2013 IL App (1st) 121692-U

THIRD DIVISION
March 27, 2013

No. 1-12-1692

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CITIBANK, N.A.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 M1 160136
	)	
MARK A. MURRAY,	)	Honorable
	)	Dennis M. McGuire,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Justices Hyman and Sterba concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant has forfeited and waived the review of certain issues on appeal through his failure to object both at trial and in a written posttrial motion and to support his arguments with citation to relevant authority. In the absence of a transcript or other record of trial, this court must presume that the judgment entered by the trial court, after a trial, was in conformity with the law and had a sufficient factual basis.

¶ 2 This is a collections action, in which plaintiff Citibank, N.A. (Citibank) filed a complaint against *pro se* defendant Mark Murray (Murray), alleging that he failed to pay the debt incurred through his use of a credit card issued by Citibank. Following a bench trial, the trial court

entered a judgment of $10,538.41, plus costs in favor of Citibank. Murray challenges, *pro se*, both that judgment and the proceedings which led to the entry of that judgment. We affirm.

¶ 3 Although Murray's various filings in this court are less than clear, this court was able to discern three issues on appeal: whether the trial court erred when it denied Murray's motion to dismiss Citibank's complaint; whether an affidavit filed in support of Citibank's complaint was "incomplete;" and whether the trial court erred when it entered judgment in favor of Citibank after trial. To the extent Murray's briefs raise other issues we find they are waived by his failure to clearly define them and because they were improperly raised for the first time in the reply brief (see Supreme Court Rule 341(h)(7), (j) (eff. July 1, 2008)).

¶ 4 Although the record on appeal does not include a report of proceedings, the following facts can be gleaned from the common law record.

¶ 5 In September 2011, Citibank filed a complaint alleging that Murray opened a credit card account, made purchases, and subsequently failed to pay a $10,538.41 balance. Attached to the complaint in support was the affidavit of Misty McConnell.

¶ 6 In her affidavit, McConnell averred that she was an employee of Citicorp Credit Services, Inc., a subsidiary of Citibank, which services credit card accounts owned by Citibank by maintaining and recording information in Citibank's records. She further averred that she was a custodian of records and had access to records concerning Murray's credit card ending in 8787, which was the subject of the lawsuit. McConnell also averred that Citibank's records indicated that this account contained Murray's name and billing address, listed the account's history, indicated a balance due and owing of $10,538.41, and reflected that charges were made to the account to purchase goods and services or cash advances. She then averred that Murray was provided with periodic billing statements for the account when there was activity and eventually failed to make required payments. McConnell finally averred that a true and correct copy of the

account statement sent to Murray for the period of May 5, 2011 through June 8, 2011 was attached to the complaint, and that this was a business record created and maintained by Citibank in the ordinary course of business activity. The attached statement indicated a balance of $10,538.41 on Murray's account with a due date of July 5, 2011.

¶ 7 On October 13, 2011, Murray filed, *pro se,* an answer and a motion to dismiss. The answer alleged that Citibank's complaint failed to state a claim upon which relief may be granted. The motion to dismiss alleged, *inter alia*, that Citibank had not shown proof of the original contract, that Citibank failed to establish that Murray was the person who applied for and used the credit card, and that credit card agreements were unconscionable and unenforceable contracts of adhesion. After the trial court denied the motion to dismiss, Murray filed a *pro se* motion to strike Citibank's "affidavit of debt." This motion was also denied.

¶ 8 After a trial in June 2012, the court entered judgment in the amount of $10,538.41, plus costs in favor of Citibank.

¶ 9 On appeal, Murray first contends that the trial court erred when it denied his motion to dismiss because Citibank's complaint failed to state a cause of action upon which relief could be granted.

¶ 10 The denial of a motion to dismiss is not a final and appealable order. *Cabinet Service Tile, Inc. v. Schroeder,* 255 Ill. App. 3d 865, 868 (1993). However, because an appeal from a final judgment puts the prior interlocutory orders which produced that judgment at issue, a court of review has the jurisdiction to review any interlocutory order which constituted a procedural step leading to the entry of the final judgment from which the appeal is taken. *Knapp v. Bulun*, 392 Ill. App. 3d 1018, 1023 (2009); see also *Hampton v. Cashmore,* 265 Ill. App. 3d 23, 25 (1994) (after the entry of a final order, all previous nonfinal orders become appealable). Accordingly, the denial of a motion to dismiss filed pursuant to section 2-615 of the Code of

Civil Procedure (735 ILCS 5/2-615 (West 2010)), may be reviewed, even after the entry of a final judgment. See *People ex rel. Alvarez v. Price,* 408 Ill. App. 3d 457, 465 (2011).

¶ 11 However, in order to properly preserve an issue for review, a party must object at trial and in a written posttrial motion. *Check v. Clifford Chrysler-Plymouth of Buffalo Grove, Inc .,* 342 Ill. App. 3d 150, 159 (2003); see also 735 ILCS 5/2-612(c) (West 2010) (all defects in pleadings, whether "in form or substance" not objected to before the trial court are waived). A doctrine related to the forfeiture rule is the doctrine of aider by verdict. *Adcock v. Brakegate, Ltd.,* 164 Ill. 2d 54, 60 (1995). Pursuant to this doctrine, if a party permits an action to advance to a verdict, all formal and purely technical and clerical errors in a complaint, as well as defective or imperfect facts essential to a cause of action, are cured by the entry of a verdict. *Adcock,* 164 Ill. 2d at 60-61; see also *ABN AMRO Services Co., Inc. v. Navarrete Industries, Inc.,* 383 Ill. App. 3d 138, 143 (2008). Although a defendant may raise, at any time, a claim that a complaint fails to state a recognized cause of action, this exception only applies when a complaint fails to state a recognized cause of action. *Adcock,* 164 Ill. 2d at 61. In other words, there is a distinction between a complaint that fails to plead a cause of action, which may be challenged at any time, and a complaint that defectively or imperfectly alleges a cause of action, which may not be challenged after the entry of a verdict. *Adcock*, 164 Ill. 2d at 61-62.

¶ 12 In the case at bar, this court cannot determine whether Murray renewed his argument that Citibank failed to state a claim upon which relief could be granted at trial because the record on appeal does not include a transcript of the trial, or other appropriate substitute (see Supreme Court Rule 323 (eff. Dec. 13, 2005)). In any event, the record does not contain a posttrial motion. Any doubts raised by the insufficiency of the record must be resolved against Murray, who, as the appellant, has the burden to present this court with a sufficiently complete record of the trial court proceedings to support his claims of error. *Midstate Siding & Window Co. v.*

Rogers, 204 Ill. 2d 314, 319 (2003), citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Because Murray failed to properly preserve his claim that the complaint failed to state a claim upon which relief may be granted for review, it is forfeited for purposes of this appeal. *Check,* 342 Ill. App. 3d at 159. Moreover, the doctrine of aider by verdict further precludes review of the issue because Murray allowed the case to proceed to verdict. That verdict cured not only any formal and purely technical defects in the complaint, but also any defect in failing to allege or in alleging defectively any substantial facts which are essential to a right of action. *Adcock,* 164 Ill. 2d at 60-61.

¶ 13 With regard to McConnell's affidavit, Murray argues that it is legally insufficient because McConnell has no personal knowledge of the facts of this case, is a "robo-signer" and committed perjury by signing the affidavit. However, Murray has failed to support these conclusions with any authority or relevant citations to the record. See Supreme Court Rule 341(h)(7) (eff. July 1, 2008) (argument shall contain citation to authority). Therefore, this issue is waived on appeal. See *Alvarez v. Pappas*, 374 Ill. App. 3d 39, 44 (2007), *aff'd.,* 229 Ill. 2d 217 (2008) (a point raised on appeal that is unsupported by citation to relevant authority is waived); *Wolfe v. Menard Inc.,* 364 Ill. App. 3d 338, 348 (2006) (conclusory assertions without supporting analysis are not enough to constitute "argument" pursuant to Rule 341).

¶ 14 Murray finally contends that the trial court's judgment in favor of Citibank, entered after trial, did not take into consideration documents that he filed with the court, permitted perjury by Citibank and its attorneys, and denied him a fair trial.

¶ 15 However, as discussed above, because the record on appeal does not include a transcript of the trial, or other appropriate substitute (see Supreme Court Rule 323 (eff. Dec. 13, 2005)), Murray has failed to satisfy his burden to present a sufficiently complete record of the proceedings to support of his claims of error. *Midstate Siding & Window Co.*, 204 Ill. 2d at 319.

When the issue on appeal relates to the conduct of a hearing or proceeding, the absence of a transcript or other record of that proceeding means that this court must presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Midstate Siding & Window Co.*, 204 Ill. 2d at 319.

¶ 16 Here, although Murray challenges the trial court's entry of judgment in favor of Citibank, the absence of a trial transcript is fatal to his claim because this court cannot discern from the record the content of the testimony or evidence presented or the court's reasoning in ruling as it did. Instead, this court must presume that the trial court's entry of judgment in favor of Citibank was both legally and factually correct. *Midstate Siding & Window Co.*, 204 Ill. 2d at 319.

¶ 17 Accordingly, the judgment of the circuit court is affirmed.

¶ 18 Affirmed.