2015 IL App (1st) 143112-U

FOURTH DIVISION
November 19, 2015

No. 1-14-3112

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MB FINANCIAL BANK, N.A.,	)	Appeal from the
	)	Circuit Court
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	
ARUN K. VELUCHAMY,	)	No. 13 CH 12375
	)	
Defendant-Appellant, and	)	
	)	
HEARTLAND BANK AND TRUST COMPANY, as assignee of Federal Deposit Insurance Corporation, as receiver for Western Springs National Bank and Trust Co.,	)	
	)	
Defendant-Appellee,	)	
	)	
	)	
(The Pinnacle Condominium Association, an Illinois not-for-profit corportation, Nonrecord claimants and Unknown Owners,	)	Honorable
	)	Pamela McLean Meyerson,
	)	Judge Presiding.
	)	
Defendants).	)	

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court had personal jurisdiction over defendant after he was properly served by publication. Therefore, the judgment of foreclosure and sale as well as all subsequent orders were properly entered. Additionally, defendant forfeited any challenge to Heartland's junior lien position by failing to challenge the finding on appeal.

¶ 2 Plaintiff, MB Financial Bank, N.A., filed a mortgage foreclosure complaint in May 2013, against defendant Arun K. Veluchamy. In March 2014, the trial court entered a judgment for foreclosure and sale in plaintiff's favor. A judicial sale was held and plaintiff filed a motion to confirm the sale in August 2014. In October 2014, the trial court granted plaintiff's motion to confirm the sale.

¶ 3 Defendant appeals, arguing that (1) the judgment of foreclosure and sale and all subsequent orders are void because the trial court lacked subject matter jurisdiction and personal jurisdiction over defendant; and (2) the trial court erred in approving and confirming the sale of the property because the judgment of foreclosure was void and it misapplied section 15-1508(b) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1508(b) (West 2012)).

¶ 4 In May 2013, plaintiff filed a complaint to foreclose mortgage against defendants. The complaint alleged that on June 2, 2005, defendant, as mortgagor, executed a mortgage in the amount of $1,150,000, for the property located at 21 East Huron Street, Unit 4204, in Chicago, Illinois. A mortgage modification was entered into on October 15, 2010. The complaint stated that defendant had not made the monthly payments since January 2013. The total amount due at the time of the complaint was $983,460.64.

¶ 5 In August 2013, an attorney for plaintiff filed an affidavit of publication, stating that he "has made due inquiry to find" defendant, "whose place of residence is 21 E. Huron Street, Unit 4204, Chicago, IL 60610, but who is concealed within this State, so that process cannot be

served upon him." In December 2013, plaintiff filed motions for entry of an order of default and for summary judgment of foreclosure and sale against defendant. The motion for default stated that defendant was served in August 2013, but has failed to appear, answer, or otherwise plead. In February 2014, plaintiff filed an affidavit of publication, again stating that due inquiry was made to find defendant, but he was concealed within the State. The affidavit further stated that according to the affidavits of special process servers attached as an exhibit, plaintiff "has made nineteen unsuccessful attempts at service upon [defendant] at five different locations." The attached affidavits included seven attempts at the subject property, an attempt at defendant's former place of employment in Hillside, an attempt at a high rise building at 25 East Superior in Chicago, an attempt at the Dirksen Courthouse on Dearborn in Chicago for motion call on "Veluchamy," and nine attempts at a residence in Oak Brook, in which defendant's name is listed in the directory but the intercom was disconnected.

¶ 6 On March 14, 2014, the trial court entered an order of default against defendant as well as a judgment of foreclosure and sale. On April 8, 2014, defendant filed a motion to quash service of process by publication. Defendant asserted that plaintiff "has failed to expend the necessary effort to secure jurisdiction by service of process on the defendant." Defendant argued that plaintiff failed to fully comply with Circuit Court Rule 7.3 by not including defendant's Oak Brook residence on the affidavit of publication, and that the affidavit from the special process server in regard to the subject property was not notarized and was void. In an affidavit, defendant stated that he has not been served and has resided at both the subject property and the Oak Brook residence for more than four years.

¶ 7 In June 2014, plaintiff filed a notice of foreclosure sale, listing the sale date as June 17, 2014. Plaintiff also filed a response to defendant's motion to quash service. In response,

plaintiff stated that it complied with circuit court rules by sending the affidavit to the subject property and it was unaware that defendant resided at the Oak Brook residence, noting that defendant's affidavit stated that he resided at both the subject property and the Oak Brook residence. Plaintiff attached a new version of the affidavit of the special process server regarding service attempts at the subject property that was sworn and notarized.

¶ 8 Following the trial court's order for a supplemental response, plaintiff filed a revised affidavit of publication on June 30, 2014. The revised affidavit from one of plaintiff's attorney stated that he performed a "diligent search and inquiry *** to locate the place of residence and/or other places at which to serve [defendant] by searching the loan documents at issue in this case, the Cook County Assessor's website, the Cook County Recorder of Deeds' website, Google, whitepages.com, LinkedIn, the Illinois Secretary of State's website, PeopleSmart, and the Northern District of Illinois United States Bankruptcy Court's website."

¶ 9 Following a hearing on August 6, 2014, the trial court denied defendant's motion to quash service of process by publication and held that the judicial sale may proceed on the following day, August 7. Later that day, defendant filed a motion to vacate *ex-parte* judgment of foreclosure, order of default and to strike the complaint. On the morning of August 7, 2014, defendant filed a motion to void the judgment and cancel the judicial sale, again challenging service of process, in that "service of process was never personally effectuated" on defendant. On August 13, 2014, plaintiff filed a motion for confirmation of judicial sale and additional relief, stating that the subject property was sold at a judicial sale on August 7, 2014.

¶ 10 On August 15, 2014, 21 E Huron LLC filed a petition to intervene, stating that Chezi Rafaeli and Susan Rafaeli, the highest bidders at the judicial sale, assigned their right, title and interest, in and to the certificate of sale to 21 E Huron LLC. 21 E Huron LLC also filed motion

for ordering approving the sale and distribution, motion for order of possession, and motion for order directing issuance of selling officer's deed. The certificate of sale stated that the subject property sold for $1,400,000 at the judicial sale. The report of sale and distribution stated that the total amount of indebtedness was $1,087,467.82, leaving a surplus of $312,532.18. On August 25, 2014, defendant Heartland Bank and Trust (Heartland) filed an appearance and a petition for turnover of surplus funds from the foreclosure sale and it possessed an interest in the property as a lien holder.

¶ 11 In August 2014, the trial court denied both defendant's motion to void the judgment and cancel the judicial sale and defendant's motion to vacate *ex-parte* judgment of foreclosure, order of default, and to strike the complaint. In September 2014, defendant filed a motion to dismiss the foreclosure proceeding resulting from reinstatement, and a motion for evidentiary hearing as to valuation and on plaintiff's motion to confirm sale.

¶ 12 On October 7, 2014, the trial court granted 21 E Huron LLC's petition to intervene and that Heartland was found to have "proven up junior mortgage lien per the order of foreclosure and sale." Also on that date, the trial court entered an order approving the second amended report of sale and distribution and confirming the judicial sale. The order also included a notation that "[t]he judgment of foreclosure dated March 14, 2014 is amended to provide that there is no deficiency. Therefore, no deficiency judgment is entered on the foreclosure count or on Count III." On October 8, 2014, the trial court denied defendant's motion to dismiss foreclosure proceeding resulting from reinstatement.

¶ 13 This appeal followed.[1]

[1] We note that Heartland and 21 E Huron LLC also filed appellee briefs on appeal.

¶ 14 Defendant first argues that the trial court lacked personal and subject matter jurisdiction over necessary parties rendering the judgment of foreclosure and sale as well as all subsequent orders void.

¶ 15 "To enter a valid judgment, a court must have both jurisdiction over the subject matter and jurisdiction over the parties." *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17. A judgment entered without jurisdiction over the parties is void and may be challenged at any time. *Id.* "Personal jurisdiction may be established either by service of process in accordance with statutory requirements or by a party's voluntary submission to the court's jurisdiction." *Id.* ¶ 18. We review the trial court's denial of defendant's motion to quash service of process *de novo*. *BAC Home Loans Servicing, LP v. Pieczonka*, 2015 IL App (1st) 133128, ¶ 7.

¶ 16 Initially, we observe that defendant's assertion that the trial court lacked subject matter jurisdiction lacks merit. "In a civil lawsuit that does not involve an administrative tribunal or administrative review, jurisdiction consists solely of subject matter or personal jurisdiction. Subject matter jurisdiction is defined solely as the power of a court to hear and determine cases of the general class to which the proceeding in question belongs." *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 39. "Subject matter jurisdiction refers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs, and this jurisdiction extends to all justiciable matters." (Citations omitted.) *Id.* ¶ 35; see also Ill. Const. 1970, art. VI, § 9. "To invoke the circuit court's subject matter jurisdiction, a party need only present a justiciable matter, *i.e.*, a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." (Citations omitted.) *Id.* Defendant's contentions in the

trial court and on appeal do not challenge the trial court's power to hear a mortgage foreclosure matter, which it clearly had, but rather these contentions are singularly focused on personal jurisdiction. Therefore, the only jurisdictional issues presented on appeal relate to the question of personal jurisdiction.

¶ 17 "Service of process serves the dual purposes of protecting a defendant's right to due process by allowing proper notification and an opportunity to be heard." *Bank of New York Mellon v. Karbowski*, 2014 IL App (1st) 130112, ¶ 12. "Failure to effect service as required by law deprives a court of jurisdiction over the person and any default judgment based on defective service is void." *Id.* "Specifically, a foreclosure judgment entered without service of process is void." *Id.*

¶ 18 "Section 2-206(a) of the Illinois Code of Civil Procedure [(Code)] provides for service by publication in cases involving property within the jurisdiction of the court." *Id.* ¶ 13 (citing 735 ILCS 5/2-206(a) (West 2008)). Section 2-206(a) provides, in relevant part:

> "Whenever, in any action affecting property or status within the jurisdiction of the court, including an action to obtain the specific performance, reformation, or rescission of a contract for the conveyance of land, plaintiff or his or her attorney shall file, at the office of the clerk of the court in which the action is pending, an affidavit showing that the defendant resides or has gone out of this State, or on due inquiry cannot be found, or is concealed within this State, so that process cannot be served upon him or her, and stating the place of residence of the defendant, if known, or that upon diligent inquiry his or her place of residence cannot be

> ascertained, the clerk shall cause publication to be made in some newspaper published in the county in which the action is pending." 735 ILCS 5/2-206(a) (West 2012).

¶ 19 In addition, the Cook County circuit court adopted a rule that further expands on the requirement for the affidavit:

> "Pursuant to 735 ILCS 5/2-206(a), due inquiry shall be made to find the defendant(s) prior to service of summons by publication. In mortgage foreclosure cases, all affidavits for service of summons by publication must be accompanied by a sworn affidavit by the individual(s) making such 'due inquiry' setting forth with particularity the action taken to demonstrate an honest and well directed effort to ascertain the whereabouts of the defendant(s) by inquiry as full as circumstances permit prior to placing any service of summons by publication." Cook Co. Cir. Ct. R. 7.3 (Oct. 1, 1996).

¶ 20 "Although the Code contemplates service by publication, our court long ago recognized that such service is 'an extraordinary means of serving notice—one unknown at the common law' and that, from the perspective of the person to be notified, it is the 'least satisfactory method' of giving notice and 'often it is no notice at all.' " *Karbowski*, 2014 IL App (1st) 130112, ¶ 13 (quoting *Public Taxi Service Inc. v. Ayrton*, 15 Ill. App. 3d 706, 713 (1973)). "A party defending notice by publication 'must show a strict compliance with every requirement of the statute.' " *Id.* (quoting *Illinois Valley Bank v. Newman*, 351 Ill. 380, 383 (1933)).

¶ 21 Here, defendant argues that service by publication is not permitted in mortgage foreclosures, but instead only personal service can be effectuated to attain personal jurisdiction over a defendant. The crux of defendant's argument is based on a sentence taken from the Illinois Supreme Court decision *ABN AMRO Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526 (2010).

¶ 22 In *McGahan*, the question on appeal in two consolidated cases was whether "a mortgagee must name a personal representative for a deceased mortgagor in a mortgage foreclosure proceeding in order for the circuit court to acquire subject matter jurisdiction." *McGahan*, 237 Ill. 2d at 528. In those cases, the mortgagee bank filed a complaint for foreclosure against the mortgagor, but later discovered that the mortgagor had died. The mortgagee declined to name a personal representative in the foreclosure case. *Id.* at 528-29. The trial court subsequently dismissed the mortgagee's complaint, determining that the foreclosure was a *quasi in rem* proceeding in which the mortgagor is a necessary party. *Id.* at 529-30. The facts of the consolidated case were substantially similar and the trial court dismissed the mortgagee's complaint. *Id.* at 531.

¶ 23 The supreme court extensively analyzed the question of whether mortgage foreclosure proceedings were properly considered *in rem* or *quasi in rem* proceedings. The court concluded:

> "a mortgage foreclosure proceeding must be deemed a *quasi in rem* action. One of the pivotal differences between *in rem* and *quasi in rem* actions is whether the defendant is the property or a named person. In *in rem* actions, the property itself is the defendant, while in *quasi in rem* actions, a named party is the defendant. In a foreclosure action, the property is not the

> defendant. Rather, the mortgagor, the person whose interest in the real estate is the subject of the mortgage, is a necessary party defendant to the foreclosure proceedings. As such, the proceeding must be brought against a named party and a foreclosure action must be a *quasi in rem* action." (Citations omitted.) *Id.* at 535-36.

¶ 24 The court further stated,

> "Moreover, in foreclosure actions, the property is not the instrumentality of the wrong, nor is it responsible for the plaintiff's injury. The mortgagor is the instrumentality of the wrong. It was he or she who breached the contract by defaulting on the note secured by the mortgage. The foreclosure action is based on the note, the vehicle which gives the plaintiff the legal right to proceed against the property. The object of the foreclosure action is to enforce the obligation created by that contract, through the property, but against a specific person." *Id.* at 536.

¶ 25 The supreme court then made the following statement, upon which defendant bases his entire argument on appeal. "Likewise, because the mortgagor is a necessary party in a foreclosure action, it is necessarily true that there must be personal service on the mortgagor, *i.e.*, 'citation' to him or her." *Id.* (citing *Rockwell v. Jones*, 21 Ill. 279, 285 (1859)). However, the court continued, observing that in *in rem* proceedings, "personal service is not required on any person, not even the owner," instead public citation is given to the world. *Id.* The court noted this distinction in confirming that foreclosure proceedings are properly characterized as *quasi in rem*. *Id.*

¶ 26 Significantly, the supreme court never considered the question of whether section 2-206(a) and service by publication was permissible in foreclosure proceedings. That question was never before the court. Rather, the court's use of the term "personal service" was to contrast *quasi in rem* proceedings, where the mortgagor must be served with process, from *in rem* proceedings, in which no person must be served with the complaint. Defendant's argument takes a single sentence from a case in which the question of service by publication was not raised to invalidate an alternate method of service in foreclosure proceedings. Defendant fails to cite any authority beyond the *McGahan* sentence to support his argument. No case has interpreted this sentence to require personal service such that service by publication and section 2-206(a) are not applicable in foreclosure cases. Nothing in *McGahan* suggested a broader interpretation such that service by publication was no longer valid in foreclosure cases. On the contrary, recent cases have continued to apply section 2-206(a) to mortgage foreclosure cases. See *BankUnited v. Velcich*, 2015 IL App (1st) 132070; *JPMorgan Chase Bank v. Ivanov*, 2014 IL App (1st) 133553; *Karbowski*, 2014 IL App (1st) 130112; *Deutsche Bank National Trust Co. v. Brewer*, 2012 IL App (1st) 111213. We decline to interpret the use of the term "personal service" by the *McGahan* court to eliminate the application of section 2-206(a) for service by publication in mortgage foreclosure proceedings.

¶ 27 We further find defendant's reliance on *Metrobank v. Cannatello*, 2012 IL App (1st) 110529, to be misplaced. There, the reviewing court considered "personal service" under section 15-1508(e) of the Foreclosure Law as it relates to a personal deficiency judgment. *Id.* ¶ 9. The court in that case did not consider the question of service by publication in foreclosure proceedings.

¶ 28 Since case law supports the use of service by publication in foreclosure proceedings, we turn to defendant's next argument that plaintiff's affidavit of publication failed to strictly comply with section 2-206(a).

¶ 29 "The statutory prerequisites for service by publication, including due diligence and due inquiry, must be strictly complied with in order for a court to obtain jurisdiction over a defendant." *Velcich*, 2015 IL App (1st) 132070, ¶ 30. " 'Our courts have determined that these statutory prerequisites are not intended as *pro forma* or useless phrases requiring mere perfunctory performance but, on the contrary, require an honest and well-directed effort to ascertain the whereabouts of a defendant by inquiry as full as circumstances permit.' " *Id.* (quoting *Bank of New York v. Unknown Heirs & Legatees*, 369 Ill. App. 3d 472, 476 (2006)).

¶ 30 Here, the revised affidavit of publication, filed at the trial court's request on June 30, 2014, provided additional details of the attempts to locate and serve defendant. An attorney for plaintiff stated that he performed a "diligent search and inquiry *** to locate the place of residence and/or other places at which to serve [defendant] by searching the loan documents at issue in this case, the Cook County Assessor's website, the Cook County Recorder of Deeds' website, Google, whitepages.com, LinkedIn, the Illinois Secretary of State's website, PeopleSmart, and the Northern District of Illinois United States Bankruptcy Court's website." In addition, plaintiff's counsel attached affidavits of special process servers detailing the 19 attempts to personally serve defendant at 5 different locations, including both residences where defendant admitted residing. Notably, at both residences, the process server was unable to reach the property due to a doorman at the subject property and an intercom at his Oak Brook residence.

¶ 31 Defendant contends that the process server did not make reasonable efforts to ascertain defendant's whereabouts. Defendant cites a recent amendment to section 2-203(a) of the Code "to require process servers to do more than throw up their hands when confronted with a doorman or a gated community." The amendment provides:

> "An employee of a gated residential community shall grant entry into the community, including its common areas and common elements, to a process server authorized under Section 2-202 of this Code who is attempting to serve process on a defendant or witness who resides within or is known to be within the community. As used in this Section, 'gated residential community' includes a condominium association, housing cooperative, or private community." Pub. Act 98-966 (eff. Jan. 1, 2015) (amending 735 ILCS 5/2-203(a) (West 2014)).

¶ 32 Defendant fails to note that this statute was amended effective January 1, 2015, and was not in existence at the time plaintiff was seeking to serve defendant with process. Moreover, the onus of this amendment falls on the doorman or gated community representative, not a process server. Regardless, this amendment was not in existence in 2013 at the time plaintiff was seeking to serve defendant with process and has no bearing on the current case.

¶ 33 We find that the revised affidavit of publication demonstrated strict compliance by plaintiff and established due inquiry and due diligence in attempts to locate and to serve defendant. The affidavit showed that an attorney for plaintiff searched numerous databases and online resources for defendant's location and attempted service at five different locations a total of 19 times, including 16 attempts at the two addresses defendant admits to residing. For each

attempted address, the process server detailed the time service was attempted and the reason why defendant could not be served, including leaving voicemails and lack of access by front desk at the subject property. Plaintiff undertook an "honest and well-directed effort to ascertain the whereabouts of a defendant by inquiry as full as circumstances permit." See *Velcich*, 2015 IL App (1st) 132070, ¶ 30 (finding that the plaintiff's 14 attempts at service at five different addresses established due inquiry and due diligence). Therefore, we conclude that plaintiff established that it made a diligent inquiry and detailed the specific actions it took to ascertain defendant's location sufficient to justify service by publication in accordance with section 2-206(a) of the Code and local rule 7.3. See 735 ILCS 5/2-206(a) (West 2012); Cook Co. Cir. Ct. R. 7.3 (Oct. 1, 1996). Accordingly, the trial court had personal jurisdiction over defendant and had the authority to enter the judgment of foreclosure and sale.

¶ 34 Defendant also asserts that the trial court erred in approving and confirming the sale of the subject property. First, defendant contends that the order confirming the sale is void because the judgment of foreclosure and sale was void for lack of personal jurisdiction. Since was have already held that the trial court had personal jurisdiction and the judgment of foreclosure and sale was properly entered, we reject this contention without further comment.

¶ 35 Next, defendant argues that the trial court misapplied section 15-1508(b) of the Foreclosure Law (735 ILCS 5/15-1508(b) (West 2012)) because defendant's motion to void the judgment and cancel the judicial sale was filed prior to the sale of the property. According to defendant, the trial court was not limited to the provisions of section 15-1508(b) in determining whether to confirm the sale and had the inherent authority to review defendant's response in opposition to plaintiff's motion to confirm the sale.

¶ 36 Under the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1101 *et seq.* (West 2010)), "after a judicial sale and a motion to confirm the sale has been filed, the court's discretion to vacate the sale is governed by the mandatory provisions of section 15-1508(b)." *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 18. Section 15-1508(b) of the Foreclosure Law confers broad discretion on trial courts in approving or disapproving judicial sales, and a trial court's decision will not be disturbed absent an abuse of discretion. *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008).

¶ 37 Section 15-1508(b) of the Foreclosure Law provides:

> "Upon motion and notice in accordance with court rules applicable to motions generally, which motion shall not be made prior to sale, the court shall conduct a hearing to confirm the sale. Unless the court finds that (i) a notice required in accordance with subsection (c) of Section 15-1507 [735 ILCS 5/15-1507(c) (West 2012)] was not given, (ii) the terms of sale were unconscionable, (iii) the sale was conducted fraudulently, or (iv) justice was otherwise not done, the court shall then enter an order confirming the sale." 735 ILCS 5/15-1508(b) (West 2012).

¶ 38 Defendant's argument lacks merit. Defendant's motion to void judgment and cancel the judicial sale was denied on August 29, 2014. The order confirming the judicial sale was not entered until October 7, 2014. Thus, the motion to void judgment was no longer before the court at the time it confirmed the sale. Defendant cites no authority that a previously denied motion prevented the trial court from confirming the sale pursuant to section 15-1508(b).

¶ 39 Defendant argues in the alternative that even if section 15-1508(b) was applicable, the trial court erred in failing to find that "justice was not otherwise done" in the judicial sale. See 735 ILCS 5/15-1508(b)(iv) (West 2012). According to defendant, justice was not done because (1) the trial court lacked jurisdiction, and (2) the bidding process was chilled due to pending motions which resulted in a lower purchase price and frustration of the public policy goal of maximizing the property's sale price. We have already found the trial court had jurisdiction and cannot support defendant's claim.

¶ 40 We find defendant's assertion that the bidding process was chilled to be speculative. The only pending motion mentioned by defendant was his own motion to void judgment and cancel the judicial sale, which was filed after 10 a.m. on the day of the judicial sale. It is unclear how a motion filed less than an hour before the scheduled judicial sale impeded the sale. Further, the subject property was sold for $1,400,000, which was in excess of defendant's indebtedness, to third-party bidders. We find no support for defendant's claims that the bidding process was chilled such that justice was not done under section 15-1508(b) of the Foreclosure Law. The trial court did not err in confirming the judicial sale.

¶ 41 Finally, Heartland argues in its response brief that defendant has forfeited any challenge to the trial court's finding in an order on October 7, 2014, that Heartland had "proven up [its] junior mortgage lien per the order of foreclosure and sale in an amount of and exceeding $312,532.18." The order further stated that, "Heartland shall file with chief judge for turnover of the surplus funds in this case." In his notice of appeal, defendant included this order finding that Heartland had proven up its junior mortgage lien, but did not raise any arguments concerning this order in his opening brief on appeal. "Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6,

2013). Since no argument was presented by defendant in his opening brief, any issue regarding the finding that Heartland has proven up its position as a junior mortgage lienholder has been forfeited. Further any argument raised in the reply by defendant is also forfeited.

¶ 42 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 43 Affirmed.