

NOTICE
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2014 IL App (5th) 120419-U

NO. 5-12-0419

IN THE

APPELLATE COURT OF ILLINOIS

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).

FIFTH DISTRICT

JEFFREY EDEN NELSON,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant and Cross-Appellee,)	White County.
)	
v.)	No. 07-L-13
)	
BAYVIEW LOAN SERVICING, L.L.C.,)	
)	
Defendant-Appellee and Cross-Appellant,)	
)	
and)	
)	
OLD NATIONAL BANK and BAYVIEW)	
FINANCIAL TRADING GROUP, L.P.,)	Honorable
)	Thomas H. Sutton,
Defendants-Appellees.)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Spomer and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* Under the supremacy clause, a mortgagor's state law claims against a mortgagee alleging consumer fraud and negligence were barred by the three-year statute of limitations contained within the Real Estate Settlement Procedures Act (12 U.S.C. § 2614 (2006)); the mortgagor was entitled to a \$200 fee under section 2 of the Mortgage Act (765 ILCS 905/2 (West 2006)); and the amount of the circuit court's award of attorney fees to the mortgagee in foreclosure proceeding was not an abuse of discretion.

¶ 2 The appeal involves issues arising out of a mortgage foreclosure action and a subsequent lawsuit filed by the mortgagor. The plaintiff in this appeal, Jeffrey Eden Nelson, is the mortgagor, and he filed a complaint against the defendants, Old National Bank, Bayview Loan Servicing, L.L.C., and Bayview Financial Trading Group, L.P. (Bayview Financial), alleging various claims of misconduct on the part of the defendants stemming from a separate foreclosure proceeding that was initially filed by Bayview Loan Servicing. By agreement of the parties, the separate foreclosure proceeding filed by Bayview Loan Servicing was included as a counterclaim to Nelson's complaint.

¶ 3 The circuit court conducted a bench trial on all of the parties' respective claims and made detailed findings with respect to their numerous contentions. Much of the dispute centered on Nelson's and Bayview Loan Servicing's claims for attorney fees and costs against each other. The circuit court entered a judgment that granted Nelson's and Bayview Loan Servicing's claims, in part, and denied their claims, in part. The circuit court also entered a judgment in favor of Old National Bank and Bayview Financial with respect to Nelson's claims against them. Nelson appeals the circuit court's judgment, and Bayview Loan Servicing cross-appeals the judgment. For the following reasons, we affirm.

¶ 4 **BACKGROUND**

¶ 5 The mortgage at the center of this dispute was created when Nelson and his wife, Denise,¹ initially borrowed money from Old National Bank in September 2000 and

¹Denise Nelson is not a party to this appeal.

signed the mortgage to secure the note against real property located in Crossville, Illinois. Nelson then made payments on the note to Old National Bank. In June 2004, Old National Bank entered into an agreement with Bayview Financial in which Bayview Financial acquired over 500 of Old National Bank's loans, including Nelson's loan.²

¶ 6 Bayview Financial is an entity that facilitates the purchase of existing loans from various banks on behalf of another entity, Bayview Loan Servicing. Bayview Financial acquires the loans by executing purchase agreements to acquire the loans but only for the limited purpose of immediately transferring them to Bayview Loan Servicing. The defendants presented testimony that Bayview Financial did not hold or service any loans itself. Instead, once the bank that was selling the loans received the funds for the purchase of the loans, the selling bank's custodian transferred the original collateral files to Bayview Loan Servicing's custodian. Generally, the loan documents were prepared in accordance with the agreements entered into by Bayview Financial and transferred to Bayview Loan Servicing's custodian as trustee in blank, *i.e.*, the name of the assignee was left blank to be filled in later with a rubber stamp, if needed. After the transfer, Bayview Loan Servicing's custodian reviewed the loan files and created electronic images of the documents contained within the loan files. The image files were viewable by Bayview Loan Servicing's employees over an imaging system called PaperVision.

²Old National Bank utilized an intermediary, FTN Financial Capital Assets Corporation, to sell the loans on its behalf.

¶ 7 Consistent with Bayview Financial's business practices, the sales agreement transferring Nelson's note and mortgage to Bayview Financial required that the transfer documents be prepared with an empty blank where the name of the entity to receive the loans should appear. Therefore, Old National Bank executed a blank assignment agreement of Nelson's note and mortgage that Bayview Financial had transferred to Bayview Loan Servicing's custodian. The sale, transfer, and delivery of the loan files from Old National Bank to Bayview Loan Servicing's custodian were completed before August 1, 2004.

¶ 8 Evidence in the record indicates that Old National Bank sent Nelson a "goodbye" letter that notified him that the servicing of his loan was being transferred to Bayview Loan Servicing. The letter stated that he should start making payments to Bayview Loan Servicing after August 1, 2004. In addition, on August 6, 2004, Bayview Loan Servicing also sent a letter to Nelson that informed him that effective August 1, 2004, he should send his mortgage payments to Bayview Loan Servicing. Old National Bank also sent its branches a list of loans that were transferred and instructions on how to inform a customer of the new loan servicer if the customer inquired about a transferred loan.

¶ 9 After the transfer date, Old National Bank was required to continue to accept payments on behalf of Bayview Loan Servicing for a period of time, and it was required to endorse the payments and send them to Bayview Loan Servicing. According to Nelson, however, in August 2004, Old National Bank began refusing to accept payments on the loan. Nelson's loan was current when Old National Bank transferred it to Bayview

Financial, but Bayview Loan Servicing never received any payments on the loan after August 1, 2004.

¶ 10 When Nelson's loan became past due, representatives of Bayview Loan Servicing made several telephone calls and sent multiple letters to Nelson. Nelson testified that he started getting calls from people identifying themselves as Bayview employees sometime near the end of July or August. He denied receiving any written communications from anyone advising him that his loan had been sold prior to the telephone calls. He testified that he spoke with a "Bayview employee" several times and asked for proof that he owed them money, but that they did not send him any documents to show that he "owed Bayview money." He testified that after the first few telephone calls from a "Bayview employee" in July or August, he went to Old National Bank and asked an employee if the bank had sold his mortgage. At the time, he had three mortgages with the bank. According to Nelson, he spoke with the branch manager, Jo Haley, and she told him that the bank had not sold his loan. He continued to receive telephone calls from "Bayview," but did not answer any more calls after Haley told him that the bank had not sold his loan.

¶ 11 On September 20, 2004, Bayview Loan Servicing sent a letter to Nelson notifying him of the default, requesting payment of past due amounts, and informing him that the loan would be accelerated if the past due amount was not paid. According to Nelson, in September, he received a telephone call from an Old National Bank employee who told him that they had received a letter addressed to him from Bayview Loan Servicing. Old National Bank's address was similar to Nelson's home address, and the mail carrier

apparently misdelivered the letter. Nelson testified that he picked up the letter from the bank, opened the envelope, and learned for the first time that Bayview Loan Servicing was now servicing his loan. According to Nelson, at the time he received the letter, Old National Bank had not been accepting his payments for approximately one month. Nelson called Bayview Loan Servicing and again demanded proof that it owned the loan, and according to Nelson, a representative told him that Bayview Loan Servicing did not have to prove that it owned his loan.

¶ 12 On November 22, 2004, Bayview Loan Servicing filed the foreclosure action against Nelson. At the time it initiated the foreclosure action, Bayview Loan Servicing's custodian still held the blank loan transfer documents. Bayview Loan Servicing informed its foreclosure counsel, Ira Nevel, that it would record a written assignment of Nelson's note and mortgage.

¶ 13 Bayview Loan Servicing subsequently requested its custodian to release the blank assignment documents so they could be "prepared and completed." The vice-president of Bayview Financial's collateral department testified that his department prepared the documents on behalf of Bayview Loan Servicing when a purchased loan was going to be foreclosed.

¶ 14 With respect to Nelson's loan, a "processor" in Bayview Financial's collateral department received the documents from the custodian for the purpose of filling in the documents' blanks. However, the processor used the wrong stamp and mistakenly filled in Bayview Financial instead of Bayview Loan Servicing as the assignee of Nelson's loan. Therefore, at this time, no documents existed to establish that Bayview Loan

Servicing had any interest in the note or mortgage; Bayview Financial was the named assignee. The vice-president of Bayview Financial testified that the Bayview Financial stamp was rarely used and only in the event that a loan was sold to another entity since the seller would most likely be Bayview Financial.

¶ 15 The collateral department of Bayview Financial sent the assignment documents to Bayview Loan Servicing's foreclosure counsel who did not notice that Bayview Financial's name appeared on the documents as the assignee. He attached the assignment to Bayview Loan Servicing's motion for summary judgment, and the trial court granted a summary judgment in favor of Bayview Loan Servicing based on the assignment. On December 19, 2006, Nelson appealed the order that granted Bayview Loan Servicing's motion for summary judgment.

¶ 16 In February 2007, while the appeal in the foreclosure case was pending, Nelson filed an election to redeem. His pleading alleged that while he had elected to redeem and pay the foreclosure judgment amount, he did not concede the accuracy of "said amount." In March 2007, the circuit court determined the redemption amount, and Nelson delivered a check to the court for the redemption amount. Bayview Loan Servicing received payment for the redemption amount.

¶ 17 Shortly after Bayview Loan Servicing received the redemption payment, it offered Nelson a release of the mortgage upon the dismissal of his appeal. Nelson did not agree to dismiss his appeal. Instead, while the foreclosure appeal was still pending, on July 16, 2007, Nelson filed the complaint that is the subject matter of the present appeal, alleging claims against Old National Bank, Bayview Loan Servicing, and Bayview Financial

stemming from their alleged actions in the foreclosure proceeding. Nelson alleged various claims against the defendants including slander of title and violation of the Fair Debt Collection Practices Act (15 U.S.C. § 1692 (2006)).

¶ 18 After receipt of Nelson's redemption payment, Bayview Loan Servicing began preparing a release of mortgage, but its foreclosure counsel advised that it should not release the mortgage because of the ongoing litigation. Bayview Loan Servicing's counsel had several communications with Nelson's attorney indicating that Bayview Loan Servicing was willing to provide a release of the mortgage upon dismissal of his appeal of the foreclosure judgment.

¶ 19 On May 21, 2008, this court reversed the circuit court's summary judgment in favor of Bayview Loan Servicing in the foreclosure proceeding. *Bayview Loan Servicing, L.L.C. v. Nelson*, 382 Ill. App. 3d 1184, 890 N.E.2d 940 (2008). This court noted that the record included only the assignment from Old National Bank to Bayview Financial, a separate legal entity that was distinct from Bayview Loan Servicing. *Id.* at 1187, 890 N.E.2d at 943. We held that, based on the record before the court, Bayview Loan Servicing was not the correct legal entity to bring the foreclosure action as there was no evidence in the record that Bayview Loan Servicing ever obtained any legal interest in the property. *Id.* at 1187-88, 890 N.E.2d at 943-44. The judgment in favor of Bayview Loan Servicing, therefore, was incorrect based on the evidence presented to the circuit court in support of the motion for summary judgment. This court reversed and remanded the matter to the circuit court for further proceedings.

¶ 20 After the remand, the circuit court determined that the effect of the appellate court's order was to place the parties back in their respective positions that existed prior to the entry of the summary judgment. After this court reversed the foreclosure judgment, Bayview Loan Servicing offered to release the mortgage security interest without prejudice to either party's claims and defenses. Nelson, however, initially rejected this offer.

¶ 21 In anticipation of further litigation, on August 1, 2008, Bayview Loan Servicing's foreclosure counsel prepared and recorded a new assignment that established Bayview Loan Servicing as the assignee of Nelson's note and mortgage. The assignment transferred Bayview Financial's interest in Nelson's mortgage to Bayview Loan Servicing. The assignment includes a statement that it was intended to correct the earlier assignment from Old National Bank to Bayview Financial.

¶ 22 Bayview Loan Servicing then sought leave to file an amended complaint in the foreclosure proceeding, and the court granted the motion by agreement. Count I sought a declaration of the rights and duties between Bayview Loan Servicing and Nelson, and count II sought a foreclosure and collection of all amounts due under the terms of the note and mortgage.

¶ 23 The foreclosure case proceeded concurrently with Nelson's lawsuit. Shortly before trial, in July 2011, Nelson accepted Bayview Loan Servicing's offer to release the mortgage security lien interest without prejudice to any claims and defenses. The court dismissed the foreclosure suit without prejudice to Bayview Loan Servicing's claims to any amount due pursuant to the note and mortgage, including attorney fees and costs. By

stipulation, Bayview Loan Servicing's claims in the foreclosure suit were made a part of a counterclaim in Nelson's lawsuit.

¶ 24 Nelson's original complaint against Old National Bank, Bayview Financial, and Bayview Loan Servicing ultimately was superseded by a second amended complaint that he filed on March 10, 2009. The second amended complaint alleged six counts. Count I alleged a cause of action against Old National Bank based on the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2004)). Count II alleged a common law negligence action against Old National Bank. Count III alleged an action to compel the release of the mortgage against Bayview Loan Servicing and Bayview Financial based on section 2 of the Mortgage Act (765 ILCS 905/2 (West 2006)). Count IV alleged a cause of action against Bayview Loan Servicing based on the Fair Debt Collection Practices Act (15 U.S.C. § 1692 (2006)). Count V alleged a cause of action for slander of title against both Bayview Loan Servicing and Bayview Financial. Finally, count VI alleged a cause of action for wrongful foreclosure against Bayview Loan Servicing. Prior to trial, the circuit court dismissed count VI, and Nelson elected not to replead. The defendants filed numerous affirmative defenses including the applicable statute of limitations, estoppel, and waiver.

¶ 25 The trial court conducted a bench trial on the complaint and counterclaim in two phases: first, the court determined questions of liability and, second, it determined the amount of damages based upon its findings of liability.

¶ 26 With respect to counts I and II of Nelson's complaint, the circuit court held that the claims were barred by the three-year statute of limitations contained within the Real

Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2614 (2006)). The court, therefore, entered a judgment in favor of Old National Bank on counts I and II. On appeal, Nelson challenges the circuit court's dismissal of counts I and II of his second amended complaint.

¶ 27 With respect to count III of the complaint, release of the mortgage, the court found in favor of Nelson with respect to his claim against Bayview Loan Servicing. On count III, the court initially held that Nelson was entitled to a \$200 statutory award plus reasonable fees and costs incurred for the period between his redemption and the appellate court's decision that vacated the summary judgment which put the parties back in their respective positions. The court held that Bayview Loan Servicing was obligated by statute to provide Nelson with a release during this period of time, but did not do so. Nelson submitted a fee petition to establish his fees and costs, and after considering the petition, the court found that the petition did not adequately prove what fees he had incurred for obtaining the release of the mortgage during the relevant time period. Therefore, the court awarded Nelson only the \$200 statutory award as damages for count III. On appeal, Nelson does not raise any issues with respect to the circuit court's judgment on count III, but Bayview Loan Servicing cross-appealed the circuit court's \$200 statutory award.

¶ 28 With respect to count IV, Nelson's claim under the Fair Debt Collection Practices Act, the court entered a directed verdict in favor of Bayview Loan Servicing based on the applicable statute of limitations. Bayview Loan Servicing subsequently filed a motion seeking attorney fees and costs incurred as a result of defending this claim pursuant to

section 1692k(a)(3) of the Fair Debt Collection Practices Act and as a sanction pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013).

¶ 29 The court denied Bayview Loan Servicing's request for fees and costs pursuant to the Fair Debt Collection Practices Act, but granted its request, in part, pursuant to Rule 137. The court awarded Bayview Loan Servicing \$1,000 for attorney fees as a sanction against Nelson. On appeal, Nelson challenges the circuit court's \$1,000 sanction award. In its cross-appeal, Bayview Loan Servicing argues that the circuit court should have awarded it additional attorney fees and costs that it incurred in defending this claim under the language of the note and mortgage, under section 1692k(a)(3) of the Fair Debt Collection Practices Act, and pursuant to Rule 137.

¶ 30 With respect to count V of Nelson's second amended complaint, the slander of title claim, the court found in favor of Nelson and against Bayview Loan Servicing. Turning to damages, the court found that there was no competent proof that Nelson had suffered any actual damage. Nonetheless, the court held that Nelson was entitled to reasonable attorney fees and costs that he incurred as a result of Bayview Loan Servicing's having slandered his title to the real estate by pursuing the foreclosure proceeding when it had no ownership interest in Nelson's note or mortgage. The court initially awarded Nelson \$11,247.50 in attorney fees and costs with respect to count V. Bayview Loan Servicing filed a motion to reconsider the circuit court's findings with respect to count V. The circuit court agreed with the motion and vacated the judgment in favor of Nelson on count V, holding that its initial decision concerning liability was based on actions by Bayview Loan Servicing that were privileged. The court entered a judgment in favor of

Bayview Loan Servicing with respect to count V. On appeal, Nelson challenges this portion of the circuit court's judgment.

¶ 31 Bayview Loan Servicing's counterclaim against Nelson concerned, among other issues, the amount of attorney fees and costs that it was entitled to recover against Nelson as a result of his default on the loan. The circuit court awarded Bayview Loan Servicing \$15,120.51 in fees and costs. In its cross-appeal, it argues that it was entitled to recover a greater amount of fees and costs.

¶ 32 We will address each of the parties' claims separately below.

¶ 33 DISCUSSION

¶ 34 I.

¶ 35 Counts I and II of Nelson's Second Amended Complaint

¶ 36 The first issue that Nelson raises on appeal concerns the circuit court's dismissal of counts I and II of the second amended complaint which alleged claims against Old National Bank under the Consumer Fraud Act (815 ILCS 505/1 *et seq.* (West 2004)) and common law negligence. The argument centers around the issue of whether the three-year statute of limitations provided in section 2614 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2614 (2006)) applied to these two counts. The determination of this issue depends on whether the Real Estate Settlement Procedures Act preempts the state law claims. We believe the circuit court ruled correctly in dismissing counts I and II of the second amended complaint based on the applicable statute of limitations.

¶ 37 Counts I and II of the second amended complaint alleged that Old National Bank assigned the mortgage to another entity but did not inform Nelson before or after the assignment. In addition, Nelson alleged that when he became aware that Bayview Loan Servicing was demanding payment on the mortgage, he contacted Old National Bank and inquired whether it had assigned the mortgage. He alleged that an Old National Bank employee told him that it had not transferred the loan and that Old National Bank was still the holder of the mortgage. Nelson maintained that he relied on the representations of Old National Bank that it had not sold or assigned the mortgage, that Old National Bank had a duty under the Consumer Fraud Act not to misrepresent the status of the mortgage, and that it was negligent in misrepresenting the status of the mortgage. As a proximate cause of the misrepresentations, Nelson alleged, Bayview Loan Servicing filed the foreclosure action resulting in his damages.

¶ 38 The circuit court concluded that Nelson's claims based on state law were subject to the three-year statute of limitations contained in the Real Estate Settlement Procedures Act. We agree.

¶ 39 Section 2605(b)(1) of the Real Estate Settlement Procedures Act establishes the notice requirements upon the transfer of a loan. Specifically, section 2605(b)(1) states that "[e]ach servicer of any federally related mortgage loan shall notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan to any other person." 12 U.S.C. § 2605(b)(1) (2006). Section 2605 also establishes the time and content requirements for the notice. 12 U.S.C. § 2605(b)(2), (b)(3) (2006). Section 2605(f) establishes damages for failing to comply with the notice requirements, including

any actual damages to the borrower. 12 U.S.C. § 2605(f) (2006). Finally, section 2605(h) specifically preempts state laws as follows:

"Notwithstanding any provision of any law or regulation of any State, a person who makes a federally related mortgage loan or a servicer shall be considered to have complied with the provisions of any such State law or regulation requiring notice to a borrower at the time of application for a loan or transfer of the servicing loan if such person or servicer complies with the requirements under this section regarding timing, content, and procedures for notification of the borrower." 12 U.S.C. § 2605(h) (2006).

¶ 40 Section 2616 of the Real Estate Settlement Procedures Act sets out an additional preemption provision as follows:

"This chapter does not annul, alter, or affect, or exempt any person subject to the provisions of this chapter from complying with, the laws of any State with respect to settlement practices, except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency." 12 U.S.C. § 2616 (2006).

¶ 41 The Real Estate Settlement Procedures Act includes a three-year statute of limitations for any action based on a violation of the notice requirements set out in section 2605. 12 U.S.C. § 2614 (2006).

¶ 42 The substance of Nelson's two counts against Old National Bank is that Old National Bank did not inform him that the mortgage had been transferred and that, when questioned, it denied having assigned the mortgage. In granting Old National Bank's

motion for a directed verdict at the close of Nelson's case, the court looked at the substance of the allegations and concluded that they were based on assertions that Old National Bank failed to give proper notice of the assignment. The court, therefore, concluded that Nelson could proceed with his state law claims, but only to the extent that they did not conflict with the provisions of the Real Estate Settlement Procedures Act, including its three-year statute of limitations. Nelson filed his complaint on July 16, 2007, and he alleged that Old National Bank's failure to provide proper notice occurred "on or about June of 2004." The court, therefore, concluded that the claim was untimely.

¶ 43 Nelson argues that, with respect to count II, the five-year statute of limitations contained in section 13-205 of the Code of Civil Procedure (735 ILCS 5/13-205 (West 2004)) applies. However, a five-year statute of limitations conflicts with the statute of limitations provided in the Real Estate Settlement Procedures Act. The statute of limitations contained in the federal statute preempts the conflicting state law under the supremacy clause of the United States Constitution.

¶ 44 The supremacy clause preempts state law in three circumstances: (1) when the express language of a federal statute indicates an intent to preempt state law, (2) when the scope of a federal regulation is so pervasive that it implies an intent to occupy a field exclusively, and (3) when state law actually conflicts with federal law. *Coram v. State of Illinois*, 2013 IL 113867, ¶ 71, 996 N.E.2d 1057. In the present case, the first and third preemption circumstances exist because the language of the Real Estate Settlement Procedures Act expressly states an intent to preempt a state law that is "inconsistent" with

any provision in the statute and, as noted above, the different statutes of limitations are inconsistent.

¶ 45 The second preemption circumstance also exists because the federal regulation in the Real Estate Settlement Procedures Act is intended to operate exclusively with respect to the notice requirements upon the transfer of loans covered under the statute. 12 U.S.C. § 2605(h) (2006) ("Notwithstanding any provision of any law or regulation of any State" compliance with the requirements of the Real Estate Settlement Procedures Act shall be considered as compliance "with the provisions of any such State law").

¶ 46 The substance of counts I and II of Nelson's second amended complaint is predicated on allegations that Old National Bank failed to comply with federal notice requirements. The Real Estate Settlement Procedures Act regulates disclosure requirements and has its own enforcement mechanisms and statute of limitations. Nelson's state law claims are untimely under the federal statute; therefore, federal preemption required the dismissal of Nelson's state law claims against Old National Bank.

¶ 47 II.

¶ 48 Count III of Nelson's Second Amended Complaint

¶ 49 Count III of Nelson's second amended complaint alleged an action against Bayview Loan Servicing and Bayview Financial to compel a release of the mortgage pursuant to section 2 of the Mortgage Act (765 ILCS 905/2 (West 2006)). At the time of the trial, Bayview Loan Servicing had released the mortgage, and Nelson sought penalties, attorney fees, and costs under the Mortgage Act.

¶ 50 The circuit court found in favor of Nelson and against Bayview Loan Servicing on this count and awarded Nelson statutory damages of \$200 as provided in the Mortgage Act. The court also found that Nelson was entitled to attorney fees and costs. However, the court further held that Nelson failed to adequately establish his fees and costs, so the court awarded him only the \$200 statutory award with respect to count III. In his opening brief, Nelson does not raise any issues with respect to the circuit court's award on count III, but Bayview Loan Servicing, in its cross-appeal, has challenged the circuit court's \$200 award. Bayview Loan Servicing argues that Nelson was not entitled to a release of the mortgage under the Mortgage Act when he paid the redemption amount because he continued to challenge the foreclosure judgment on appeal; therefore, according to Bayview Loan Servicing, the circuit court erred in awarding Nelson \$200. We disagree.

¶ 51 In finding in favor of Nelson with respect to count III, the court noted that the original foreclosure judgment was entered on November 21, 2006, and Nelson was required to redeem or the property could be sold at a sheriff's sale. Nelson elected to redeem, and the parties subsequently followed the statutory procedures for determining the redemption amount. On May 14, 2007, the court entered an order establishing the redemption amount, finding that Nelson had to pay Bayview Loan Servicing the amount of \$82,627.39 to redeem the property. The redemption amount included principal, interest, late fees, and various foreclosure costs including attorney fees. Nelson redeemed the property by paying the redemption amount. However, he continued to challenge the foreclosure judgment on appeal.

¶ 52 In analyzing Nelson's claim for a \$200 statutory award under the Mortgage Act due to Bayview Loan Servicing's failure to issue a release of the mortgage after the redemption, the court cited the Illinois Mortgage Foreclosure Law which requires a mortgagee to promptly furnish the mortgagor with a release of the mortgage upon receipt of the redemption amount. Specifically, section 15-1603(f)(3) of the Illinois Mortgage Foreclosure Law states: "Upon payment to the clerk, whether or not the owner of redemption files an objection at the time of payment, the clerk shall give a receipt of payment to the person redeeming from the foreclosure, and shall file a copy of that receipt in the foreclosure record. Upon receipt of the amounts specified to be paid to the mortgagee pursuant to this Section, the mortgagee shall promptly furnish the mortgagor with a release of the mortgage or satisfaction of the judgment, as appropriate, and the evidence of all indebtedness secured by the mortgage shall be cancelled." 735 ILCS 5/15-1603(f)(3) (West 2006).

¶ 53 Based on this statutory language, the circuit court concluded that once Nelson paid the redemption amount, Bayview Loan Servicing was obligated to issue a release of the mortgage. The court further found that, shortly after Nelson's redemption, his attorney requested a release of the mortgage, but Bayview Loan Servicing's attorney instructed his client not to issue a release of the mortgage. The circuit court then turned to section 4 of the Mortgage Act (765 ILCS 905/4 (West 2006)), which provides that a mortgagee has one month to issue a release of the mortgage when it has received payment of the debt. Failure to issue the release within one month results in a penalty of \$200 payable to the

party aggrieved, which may be recovered in a civil action along with reasonable attorney fees. *Id.*

¶ 54 The circuit court concluded that Bayview Loan Servicing should have provided a release within one month of March 29, 2007, and its failure to do so entitled Nelson to \$200 under the Mortgage Act. The court emphasized that the circuit court had previously made a determination concerning the amount Nelson owed for redemption. Although Nelson had appealed the foreclosure judgment, Bayview Loan Servicing did not move to stay the foreclosure proceeding, and Nelson faced the risk of the property's being sold at a sheriff's sale. The court further noted that the language of the Mortgage Act did not permit the mortgagee to withhold the release once the mortgagor fulfilled his redemption obligation.

¶ 55 We agree with the circuit court's analysis. Interpretation of statutes involves questions of law that are reviewed *de novo*. *Franz v. Calaco Development Corp.*, 352 Ill. App. 3d 1129, 1149, 818 N.E.2d 357, 376 (2004). "Where a statute is unambiguous, it must be enforced as enacted, and a court can never depart from its plain language by reading into it exceptions, limitations, or conditions which conflict with the clearly expressed legislative intent." *Id.* at 1150, 818 N.E.2d at 376. Under the unambiguous statutory scheme outlined by the circuit court, once Nelson paid the court-established redemption amount, Bayview Loan Servicing was obligated to provide a release of the mortgage and had one month to do so. The statute does not allow for withholding the release under the circumstances of this case. The circuit court's \$200 award to Nelson on count III of his second amended complaint was proper.

¶ 56

III.

¶ 57

Count IV of Nelson's Second Amended Complaint

¶ 58 Count IV of Nelson's second amended complaint alleged a cause of action against Bayview Loan Servicing under the Fair Debt Collection Practices Act (15 U.S.C. § 1692 *et seq.* (2006)). As part of its affirmative defenses to count IV, Bayview Loan Servicing alleged that the action was time-barred by section 1692k(d) of the Fair Debt Collection Practices Act (15 U.S.C. § 1692k(d) (2006)), which provides that an action to enforce any liability under the statute must be brought within one year from the date on which the violation occurs.

¶ 59 The basis for Nelson's claim under the Fair Debt Collection Practices Act was the allegation that Bayview Loan Servicing committed an unfair and/or unconscionable debt collection practice by filing the foreclosure suit and seeking the summary judgment in the foreclosure suit when it had no ownership interest in the mortgage.

¶ 60 As noted above, the circuit court entered a directed verdict in favor of Bayview Loan Servicing at the end of Nelson's case in chief on the basis of the statute of limitations set forth in section 1692k(d). Bayview Loan Servicing subsequently filed a motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013). The circuit court granted the motion for sanctions and awarded Bayview Loan Servicing \$1,000 in attorney fees as Rule 137 sanctions. Nelson challenges the circuit court's award of Rule 137 sanctions.

¶ 61 In granting Bayview Loan Servicing's motion for Rule 137 sanctions, the circuit court noted that "[w]hen attorneys discover they made improper pleading, they are

obligated to bring it to the attention of the Court and opposing counsel *** and the attorney must promptly dismiss the lawsuit once he knows it's unfounded even if it's over the objections of his client." The court noted that, on September 29, 2009, the trial court had dismissed an identical claim against Bayview Loan Servicing's foreclosure counsel because it was beyond the statute of limitations. In addition, the court noted that the appellate court affirmed that dismissal in a Rule 23 order entered on June 6, 2011. The circuit court concluded, therefore, that Nelson knew that his cause of action under the Fair Debt Collection Practices Act was beyond the statute's statute of limitations.

¶ 62 On appeal, Nelson argues that the sanctions were improperly awarded because (1) Bayview Loan Servicing first raised the issue at the end of Nelson's case in chief, (2) the circuit court failed to specify the basis for its sanction award, and (3) the court improperly considered a Rule 23 order previously entered by this court as it related to a separate motion to dismiss filed in a different proceeding.

¶ 63 Rule 137 requires that every pleading be well grounded in fact and warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. Ill. S. Ct. R. 137 (eff. July 1, 2013). When a pleading is filed in violation of Rule 137, the court may impose an appropriate sanction, which may include an order to pay the reasonable expenses incurred by the other party as a result of the filing of the pleading, including reasonable attorney fees. *Id.* Subsection (d) requires the trial judge to "set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order." Ill. S. Ct. R. 137(d) (eff. July 1, 2013).

¶ 64 We review a circuit court's award of Rule 137 sanctions under the abuse of discretion standard. *In re Rocca*, 2013 IL App (2d) 121147, ¶ 30, 1 N.E.3d 1281. A trial court exceeds its discretion on sanctions only where no reasonable person would take the view adopted by it. *Mandziara v. Canulli*, 299 Ill. App. 3d 593, 602, 701 N.E.2d 127, 135 (1998).

¶ 65 In the present case, the circuit court did not abuse its discretion in awarding Rule 137 sanctions.

¶ 66 Nelson first argues that the sanction award was improper because the issue was first raised at the close of his case. With regard to the timing of a Rule 137 motion, Rule 137(b) requires that the motions "must be filed within 30 days of the entry of final judgment, or if a timely post-judgment motion is filed, within 30 days of the ruling on the post-judgment motion." Ill. S. Ct. R. 137(b) (eff. July 1, 2013). Nothing within the language of the rule precluded Bayview Loan Servicing from filing its motion for sanctions at the close of Nelson's case in chief.

¶ 67 The circuit court properly considered the timing of the motion as a factor in determining the amount of sanctions to award. The circuit court noted that the party seeking sanctions should promptly give notice to the court and the offending party upon discovering the basis for the sanctions. The court stated that if the "claim could have been readily disposed of by summary procedures, there is little justification for a claim for attorney's fees and expenses engendered in lengthy and elaborate proceedings in opposition." The court found that Nelson's claim under the Fair Debt Collection Practices Act could have been readily disposed of by summary procedures rather than the

lengthy and costly bench trial. Therefore, the court awarded Bayview Loan Servicing only \$1,000 in fees as a sanction under Rule 137. The court did not abuse its discretion in considering the timeliness of the motion in determining the amount of the sanction, rather than denying the motion in its entirety.

¶ 68 Second, Nelson argues that the circuit court improperly failed to specify the basis for its sanction award. We disagree. On July 3, 2012, the circuit court specifically stated on the record the basis for its sanction award. The amended judgment order that included the \$1,000 award for Rule 137 sanctions specifically noted that it was based on findings and orders of the court, including findings and orders entered on the record on July 3, 2012. See *Spiegel v. Hollywood Towers Condominium Ass'n*, 283 Ill. App. 3d 992, 1002, 671 N.E.2d 350, 358 (1996) ("[T]he transcript of the hearing on the motion for sanctions indicates that the circuit court articulated in detail the basis for each sanction imposed. Accordingly, we find no error in the court's failure to reduce those reasons to writing.").

¶ 69 Finally, Nelson argues that the circuit court's sanction award was improper because it relied on a nonprecedential Rule 23 order in a related case. Illinois Supreme Court Rule 23 states that a case disposed of by the appellate court by a written order "is not precedential and may not be cited by any party except to support contentions of double jeopardy, *res judicata*, collateral estoppel or law of the case." Ill. S. Ct. R. 23(e)(1) (eff. July 1, 2011).

¶ 70 When Bayview Loan Servicing moved for a directed verdict with respect to count IV of the second amended complaint, it cited the statute of limitations contained in the Fair Debt Collection Practices Act. In response, Nelson's counsel cited the Rule 23 order

and stated, "as far as the statute of limitations goes, I appear in light of the recent Fifth District appellate court decision to be bound to concede that likely, Count IV is barred by the statute of limitations."

¶ 71 When the circuit court granted the motion for sanctions, the court mentioned the Rule 23 order only in the context of identifying the period after which Nelson's counsel understood that the claim under the Fair Debt Collection Practices Act no longer had merit, noting that counsel had a duty to "dismiss the lawsuit once he knows it's unfounded." The court acknowledged that the Rule 23 order cannot "be cited as authority" and referenced the Rule 23 order only to show that "Nelson knew that this cause of action under the Fair Debt Collection Practices Act was improper because it was beyond the Statute of Limitations." As noted above, Nelson's counsel acknowledged this conclusion when he conceded that the claim was untimely based on this court's holding in the Rule 23 order. Under these facts, the circuit court did not improperly rely on a Rule 23 order as precedential authority.

¶ 72

IV.

¶ 73

Count V of Nelson's Second Amended Complaint

¶ 74 Next, Nelson takes issue with the circuit court's judgment with respect to count V of the second amended complaint. Count V alleged a claim against Bayview Loan Servicing and Bayview Financial for slander of title for failing to release the mortgage after Nelson paid the redemption amount. The elements for a claim of slander of title are: (1) oral or written words disparaging a person's title to property which result in (2)

special damages and which are motivated by (3) malice. *Pecora v. Szabo*, 94 Ill. App. 3d 57, 66, 418 N.E.2d 431, 438 (1981).

¶ 75 The court initially found in favor of Nelson and against Bayview Loan Servicing on count V and found in favor of Bayview Financial and against Nelson on count V. In finding in favor of Nelson on count V against Bayview Loan Servicing, the circuit court found that Bayview Financial had legal and equitable ownership of the mortgage when Bayview Loan Servicing filed the foreclosure suit. The court further found as follows:

"In this court's opinion, there is no question that Bayview Loan Servicing made a false publication of words, disparaging Nelson's title to the property, when it said that Nelson had executed a mortgage and Bayview Loan Servicing as an assignee of Old National Bank and that it was the owner of the installment note and mortgage when, in fact, neither of those were true."

¶ 76 The court found that Bayview Loan Servicing made the false assertion in the complaint to foreclose the mortgage, in its amended motion for summary judgment, in the affidavit to prove up the complaint, and in the motion for entry of judgment of foreclosure and order of sale. The court also noted that based on these false statements, Bayview Loan Servicing placed a publication notice of a sheriff's sale in a newspaper.

¶ 77 Turning to the issue of damages, the court found that there was no competent proof that Nelson suffered any actual damages as a result of the slander of title, but that it may award attorney fees and costs for a slander of title action without requiring proof of special damages. The court, therefore, held that Nelson was entitled to reasonable attorney fees and costs incurred as the result of Bayview Loan Servicing having filed the

complaint and other pleadings in the foreclosure action. Nelson submitted a petition of his fees and costs, and after considering the fee petition, the circuit court determined that he was entitled to \$11,247.50 as a result of the slander of title claim.

¶ 78 Bayview Loan Servicing filed a motion to reconsider the circuit court's judgment with respect to count V. Bayview Loan Servicing maintained that the basis of Nelson's slander of title claim was not its filing and prosecuting the foreclosure proceeding. Instead, Bayview Loan Servicing argued that Nelson's slander of title claim as alleged in his second amended complaint was based on its refusal to release the mortgage after he paid the redemption amount. In addition, it argued that even if Nelson's claim was based on the mortgage foreclosure proceeding, any statements it made and actions it took as part of the judicial proceedings were privileged against a claim of slander of title.

¶ 79 The circuit court considered the motion to reconsider and concluded that it ruled incorrectly with respect to count V. It held that "the basis upon which the Court rendered its initial decision would be based upon matters which were privileged because of the fact that they were filed as part of the court case." The circuit court, therefore, granted Bayview Loan Servicing's motion to reconsider. The court vacated that portion of its previous judgment in favor of Nelson on count V and entered a judgment in favor of Bayview Loan Servicing.

¶ 80 Nelson appeals the circuit court's judgment with respect to count V and argues that the court erred in finding in favor of Bayview Loan Servicing on count V. Specifically, Nelson argues that its claim for slander of title was not based on statements made under oath to the circuit court. Instead, his claim for slander of title was based on Bayview

Loan Servicing and Bayview Financial's failure to release the mortgage after he paid it off. He argues that "maliciously failing to release a mortgage document previously recorded once the mortgage is paid off" constitutes slander of title and is not privileged. In addition, he notes that Bayview Loan Servicing published the notice of the sheriff's sale which contained the false statement concerning its ownership of the mortgage and maintains that this false statement was not privileged.

¶ 81 With respect to the published notice of the sheriff's sale, we agree with Bayview Loan Servicing that the notice of the sheriff's sale published in a newspaper was not part of Nelson's claim of slander of title as alleged in his complaint. Nelson alleged a claim of slander of title based on Bayview Loan Servicing's failure to release the mortgage after he paid it off. He did not allege a claim of slander of title as a result of the publication of the notice of the sheriff's sale. Accordingly, Nelson waived any claim of slander of title based on the publication of the notice of the sheriff's sale. *SI Securities v. Bank of Edwardsville*, 362 Ill. App. 3d 925, 933, 841 N.E.2d 995, 1002 (2005) ("Issues not raised in a complaint and points not argued in the trial court are waived on appeal."); *In re Estate of Bontkowski*, 337 Ill. App. 3d 72, 77, 785 N.E.2d 126, 131 (2003) ("The issues in any litigation are determined by the pleadings and an issue cannot be sustained by evidence absent a corresponding pleading.").

¶ 82 Nelson argues, alternatively, that the circuit court's judgment with respect to count V should be reversed because the basis of his claim was Bayview Loan Servicing's refusal to release the mortgage once he paid the redemption amount, but the circuit court's findings incorrectly focused on the foreclosure proceeding. Nelson argues that

once he paid the redemption amount, he was entitled to a release and that Bayview Loan Servicing's failure to issue the release constituted slander of title. We disagree with Nelson's argument.

¶ 83 The procedure for redemption is found in section 15-1603 of the Mortgage Foreclosure Law (735 ILCS 5/15-1603 (West 2006)). Pursuant to the redemption procedures set forth in section 15-1603, Bayview Loan Servicing filed a certificate concerning the amount necessary for redemption, including all postjudgment expenses, and Nelson filed his objections. The circuit court subsequently determined that the redemption amount would be \$82,627.39.

¶ 84 Nelson paid the redemption amount to the circuit court, and Bayview Loan Servicing received a check for the redemption amount. The circuit court cited section 15-1603(f)(3) of the Mortgage Foreclosure Law (735 ILCS 5/15-1603(f)(3) (West 2006)), and concluded that upon receipt of the redemption amount, the mortgagee was required to furnish the mortgagor with a release of the mortgage.

¶ 85 The circuit court noted that, shortly after Bayview Loan Servicing received the redemption check, Nelson's attorney requested a release of the mortgage, but Bayview Loan Servicing refused because litigation between the parties was still pending. Bayview Loan Servicing did not furnish a release of the mortgage until August 2011, which the court found was more than four years after the statute required that it be furnished.

¶ 86 The circuit court made these findings in addressing count III of Nelson's second amended complaint requesting release of the mortgage. As noted above, Nelson argues that Bayview Loan Servicing's failure to release the mortgage also established a common

law claim for slander of title as alleged in count V. Although the circuit court did not address Nelson's specific claim of failure to release the mortgage as a basis for his slander of title claim, we may affirm the circuit court's judgment on any basis appearing in the record. *Lollis v. Chicago Transit Authority*, 238 Ill. App. 3d 583, 586, 606 N.E.2d 479, 481 (1992). Other findings made by the circuit court support its judgment in favor of Bayview Loan Servicing with respect to count V.

¶ 87 We agree with Bayview Loan Servicing that Nelson's claim of slander of title based on the failure to release the mortgage was factually the same as his statutory claim for release of mortgage. Both claims are based on the same set of facts. With respect to his statutory claim under the Mortgage Act, the court found that Nelson was entitled to reasonable attorney fees incurred between his redemption and the appellate court's reversal of the foreclosure judgment. The circuit court afforded Nelson the opportunity to prove his fees and costs, but the court found that he failed to carry his burden of proof, and he has not challenged that finding on appeal. Accordingly, we agree with Bayview Loan Servicing that, for the same reasons, Nelson failed to prove any damages as a result of a slander of title based on the failure to release the mortgage. Accordingly, we affirm the judgment in favor of Bayview Loan Servicing on count V of the second amended complaint.

¶ 88 V.

¶ 89 Bayview Loan Servicing's Mortgage Foreclosure Counterclaim

¶ 90 Finally, Bayview Loan Servicing appealed the circuit court's award of fees and costs on its foreclosure counterclaim. The circuit court found that Bayview Loan

Servicing was entitled to \$24,064.50 as recoverable attorney fees and was entitled to \$2,502.10 for costs in the foreclosure counterclaim. The court, however, deducted from these amounts the \$9,099.99 in fees and \$2,346.10 in costs that Nelson previously paid for the vacated redemption. The court, therefore, awarded Bayview Loan Servicing a judgment in its favor in the amount of \$15,120.51 for its attorney fees and costs. In its cross-appeal, Bayview Loan Servicing challenges this award and argues that the court should have awarded it the full amount of \$24,064.50 for its attorney fees, and in his appeal, Nelson argues that Bayview Loan Servicing was not entitled to any attorney fees in the foreclosure proceeding.

¶ 91 In ruling on Bayview Loan Servicing's request for attorney fees with respect to the foreclosure counterclaim, the circuit court held that when the original foreclosure judgment was reversed by the appellate court:

"the parties were restored to their original rights as follows: The summary judgment and the judgment entered on March 13, 2006, was vacated. The judgment of foreclosure and order of sale entered on November 21, 2006, was vacated including the right for Bayview Loan Servicing to be paid amounts of princip[al], interest, fees, and costs. Post-judgment interest, pre-foreclosure late charges, post-judgment attorney fees *** [were] also vacated by the appellate court. The redemption of the mortgage by Nelson was vacated which would include Bayview's right to receive the money paid in redemption, so that Nelson had a right to be paid the money he gave for redemption. The mortgage was reinstated in Bayview Financial ***. Any right to a release of the mortgage that

Nelson should have received by his redemption of the property was vacated. So he was no longer entitled to a release of mortgage. The principal due to Bayview Financial *** plus any interest from the time of the redemption period should have been reinstated."

¶ 92 With respect to its analysis of Bayview Loan Servicing's request for fees and costs, the court divided the history of the case between two periods. The court first considered attorney fees relating to what the court called "the first mortgage foreclosure action." The court defined the first period "as being the time of the filing of the complaint to foreclose mortgage on November 22, 2004, until the filing of the amended complaint on July 8, 2008" which was after the appellate court reversed the foreclosure summary judgment.

¶ 93 With respect to these fees, the court noted that Bayview Loan Servicing's petition for attorney fees did not request any fees prior to July 7, 2008. The fee request specifically noted that the request did "not include any fees previously ordered and paid." The court, however, noted that the effect of this court's May 21, 2008, Rule 23 order was that the fees previously ordered and paid were vacated. The court further stated that the previous affidavit that was filed as part of the first mortgage foreclosure action for fees was inadequate because it merely contained one line, "legal services foreclosure, \$5,862.50." The court stated, "It does not specify the services performed, by whom they were performed, how the work related to litigation, the time expended, and the hourly rate." The court also found that the attorney fees incurred for the first mortgage foreclosure action were not reasonable. The court, therefore, held that attorney fees

previously paid by Nelson as part of the vacated redemption amount were to be credited against any further attorney fees that the court determined that Nelson owed.

¶ 94 Next, the court considered attorney fees relating to filing of the amended complaint for foreclosure on July 8, 2008, after the appellate court's remand up to the time of the filing of the fee petition. The court found that the attorney fees listed in Bayview Loan Servicing's fee petition for the time period beginning on July 8, 2008, were reasonable. The court, therefore, awarded Bayview Loan Servicing \$24,064.50, in fees as set forth in its fee petition, but deducted the \$9,099.99 that Nelson had already paid as a credit in his favor.

¶ 95 On appeal, Bayview Loan Servicing argues that the circuit court improperly held that Nelson was entitled to a setoff for the fees and costs incurred by Bayview Loan Servicing related to the first foreclosure complaint. Our review of the circuit court's award of attorney fees is based on the abuse of discretion standard. *Harris Trust & Savings Bank v. American National Bank & Trust Co. of Chicago*, 230 Ill. App. 3d 591, 598, 594 N.E.2d 1308, 1314 (1992) ("Our review will be confined to determining whether the trial court abused its discretion when it ruled that the award of attorney fees was reasonable."). In the present case, the circuit court did not abuse its discretion.

¶ 96 We agree with the circuit court's assessment of the effect of our Rule 23 order that reversed the summary judgment in the original foreclosure action. When we reversed the summary judgment, the parties were restored to their original positions prior to the entry of the summary judgment. All orders that the circuit court entered based on the validity of the summary judgment were also effectively vacated upon our reversal of the summary

judgment. Accordingly, at the time Bayview Loan Servicing sought attorney fees and costs with respect to its amended foreclosure complaint (included as a counterclaim in Nelson's lawsuit), there existed no order establishing that it was entitled to any attorney fees with respect to the first foreclosure action, but Nelson had already paid \$9,099.99 in fees as a part of the vacated redemption. With no previous order approving attorney fees, Bayview Loan Servicing was obligated to carry its burden of proving that it was entitled to all of the attorney fees it sought, including the \$9,099.99 Nelson previously had paid.

¶ 97 The circuit court found, however, that when Bayview Loan Servicing filed the original foreclosure action, Bayview Financial had legal and equitable ownership of the mortgage. This is a factual finding that we cannot reverse unless it is against the manifest weight of the evidence. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 17, 998 N.E.2d 1227 (a reviewing court reviews factual determinations of a trial court under the manifest weight of the evidence standard and will reverse factual findings only where the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based in evidence). The circuit court's finding that Bayview Loan Servicing was not the mortgagee during the litigation of the first foreclosure action was not against the manifest weight of the evidence.

¶ 98 The record supports the circuit court's finding that no valid contractual relationship existed with respect to Nelson and Bayview Loan Servicing during the period in question. At the time the original foreclosure action was filed, Old National Bank had been the original holder of the indebtedness secured by the mortgage, and the only assignment documents that existed named Bayview Financial as the entity that obtained legal interest

in the subject property. Bayview Loan Servicing did not have any contract rights to recover fees pursuant to the terms of the mortgage during this period of time. Accordingly, we affirm the circuit court's denial of fees and costs previously paid by Nelson as a result of the vacated redemption that was based on the improper foreclosure judgment. Bayview Loan Servicing is not entitled to these fees and costs.

¶ 99 In its brief, Bayview Loan Servicing argues that it was entitled to bring the initial foreclosure action as the loan servicer. However, nothing in the record establishes that Bayview Loan Servicing alleged that status of a "loan servicer" when it brought its initial foreclosure proceeding. In fact, we reversed the summary judgment in the foreclosure proceeding because Bayview Loan Servicing alleged that it owned Nelson's note and mortgage, but the documents it submitted in support of its request for summary judgment did not convey it any ownership interest.

¶ 100 Nelson argues that Bayview Loan Servicing was not entitled to any fees in the foreclosure proceeding because the Rule 23 order established that it was a stranger to the note and mortgage. However, on August 1, 2008, Bayview Loan Servicing's foreclosure counsel prepared and recorded a new assignment that established Bayview Loan Servicing as the assignee of Nelson's note and mortgage. The circuit court awarded Bayview Loan Servicing fees and costs that it incurred as a result of Nelson's loan default after June 6, 2011, in the amount of \$24,064.50. Bayview Loan Servicing was no longer a stranger to the note and mortgage when it incurred these fees as a result of the default.

¶ 101 Bayview Loan Servicing argues that it was entitled to additional attorney fees and costs for defending Nelson's claim pursuant to the Fair Debt Collection Practices Act.

¶ 102 In its affidavit in support of its fee request relating to its counterclaim, Bayview Loan Servicing itemized its fee request into three categories. The first category was for fees as a result of Nelson's loan default that it incurred after June 6, 2011, in the amount of \$24,064.50. As noted above, the circuit court approved these fees. The other two categories concerned fees that it incurred as a result of its defense against Nelson's claim pursuant to the Fair Debt Collection Practices Act, both before June 6, 2011, and after June 6, 2011. Bayview Loan Servicing maintained that it incurred \$10,552.50 in fees prior to June 6, 2011, in defending this claim and incurred \$8,864.10 in fees in defending the claim after June 6, 2011.

¶ 103 The circuit court did not award Bayview Loan Servicing any fees for defending the Fair Debt Collection Practices Act claim except for the \$1,000 noted above pursuant to Illinois Supreme Court Rule 137. In its cross-appeal, Bayview Loan Servicing argues that it is entitled to all of these additional fees pursuant to the terms of the mortgage, section 1692k(a)(3) of the Fair Debt Collection Practices Act, or Rule 137.

¶ 104 In its argument on appeal, Bayview Loan Servicing argues that the affidavit also included fees for defending Nelson's slander of title claim. However, nothing within the attorney's affidavit states that any of the charges related to defending the slander of title claim. The attorney's affidavit only mentions the mortgage foreclosure proceeding and defending Nelson's claim pursuant to the Fair Debt Collection Practices Act.

¶ 105 As noted above, the court determined that Bayview Loan Servicing was entitled to only \$1,000 in attorney fees in defending Nelson's claim under the Fair Debt Collection Practices Act pursuant to Rule 137. In reviewing the amount of a circuit court's award of

attorney fees, the reviewing courts use the abuse of discretion standard. *Harris Trust & Savings Bank*, 230 Ill. App. 3d at 598, 594 N.E.2d at 1314 (in foreclosure case, the reviewing court "will be confined to determining whether the trial court abused its discretion when it ruled that the award of attorney fees was reasonable"); *In re Marriage of Pitulla*, 256 Ill. App. 3d 84, 89, 628 N.E.2d 563, 566 (1993) (decision concerning the amount of an attorney fee award as a sanction is within the discretion of the trial court which the reviewing court will not disturb absent an abuse of discretion); *Carroll v. Wolpoff & Abramson*, 53 F.3d 626, 628 (4th Cir. 1995) (although the Fair Debt Collection Practices Act mandates an award of reasonable attorney fees, the amount of the reasonable attorney fees is within the sound discretion of the trial court).

¶ 106 Accordingly, in the present case, although Bayview Loan Servicing advances three theories under which it is entitled to attorney fees for defending Nelson's claim under the Fair Debt Collection Practices Act, regardless of the basis for the award of attorney fees, the circuit court has discretion to determine the amount of fees, and we cannot overturn that determination absent an abuse of discretion. In addition, Bayview Loan Servicing has not articulated a legal basis for concluding that the circuit court's exercise of discretion should be different depending on which basis it awards the fees. Accordingly, our review of the circuit court's award of \$1,000 in fees for defending the Fair Debt Collection Practices Act is limited to evaluating whether the circuit court abused its discretion in determining this amount.

¶ 107 The circuit court in the present case did not abuse its discretion in awarding \$1,000 to Bayview Loan Servicing for its attorney fees in defending Nelson's claim under

the Fair Debt Collection Practices Act. As noted above, in awarding Bayview Loan Servicing \$1,000 in attorney fees in defending this claim, the circuit court properly considered the timing of the motion as a factor in determining the amount of attorney fees to award. The court observed that if the "claim could have been readily disposed of by summary procedures, there is little justification for a claim for attorney's fees and expenses engendered in lengthy and elaborate proceedings in opposition." The court found that Nelson's claim under the Fair Debt Collection Practices Act could have been readily disposed of by summary procedures based on the statute of limitations rather than the lengthy and costly bench trial. Therefore, the court awarded Bayview Loan Servicing only \$1,000 in fees as a sanction under Rule 137.

¶ 108 Regardless of the theory upon which the circuit court awarded attorney fees, this same analysis is applicable in determining the appropriate amount of *reasonable* attorney fees to award. The court did not abuse its discretion in considering the timeliness of Bayview Loan Servicing's defense in determining the appropriate amount of fees to award for the defense. Our analysis of the circuit court's award would not be any different if we were to determine that Bayview Loan Servicing was also entitled to attorney fees for defense of this claim under the terms of the mortgage or section 1692k(a)(3) of the Fair Debt Collection Practices Act. No matter what the basis for awarding the fees, it is only entitled to recover *reasonable* attorney fees, and the circuit court's finding of \$1,000 as reasonable attorney fees was not an abuse of discretion.

¶ 109

CONCLUSION

¶ 110 For the foregoing reasons, the judgment of the circuit court of White County is hereby affirmed.

¶ 111 Affirmed.