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FIRST DIVISION
January 20, 2015

No. 1-14-0851
2015 IL App (1st) 140851-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CITIMORTGAGE, INC.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	No. 11 CH 36674
TOMASZ SMRECZYNSKI,)	
)	Honorable
Defendant-Appellant.)	Robert D. Senechalle,
)	Judge Presiding

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

ORDER

Held: Order denying defendant's motion for summary judgment was improper where motion had been previously withdrawn; all other arguments waived.
Judgment affirmed.

¶ 1 Defendant Tomasz Smreczynski appeals from the trial court's purported denial of his motion for summary judgment against plaintiff Citimortgage, Inc. (Citimortgage). Citimortgage originally filed a complaint to foreclose mortgage against defendant on October 21, 2011, after defendant allegedly failed to pay monthly installments owed beginning in July 2011. On April

12, 2013, Citimortgage filed a motion for summary judgment and judgment for foreclosure and sale, which was set for hearing on June 26, 2013.

¶ 2 On May 1, 2013, defendant filed his own "Motion for Summary Judgment of Deemed Allegations." However on June 26, 2013, at which time a briefing schedule was set on Citimortgage's motion for summary judgment, defendant withdrew his motion for summary judgment. The order was prepared by defense counsel.

¶ 3 On July 17, 2013, however, the trial court entered an order denying defendant's "Motion for Summary Judgment of Deemed Allegations", despite the fact that it had been previously withdrawn. Briefing continued on Citimortgage's motion for summary judgment.

¶ 4 On August 28, 2013, summary judgment and judgment for foreclosure and sale were entered in Citimortgage's favor. Defendant appealed, seeking review of the order confirming the judicial sale, the order striking his affirmative defenses, and the denial of his motion for summary judgment. In his appellate brief, defendant solely argues that the trial court erred in denying his motion for summary judgment.

¶ 5 However, as stated above, defendant's motion for summary judgment was withdrawn on June 26, 2013, in an order prepared by defense counsel. While the record contains an order denying defendant's motion for summary judgment on July 17, 2013, we find that that denial was improper, as the motion was no longer before the court. See *Gray v. National Restoration Systems, Inc.*, 354 Ill. App. 3d 345, 363 (2004) (trial court allowed defendant to withdraw sections of motion for summary judgment, but then subsequently entered an order ruling on the withdrawn issues; court on appeal held that the withdrawn issues were "not before the trial court when it ruled on [the defendant's] motion for summary judgment," and that the ruling pertaining to those issues was thus improper). Defendant does not contend, and there is nothing in the

record indicating, that the motion was ever reinstated. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984) (any doubts which may arise from the incompleteness of the record will be resolved against the appellant).

¶ 6 Rather, in the case at bar, the parties continued to brief and argue only Citimortgage's motion for summary judgment, and the trial court ultimately granted Citimortgage's motion for summary judgment. To the extent that defendant takes issue with that ruling, we find that any argument pertaining to that ruling is waived since he failed to argue it in his opening appellate brief. S. Ct. R. 341(h)(7) (eff. Feb 6, 2013) (points not argued are waived); *Three Angels Broadcasting Network, Inc. v. Department of Revenue*, 381 Ill. App. 3d 679, 699 (2008) (arguments not raised in a party's opening brief are waived for our review). Defendant's only argument on appeal is that his "Motion for Summary Judgment of Deemed Allegations" should have been granted, and because that order was improper, we find defendant's argument to be without merit.

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

¶ 8 Affirmed.