

NOTICE  
Decision filed 06/05/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 130323-U

NO. 5-13-0323

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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DEUTSCHE BANK NATIONAL TRUST	)	Appeal from the
COMPANY, as Indenture Trustee for New Century	)	Circuit Court of
Home Equity Loan Trust 2004-1 by Carrington	)	Williamson County.
Mortgage Services, LLC as Attorney in Fact,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11-CH-183
	)	
RONALD E. FERGUSON and JACQUELINE	)	
FERGUSON,	)	
	)	
Defendants-Appellants,	)	
	)	
and	)	
	)	
UNKNOWN OWNERS and NONRECORD	)	
CLAIMANTS,	)	Honorable
	)	James R. Moore,
Defendants.	)	Judge, presiding.

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JUSTICE STEWART delivered the judgment of the court.  
Presiding Justice Welch and Justice Schwarm concurred in the judgment.

**ORDER**

¶ 1 *Held:* Due to serious deficiencies in the defendants-appellants' *pro se* brief, most notably a lack of coherent arguments, the brief is stricken and this appeal is dismissed.

¶ 2 In this mortgage-foreclosure action, the circuit court of Williamson County entered a summary judgment in favor of the plaintiff, Deutsche Bank National Trust Company, as indenture trustee for New Century Home Equity Loan Trust 2004-1, and against the defendants, Ronald E. and Jacqueline Ferguson. (The unknown owners and nonrecord claimants were dismissed as parties defendant.) Subsequently, the circuit court entered an order confirming the judicial sale of the foreclosed property. From this confirmation order, the defendants now appeal. The defendants have filed a *pro se* brief with this court. The plaintiff argues, *inter alia* that the defendants' brief does not comply with supreme court rules, and that this court should strike the brief and dismiss this appeal due to that noncompliance. After due consideration, this court has decided to exercise its discretion to strike the defendants' brief and to dismiss this appeal. This court also notes that the defendants did not otherwise show, and this court has not found in the record on appeal, any reversible error.

¶ 3 BACKGROUND

¶ 4 On November 15, 2011, the plaintiff filed in the circuit court a complaint for mortgage foreclosure against the defendants. See 735 ILCS 5/15-1504(a) (West 2010). The property at issue is located at 12190 Deer Run Road in Marion. Line 3(N) of the foreclosure complaint stated that plaintiff was bringing the action "as the legal holder of the indebtedness and owner of the mortgage given as security thereof." The complaint further alleged that the defendants were the mortgagors, that they had not paid the monthly installments of principal, interest, taxes, and insurance from February 2011 through the time of filing the complaint, and that they owed \$137,207.59 plus interest,

costs, advances, and fees, at that time. Attached to the complaint were a copy of the mortgage and a copy of the note secured thereby. See 735 ILCS 5/15-1504(a)(2) (West 2010). Both the mortgage instrument and the note were dated March 18, 2004; both defined the lender as New Century Mortgage Corporation (New Century) and defined the borrowers as the defendants; and both bore the defendants' signatures. The note was for \$125,000, with an interest rate starting at 7.45% *per annum* and a monthly payment starting at \$869.75, with the first payment due May 1, 2004. Also attached to the complaint was a copy of an assignment of mortgage from New Century to the plaintiff, dated October 20, 2011.

¶ 5 On December 20, 2011, the defendants filed *pro se* an answer to the foreclosure complaint. The answer did not explicitly "admit" or "deny" the complaint's allegations. The defendants asserted that the plaintiff was not the legal holder of their mortgage or of the note secured thereby, that the foreclosure complaint was "a fraud," and that the amount claimed as owed was incorrect. (No alternative amount was specified.) The defendants asked the court to dismiss the complaint or, in the alternative, to order the plaintiff to turn over to them certain specified information, copies of various specified documents including the mortgage instrument and any assignment of mortgage, and a payment history. No affidavit accompanied the defendants' response.

¶ 6 On March 26, 2012, the plaintiff filed a motion for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2012)). Accompanying the motion for summary judgment was an affidavit from an officer of a

mortgage-loan servicing firm, which indicated that the defendants owed \$137,207.59 in principal and \$154,594.58 in total as of February 28, 2012.

¶ 7 On March 29, 2012, the defendants filed *pro se* a "motion to deny summary judgment." This motion included a request that the court order the plaintiff to produce certain specified information, copies of various specified documents including the mortgage instrument and any assignment of mortgage, and a payment history. No affidavit accompanied the defendants' motion. Eventually, the plaintiff produced most of the requested items.

¶ 8 On August 2, 2012, the plaintiff filed a second motion for summary judgment. The plaintiff averred that the defendants, in their answer, failed to set forth any facts or evidence supporting their allegations that the plaintiff was not the legal holder of the note and mortgage, that the complaint was a fraud, or that the amount of indebtedness alleged in the complaint was incorrect.

¶ 9 On August 8, 2012, the defendants filed a response to the second motion for summary judgment. They again stated that the plaintiff was not the legal holder of the note. "Plaintiff attached a copy of the note," the defendants observed, "but has failed to produce the original for the Court's review." The defendants expressed their belief that the complaint was a "fraud," explaining that they could not set forth facts and evidence to establish the fraud "until Plaintiff provides ALL documents and material requested by Defendants." The defendants added that they would prove fraud "after a forensic is done on [the] mortgage file." The defendants repeated that they disputed the amount owed, but

explained that they needed the plaintiff to "comply" with their "motion for discovery" before they could "set forth the facts or evidence supporting this allegation."

¶ 10 On August 13, 2012, the court granted the plaintiff's motion for summary judgment and entered a judgment of foreclosure and sale. On motion of the defendants, the court stayed the sale of the subject property. The defendants initiated an appeal to this court. On March 11, 2013, this court dismissed that appeal as premature because an order confirming a judicial foreclosure sale had not yet been entered. *Deutsche Bank National Trust Co. v. Ferguson*, No. 5-12-0387.

¶ 11 Eventually—on June 5, 2013—the plaintiff purchased the subject property at public auction for \$125,250, according to a receipt and a certificate of sale filed with the court. See 735 ILCS 5/15-1508(a) (West 2012). Apparently, the plaintiff filed a motion for an order approving the report of sale and distribution and confirming the sale, although the motion is not part of the record on appeal. The defendants filed a "motion to deny approving report of sale and distribution, confirming sale and order of possession." On June 17, 2013, the court entered a judgment confirming the judicial sale of the foreclosed property and awarding the plaintiff possession of the subject property. See 735 ILCS 5/15-1508(b), (g) (West 2012). On June 24, 2013, the defendants filed a notice of appeal from the judgment, thus perfecting the instant appeal.

¶ 12 In this court, the defendants filed an emergency motion to stay the judgment pending appeal. On July 17, 2013, this court denied the defendants' emergency motion. On October 22, 2013, the defendants filed a *pro se* brief in this court. On that same day, this court entered an order noting that the brief (1) lacked any citations to the record on

appeal, contrary to the command of Supreme Court Rules 341(h)(6) and (7) (eff. Feb. 6, 2013), and (2) failed to include a proper complete table of contents, with page references, of the record on appeal, contrary to the command of Supreme Court Rule 342(a) (eff. Jan. 1, 2005). Due to those two defects, this court ordered the brief stricken. This court also granted the defendants additional time within which to file a substitute brief that complied with supreme court rules.

¶ 13 On November 21, 2013, within the time granted to them, the defendants filed with this court a substitute brief. Citations to the record on appeal are included in the substitute brief's "Statement of Facts" section, a section that consists of a single page and is nothing more than a listing of documents filed in the case and the filing dates. No citations to the record appear in the substitute brief's four-page "Argument" section. The substitute brief does not include a proper complete table of contents, with page references, of the record on appeal.

¶ 14

#### ANALYSIS

¶ 15 As the immediately preceding paragraph makes clear, the defendants have not corrected the problems that led this court to dismiss their original appellant's brief. The plaintiff urges this court, *inter alia*, to strike the defendants' substitute brief due to five specific deficiencies that the plaintiff identifies, one of which is "an argument section completely devoid of citations to the record or any reasoned argument in violation of Ill. S. Ct. R. 341(h)(7)."

¶ 16 Supreme Court Rule 341 (eff. Feb. 6, 2013) governs the contents of appellate briefs. The purpose of Rule 341's provisions is "to require parties before a reviewing

court to present clear and orderly arguments so that the court can properly ascertain and dispose of the issues involved." *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7. These provisions are requirements, not mere suggestions. *Id.* Furthermore, a party's *pro se* status does not relieve him or her of the burden of complying with the rules governing appellate briefs. *Biggs v. Spader*, 411 Ill. 42, 44-46 (1951).

¶ 17 Subpart (h) of Rule 341 governs appellants' briefs. Subpart (h)(7) states:

"Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on. Evidence shall not be copied at length, but reference shall be made to the pages of the record on appeal or abstract, if any, where evidence may be found. Citation of numerous authorities in support of the same point is not favored. Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

Under Supreme Court Rule 341(h)(7), a reviewing court is entitled to have issues clearly defined, with "cohesive arguments" presented and pertinent authority cited. *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993). A reviewing court "is not a repository into which an appellant may foist the burden of argument and research." *Id.* A reviewing court does not act as an advocate or search the record for error. *Id.* An appellant forfeits any contention that is unsupported by argument or by citation to authority. *Id.* Where an appellant fails to articulate an organized and cohesive argument for the court's consideration, the appeal must be dismissed. *Bank of Ravenswood v. Maiorella*, 104 Ill. App. 3d 1072, 1074-75 (1982).

¶ 18 In the case *sub judice*, the defendants have clearly failed to articulate an organized and cohesive legal argument for this court's consideration. In their brief, the defendants presented three arguments. They framed their first issue as follows: "Whether the lower tribunal erred in granting summary judgment in favor of dendant-appellee [*sic*]." This argument is very short. It consists almost entirely of a recitation of basic principles, or "black letter law," regarding summary judgment, then concludes with this paragraph: "In the Court below Appellants clearly raised substantial issues of disputed fact. See Motion to Deny Summary Judgment filed March 29, 2012." The defendants did not even attempt to write an argument explaining how the pertinent law applies to the facts of their case. Instead, they attempted to assign the task to this court.

¶ 19 The defendants framed their second issue as follows: "Whether appellants are entitled to full discovery of documents, as set forth under the Real Estate Settlement Procedures Act, 12 U.S. Section 2605(e)." Approximately half of this argument consists of an extended quotation from section 2605(e) of the Real Estate Settlement Procedures Act (12 U.S.C. § 2605(e) (2012)), which essentially requires any servicer of a federally related mortgage loan to respond in writing to a borrower's "qualified written request" for information relating to the servicing of the borrower's loan. The defendants imply that if only the plaintiff had supplied them with some documents, the nature of which is unspecified in their brief, they could have established that the complaint was a "fraud" and that the plaintiff was not the legal holder of the mortgage and note at issue here. Once again, the defendants have failed to present a coherent argument. They have failed to explain how exactly the plaintiff violated the Real Estate Settlement Procedures Act or

how any violation might have affected the circuit court's rulings in this case. This court notes that a copy of the foreclosure complaint and a copy of the note, both bearing the defendants' signatures, and a copy of the assignment of the mortgage from the original mortgagee to the plaintiff, were attached to the foreclosure complaint, and the plaintiff eventually supplied the defendants with copies of other documents, including the loan application and a payment history. This court will not guess which other documents the plaintiff could have produced or how they may have affected this case.

¶ 20 The defendants framed their third issue as follows: "Whether appellants' due process and equal protection under the State of Illinois and the Federal Constitution violated [*sic*]." Here, the defendants asserted that the "taking" of their property violated the Illinois due process and equal protection clauses (Ill. Const. 1970, art. I, § 2) and the fourteenth amendment to the United States Constitution (U.S. Const., amend. XIV). The defendants quoted from these two constitutional provisions, but did not begin to explain how either provision was violated by the proceedings in the circuit court.

¶ 21 Due to the defendants' failure to present coherent arguments in their briefs, in contravention of Rule 341(h)(7), the defendants' brief is stricken and this appeal is dismissed.

¶ 22 This court notes that the defendants' principal assertion in the circuit court—that the plaintiff is not the legal holder of the mortgage and note—finds no support in the record. (The record consists solely of the common law record; no reports of proceedings or bystanders' reports are included.) Indeed, the copies of the mortgage, the note, and the assignment of mortgage—all attached to the foreclosure complaint, as previously

discussed—established that the plaintiff was the legal holder of the mortgage and note. See, e.g., *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 24 (the mere attachment of a note to a complaint is *prima facie* evidence that plaintiff owns the note). The defendants never put forth any facts or evidence to contradict any of the claims in the complaint, raising no genuine issue as to any material fact, and thus making summary judgment appropriate in this case. See 735 ILCS 5/2-1005 (West 2012); *Korzen*, 2013 IL App (1st) 130380, ¶ 14. Nothing in the record indicates that the circuit court abused its broad discretion in approving the judicial sale of the subject property. See *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008).

¶ 23 Appeal dismissed.