2017 IL App (1st) 153282-U

FIRST DIVISION
March 20, 2017

No. 15-3282

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MLB SUB 1, LLC, Plaintiff-Appellee, v. CHRIS CHUDZIK, A/K/A CHRISTOPHER CHUDZIK, CITY OF CHICAGO, NORTH MANAGEMENT SERVICES, INC., UNKNOWN OWNERS and NON-RECORD CLAIMANTS, Defendants-Appellants.	Appeal from the Circuit Court of Cook County, Chancery Division No. 13 CH 08104 Honorable Anna M. Loftus Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Connors and Justice Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly denied defendant's motion to vacate summary judgment in favor of plaintiff. Defendant failed to establish that the assignment of his mortgage loan was unenforceable.

¶ 2 This is a mortgage foreclosure case. The trial court granted summary judgment to the plaintiff. Defendant subsequently filed a petition to vacate the entry of summary judgment

which the trial court denied. The court then entered an order confirming the sale. Defendant appeals the rejection of his motion to vacate, and we affirm.

¶ 3 BACKGROUND

¶ 4 On July 26, 1999, defendant Chris Chudzik executed a promissory note and mortgage granting New Century Mortgage Corp. a security interest in the property commonly known as 5549 South Natoma Avenue, in Chicago. Defendant failed to make the required payments pursuant to the mortgage and note. In 2007, the mortgage was assigned to Property Asset Management, Inc. ("PAM"). In 2013, Property Asset Management assigned its mortgage to MLB Sub 1, LLC ("MLB Sub").

¶ 5 On March 26, 2013, the original plaintiff filed a complaint to foreclose the mortgage in its capacity as the holder of the mortgage and note. Defendant filed his answer to the complaint which did not raise any affirmative defenses. On November 20, 2014, an order was entered substituting MLB Sub as the party-plaintiff. Plaintiff filed a motion for summary judgment and a motion for judgment of foreclosure and sale.

¶ 6 On February 25, 2015, the court entered a summary judgment and judgment of foreclosure and sale in favor of plaintiff. On March 26, 2015, defendant filed a motion pursuant to 735 ILCS 5/2-1203(a) to reconsider the court's grant of summary judgment and a motion to amend his answer. The motions were set on a briefing schedule. On May 19, 2015, defendant filed a motion to vacate the entry of summary judgment and judgment of foreclosure for violation of section 1-3(a) of the Residential Mortgage Licensing Act ("Licensing Act"), 205 ILCS 635/1-3(a)(West 2012), and sought to void the mortgage. Defendant's motion argued that, because PAM and MLB Sub were not licensed under the Licensing Act, the loan's transfer between PAM and MLB Sub was void. Defendant claimed that, since the transfer was void, the

entered judgments should be voided and the case dismissed. The trial court denied defendant's motions and held that the lack of standing defense was not timely raised and that defendant failed to present sufficient evidence that the Licensing Act applied or was violated. Subsequently, the property was sold at public auction. The trial court confirmed the sale. This appeal followed.

¶ 7 ANALYSIS

¶ 8 A motion to rehear, modify or vacate pursuant to section 2-1301 is typically reviewed under an abuse of discretion standard. *Wells Fargo Bank, N.A. v. Simpson*, 2015 IL App (1st) 142925, ¶ 32; *JP Morgan Chase Bank v. Fankhauser*, 383 Ill. App. 3d 254, 259 (2008). However, in the instant appeal, the resolution of the motion to vacate involved an interpretation of section 1-3 of the Licensing Act, which presents a question of law that we review *de novo*. *Carver v. Sheriff of La Salle County*, 203 Ill. 2d 497, 506-07 (2003).

¶ 9 Defendant argues that the trial court erroneously denied his motion to vacate the summary judgment in favor of plaintiff when the assignment of the loan and mortgage from PAM to MLB Sub was unenforceable as against public policy because both entities were not licensed to do business in Illinois in violation of the Licensing Act. In support of his argument defendant mirrors the arguments contained in *First Mortgage Co., LLC v. Dina*, 2014 IL App (2d) 130567, ¶ 21 which held that a mortgage made by an entity that was not licensed under the License Act was void as against public policy.

¶ 10 Just as defendant here, *Dina* relied on section 1–3(a) of the License Act, which prohibits an entity, with exceptions not relevant here, from "brokering, funding, originating, servicing or purchasing" residential mortgage loans without first obtaining a license pursuant to the License Act. 205 ILCS 635/1–3(a) (West 2012). Based on the fact that the mortgage loan originator was not licensed pursuant to the Act, and the plaintiff was unable to establish that the mortgage loan

originator was exempt from the licensing requirement, *Dina* determined that the mortgage was void because of the strong public policy rationale favoring the unenforceability of a mortgage originated in violation of the Licensing Act. *Dina*, 2014 IL App (2d) 130567, ¶¶ 18–23.

¶ 11 In 2015, the General Assembly passed Public Act 88–113 (eff. July 23, 2015), which amended the Licensing Act in specific response to *Dina.* Notably, section 1–3(e) of the Licensing Act was amended to reflect the General Assembly's understanding of the existing law and to repudiate the result in *Dina:*

> "A mortgage loan brokered, funded, originated, serviced, or purchased by a party who is not licensed under the Section shall not be held to be invalid solely on the basis of a violation of this Section. The changes made to this Section by this amendatory Act of the 99th General Assembly are declarative of existing law."
> 205 ILCS 635/1–3(e) (West Supp. 2015).

¶ 12 In light of this amendment to the Licensing Act, *Dina*'s holding has been repudiated and a mortgage loan will not be deemed void as against public policy because the lender or purchaser of the loan is not licensed in accord with the Licensing Act. *Nationstar Mortg. LLC v. Missirlian*, 2017 IL App (1st) 152730, ¶ 15; *Wells Fargo Bank, N.A. v. Maka*, 2017 IL App (1st) 153010, ¶ 18. The same logic applies to assignments and transfers of loan mortgages between two unlicensed business, as here, especially because these are second market transactions do not directly involve the borrower. Here, defendant agreed that the initial "Lender may transfer [the] Note" and the mortgage. The assignment from PAM to MLB Sub took place after the loan was originated, went into default and the foreclosure case was filed. Accordingly, defendant's argument that the loan transfer between the two allegedly unlicensed businesses was unenforceable as against public policy fails.

¶ 13 Defendant maintains, as he did during the hearing of his motion to vacate, that he was not seeking to void the mortgage, but rather, because the contract between the unlicensed servicers was unenforceable due to the violations of the Licensing Act, MLB Sub lacked the right to enforce the mortgage.

¶ 14 But the Licensing Act does not provide for any private remedies for violations of its licensing requirements, such as a private right of action or the right of a mortgagor to avoid a mortgage obtained by an unlicensed lender. *Nationstar Mortg. LLC v. Missirlian*, 2017 IL App (1st) 152730, ¶ 15. In other words, while defendant cites various provisions of the Licensing Act, they do not support his argument that he has a private right of action to enforce the licensing requirements and instead actually reference the *state's* authority to punish violators. *See* 205 ILCS 635/1-3(a-1)(3) (West 2012).

¶ 15 Here, the consequences for violating the Licensing Act include an injunction or a fine in an amount not to exceed $25,000. 205 ILCS 635/1–3(c), (e) (West 2012). Even if the mortgage loan was transferred between two allegedly unlicensed business entities, defendant cannot show that the violation of the Licensing Act caused him some direct harm. Therefore, defendant's argument that he can rely on the provisions of the Licensing Act to render the assignment of his mortgage unenforceable lacks merit.

¶ 16 In addition, the trial court properly held that defendant failed to meet his burden of proof for his standing defense based on violations of the Licensing Act. Defendant argues that MLB Sub was the loan servicer and that "servicing" is governed by the Licensing Act. As support, defendant relied on one sentence in the affidavit of amounts due and owing attached MLB Sub's motion for summary judgment to prove that MLB Sub is the loan servicer. However, the affidavit states that another entity, BSI Financial, was actually the loan servicer for the mortgage.

The affidavit states that BSI Financial acquired the servicing rights on October 22, 2013, and also details the BSI Financial's procedures and policies with respect to how it services mortgage loans. The affidavit further includes business records generated by BSI Financial as the loan servicer.

¶ 17 Defendant's other evidence consisted of internet printouts of searches on the Illinois Department of Financial & Professional Regulation (IDFPR). The internet printouts do not meet the standards required by Illinois Rule of Evidence 901 which requires a foundation be laid to establish the admissibility of evidence. Ill. R. Evid. 901 (eff. Jan. 1, 2011). The internet printouts attached as support for defendant's argument that the two business entities were not licensed in Illinois are not accompanied by an affidavit to establish their admissibility or explain what the printouts actually prove or how they were generated. The printouts are merely hearsay, not admissible in support of, or opposition to a motion for summary judgment. *People ex rel. Madigan v. Kole,* 2012 IL App (2d) 110245, ¶ 47.

¶ 18 Furthermore, defendant's evidence also omitted anything to establish that the Licensing Act actually applied to PAM of MLB Sub. *Deutsche Bank Nat. Trust v. Cichosz*, 2014 IL App (1st) 131387, ¶ 16 (holding that it is the burden of a party raising the defense to present facts as to whether the entity is within the purview of an act, or that the entity if not exempt from the act and that bare allegations are insufficient). Defendant failed to establish that there was a Licensing Act violation with respect to the transfer or assignment of his mortgage. Accordingly, the circuit court correctly entered the judgment of foreclosure as well as the order approving the sale, and correctly denied defendant's motions to vacate and reconsider.

¶ 19 CONCLUSION

¶ 20 Based on the foregoing, we affirm.

¶ 21 Affirmed.