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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

CIT BANK, N.A., formerly known as)	Appeal from the Circuit Court
OneWest Bank N.A.,)	of Lake County.
)	
Plaintiff-Appellee,)	
v.)	No. 14-CH-1609
)	
OFELIA STARKMAN, Individually and as)	
Trustee of the Starkman Living Trust)	
dated 11/15/2000,)	
)	
Defendant-Appellant)	
)	
(Chicago Title and Trust Company,)	
as Trustee u/t/a dated 05/19/1983 a/k/a)	
Trust No. 1083593; The State of Illinois;)	
Manorcare Health Services, LLC; Unknown)	
Beneficiaries of Chicago Title and Trust)	
Company u/t/a dated 05/19/1983 a/k/a)	
Trust No. 1083593; Unknown Beneficiaries)	
of the Starkman Living Trust)	Honorable
dated 11/15/2000; Unknown Owners and)	Margaret A. Marcouiller,
Nonrecord Claimants, Defendants).)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Jorgensen and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly entered summary judgment in favor of the plaintiff on its foreclosure complaint.

¶ 2 The plaintiff, CIT Bank N.A. (CIT), formerly known as OneWest Bank N.A. (OneWest Bank), filed a foreclosure suit against the defendants, Chicago Title and Trust Company as trustee for the Starkman Living Trust dated 5/19/83 and known as Trust No. 1083593 (Trust I); Ofelia Starkman, individually and as trustee for the Starkman Living Trust dated 11/15/2000 (Trust II); the State of Illinois; Manorcare Health Services, LLC; unknown beneficiaries of Trust I; unknown beneficiaries of Trust II; and unknown owners and nonrecord claimants. The trial court denied Ofelia's motion to dismiss the complaint and granted CIT's motion for summary judgment. On appeal, Ofelia argues that the trial court erred because the mortgage at issue was not effective to encumber the property. We affirm.

¶ 3 BACKGROUND

¶ 4 Pursuant to a June 7, 1983, recorded deed, Chicago Title, as trustee for Trust I, took title to real property located at 2005 Malory Lane in Highland Park. Irving Starkman and Ofelia Starkman were the beneficiaries of Trust I. The Starkmans raised twelve children in the home and Ofelia still resides in the home.

¶ 5 In 2007, Irving applied for a reverse mortgage on the property. At that time, Irving suffered from multiple ailments including Parkinson's disease, colon cancer, and spinal stenosis. Ofelia was his primary caretaker. Irving was identified as the sole borrower on two loan applications, dated January 10 and March 22, 2007. A January 10, 2007, loan disclosure form also named Irving as the sole borrower.

¶ 6 On March 22, 2007, Irving entered into a reverse mortgage on the property with Financial Freedom Senior Funding Corporation, a subsidiary of IndyMac Bank, FSB (Financial Freedom). In connection with the transaction, Irving executed a Cash Account Adjustable Rate Reverse Mortgage Loan Account Disclosure Statement and Agreement (hereinafter "note"). The note provided for an initial advance of \$756,800, of which \$215,105 was paid out as cash to Irving

and \$541,695 paid off preexisting liens on the property. Irving was identified in the note as the sole borrower. The loan proceeds were based solely upon Irving's age at the time, 76 years old. Ofelia was 64 years old at the time of the transaction.

¶ 7 The note provided:

“All amounts owed under this Agreement become due and payable in the ordinary course and without acceleration upon the first occurrence of a Maturity Event described below
***.

I understand that if all amounts owed under the Agreement and the Security Instrument are not repaid to you on or before the date upon which they become due, you may exercise any of the remedies available to you in the Security Instrument.”

The note defined “Maturity Events” to include “[m]y death or, if there is more than one borrower, the death of the last living Borrower.” Irving was listed as the sole borrower on the note and only he signed as borrower.

¶ 8 On the same date, the Starkmans executed a Non-Borrower Spouse Ownership Interest Certification (Non-Borrower Certification), pursuant to which they agreed that, after consultation with independent legal and tax experts, it was in their “best interest to enter into a reverse mortgage loan with one spouse having no ownership interest in the real property that will serve as collateral for the reverse mortgage loan.” Additionally, Ofelia acknowledged:

“In addition, I understand and acknowledge that should my spouse predecease me or fail to occupy the home where I reside as his/her principal residence, and unless another means of repayment is obtained, the home where I reside may need to be sold to repay Reverse Mortgage debt incurred by my spouse. If the home where I reside is required to be resold, I understand that I may be required to move from my residence.”

Irving signed the Non-Borrower Certification as “Borrower” and Ofelia signed it as “Non-Borrower Spouse.” The Non-Borrower Certification was also signed by a witness.

¶ 9 As security for the note, the Starkmans and Chicago Title, as trustee of Trust I, executed a mortgage in favor of Financial Freedom, secured by the property. The first page of the mortgage indicated that the borrower was Chicago Title, as trustee for Trust I. It also stated that the term “borrower” referred collectively to all borrowers under the mortgage. On the last page of the mortgage, Irving and Ofelia both signed on lines that listed them as “Borrower.” In addition, they both initialed Exhibit A to the mortgage, which referred to the legal description of the property, as “Borrower.” A representative of Chicago Title, as trustee for Trust I, signed a signatory exhibit which was incorporated into the mortgage by reference.

¶ 10 The mortgage secured a revolving line of credit in the maximum principal amount of \$1,513,600. Section 10 of the mortgage provided:

“Anyone who co-signs this Security Instrument as a Borrower but does not execute the [note] (i) is co-signing this Security Instrument only to mortgage, grant, warrant and convey that Borrower’s interest in the Property under the terms of this Security Instrument; (ii) is not personally obligated to pay the amounts secured by this Security Instrument; and (iii) agrees that Lender and any other Borrower may agree, subject to applicable law, to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the [Note] without that Borrower’s consent.”

Section 24 of the mortgage provided a waiver of homestead rights indicating that “[i]n accordance with Illinois law, I hereby release and waive all rights under and by virtue of the Illinois homestead exemption laws.” The mortgage was recorded with the recorder of deeds on April 20, 2007.

¶ 11 Irving died in July 2013. The mortgage was assigned to OneWest Bank, by an assignment of mortgage recorded on August 6, 2014. On August 12, 2014, OneWest filed a complaint to foreclose on the mortgage. Ofelia was named as a defendant, both individually and in her capacity as trustee of Trust II. Attached as exhibits to the complaint were the mortgage and note.

¶ 12 On May 15, 2015, Ofelia filed a motion to dismiss the foreclosure complaint pursuant to section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (a)(9) (West 2014)). In that motion, Ofelia argued that she was a “borrower” on the mortgage within the meaning of section 6.1(a) of the Illinois Banking Act (205 ILCS 5/6.1(a) (West 2014)), which defined a “borrower” as any homeowner who is, or whose spouse is, at least 62 years of age. Because she was a borrower, she argued that there was no triggering event which would allow for foreclosure on the mortgage as she was still occupying the home as her principal residence.

¶ 13 On June 29, 2015, OneWest responded to the motion to dismiss. OneWest argued that Irving was the only borrower on the note and that Ofelia’s signature as a borrower on the mortgage was only effective, as stated in section 10 of the mortgage, “to mortgage, grant, warrant and convey that Borrower’s interest in the Property.” OneWest argued that this was supported by the Non-Borrower Certification that was signed by Ofelia. Because Irving was the only borrower, his death was a maturity event under the terms of the note. OneWest also argued that the fact that the loan amount was based only on Irving’s age, and not Ofelia’s age, demonstrated that Irving was the sole borrower. OneWest asserted that by having Irving apply as the sole borrower, the Starkmans qualified for a larger loan, which benefited both of them as the proceeds were used to pay off existing liens and they received a cash payout of \$215,105.

¶ 14 On September 14, 2015, OneWest filed a motion to amend plaintiff's name to reflect that it changed its name to "CIT Bank, N.A., formerly known as OneWest Bank, N.A." The trial court granted the motion to amend the plaintiff's name.

¶ 15 On September 22, 2015, a hearing was held on the motion to dismiss. Following the hearing, the trial court noted that a complaint should not be dismissed pursuant to section 2-619 unless it was clear that no set of facts could be proved which would entitle the plaintiff to recover. The trial court found that there was an issue of fact as to whether Ofelia was a borrower or a non-borrower spouse and thus denied the motion to dismiss.

¶ 16 On November 20, 2015, Ofelia filed a verified answer to the complaint and asserted six affirmative defenses. As her first affirmative defense, Ofelia argued that the mortgage was an FHA insured loan and that CIT failed to send her a counseling notice offering a face-to-face meeting in accordance with special servicing requirements under 24 C.F.R. § 203.500. As a second affirmative defense, Ofelia argued that CIT failed to mail her a grace period notice as required by section 15-1502.5 of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1502.5 (West 2014)). The third affirmative defense was that Irving and Ofelia were fraudulently induced into signing the mortgage and note when they were repeatedly told by CIT or its agents that either spouse would be able to remain in the subject property upon the death of the first spouse. As the fourth affirmative defense, Ofelia argued that the loan could not be foreclosed because CIT failed to accelerate the loan. As a fifth affirmative defense, Ofelia argued that the mortgage was defective because it did not identify her as Irving's spouse anywhere in the mortgage and did not include language demonstrating that she joined the mortgage or waived any of her rights in the property. As a sixth affirmative defense, Ofelia reserved the right to "file any further defense that may come to light in the future based on discovery advanced in this case."

¶ 17 On March 9, 2016, CIT filed a combined motion to dismiss affirmative defenses and for summary judgment, pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2014)). On May 4, 2016, the trial court entered a written memorandum on the combined motion. The trial court dismissed affirmative defenses one and three without prejudice, dismissed the fourth and fifth affirmative defenses with prejudice, and denied the combined motion as to the second affirmative defense because the affidavit in support of CIT's motion for summary judgment failed to mention whether the grace period notice was mailed. The trial court granted Ofelia 28 days to file amended affirmative defenses one and three. Ofelia did not file any amended affirmative defenses.

¶ 18 On January 18, 2017, CIT filed another combined motion to dismiss and for summary judgment seeking dismissal of and/or summary judgment on Ofelia's second affirmative defense. On the same date, CIT filed a motion for entry of judgment for foreclosure and sale. CIT argued that the second affirmative defense failed because the grace period notice was mailed on August 26, 2013 and, further, section 15-1502.5 of the Foreclosure Law had been repealed and a grace period notice was no longer required. CIT attached a proof of mailing affidavit in support of its motion.

¶ 19 Ofelia filed a response to the combined motion, in which she argued that the mortgage was not valid because it: (1) lacked consideration, (2) did not accurately reflect the intent of the parties, and (3) did not adequately represent the identity of the borrowers.

¶ 20 In reply, CIT argued that there was sufficient consideration because the Starkmans received funds to pay off existing liens and cash, which benefitted both Irving and Ofelia. CIT alternatively argued that Ofelia waived the right to challenge the enforceability of the mortgage by not asserting this argument in her answer. CIT also argued that the mortgage documents

accurately reflected the parties' intent. CIT noted that the parties that held a beneficial interest in the property: Irving, Ofelia, and Chicago Title all properly executed the mortgage.

¶ 21 On April 26, 2017, a hearing was held on the combined motion. Ofelia acknowledged that she had raised an affirmative defense sounding in fraud (her third affirmative defense), that it was dismissed without prejudice, and that she never filed an amended affirmative defense alleging fraud in the inducement of the contract. At the hearing, Ofelia argued only that she was a borrower on the note or, alternatively, that the mortgage was invalid because she received no consideration.

¶ 22 Following arguments, the trial court granted CIT's motion for summary judgment and entered a judgment for foreclosure and sale. The trial court noted that the grace period notice statute was no longer in effect, so the second affirmative defense failed. The trial court found that the argument as to lack of consideration was forfeited because it was not raised as an affirmative defense. Nonetheless, the trial court also found that there was adequate consideration as the proceeds of the note were used to pay off liens, which benefitted both Irving and Ofelia. As to whether the mortgage and note reflected the parties' intent, the trial court found that it did. The trial court found that the mortgage clearly reflected that Ofelia signed it to convey her interest in the property and that this was supported by the signing of the Non-Borrower Certification. Finally, the trial court found that the mortgage documents adequately represented the identity of the borrowers.

¶ 23 On August 1, 2017, a sheriff's sale was conducted and the property was sold to the highest bidder, CIT. On November 17, 2017, the trial court entered an order confirming the sale. Thereafter, Ofelia filed a timely notice of appeal challenging the trial court's April 2017 order granting summary judgment to CIT and the September 2015 order denying her motion to dismiss.

¶ 24

ANALYSIS

¶ 25 On appeal, Ofelia argues that the trial court erred in granting CIT's motion for summary judgment on its foreclosure complaint because the mortgage was invalid for various reasons. Specifically, Ofelia argues that the mortgage was invalid because it violated homestead exemption laws and federal regulations. Ofelia also argues that the mortgage was not enforceable because it: (1) lacked consideration; (2) did not accurately reflect the intent of the parties; and (3) did not properly reflect the identities of the borrowers. CIT contends that these arguments are forfeited because they were not raised as affirmative defenses. We will address each of these arguments in turn.

¶ 26 A trial court's ruling on a motion for summary judgment is reviewed *de novo*. *Harrison v. Addington*, 2011 IL App (3d) 100810, ¶ 37. Such a judgment is proper where the pleadings, depositions, admissions, and affidavits, viewed in the light most favorable to the nonmoving party, reveal no genuine issue of material fact and the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014). "[It] should only be granted when the moving party's right is clear and free from doubt." *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 23.

¶ 27

A. Forfeiture

¶ 28 CIT argues that Ofelia waived her arguments on appeal by not raising them as affirmative defenses in her answer. As to Ofelia's argument regarding lack of consideration, we note that, generally, lack of consideration for a promissory note is presumed and is only subject to rebuttal by way of an affirmative defense. See *M. Loeb Corp. v. Brychek*, 98 Ill. App. 3d 1122, 1125 (1981) ("Consideration for a promissory note is rebuttably presumed and requires no proof other than the note itself," and "[f]ailure or want of consideration is an affirmative defense"). Further, a defense not properly pleaded is deemed forfeited. *Id.* However, a determination that

an affirmative defense has been forfeited is inappropriate when the party asserting forfeiture was able to respond to the defense and thus was not unfairly prejudiced. *Hanley v. City of Chicago*, 343 Ill. App. 3d 49, 54 (2003). In this case, Ofelia did not raise lack of consideration as an affirmative defense in her answer, but she did raise it in her response to the motion for summary judgment. While CIT objected to this argument in the trial court, and the trial court noted that the argument was forfeited, it nonetheless allowed the parties to address the issue. Accordingly, as CIT was able to respond to Ofelia's argument alleging lack of consideration, we decline to find it forfeited. *Id.*

¶ 29 Next, we note that Ofelia did not raise, either in her written reply to the motion for summary judgment or at the hearing on the motion, her arguments that the reverse mortgage was invalid because it violated homestead exemption laws and certain federal regulations. Arguments not raised in the trial court and raised for the first time on appeal are forfeited. *Village of Roselle v. Commonwealth Edison Co.*, 368 Ill. App. 3d 1097, 1109 (2006). As such, these arguments are forfeited.

¶ 30 Ofelia's argument that the mortgage and note did not reflect the intent of the parties is likewise forfeited. This argument is essentially a claim of fraud. At the hearing on the motion for summary judgment, Ofelia acknowledged that she had raised an affirmative defense based on fraud, that it was dismissed without prejudice, and that she never filed an amended affirmative defense alleging fraud. Accordingly, this argument is forfeited. 735 ILCS 5/2-613(d) (West 2016); *Athans v. Williams*, 327 Ill. App. 3d 700, 705, (2002) ("If a party fails to plead an affirmative defense, he is deemed to have waived the defense, and it cannot be considered even if the evidence suggests the existence of the defense").

¶ 31 Finally, Ofelia's argument that the mortgage did not reflect the identities of the borrowers is not forfeited. Ofelia raised this argument in her response to CIT's motion for summary

judgment and CIT did not object to this argument in the trial court. For this reason, the argument has not been forfeited. *Id.* Moreover, in her answer to the complaint for foreclosure, Ofelia denied that all the borrowers on the mortgage were deceased. This pleading can also be viewed as preserving the argument. *Aurora Bank FSB v. Perry*, 2015 IL App (3d) 130673, ¶¶ 18, 21 (holding that defendants had not waived their challenge to the plaintiff's legal capacity to foreclose because, in their answer, they had expressly denied the plaintiff's allegation that it was the mortgagee).

¶ 32 Nonetheless, while Ofelia has forfeited her arguments that the reverse mortgage was invalid because it violated homestead exemption laws and federal regulations, and did not accurately reflect the intent of the parties, forfeiture is a limitation on the parties and not on this court. *Jill Knowles Enterprises, Inc. v. Dunkin*, 2017 IL App (2d) 160811, ¶ 22. A court may overlook a party's forfeiture in order to maintain a sound and uniform body of precedent or where the interests of justice so require. *Roxana Community Unit School District No. 1 v. Environmental Protection Agency*, 2013 IL App (1st) 120825, ¶ 39. In the interests of justice, we will address all of Ofelia's arguments.

¶ 33 B. Violation of Homestead Laws and Federal Regulations

¶ 34 Ofelia's first argument is that the mortgage was not a valid lien because it violated homestead exemption laws. Ofelia cites to section 12-904 of the Code, which states that "[no] release, waiver, or conveyance of the [homestead] estate so exempted shall be valid, unless the same is in writing [and] signed by the individual and his or her spouse, if he or she have one." 735 ILCS 5/12-904 (West 2014). Ofelia argues that the mortgage is invalid because it was not clear whether she was signing the mortgage to waive her rights or whether she was joining the note. The language of the mortgage does not support this contention. Section 10 of the mortgage specifically stated that anyone who signed the mortgage but not the note was doing so

“to warrant and convey that Borrower’s interest in the Property under the term of this [mortgage].” Further, section 24 stated that “I hereby release and waive all rights under and by virtue of the Illinois homestead exemption laws.” Here, the mortgage was in writing and was signed by both Ofelia and Irving as borrowers. The plain language of the mortgage is clear that Ofelia was signing it in order to release her entire interest in the property. Ofelia’s argument that the mortgage is defective under homestead exemption laws is without merit.

¶ 35 Ofelia next argues that under federal law regarding reverse mortgages she is considered a borrower, even though she is not named on the note, because she was Irving’s spouse. Ofelia argues that the majority of reverse mortgages are Home Equity Conversion Mortgages (HECM), which are offered by the Department of Housing and Urban Development (HUD) and insured by the FHA. Ofelia cites to 12 U.S.C. § 1715z-20(j), which provides that HUD may not insure an HECM “unless such mortgage provides that the homeowner’s obligation to satisfy the loan obligation is deferred until the homeowner’s death, the sale of the home, or the occurrence of other events specified in regulations of the Secretary.” That section further defines “homeowner” to include the spouse of a homeowner. However, Ofelia’s reliance on this provision is misplaced as the reverse mortgage at issue in this case was not an HECM and was not insured by HUD. As such, the federal regulation cited by Ofelia is not applicable. Moreover, even if the reverse mortgage in this case was an HECM and was improperly insured by HUD, this would not necessarily implicate CIT’s right to foreclose on the mortgage. See *Estate of Jones v. Live Well Financial, Inc.*, No. 1:17-CV-3105-TWT, 2017 WL 4176661, at *4 (N.D. Ga. Sept. 20, 2017).

¶ 36 C. Consideration

¶ 37 Ofelia next argues that the mortgage is invalid because it lacked consideration. This argument is without merit. “Consideration consists of some detriment to the offeror, some

benefit to the offeree, or some bargained-for exchange between them.” *Doyle v. Holy Cross Hospital*, 186 Ill. 2d 104, 112 (1999). It is well established that consideration for a mortgage need not move directly from the mortgagee to the mortgagor and may consist of a loan to a third person. *Peterson Bank v. Langendorf*, 136 Ill. App. 3d 537, 539 (1985). As explained in *Riddle v. LaSalle National Bank*, 34 Ill. App. 2d 116, 119-20, (1962):

“A mortgage may be given to guarantee the debt of another, and if he or the mortgagor benefits thereby there is sufficient consideration for the mortgage. 59 C.J.S. Mortgages § 90. The consideration for a mortgage need not move directly from the mortgagee to the mortgagor. The consideration may consist in a loan to a third person. If, at the mortgagor’s request, any detriment, loss or damage is sustained by the mortgagee or if any advantage, profit or benefit is conferred on or accrues to the mortgagor, there is sufficient consideration to support the mortgage.”

A benefit to a third person constitutes sufficient consideration for a promise or agreement. *Affiliated Realty & Mortgage Co. v. Jursich*, 17 Ill. App. 3d 146, 150 (1974).

¶ 38 In the present case, the mortgage was supported by valid consideration. Ofelia joined in the execution of the mortgage to secure the note for Irving. This alone constituted adequate consideration as it was a benefit to Irving. *Id.* Moreover, the consideration was valid as it directly benefitted Ofelia. *Doyle*, 186 Ill. 2d at 112. The proceeds of the note were used to pay off family liens, which was a benefit to both Irving and Ofelia. Accordingly, the mortgage in this case does not fail for lack of consideration.

¶ 39 D. Intent of the Parties

¶ 40 Ofelia also argues that the mortgage documents do not reflect the intent of the parties. She contends that it was her and Irving’s intent to enter the agreement while affording each of them the right to maintain their residence in the marital home until both were deceased. A

mortgage is a contract between the parties. *Resolution Trust Corp. v. Holtzman*, 248 Ill. App. 3d 105, 111 (1993). Contract law provides that “the parties to a contract are presumed to have intended what their language clearly imports so that a trial court has no discretion to require parties to accept any terms other than those in their contract.” *Id.* Further, “a court is powerless to alter the clear terms of a mortgage contract.” *Id.* at 112.

¶ 41 In the present case, the plain language of the note shows that Irving was the sole borrower. He was identified as the sole borrower on two loan applications and on a loan disclosure form. Irving was also defined in the note as the sole borrower. Additionally, on the Non-Borrower Certification, Irving signed as the borrower and Ofelia signed as a “non-borrower spouse.” In that certification, Ofelia acknowledged that if Irving predeceased her, she would be required to move if the property had to be sold to repay the reverse mortgage debt. Although Ofelia argues that she was misled about the contents of the mortgage documents, she is bound thereby because she had a duty to learn the contents of the mortgage documents before she signed them. See *Leon v. Max E. Miller & Son, Inc.*, 23 Ill. App. 3d 694, 699 (1974). It is well settled that “a party who signs an instrument relying upon representations as to its contents when he has had an opportunity to ascertain the truth by reading the instrument and has not availed himself of the opportunity, cannot be heard to say that he was deceived by misrepresentations.” *Id.* at 699-700. Accordingly, Ofelia’s argument is not sufficient to overcome the plain language of the mortgage documents in this case. *Holtzman*, 248 Ill. App. 3d at 111. While we are sympathetic to Ofelia’s present circumstances, as a court we are nonetheless required to interpret a contract as written. *Id.* at 112.

¶ 42 E. Identity of the Borrowers

¶ 43 Finally, Ofelia argues that the mortgage documents are invalid as they did not properly reflect the identities of the borrowers. She argues that the mortgage lists the borrower as

Chicago Title, as trustee of Trust I, and that the only borrowers on the note were she and Irving. In so arguing, Ofelia relies on *CitiMortgage, Inc. v. Parille*, 2016 IL App (2d) 150286.

¶ 44 In *Parille*, this court affirmed the trial court's dismissal of CitiMortgage's foreclosure claim against the Parilles, a married couple, Anthony and Karyn. The property at issue was the marital home, in which the Parilles held title as tenants by the entirety. *Id.* ¶ 3. The mortgage listed Karyn as the only borrower and stated that she was the mortgagor. *Id.* ¶ 7. Anthony's initials did not appear on the mortgage. One of the provisions in the mortgage stated, in printed text, as follows: "any Borrower who co-signs this Security Instrument but does not execute the note[] is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument." *Id.* ¶ 7. On the last page of the mortgage, printed text read: "BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument * * *." Karyn signed on the line below this statement. On the line below that, Anthony signed his name. Typewritten text directly below Anthony's signature read: "Anthony Parille is signing this document for the sole purpose of waving [*sic*] homestead rights." *Id.* ¶ 7.

¶ 45 We held that the mortgage was not effective to encumber the property. We noted that the mortgage listed Karyn as the only borrower; stated that the "borrower" was the mortgagor; only Karyn initialed every page; and on the last page, only Karyn signed without qualification. *Id.* ¶ 25. Further, Anthony signed on the last page with qualifying language that he was signing only to waive his homestead rights; he did not sign as a mortgagor. *Id.* We held that the provision stating that "any Borrower who co-signs this Security Instrument but does not execute the note[] is co-signing this Security Instrument * * * to mortgage, grant and convey the co-signers interest in the Property" was not applicable to Anthony because he was not a "borrower." We stated that this conclusion was supported by two facts: Anthony was not identified as a borrower in the

mortgage, and he was not a borrower on the related promissory note, which was executed only by Karyn.

¶ 46 In the present case, Ofelia's reliance on *Parille* is unpersuasive. Ofelia signed the mortgage on a line which identified her as a "Borrower" and did not include any qualifying information. Further, Ofelia and Irving both initialed, as "Borrowers," the legal description of the property incorporated into the mortgage. As such, unlike *Parille*, where Anthony was not identified as a borrower on the mortgage, the mortgage in this case clearly identified Ofelia as a borrower. Ofelia's argument that the mortgage does not properly identify the borrowers is without merit. She clearly signed the mortgage as a borrower and, based on sections 10 and 24 of the mortgage, she clearly conveyed her entire interest in the property.

¶ 47

CONCLUSION

¶ 48 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 49 Affirmed.