strike pages 20-22 from Vinarov's reply brief, and will not consider his argument that the PAA did not bar his claims arising out of conduct by Chase itself. [10] [11]

¶ 24 The decision to allow an amendment to a pleading rests within the sound discretion of the trial court, and absent an abuse of discretion, we will not disturb the trial court's decision.

[10] Chase also requests us to affirm the trial court's order denying Vinarov leave to file amended counterclaims on the basis that Vinarov failed to cite to the record or any legal authority in accordance with Rule 341(h)(7). However, although it is very limited, Vinarov's briefs do contain a few cites to the record and to legal authority. Thus, we decline to affirm on that basis.

[11] We note that, as Chase points out, Vinarov failed to provide a complete record, primarily a transcript or bystander report from the hearing denying him leave to file amended counterclaims. Any doubts resulting from the incompleteness of the record will be resolved against Vinarov. *CitiMortgage, Inc. v. Moran*, 2014 IL App (1st) 132430, ¶ 41.

Mandel v. Hernandez, 404 Ill. App. 3d 701, 705 (2010). A trial court abuses its discretion when no reasonable person would take the view adopted by the trial court. *Steele v. Provena Hospitals*, 2013 IL App (3d) 110374, ¶ 93. In order to determine whether the trial court abused its discretion in denying a party leave to file an amended pleading, "we consider the following factors: '(1) whether the proposed amendment will cure the defective pleading; (2) whether the proposed amendment would surprise or prejudice the opposing party; (3) whether the proposed amendment was timely filed; and (4) whether the moving party had previous opportunities to amend.' " *CIMCO Communications Inc. v. National Fire Insurance Co. of Hartford*, 407 Ill. App. 3d 32, 38 (2011) (quoting *Board of Directors of Bloomfield Club Recreation Ass'n v. Hoffman Group, Inc.*, 186 Ill. 2d 419, 432 (1999)).

¶ 25 Moving to the merits of the issue, we now determine whether the trial court abused its discretion when it denied Vinarov leave to file his proposed amended counterclaims against Chase. The crux of our analysis is whether the PAA bars claims against Chase arising out of WaMu's alleged fraudulent conduct in connection with the 2006 mortgage, as that is the basis of Vinarov's counterclaims. The PAA, executed between Chase and the FDIC when Chase assumed WaMu's loan, states, in pertinent part:

> "Notwithstanding anything to the contrary in this Agreement, any liability associated with borrower claims for payment of or liability to any borrower for any monetary relief, or that provide for any other form of relief to any borrower *** whether asserted affirmatively or defensively, related in any way to any loan or commitment to lend made by the Failed Bank [WaMu] prior to failure, or to any loan made by a third party in connection

> with a loan which is or was held by [WaMu], or otherwise arising in connection with [WaMu's] lending or loan purchase activities are specifically not assumed by the Assuming Bank [Chase]."

This court has previously analyzed this *exact* language, and has held that it does indeed bar claims against the Assuming Bank for allegations arising out of conduct by the Failed Bank that occurred before assuming the loan. *Bayview Loan Servicing, LLC v. Szpara*, 2015 IL App (2d) 140331, ¶ 32 (citing *Baginski v. JP Morgan Chase Bank N.A.*, No. 11 C 6999, 2012 WL 5989295, at *5 (N.D. Ill. Nov. 29, 2012)). The plain language of the PAA clearly states that Chase did not assume any liability to Vinarov arising out of his loan origination with WaMu. It does not provide any exceptions for fraudulent or illegal activity, despite Vinarov's contention to the contrary.

¶ 26 In support of his argument that the PAA does not bar all claims, Vinarov directs us to *Jolley v. Chase Home Finance, LLC*, 213 Cal. App. 4th 872 (2013). Vinarov avers that in that case, the California Appellate Court held that "a successor bank could be held liable for the actions of a failed bank under similar circumstances" notwithstanding the PAA. *Jolley* does not stand for that premise. Rather, in *Jolley*, the court held that the trial court erred under a California judicial notice statute by using the PAA for an improper purpose on summary judgment. *Id*. at 887. *Jolley* was the only legal authority Vinarov cited to in his motion for leave to file amended counterclaims. And the court had instructed Vinarov that he could seek leave to file amended counterclaims, but *only by motion citing to legal authority*. Further, Vinarov has not explained how the proposed amended counterclaims corrected the defects in the original counterclaims. Thus, it cannot be said that no reasonable person would take the view adopted by the trial court

in denying his motion. Consequently, the court did not abuse its discretion by denying Vinarov leave to file his amended counterclaims.

¶ 27 Finally, Vinarov argues that the court erred in denying Irina leave to file an amended petition to intervene. However, Vinarov does not have standing to raise this argument. "The doctrine of standing ensures that issues are raised only by parties having a real interest in the outcome of the controversy. [Citation.] Standing is shown by demonstrating some injury to a legally cognizable interest." *Powell v. Dean Foods Co.*, 2012 IL 111714, ¶ 35. Here, it was Irina whose motion for leave was denied and only she would have a cognizable injury to challenge that denial. However, the notice of appeal states *only* Vinarov's name, not Irina's name. "Where the notice of appeal clearly names only one party as appellant, the court considers the appeal to be taken only by the named party." *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 824 (2010). And a nonappealing party may not benefit from the efforts of an appealing party. *Downs v. Rosenthal*, 2013 IL App (1st) 121406, ¶ 20. We are not persuaded by Vinarov's arguments that his interests would also be served by Irina's intervention because "should the plaintiffs prevail and the property be sold, Irina's sole recourse is likely to seek compensation from Vinarov." That assertion does not afford him standing. Irina could have become a party to this appeal, as a party whose petition to intervene is denied has standing to appeal that denial as long as they have direct, immediate, and substantial interest in the outcome of the appeal. *In re Bailey*, 2016 IL App (5th) 140586, ¶ 12. However, Irina did not file a notice of appeal of the trial court's denial of her effort to intervene, and now it is too late to do so. S. Ct. R. 303(a)(1) (eff. July 1, 2017) (a notice of appeal must be filed within 30 days of judgment). Therefore, Vinarov does not have standing to challenge this matter and the court's order denying Irina leave to file an amended petition for intervention is affirmed.

¶ 28 CONCLUSION

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

¶ 30 Affirmed.