2019 IL App (1st) 181180-U

FIRST DIVISION
March 29, 2019

No. 1-18-1180



IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

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| WILMINGTON SAVINGS FUND, FSB, as Trustee of Stanwich Mortgage Loan Trust A,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>ELOISE LOCKHART, UNITED STATES OF AMERICA; and UNKNOWN OWNERS AND NON-RECORD CLAIMANTS,<br><br>Defendants<br><br>(Eloise Lockhart, Defendant and Counterplaintiff-Appellant; Household Finance Corporation III, Counterdefendant-Appellee.) | Appeal from the Circuit Court of Cook County<br><br>No. 07 CH 24236<br><br>The Honorable Anna M. Loftus, Judge, presiding. |

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Mikva and Justice Griffin concurred in the judgment.

**ORDER**

¶ 1 Held: The judgment of the circuit court is affirmed. The circuit court had subject-matter jurisdiction over the foreclosure complaint. Defendant forfeited her TILA arguments by failing to comply with our supreme court's rules governing appellate briefs. Defendant's failure to perfect a stay moots her appellate arguments directed at her quiet title and rescission of mortgage claims. The circuit court properly granted summary judgment in favor of counterdefendant on counterplaintiff's Interest Act claim.

¶ 2 This appeal arises out of a mortgage foreclosure action initiated by Household Finance Corporation III (Household Finance)[1] in 2007 against defendant and counterplaintiff Eloise Lockhart, based on Lockhart's alleged default under the terms of her mortgage. Lockhart appeals from the circuit court's orders (1) entering judgment on the pleadings in favor of Household Finance on Lockhart's counterclaim for rescission under the Truth In Lending Act (TILA) (15 U.S.C. § 1601 *et seq.* (2008)); (2) entering summary judgment in favor of Household Finance on Lockhart's claims under the Illinois Interest Act (Interest Act) (815 ILCS 205/1 *et seq.* (West 2002)); and (3) entering summary judgment in favor of Household Finance on Lockhart's claims for quiet title and rescission of the mortgage based on an alleged failure to record the mortgage with the Cook County Recorder of Deeds. In addition, Lockhart argues that the circuit court lacked subject-matter jurisdiction to adjudicate Household Finance's foreclosure complaint because the mortgage was allegedly not recorded. Lockhart does not raise any argument on appeal directed at the judgment of foreclosure and sale or the order confirming the judicial sale. We affirm the circuit court's judgment in all respects.

¶ 3 I. BACKGROUND

¶ 4 Lockhart's *pro se*[2] appellate brief contains an inadequate statement of facts because it does not sufficiently provide us with the "facts necessary to an understanding of the case," as required by Supreme Court Rule 341(h)(6) (eff. May 25, 2018). Her statement of facts does not provide any description of the circuit court proceedings after July 2010, and thus omits nearly

[1]We granted Household Finance's motion to substitute Wilmington Savings Fund, FSB, as Trustee of Stanwich Mortgage Loan Trust A as the party-plaintiff, due to an "Assignment of Judgment and Interest of Mortgage," and we have amended the caption accordingly. Because Household Finance was the named party-throughout the circuit court proceedings, we will refer to the plaintiff as Household Finance. We further note that our order granting the substitution of the party-plaintiff retained Household Finance as the counter-defendant for purposes of Lockhart's counterclaims.

[2]Although Lockhart is representing herself in this appeal, Lockhart was formerly a licensed attorney in Illinois.

eight years of litigation history. This is a glaring omission considering that at least some of the orders from which she appeals were entered in July 2015. It is not our duty to scour the record—which in this case exceeds 3300 pages—in an effort to understand an appellant's case when the appellant fails to adequately describe the proceedings below, even when the appellant is proceeding *pro se*. We would be within our discretion to disregard any arguments based on facts that are not set forth in her statement of facts. See *Jeffrey M. Goldberg & Associates, Ltd. v. Collins Tuttle & Co., Inc.*, 264 Ill. App. 3d 878, 886 (1994) ("A party's failure to comply with Rule 341 is grounds for disregarding its arguments on appeal based on an un-referenced statement of facts."). We, however, have the benefit of two cogent briefs filed by Household Finance—one in its capacity as plaintiff and one in its capacity as the counterdefendant—which set forth the relevant facts of this case. We therefore rely on the appellees' briefs and the record, which establish the following facts.

¶ 5 On May 29, 2003, Lockhart submitted a loan application to Fieldstone Mortgage Co. (Fieldstone). That same day, she executed a promissory note in favor of Fieldstone secured by a mortgage on Lockhart's home. The mortgage and note were subsequently assigned to Household Finance. In September 2007, Household Finance initiated this foreclosure action, alleging that Lockhart was in default for failing to make her required monthly payments (count I). Household Finance's complaint also asserted that the mortgage contained an incorrect legal description of the property, and requested an order of reformation of the mortgage to reflect the correct legal description (count II). Copies of the mortgage and note were attached to the complaint, along with a proposed legal description of the property.

¶ 6 In May 2008, Lockhart, through counsel, filed a verified answer, affirmative defenses, and counterclaims.[3] In July 2008, Lockhart filed an amended answer, affirmative defenses, and counterclaims.[4] In relevant part, Lockhart asserted that the note carried an interest rate of 8.625% and that the "annual Percentage Rate disclosed on the Federal Truth in lending Disclosure Statement ('TILA Statement') provided to Ms. Lockhart at closing is 9.15%." She further alleged that Household Finance received "a yield spread premium in an amount between 3.000% and 3.500%." She alleged that "[t]he existence, exact amount nor nature of the yield spread premium was not disclosed *** as she was not provided with 'final' closing documents which would have disclosed the existence and nature of the [y]ield [s]pread [p]remium." She asserted that on May 1, 2006, she notified "[p]laintiff's counsel of her intention to rescind the loan pursuant to her rights under the Truth in Lending Act."[5] Lockhart asserted that the conduct described violated section 4.1a of the Interest Act (815 ILCS 205/4.1a (West 2002)) (count I) and section 1640 of TILA (15 U.S.C. § 1640 (2008)) (count II). Counts I and II only sought money damages. Lockhart further asserted that Household Finance lacked standing because "it does not have a first lien recorded prior to that of the United States of America, and Internal Revenue Service."

¶ 7 Lockhart further asserted in count IV that Household Finance's complaint alleged that Lockhart's mortgage "was recorded as document no. 031726317,"[6] and she asserted that the "mortgage recorded as document number 0315626217 is stamped on page two through eighteen of a different mortgage." She alleged that she conducted a search that revealed that "the

[3]Lockhart's initial answer was incorrectly styled as "Defendant, [*sic*] Eloise Lockhart's First Amended Answer, Affirmative Defenses and Counterclaims."

[4]Lockhart's amended answer was incorrectly styled as "Defendant, [*sic*] Eloise Lockhart's Second Amended Answer, Affirmative Defenses and Counterclaims."

[5]Although Lockhart's counterclaim references an exhibit purporting to be a letter of rescission, the parties do not direct our attention to that exhibit in the record, and we have not been able to locate the letter.

[6]The allegation in Lockhart's counterclaim is inconsistent with the complaint, which asserted in paragraph 3F: "Identification of recording: 0315726217."

Recorded [*sic*] of Deeds showed no record of Plaintiff's recorded mortgage." She further alleged that the mortgage lacked a legal description, and that "if Plaintiff possesses a lien on the property, the lien attaches to a vacant lot and not to defendant's residence." Lockhart therefore claimed that Household Finance "clouded title to the subject property by initiating foreclosure complaint [*sic*] on the property based on mortgages that does [*sic*] not exist and are invalid, therefore putting in doubt the validity of the defendant's title to the property," and that plaintiff failed to record the mortgage. Lockhart requested that the circuit court quiet title to the property in her favor. Lockhart's attorney was subsequently granted leave to withdraw his appearance.

¶ 8 Household Finance filed a motion for judgment on pleadings pursuant to section 2-615(e) of the Code of Civil Procedure (Code) (735 ILCS 5/2-615(e) (West 2010)), with respect to counts II and III Lockhart's counterclaims. In relevant part, Household Finance asserted that Lockhart's Interest Act claim in count I was preempted by federal law and that the provision relied on by Lockhart had been implicitly repealed. Plaintiff argued that Lockhart's TILA claim failed because the violation she alleged was not apparent from the face of the disclosure statement, and therefore Household Finance, as the assignee of Fieldstone, could not be liable for a TILA violation.

¶ 9 Lockhart filed a *pro se* response to the motion for judgment on the pleadings, in which she requested leave to amend her Interest Act counterclaim to assert a violation of section 4(a)(1) of the Interest Act (815 ILCS 205/4(2)(a) (West 2002), because the loan imposed prepayment penalties. Her response did not address Household Finance's motion with respect to her TILA claim. On June 3, 2010, the circuit court entered judgment on the pleadings in favor of Household Finance Interest Act and TILA claims, and denied Lockhart's request for leave to amend her Interest Act claim without prejudice.

¶ 10 On September 26, 2011, the circuit court granted Lockhart leave to file a second amended Interest Act counterclaim. The circuit court's order provided that "further leave to amend counterclaims and amend affirmative defenses is denied without prejudice."[7] Lockhart's second amended Interest Act counterclaim asserted that the note had an annual interest rate of 9.152%, contained a prepayment penalty, and "recites that it is governed by the Alternative Mortgage Transaction Parity Act of 1982 [(AMPTA)] [12 U.S.C. § 3801 *et seq.* (2008)]." She alleged that the prepayment penalty violated section 4(2)(a) of the Interest Act (815 ILCS 205/4(2)(a) (West 2002)), which prohibits prepayment penalties on loans secured by mortgages that have interest rates exceeding 8% per annum. She further contended that the mortgage lender failed to provide her with a copy of the Consumers Handbook on Adjustable Rate Mortgages (CHARM disclosure) within three days of receiving her loan application or at closing, in violation of 12 C.F.R. § 226.19. She sought statutory damages, attorney fees, and costs. The parties filed cross-motions for summary judgment on Lockhart's second amended Interest Act claim and quiet title claim (count IV of her amended counterclaims). After briefing, on November 19, 2015, the circuit court denied Lockhart's motion for summary judgment and entered summary judgment in favor of Household Finance on Lockhart's counterclaims. Therefore, the only claims that remained pending were Household Finance's claim to foreclose on the mortgage and for reformation of the mortgage.

¶ 11 Household Finance moved for summary judgment on its complaint. After briefing, the circuit court entered summary judgment in favor of Household Finance on counts I and II of its complaint, entered a judgment of foreclosure and sale, an order reforming the mortgage, and

[7]Lockhart appealed the portion of the circuit court's order denying further leave to amend, which this court docketed as case no. 1-11-3169, but which we dismissed on Household Finance's motion.

other related orders. Lockhart's motion to vacate and reconsider was denied, as was her motion to stay the judicial sale.

¶ 12 On August 1, 2017, Lockhart filed a notice of appeal, which this court docketed as appeal no. 1-17-1928. The property was sold at a judicial auction on August 18, 2017, to a third-party bidder. Household Finance then filed a motion in the circuit court to approve and confirm the judicial sale, which the parties briefed. On November 1, 2017, we granted Household Finance motion to dismiss appeal no. 1-17-1928 for lack of jurisdiction, and our supreme court denied Lockhart's petition for leave to appeal. Our mandate was filed with the clerk of the circuit court on May 10, 2018.

¶ 13 On May 14, 2018, the circuit court granted Household Finance's motion to approve and confirm the judicial sale, and entered an order of possession in favor of the third-party bidder. The circuit court also entered a personal deficiency judgment against Lockhart for $208,546.37. On June 5, 2018, Lockhart, through counsel, filed a notice of appeal, as well as a motion in the circuit court to stay enforcement of the order for possession pending appeal. The circuit court denied Lockhart's motion to stay enforcement. Lockhart's counsel filed a motion to stay enforcement in this court, which was also denied. Prior to briefing the merits of this appeal, Lockhart's counsel was allowed to withdraw his appearance.

¶ 14 II. ANALYSIS

¶ 15 Household Finance argues that we should dismiss Lockhart's appeal as moot because the property was sold to a nonparty and Lockhart failed to perfect a stay of enforcement of the judgment in accordance with Illinois Supreme Court Rule 305(b) (eff. July 1, 2017). We agree with Household Finance that the portion of Lockhart's appeal seeking reversal of the circuit

court's judgment dismissing her quiet title counterclaim is moot, but we decline to dismiss her appeal in its entirety.

¶ 16 "An action to quiet title in property is an equitable proceeding in which a party seeks to remove a cloud on his title to the property." *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 52 (2009). "It is a fundamental requirement in an action to quiet title or in an action to remove a cloud from a title that the plaintiff must recover on the strength of his own title, although it is not required that a perfect title be established." (Internal quotation marks omitted.) *Id.* (citing *Lakeview Trust & Savings Bank v. Estrada*, 134 Ill. App. 3d 792, 812 (1985)). In other words, a plaintiff in an action to quiet title must actually have title to the property. *Id.*

¶ 17 A reviewing court will not generally consider moot questions "because our jurisdiction is restricted to cases which present an actual controversy." *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 523 (2001). An appeal is moot if no controversy exists or if "events have occurred that make it impossible for the reviewing court to grant the complaining party effectual relief." *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 291 (2005). In the absence of a stay, an appeal is moot if the relief sought involves possession or ownership of property that has already been conveyed to a third party who is not a party to the litigation. *Town of Libertyville v. Moran*, 179 Ill. App. 3d 880, 886 (1989). Supreme Court Rule 305(k) provides

> "If a stay is not perfected within the time for filing the notice of appeal, *** the reversal or modification of the judgment does not affect the right, title or interest of any person who is not a party to the action or to any real or personal property that is acquired after the judgment becomes final and before the judgment is stayed; nor shall the reversal or modification affect any right of any person who is not a party to the action under or by virtue of any certificate of sale issued

> pursuant to a sale based on the judgment and before the judgment is stayed." Ill. S. Ct. R. 305(k) (eff. Jan. 1, 2004).

¶ 18 Simply put, Rule 305(k) protects a third-party purchaser of property from the reversal or modification of judgment regarding that property, absent a stay of judgment pending the appeal if: (1) the property passed pursuant to final judgment, (2) the right, title and interest of the property passed to a party who is not a party to the action, and (3) the litigating party failed to perfect a stay of judgment within the time allowed for filing a notice of appeal. *Steinbrecher*, 197 Ill. 2d at 523-34.

¶ 19 Here, the property passed pursuant to a final judgment when the circuit court approved and confirmed the judicial sale. The property was sold to a third-party purchaser at the judicial sale, and a certificate of sale was issued by the selling officer prior to the confirmation of sale. The third-party purchaser was not a party to this action. Finally, Lockhart failed to perfect a stay in both the circuit court and in this court. Therefore, a reversal or modification of the circuit court's judgment would not affect the third-party purchaser's interest in the property. Without even reaching the merits of her quiet title claim, it is clear that we cannot grant Lockhart any meaningful relief with respect to the property, since she no longer has any right, title, or interest in the property on which she could pursue a quiet title claim. Lockhart's appellate claim that the circuit court erred by dismissing her quiet title claim is moot.

¶ 20 The remainder of Lockhart's appeal, however, is not moot because she does not directly challenge the foreclosure judgment or the confirmation of sale. Instead, she first contends that the circuit court lacked subject-matter jurisdiction over Household Finance's complaint; this question is not moot because—if she is correct—the personal deficiency judgment entered against her would be void and therefore vacated, which is meaningful relief that this court is

capable of providing. Lockhart further contends that the circuit court erred by dismissing her TILA claim and entering summary judgment in favor of Household Finance on her Interest Act claim. Both of these claims sought money damages; if Lockhart's appellate arguments on these issues are successful, she would be permitted to pursue her damages claims in the circuit court. Because we could plausibly provide Lockhart meaningful relief on her TILA and Interest Act arguments, neither of which depends on the title to the property, we conclude that the remainder of Lockhart's appeal is not moot.

¶ 21 That said, we reject Lockhart's argument that Household Finance's foreclosure complaint failed to invoke the circuit court's subject-matter jurisdiction. She contends that Household Finance lacked standing to pursue the foreclosure because Household Finance "is not a mortgagee as there is no recorded mortgage and by failing to file verified answers in response to Defendants [*sic*] verified affirmative defense of lack of standing, Plaintiff has admitted that it has no standing." She further contends that "the Recorder of Deeds has submitted an affidavit which shows conclusively that the document which Plaintiff submitted and swore was a copy of its recorded mortgage is 'not found' among its records."

¶ 22 Subject-matter jurisdiction refers to the circuit court's "power to hear and to determine cases of the general class to which the proceeding in question belongs." *Urban Partnership Bank v. Chicago Title Land Trust Co.*, 2017 IL App (1st) 162086, ¶ 12. The Illinois Constitution provides that "Circuit Courts shall have original jurisdiction of all justiciable matters" except for two exceptions not present here. Ill. Const. 1970, art. VI, § 9. "Generally, a justiciable matter is a controversy appropriate for review by the [circuit] court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relationship of parties having adverse legal interests." *Urban Partnership Bank*, 2017 IL App (1st) 162086, ¶ 12. Generally speaking,

mortgage foreclosure cases fall squarely within the circuit court's subject-matter jurisdiction. *Neighborhood Lending Services, Inc. v. Callahan*, 2017 IL App (1st) 162585, ¶ 20.

¶ 23 Lockhart's conception of subject-matter jurisdiction is fundamentally flawed. First, an alleged lack of standing does not defeat the circuit court's power to hear a justiciable matter. We have previously explained that while "standing might be an 'element of justiciability' [citation], it is not a requirement for a 'justiciable *matter*.' " (Emphasis added.) *Nationstar Mortgage v. Canale*, 2014 IL App (2d) 130676, ¶ 15. A complaint to foreclose on a mortgage undoubtedly presents a justiciable matter. *Callahan*, 2017 IL App (1st) 162585, ¶ 20. Furthermore, lack of standing is an affirmative defense that the defendant must both plead and prove, and that can be forfeited if not raised in a timely manner. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252-53 (2010). Therefore, even if a defendant asserts that a plaintiff lacks standing to pursue a mortgage foreclosure action, the fact remains that the subject matter of the action is justiciable.

¶ 24 Second, we find unavailing Lockhart's argument that the circuit court lacked subject-matter jurisdiction because Household Finance failed to record the mortgage and failed to attach a copy of the recorded mortgage to its complaint. "Subject-matter jurisdiction does not depend upon the legal sufficiency of the pleadings." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 340 (2002). All that is required is a justiciable matter. Whether a mortgage is valid, whether a mortgage has been recorded, and whether a plaintiff may foreclose on a particular mortgage are all matters that fall squarely within the circuit court's subject-matter jurisdiction. We find that Household Finance's complaint invoked the circuit court's subject-matter jurisdiction.

¶ 25 Next, Lockhart argues that the circuit court erred by entering judgment on the pleadings in favor of Household Finance on her TILA claim. She asserts that she timely sent the lender a

letter of rescission and that the lender failed to honor her rescission notice, thereby making Household Finance liable for damages. We do not reach the merits of her argument, which amounts to little more than a conclusory statement. She fails to provide citations to the record to support her contentions that she sent a letter of rescission, that the letter was sent to a proper recipient, or that the letter was timely sent.

¶ 26 TILA requires that creditors "clearly and conspicuously disclose" to obligors their right to rescind the credit transaction in any transaction in which a security interest is retained in the obligor's principal dwelling. 15 U.S.C. § 1635(a) (2008). Furthermore, the creditor is required to provide the obligor with "appropriate forms" for the obligor to exercise this right to rescind. *Id*. The notice of the right to rescind shall be a separate document that "clearly and conspicuously" discloses, *inter alia*, the date the rescission period expires. 12 C.F.R. § 226.23(b). Under TILA, a consumer may exercise their right to rescission within three days if all proper disclosures are made. 15 U.S.C. § 1635(a) (2008). If the required disclosures are not delivered to the borrower, the right of rescission is extended to "three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first." *Id.* § 1635(f). In order to satisfy TILA's disclosure requirements, the creditor is required to provide either the appropriate model form or a substantially similar notice. 12 C.F.R. § 226.23(b)(2).

¶ 27 But here, Lockhart has not directed our attention to any portion of the record that would suggest that the original lender—Fieldstone—failed to provide the requisite disclosures, which would extend the rescission period from three days to three years. Nor does Lockhart direct our attention to any portion of the record to suggest that she sent a timely rescission letter. Nor does she advance any argument on appeal that Household Finance would be liable for any failure to honor a purported notice of rescission. As a court of review, we are entitled to have the issues on

appeal clearly presented. *Holmstrum v. Kunis*, 221 Ill. App. 3d 317, 325 (1991). "Reviewing courts will not search the record for purposes of finding error in order to reverse [a] judgment when an appellant has made no good-faith effort to comply with the supreme court rules governing the contents of briefs." *In re Estate of Parker*, 2011 IL App (1st) 102871, ¶ 47. In the absence of any substantive argument supported by citations to both the relevant portions of the record on appeal and relevant authority, we conclude that Lockhart has forfeited her TILA argument. Ill. S. Ct. R. 341(h)(6), (7) (eff. May 25, 2018).

¶ 28 Finally, Lockhart argues that the circuit court erred by entering summary judgment in favor of Household Finance on her second amended Interest Act claim. She argues that her Interest Act claim was not preempted by section 3803(c) of AMPTA (12 U.S.C. § 3803(c) (2008)), because Fieldstone failed to substantially comply with the regulations promulgated by the Director of the Office of Thrift Supervision (OTS). Specifically, Lockhart contends that 12 C.F.R. § 226.19(b) requires a CHARM disclosure "be delivered or placed in the mail to the consumer not later than three business days after the mortgage lender receives the consumer's application from the consumer's broker." She argues that she submitted two loan applications, the first of which was submitted on May 19, 2003, and the second of which was submitted on May 29, 2003. She argues that Household Finance's motion for summary judgment demonstrated that the CHARM disclosure was provided to her on the day of her closing—May 29, 2003—and was not delivered or placed in the mail to her within three days of Fieldstone receiving her initial loan application on May 19, 2003. She asserts, therefore, that because Fieldstone did not substantially comply with OTS regulations, her Interest Act claim is not preempted by AMPTA, and the circuit court should have entered summary judgment in her favor

on her second amended Interest Act claim and denied Household Finance's cross-motion for summary judgment.

¶ 29 Summary judgment is appropriate if the pleadings, depositions, affidavits, and other admissions on file establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2016); *Cohen v. Chicago Park District,* 2017 IL 121800, ¶ 17. The purpose of summary judgment is not to try a question of fact, but rather to determine whether one exists. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 335 (2002). When the parties file cross-motions for summary judgment on the same issue, they typically agree that only a question of law is involved and invite the circuit court to decide the case based on the record before it. *Pielet v. Pielet*, 2012 IL 112064, ¶¶ 28, 30. Summary judgment may be granted on cross-motions for summary judgment where it is clear that all material facts are before the court, the issues are defined, and the parties agree that only a question of law is involved. *Haberer v. Village of Sauget*, 158 Ill. App. 3d 313, 317 (1987) (citing *Allen v. Meyer*, 14 Ill. 2d 284, 292 (1958)). We review a circuit court's order on cross-motions summary judgment *de novo*. *Pielet v. Pielet*, 2012 IL 112064, ¶ 30. *De novo* review is also appropriate to the extent that this issue requires us to construe state and federal statutes and regulations, which present questions of law. *Id.*

¶ 30 In 2003, when Lockhart obtained her loan, section 4/2(a) of the Interest Act provided

> "Except for loans described in subparagraph (a), (c), (d), (e), (f) or (i) of subsection (1) of this Section, and except to the extent permitted by the applicable statute for loans made pursuant to Section 4a or pursuant to the Consumer Installment Loan Act:

> (a) Whenever the rate of interest exceeds 8[%] per annum on any written contract, agreement or bond for deed providing for the installment purchase of residential real estate, or on any loan secured by a mortgage on residential real estate, it shall be unlawful to provide for a prepayment penalty or other charge for prepayment." (815 ILCS 205/4(2)(a) (West 2002)).

¶ 31 Lockhart alleged in her counterclaim, and Household Finance agrees, that her loan was governed by AMPTA; indeed, the note itself states "This loan is an Alternative Mortgage Loan within the definitions of [AMPTA]." Under the version of AMPTA in effect at the time of Lockhart's loan, all housing creditors, including nonfederally chartered housing institutions were permitted to "make, purchase, and enforce alternative mortgage transactions so long as the transactions are in conformity with the regulations issued by the Federal agencies." 12 U.S.C. § 3801(b) (2002). Lockhart does not contest that her mortgage satisfies the definition of an "alternative mortgage transaction,"[8] or that Household Finance satisfies the definition of a "housing creditor"[9] under AMPTA.

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[8]An "alternative mortgage transaction," was defined, in relevant part, as "a loan *** secured by an interest in residential real property *** (A) in which the interest rate or finance charge may be adjusted or renegotiated." 12 U.S.C. 3802(1).

[9]A "housing creditor" was defined as:

> (A) a depository institution, as defined in section 501(a)(2) of the Depository Institutions Deregulation and Monetary Control Act of 1980;
>
> (B) a lender approved by the Secretary of Housing and Urban Development for participation
>
> in any mortgage insurance program under the National Housing Act [12 U.S.C. 1701 et seq.];
>
> (C) any person who regularly makes loans, credit sales, or advances secured by interests in properties referred to in paragraph (1); or
>
> (D) any transferee of any of them.
>
> A person is not a 'housing creditor' with respect to a specific alternative mortgage transaction if, except for this chapter, in order to enter into that transaction, the person would be required to comply with licensing requirements imposed under State law, unless such person is licensed under applicable State law and such person remains, or becomes, subject to the applicable

¶ 32 Section 3803 provides that AMPTA applies "only to transactions made in accordance with regulations governing alternative mortgage transactions as issued by the Director of [OTS]" to the extent that the regulations are authorized by OTS rulemaking power. *Id.* § 3803(a)(3). For AMPTA to apply, an alternative mortgage transaction needed to be "in substantial compliance" with the applicable regulations. *Id.* § 3803(b). Section 3803, titled "Preemption of State constitutions, laws or regulations" further provides that "[a]n alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State constitution, law, or regulation." *Id.* § 3803(c). The Seventh Circuit Court of Appeals has observed that, "[i]f compliance is achieved, state regulations are preempted [under AMPTA] to the extent that they block state lenders from extending credit on terms permitted under federal regulations." *McCarthy v. Option One Mortgage Corp.*, 362 F.3d 1008, 1011 (7th Cir. 2004).

¶ 33 Lockhart therefore argues that in order for Household Finance to avail itself of AMPTA's preemption provisions, it was required to substantially comply with the applicable OTS regulations. Her second amended counterclaim specifically alleged that her Interest Act claim was not preempted because she was not provided a CHARM disclosure in accord with 12 C.F.R. § 226.19(b), since Fieldstone did not deliver or place in the mail a CHARM disclosure directed to her within three days of Fieldstone receiving her application.

¶ 34 Lockhart is incorrect. The version of 12 C.F.R. § 226.19(b) in effect at the time of Lockhart's loan provided in relevant part

> "Certain variable-rate transactions. If the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, the following disclosures must be provided *at*

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regulatory requirements and enforcement mechanisms provided by State law." 12 U.S.C. § 3802(2).

> *the time an application form is provided* or before the consumer pays a non-refundable fee, whichever is earlier:
>
> (1) The booklet titled [CHARM] published by the Board and the Federal Home Loan Bank Board, or a suitable substitute." (Emphasis added). 12 C.F.R. § 226.19(b).

¶ 35 Here, Household Finance's cross-motion for summary judgment was supported by an affidavit reflecting that Lockhart submitted two loan applications: the initial application on May 19, 2003, for $120,000, and the second application on May 29, 2003, for $105,000. The note that Lockhart ultimately executed had a principal balance of $105,000. It is clear, therefore, the only loan that was consummated was based on the second application dated May 29, 2003. Lockhart does not direct our attention to any facts in record to reflect when she received the application form that was approved on May 29, 2003. Furthermore, attached to Household Finance's affidavit was an adjustable rate mortgage disclosure, which, immediately above the signature line, states in bold-face type: "Receipt of this Program Disclosure Statement and [the CHARM disclosure] is hereby acknowledged." The adjustable rate mortgage disclosure has what purports to be Lockhart's signature, and is dated "5-29-03." Lockhart does not raise any argument that the signature on the adjustable rate mortgage disclosure is not hers. Therefore, there was no genuine issue of material fact that Household Finance, as assignee of Fieldstone, substantially complied with its obligations to provide Lockhart with the CHARM disclosure in connection the loan application that was actually approved, and the preemption provision in section 3803(c) of AMPTA operates to preempt Lockhart's second amended Interest Act claim. The circuit court did not err by denying Lockhart's motion for summary judgment and entering summary judgment in favor of Household Finance's on Lockhart's Interest Act claim.

¶ 36 III. CONCLUSION

¶ 37 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 38 Affirmed.