2013 IL App (1st) 122716-U

FOURTH DIVISION
October 10, 2013

No. 1-12-2716

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BEVERLY BANK & TRUST CO., N.A.,	)	Appeal from the
	)	Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10 CH 36436
	)	
STANDARD BANK & TRUST CO., as Trustee under Trust Agreement dated May 24, 1995 and known as Trust No. 14887; STANDARD BANK & TRUST CO., as Trustee under Trust Agreement dated November 2, 1990 and known as Trust No. 12802; TIMOTHY P. GRANT, UNKNOWN OWNERS, and NON-RECORD CLAIMANTS,	)	
	)	Honorable
	)	Darryl B. Simko,
Defendants-Appellants.	)	Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices Fitzgerald Smith and Epstein concurred in the judgment.

ORDER

¶ 1 *HELD*: The trial court's orders appointing a receiver, denying Grant's motion to compel and granting summary judgment in favor of Beverly Bank are affirmed.

¶ 2 Plaintiff Beverly Bank & Trust Company, N.A. (Beverly Bank) filed a complaint in the circuit court of Cook County wherein it alleged it loaned defendant Timothy P. Grant $415,000. The loan was evidenced by a loan agreement and promissory note signed by Grant and dated February 5, 2010. The loan was secured with two mortgaged properties. The loan agreement reflected the principal amount of $415,000. The stated maturity date of the promissory note was June 5, 2010. Within the promissory note, Grant agreed to pay the loan in three consecutive monthly payments of interest only, commencing on March 5, 2010, and a final principal and interest payment of $417,590.87 due on June 5, 2010. After Grant failed to pay the principal of $415,000 by June 5, 2010, Beverly Bank filed a complaint on August 24, 2010 seeking to foreclose on the mortgaged properties. Grant filed affirmative defenses alleging unfair dealing and waiver based on Beverly Bank's collection of interest.

¶ 3 On December 9, 2011, Beverly Bank filed a motion for summary judgment and a judgment of foreclosure and sale. On March 13, 2012 the trial court granted Beverly Bank's motion.

¶ 4 On appeal, Grant seeks reversal of (1) the trial court's August 13, 2012 order approving the sale and distribution of the mortgaged properties and awarding a deficiency judgment to Beverly Bank, (2) the trial court's September 8, 2011 order

appointing a receiver for the mortgaged properties, and (3) the trial court's March 13, 2012 order granting summary judgment in favor of Beverly Bank. For the reasons that follow, we affirm the trial court's rulings.

¶ 5 BACKGROUND

¶ 6 Plaintiff, Beverly Bank & Trust Company, N.A. (Beverly Bank), and defendant, Timothy P. Grant, entered into a Business Loan Agreement (loan agreement), dated February 5, 2010. Pursuant to the loan agreement, Beverly Bank extended a loan to Grant in the principal amount of $415,000 over a period of four months. The loan agreement contained the following clauses:

> **DEFAULT.** Each of the following shall constitute an Event of Default under this Agreement:
>
> > **Payment Default.** Borrower fails to make any payment when due under the Loan.
>
> * * *
>
> **EFFECT OF AN EVENT OF DEFAULT.** If any Event of Default shall occur, except where otherwise provided in this Agreement or the Related Documents, all commitments and obligations of lender under this Agreement or the Related Documents or any other agreement

immediately will terminate *** and, at Lender's option, all Indebtedness immediately will become due and payable, all without notice of any kind to Borrower ***. In addition, Lender shall have all the rights and remedies provided in the Related Documents or available at law, in equity, or other wise. ***.

* * *

No waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. ***.

No prior waiver by Lender and Borrower, or between Lender and any Grantor, shall constitute a waiver of any of Lender's rights or of any of Borrower's or Grantor's obligations as to any future transactions. ***.

* * *

> **BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS BUSINESS LOAN AGREEMENT AND BORROWER AGREES TO ITS TERMS.**

The loan agreement is signed by Grant and an authorized signer for Beverly Bank.

¶ 7 The promissory note also contained the following clauses:

> **DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Note:
>
> > **Payment Default.** Borrower fails to make any payments when due under this Note.
>
> * * *
>
> **GENERAL PROVISIONS.** ***. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notes of dishonor. *** All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan ***; and take any

> other action deemed necessary by Lender without the consent or notice to anyone. ***.
>
> * * *
>
> **PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THE NOTE.**

¶ 8 Beverly Bank's loan to Grant was secured by two separate mortgaged properties: 9330 S. Longwood Drive, Chicago, Illinois 60643 (Longwood property) and 2138 W. 110th Place, Chicago, Illinois 60643 (110th Place property). Both mortgages include the following language:

> **EVENTS OF DEFAULT.** Each of the following, at Lender's option, shall constitute an Event of Default under this Mortgage:
>
> > **Payment Default.** Borrower fails to make any payment when due under the Indebtedness.
>
> **RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of an Event of Default and at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

* * *

> **Mortgagee in Possession.** Lender shall have the right to be placed in possession or to have a receiver appointed to take possession of all or any part of the Property, with the power to *** operate the property preceding foreclosure or sale, and to collect Rents from the Property.
>
> **Judicial Foreclosure.** Lender may obtain a judicial decree foreclosing Grantor's interest in all or any of the Property.

¶ 9 In an affidavit of Timothy Grant, which was attached as support to Grant's motion to dismiss and response to summary judgment, Grant testifies that this February 5, 2010 loan agreement and promissory note are part of a series of short-term loans dating back to 2006. Grant testifies that on each prior occasion when a promissory note matured, he and Beverly Bank would enter into a new loan agreement within two months of the maturity date.

¶ 10 On June 5, 2010, Grant had not paid the principal balance of the loan as required by the promissory note. Following the June 5, 2010 maturity date, representatives of Beverly Bank discussed with Grant the possibility of renewing his loan. Specifically,

Beverly Bank offered to renew the loan in exchange for Grant securing the renewed loan with additional collateral. In a document produced by Beverly Bank, it states that "[Beverly Bank] is moving forward with foreclosure to put pressure on Borrower to sell the collateral properties or pledge additional collateral." The parties did not come to an agreement and a renewed loan was not agreed to in writing or orally by the parties.

¶ 11 On June 30, 2010, Beverly Bank, through its attorneys, sent Grant a Notice of Default & Demand for Payment informing him that his loan was in default by reason of his failure to pay the principal balance of the loan when it matured on June 5, 2010. The record contains a receipt from the United States Postal Service submitted by Beverly Bank indicating that this notice was sent overnight and left at Grant's front door. Grant claims that he never received the notice.

¶ 12 On June 8, 2010, July 8, 2010 and August 5, 2010, Beverly Bank collected interest payments on the unpaid principal balance from a demand deposit account that Grant maintained at Beverly Bank. The interest collected on these three dates did not include the additional 3% interest that is applied following a default.

¶ 13 On August 24, 2010, Beverly Bank filed a verified complaint to foreclose mortgages and for other relief. On October 15,

2010, Grant filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure, claiming that his loan was not in default. See 735 ILCS 5/2-619 (West 2008). Grant's motion to dismiss was denied.

¶ 14 On March 8, 2011, Grant filed an answer to Beverly Bank's verified complaint with affirmative defenses. Grant's affirmative defenses included: (1) interest on the indebted loan was paid at the time the complaint was filed, (2) Beverly Bank had extended the maturity date of June 5, 2010 as a matter of law by collecting interest on the unpaid loan after June 5, 2010, (3) Beverly Bank breached its duty of good faith and fair dealing based on the fact that it had on prior occasions extended loans with Grant, and (4) Beverly Bank received payments of interest after the complaint was filed.

¶ 15 On March 15, 2011, Beverly Bank filed a motion for appointment of a receiver for the mortgaged properties. On September 8, 2011, the trial court granted Beverly Bank's request to appoint a receiver, but continued the matter to September 30, 2011 for status and approval of the receiver's bond. On September 30, 2011, the trial court approved the receiver's bond, but then required Beverly Bank to file a section 2-415 applicant's bond in the amount of $10,000. See 735 ILCS 5/2-415 (West 2008). Once the applicant's bond was paid, the order

appointing a receiver would become effective. On October 18, 2011, the trial court approved Beverly Banks's section 2-415 applicant's bond.

¶ 16 After Beverly Bank filed a motion to appoint a receiver, Grant filed two motions to compel. The first motion to compel sought to have Beverly Bank answer all outstanding discovery and the second motion to compel, which Grant raises in his briefs on appeal, sought to compel the production of discovery that Beverly Bank objected to producing, namely any and all discovery relating to transactions predating the promissory note and loan agreement of February 5, 2010. Grant argued that the documents were relevant in order to show prior conduct between the parties. Beverly Bank argued that they were not relevant because the issue of prior conduct had not been placed at issue in this litigation, either by Beverly Bank's claims or Grant's affirmative defenses. The trial court denied Grant's second motion to compel.

¶ 17 On December 9, 2011, Beverly Bank filed a motion for summary judgment and a judgment of foreclosure and sale. After the motion was fully briefed, on March 13, 2012, the trial court granted Beverly Bank's motion for summary judgment and judgment for foreclosure and sale.

¶ 18 On June 14, 2012, a judicial sale of the properties took place and the Longwood property sold for $230,000 and the 110th

Place property sold for $50,000. Beverly Bank was the highest bidder on both properties.

¶ 19 On August 13, 2012, the trial court approved the report of sale and distribution of the property and entered a deficiency judgment in favor of Beverly Bank and against Grant in the amount of $258,441.05. On the same date, the trial court also entered an order approving the receiver's final report and discharged the receiver.

¶ 20 On appeal, Grant seeks reversal of (1) the trial court's August 13, 2012 order approving the sale and distribution of the mortgaged properties and awarding a deficiency judgment to Beverly Bank, (2) the trial court's September 8, 2011 order appointing a receiver for the mortgaged properties, and (3) the trial court's March 13, 2012 order granting summary judgment in favor of Beverly Bank. Grant argues that the above orders must be reversed because Beverly Bank's bad faith precludes summary judgment in its favor, Grant did not default on his loan as of June 5, 2010, making the appointment of a receiver improper, and the trial court erred in denying Grant's second motion to compel because Grant was seeking relevant documents to prove a breach of good faith and fair dealing. For the reasons that follow, we affirm the trial court's rulings.

¶ 21 ANALYSIS

¶ 22 I. Summary Judgment

¶ 23 Grant argues that the trial court erred in granting summary judgment in favor of Beverly Bank because Beverly Bank's alleged bad faith precludes entry of summary judgment in its favor. Grant further argues that summary judgment was inappropriate because Grant was never in default on the maturity date because Beverly Bank's actions in continuing to collect interest on the loan impliedly extended the maturity date of the loan. For the reasons that follow, we affirm the trial court's grant of summary judgment.

¶ 24 Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2008). While use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a lawsuit [], it is a drastic means of disposing of litigation and therefore should be allowed only when the right of the moving party is clear and free from doubt. *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986).

¶ 25 Every contract implies good faith and fair dealing between the parties to it. *Bank One, Springfield v. Roscetti*, 309 Ill. App. 3d 1048, 1059 (1999). Accordingly, a bank has a duty of

good faith in dealing with a guarantor. *City National Bank v. Russell,* 246 Ill. App. 3d 302, 310 (1993). Good faith requires the party vested with contractual discretion to exercise it reasonably, and he may not do so arbitrarily, capriciously, or in a manner inconsistent with the reasonable expectation of the parties. *Carrico v. Delp,* 141 Ill. App. 3d 684, 690 (1986); see also *Chemical Bank v. Paul,* 244 Ill. App. 3d 772, 783 (1993).

¶ 26 The obligation of good faith and fair dealing is essentially used to determine the intent of the parties where a contract is susceptible to two conflicting constructions. *Northern Trust Co.* v. VIII South Michigan Associates, 276 Ill. App. 3d 355, 367 (1995); see *Resolution Trust Corp. v. Holtzman*, 248 Ill. App. 3d 105 (1993). Problems involving the obligation of good faith and fair dealing generally arise where one party to a contract is given broad discretion in performance. *Id.* Conversely, the good-faith duty to exercise contractual discretion reasonably does not apply where no contractual discretion exists. *Mid-West Energy Consultants, Inc. v. Covenant Home, Inc.*, 352 Ill. App. 3d 160, 165 (2004). The purpose of the implied covenant of good faith and fair dealing "is to ensure that parties do not take advantage of each other in a way that could not have been contemplated at the time the contract was drafted or do anything that will destroy the other party's right to receive the benefit

of the contract." *Gore v. Indiana Insurance Co.*, 376 Ill. App. 3d 282, 286 (2007).

¶ 27 Despite the foregoing good-faith principles, parties to a contract are entitled to enforce its terms to the letter, and an implied covenant of good faith cannot overrule or modify the express terms of a contract. *Northern Trust Co.*, 276 Ill. App. 3d at 367. The covenant of good faith and fair dealing does not enable a guarantor to read an obligation into a contract that does not exist. *Id.* at 368. Further, a borrower is not justified in relying on representations outside of or contrary to the contract he or she signs where the signer is aware of the nature of the contract and had a full opportunity to read the contract. *Id.* at 365. Parties are entitled to enforce the terms of their negotiated contracts to the letter without being mulcted for lack of good faith. *Mid-West Energy Consultants, Inc.*, 352 Ill. App. 3d at 166.

¶ 28 Here, we find that the terms of the promissory note and loan agreement were clear in that the principal was to paid by June 5, 2010. It is uncontested that the principal was not paid as of June 5, 2010, thus resulting in a default.

¶ 29 Grant cites to *First National Bank of Cicero v. Sylvester*, 196 Ill. App. 3d 902 (1990), as a case that is "on all fours" with this case. We disagree. In *Sylvester*, the bank refused to

extend Sylvester an additional $200,000 loan on top of the $800,000 line of credit the bank had already given. When the principal on the bank's note became due and Sylvester refused to pay, the bank filed a lawsuit against Sylvester and sought summary judgment on the unpaid note. In response, Sylvester counterclaimed arguing "that the bank breached an enforceable line of credit agreement with [Sylvester] by refusing in bad faith to loan [the $200,000]." The court denied the bank's motion for summary judgment finding that there was a material issue of fact as to whether the line of credit between the parties was still open. Here, unlike *Sylvester*, there is no question that the line of credit was terminated as of June 5, 2010 and the principal payment was due under the note. Accordingly, there is no such issue of fact here. As such, we do not find the holding of *Sylvester* to be applicable.

¶ 30 Grant's claim that Beverly Bank breached its duty of good faith and fair dealing is without merit. Notably, Grant has not indicated which terms in the contract Beverly Bank has acted upon in a way that violates its duty of good faith and fair dealing. Rather, Grant tries to bring in prior conduct between the parties to read new terms into the promissory note and loan agreement. Not only is the prior pattern of behavior between the parties irrelevant to the duty of good faith and fair dealing, a duty

that is applied to terms within the four corners of the contract, but such behavior cannot change the uncontested clear and unambiguous terms of the promissory note and loan agreement, which state that a default occurs upon the nonpayment of any payment. See *Northern Trust Co.*, 276 Ill. App. 3d at 367 (finding parties to a contract are entitled to enforce the terms of the contract to the letter and an implied covenant of good faith cannot overrule or modify the express terms of a contract).

¶ 31 Grant further argues that because Beverly Bank continued to collect interest after June 5, 2010, and did not collect interest at the 3% higher "default" rate, this shows that Beverly Bank did not actually believe Grant was in default. We find this argument to be without merit. First, despite what Beverly Bank "might have thought" when it filed its complaint, the plain terms of the loan agreement and the promissory note show that Grant was in default on June 5, 2010 when he did not pay the principal owed on the loan. Grant does not dispute that the terms of the promissory note and loan agreement are clear and unambiguous, and he does not dispute that the principal loan amount was not paid as of that date. Thus, Grant, who signed and read both the promissory note and loan agreement, knew that he was in default. Second, it is clear that, despite what Grant believes Beverly Bank thought, Beverly Bank considered Grant to be in default as

of June 5, 2010. That, of course, is why it sent the notice of default, attempted to work with Grant to avoid the harsh result of the lawsuit and filed a lawsuit against Grant when default had occurred. And third, as stated by Beverly Bank, although the promissory note states that the interest rate increases 3% following default, the same promissory note clearly states "Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them." Thus, the fact that Beverly Bank did not yet collect the higher interest rate on the loan following default is irrelevant.

¶ 32 Last, Grant argues that the maturity date of June 5, 2010, which was clearly stated in the loan agreement, was extended as a matter of law because Beverly Bank continued to collect interest on the unpaid principal amount after the default date of June 5, 2010. We disagree. As stated in *Highland Park State Bank v. Sheahen*, 149 Ill. App. 225, 229-30 (1909):

> "The payment of legal interest on a debt in advance is a sufficient consideration to support an agreement for an extension of the time of payment and such payment of interest by the principal is, of itself, sufficient *prima facie* evidence to extend the time of payment, and works a discharge of the surety.

> English v. Landon, 181 Ill. 614. However the mere payment of a part of the principal actually due, or all the interest actually due, will not constitute such new contract with a sufficient consideration. There must be an actual intention of both parties to extend the time of payment and an intention to pay and receive the consideration therefor. English v. Landon, *supra*."
> *Highland Park State Bank v. Sheahen*, 149 Ill. App. 225, 229-30 (1909).

Thus, any interest paid after the maturity date, which was due and collected after it became due, would not extend the maturity date as a matter of law. Along the same lines, and as has been long recognized in Illinois law, a promise to do that which one is already legally obligated to do is not consideration and does not create a new obligation. *Trisko v. Vignola Furniture Co.*, 12 Ill. App. 3d 1030, 1035 (1973). As such, the accrual of interest after the demand on the note does not constitute additional consideration since the makers of the note were already obligated by the note to pay interest after the maturity of the note. *North Bank v. Circle Investment Co.*, 104 Ill. App. 3d 363, 366 (1982). Thus, Beverly Bank's collection of interest that was due

under the promissory note did not extend the maturity date as a matter of law.

¶ 33 It is also clear that Beverly Bank did not "waive" and could not "waive" any claims that Grant was in default by not collecting interest at the higher "default" rate. The February 5, 2010 promissory note clearly states: "Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them." The loan agreement further states: "Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such a right or any other right." Thus, Beverly Bank did not waive its right to hold Grant accountable for his default on the loan.

¶ 34 Of note, although we find Grant's argument regarding the prior conduct between the parties to be irrelevant, it appears from the record that Beverly Bank did try and work with Grant to avoid the result of a default after June 5, 2010, as Grant states was the practice on prior occasions. Here, however, the parties did not come to an agreement to renew the loan and, therefore, Beverly Bank followed through with the default. Accordingly, even if Grant's arguments regarding prior behavior had any relevance here, they carry little weight considering Beverly Bank

did offer to work with Grant after the maturity date of the loan and the parties were unable to come to an agreement.

¶ 35 For all of the above reasons, because we cannot say that Beverly Bank's enforcement of the agreed-upon terms of the promissory note and loan agreement was arbitrary, capricious or done in a manner inconsistent with the reasonable expectation of the parties, we affirm the trial court's findings that Beverly Bank was entitled to summary judgment and Beverly Bank did not breach its duty of good faith and fair dealing.

¶ 36 II. Appointment of a Receiver

¶ 37 Grant next argues that the trial court erred in appointing a receiver in this case, but concedes that this point is moot in the event that we affirm the trial court's ruling on summary judgment.

¶ 38 We note, however, that regardless of our decision on appeal regarding summary judgment, the trial court correctly appointed a receiver for the mortgaged properties. The standard of review for an order appointing a receiver is *de novo*. *Wells Fargo Bank, N.A. v. YP Trillium*, LLC, 2013 IL App (1st) 121389 (2013); see *Mellon Bank, N.A. v. Midwest Bank & Trust Co.*, 265 Ill. App. 3d 859 (1993); *CenterPoint Properties Trust v. Olde Prairie Block Owner, LLC*, 398 Ill. App. 3d 388, 392 (2010); *Bank of America, N.A. v. 108 N. State Retail LLC*, 401 Ill. App. 3d 158, 164-65

(2010).

¶ 39 Section 15-1701 of the Illinois Mortgage Foreclosure Law (IMFL) states that a receiver shall be appointed:

> "if (I) the mortgagee is so authorized by the terms of the mortgage or other written instrument, and (ii) the court is satisfied that there is a reasonable probability that the mortgagee will prevail on a final hearing of the cause, the mortgagee shall upon request be placed in possession of the real estate, except that if the mortgagor shall object and show good cause, the court shall allow the mortgagor to remain in possession."
>
> 735 ILCS 5/15-1701(b)(2) (West 2008).

Further, this court has held that a "proven default establishes a reasonable probability of succeeding in a mortgage foreclosure action." *Bank of America*, 401 Ill. App. 3d at 166. Thus, Grant's admission that he did not pay the principal amount that was due on June 5, 2010, an admission of default pursuant to the language of the promissory note, was sufficient to approve the appointment of a receiver. Accordingly, we affirm the trial court's appointment of a receiver in this case.

¶ 40 III. Motion to Compel

¶ 41 Grant argues that the trial court erred when it denied his second motion to compel. Specifically, Grant argued that the discovery requested, any and all documents regarding the relationship between the parties prior to the February 5, 2010 promissory note and loan agreement, was relevant to this litigation and, therefore, discoverable. Beverly Bank argued that the requested discovery was not relevant because it did not call into question the parties' prior conduct and Grant did not call into question the parties prior conduct through his affirmative defenses. The trial court denied the second motion to compel in a written order without explanation. For the reasons that follow, we affirm the trial court's denial of Grant's second motion to compel.

¶ 42 The trial court possesses broad discretion with respect to discovery. *Castro v. Brown's Chicken & Pasta, Inc.,* 314 Ill. App. 3d 542, 554 (2000). Discovery should be denied where there is insufficient evidence to show that the requested discovery is relevant. *Dufour v. Mobile Oil Corp.,* 301 Ill. App. 3d 156, 160 (1998). A reviewing court shall not disturb the trial court's ruling on discovery matters unless its decision is an abuse of discretion. *Castro,* 314 Ill. App. 3d at 554. An abuse of discretion exists where no reasonable person would take the position adopted by the trial court, *In re Marriage of Knoche,*

322 Ill. App. 3d 297, 308 (2001), or where the trial court acts arbitrarily, fails to employ conscientious judgment, and ignores recognized principles of law. *Castro,* 314 Ill. App. 3d at 554.[1]

¶ 43 Here, we cannot say that no reasonable person would take the position of the trial court. Beverly Bank filed its complaint for foreclosure and other relief after Grant defaulted on a provision of the promissory note, namely to pay the principal owed by June 5, 2010. In response, Grant does not argue that the language of the promissory note was unclear or ambiguous, but rather, he raises four allegations in his affirmative defenses that do not call into question the parties' behavior prior to the February 5, 2010 promissory note and loan agreement. The alleged affirmative defenses raised by Grant were: (1) interest on the indebted loan was paid at the time the complaint was filed, (2) Beverly Bank had extended the maturity date of June 5, 2010 as a

[1] Grant argues that the standard of review is *de novo* "if the facts are uncontroverted and the issue is the trial court's application of the law to the facts." However, the cases cited by Grant deal with the disclosure of records that are privileged or otherwise not to be disclosed pursuant to statute or common law, such as mental health records. Because "a trial court lacks the discretion to compel the disclosure of information that is privileged or otherwise exempted by statute or by common law," *In re Marriage of Bonneau*, 294 Ill. App. 3d 720, 723 (1998), the review in those cases is *de novo*. Here, we are not dealing with the disclosure of documents that are protected by statute or common law.

matter of law by collecting interest on the unpaid loan after June 5, 2010, (3) Beverly Bank breached its duty of good faith and fair dealing based on the fact that it had on prior occasions extended loans with Grant, and (4) Beverly Bank received payments of interest after the complaint was filed. Each one of these affirmative defenses deals with the terms of the February 5, 2010 promissory note and loan agreement as well as the actions of the parties after default occurred. They do not call into question the parties interactions prior to February 5, 2010. As such, we cannot say that the trial court acted arbitrarily, failed to employ conscientious judgment, ignored recognized principles of law or took a position that no other reasonable person would have in denying Grant's second motion to compel. See *In re Commissioner of Banks & Real Estate*, 327 Ill. App. 3d 441, 477 (2001).

¶ 44 CONCLUSION

¶ 45 For the reasons stated above, we affirm the trial court's findings.

¶ 46 Affirmed.