2017 IL App (1st) 153360-U

FOURTH DIVISION
June 8, 2017

No. 1-15-3360



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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| RFO HOLDINGS, INC., GD LAND CORPORATION, IH LAND CORPORATION, ROBERT F. OURY, and KARANN OURY, | ) | Appeal from the Circuit Court of Cook County. |
| Plaintiffs-Appellants, | ) | |
| v. | ) | No. 14 CH 13663 |
| METROPOLITAN CAPITAL BANK and RICHARD C. KENEMAN, Individually, | ) | Honorable Kathleen G. Kennedy, Judge Presiding. |
| Defendants-Appellees. | ) | |

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JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Ellis and Justice Howse concurred in the judgment.

**ORDER**

*Held*: We affirm the dismissal of plaintiffs' amended complaint as all claims are barred under the Credit Agreements Act.

¶ 1 Plaintiffs RFO Holdings, Inc., GD Land Corporation, IH Land Corporation, Robert F. Oury, and Karann Oury appeal from the Cook County circuit court's dismissal of their amended

complaint pursuant to section 619 of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-619 (West 2014)). The circuit court held that plaintiffs' claims were barred by the Credit Agreements Act (815 ILCS 160/1, *et seq.* (West 2014) as all of the claims were based on or related to an oral credit agreement between the parties regarding an outstanding mortgage debt owed to defendants. For the following reasons, we affirm.

¶ 2 I. BACKGROUND

¶ 3 A. Loan Agreement and Mortgage

¶ 4 Robert Oury owns and operates RFO Holdings and its affiliates GD Land Corporation and IH Land Corporation, and Karann Oury is Robert's wife. Defendant Richard Keneman is the chief lending officer of defendant Metropolitan Capital Bank (Metropolitan). On March 17, 2008, Metropolitan entered into a written loan agreement ("Loan Agreement") with Robert Oury (individually), RFO Holdings, IH Land Corporation, and GD Land Corporation to provide a revolving credit facility in the amount of $2,300,000. In conjunction, Robert Oury (individually) and his three companies executed a promissory note (Note) and provided as collateral a mortgage (Mortgage) to Metropolitan for an approximately 300-acre parcel of land in Kane County, Illinois, which was utilized as a horse farm.

¶ 5 Pursuant to the Loan Agreement, Metropolitan was empowered to foreclose on the mortgage and property in the event of a default. The agreement further provided that it "shall continue in effect until all of the Obligations have been paid, performed or otherwise satisfied in full."

¶ 6 The terms of the Mortgage granted Metropolitan the right to pursue acceleration and foreclosure upon default and waived any right of redemption. The Mortgage provided that

> "[n]o remedy or right of Mortgagee hereunder or under the Note or any of the other Loan Documents or otherwise, or available under applicable law, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under such document or under applicable law. *** All obligations of Mortgagor, and all rights, powers and remedies of Mortgagee, expressed herein shall be in mediation of, and not in limitation of, those provided by law or in the Note or any other Loan Documents or any other written agreement or instrument relating to any of the Secured Obligations or any security therefor."

¶ 7 Over time, the parties executed amendments to the Loan Agreement, Note, and Mortgage to reflect increases in the loan amount and extensions of the maturity date.

¶ 8 B. Foreclosure Proceedings in Kane County

¶ 9 Metropolitan filed a foreclosure complaint against the mortgagors and other parties[1] (hereinafter "foreclosure defendants") in Kane County circuit court on March 7, 2013, for defaulting on payments on the Note and failure to pay real estate taxes.

¶ 10 The Kane County circuit court entered a judgment of foreclosure on December 18, 2013. The judgment ordered that the property be sold at public auction and the proceeds distributed to satisfy the judgment. The order recited that "by entry of this Judgment for Foreclosure and Sale, the Mortgage and Note which is the subject matter of these proceedings is extinguished and merged into Judgment and default no longer exists, but has been replaced by Judgment, and that by virtue of the Mortgage, and the evidences of indebtedness secured thereby alleged in the

[1] The defendants in the Kane County foreclosure case were RFO Holdings, Inc., GD Land Corporation, IH Land Corporation, Robert Oury, Grupo Unidos Per El Canal, S.A., 333 West Lake, LLC, and Indian Hills Training Center, Incorporated.

Complaint, there is due to the Plaintiff, and it has a valid subsisting lien on the property described hereafter" in the amount of $2,854,180.67.

¶ 11 Metropolitan was the only bidder at the judicial sale held on February 20, 2014, and submitted a credit bit of $2,937,218.11. It filed a motion to confirm the sale on February 27, 2014.

¶ 12 On March 3, 2014, the foreclosure defendants[2] filed a motion to vacate and deny the approval of the sale in Kane County circuit court. They argued that the sale should not be approved because the terms of the sale were unconscionable, as a 2009 appraisal valued the property at $20 million, and a 2011 appraisal estimated the property was worth $11.4 million. They asserted that the sale should not be confirmed based on principles of unfairness and equity as Keneman had reassured Robert Oury repeatedly that Metropolitan would allow him to redeem ownership of the property if he was able to come up with the funds to make the bank whole. They alleged that on February 19, 2014, the day before the judicial sale, Keneman and Robert Oury met at the Drake Hotel in Chicago, and Keneman confirmed that if Robert Oury "or an affiliated third party was able to come up with the money to redeem the property, then the Bank would allow him to do so." They further asserted that a third party buyer offered to pay Metropolitan the amount due on the mortgage on February 25, 2014, so that Robert Oury could retain possession and eventually redeem ownership of the property. Metropolitan refused to negotiate a contract with them. In an affidavit provided in support of the motion, Robert Oury averred to these allegations.

¶ 13 At the March 19, 2014, hearing before the Kane County circuit judge, an individual who identified himself as Rob Kramer informed the court that he was "here as an interested party" to

[2] RFO Holdings, GD Land Corporation, IH Land Corporation, Robert Oury, and Indian Hills Training Center filed the motion to vacate and deny approval of sale.

supply funds for the foreclosure defendants to redeem the property. The Kane County circuit court denied the foreclosure defendants' motion and confirmed the sale. The order confirming the sale stated that the sale was "fairly and properly made, and without fraud" and that "justice was done." It further found that the proceeds of the sale were sufficient to pay the amount due Metropolitan and no deficiency remained.

¶ 14 The foreclosure defendants appealed the Kane County order to the Second District Illinois Appellate Court.[3] On appeal in the Second District, they argued that the Kane County circuit court erred in (1) confirming the judicial sale because it was unconscionable based on the gross disparity between the purchase price and the value of the property, and (2) denying a request for an evidentiary hearing and limited discovery regarding the appraisal and valuation issue, and (3) confirming the sale because justice was not otherwise done in light of Metropolitan's alleged false promises concerning redemption.

¶ 15 The Second District issued a Rule 23 order in that case on May 29, 2015. *Metropolitan Capital Bank v. RFO Holdings, Inc.*, No. 1-14-0320 (2015) (unpublished order under Illinois Supreme Court Rule 23). The Second District affirmed the confirmation of sale, finding that (1) the sale price was not unconscionable, (2) the circuit court properly denied the request for an evidentiary hearing, and (3) the foreclosure defendants failed to show that "justice was not otherwise done" as they never asserted that they had all the money to pay off Metropolitan before the sale, Robert Oury did not aver that the agreement to redeem was valid after the sale, and Keneman's affidavit made clear that no agreement existed. The foreclosure defendants' subsequent petition for rehearing was also denied.

¶ 16 C. The Cook County Lawsuit and the Instant Appellate Proceedings

[3] The appellants in the Second District case were RFO Holdings, Incorporated, GD Land Corporation, IH Land Corporation, and Robert Oury.

¶ 17 After the foreclosure defendants filed the appeal in the Kane County foreclosure case, but before the Second District issued a decision, plaintiffs instituted the present litigation in Cook County circuit court on August 21, 2014.[4] The Cook County circuit court granted defendants' motion to dismiss the original complaint with prejudice on December 22, 2014. Subsequently, on June 3, 2015, the Cook County circuit court granted plaintiffs' motion for leave to file a first amended complaint.

¶ 18 Plaintiffs' amended complaint contained eight counts: injunctive relief, specific performance, fraud, and unjust enrichment (plaintiffs versus Metropolitan); intentional and negligent infliction of emotional distress (Karann Oury versus Metropolitan and Keneman); fraud (plaintiffs versus Keneman); and breach of fiduciary duty (Robert and Karann Oury versus Metropolitan). Plaintiffs alleged that they initially were introduced to Metropolitan through their long-time attorney, Wayne Hannah, who had an ownership interest in the bank. Plaintiffs asserted that Metropolitan fraudulently induced them to refrain from opposing the foreclosure action or bidding at the judicial sale based on Metropolitan's representations that it would convey the property back to plaintiffs following the sale. Plaintiffs alleged that over the parties' relationship, they modified the Loan Agreement five times and plaintiffs infrequently provided late payments, but Metropolitan represented that it understood that cash flow naturally ebbed and flowed and allowed plaintiffs to catch up on late payments without prejudice.

¶ 19 Plaintiffs repeated their assertion that in July 2013, Keneman offered Robert Oury the opportunity to avoid foreclosure by paying the bank the amount due along with costs and fees, but he did not have the funds at the time to accept this offer. Plaintiffs alleged that Metropolitan orally entered into a "Settlement Agreement" (hereinafter referred to as the "Oral Agreement")

[4] Additionally, plaintiffs' company, Indian Hills Training Center, Inc., also instituted a lawsuit against Metropolitan on April 17, 2015, in Kane County circuit court, claiming that it was a third party beneficiary of the alleged oral agreement.

on February 19, 2014, when Keneman met with Robert Oury at the Drake Hotel after the judgment of foreclosure and sale was entered. Metropolitan offered to allow plaintiffs to retain ownership in exchange for paying the outstanding balance of the loan and the bank's costs and fees, with the conveyance to occur after the judicial sale. Plaintiffs alleged that Robert Oury orally accepted this offer. Plaintiffs alleged that less than one week later, Robert Oury provided a commitment for the transaction from Joseph Palumbo, who on February 25, 2014, submitted a letter, a real estate contract, and an affirmation from Plante Moran Trust that Palumbo had sufficient funds to cover the acquisition. Plaintiffs alleged that Metropolitan refused to honor the terms of the Oral Agreement. Plaintiffs argued that Metropolitan intended to obtain the property at far below market value by deterring plaintiffs from opposing the foreclosure or attempting to bid on the property.

¶ 20 Plaintiffs provided a document entitled "Real Estate Sale Agreement." However, the written document is undated and it is not signed by Metropolitan or Palumbo. The document recited that the purchase price of the property was $2,950,000, and that the agreement was "entered into this ___ day of April 2014." In the document, Palumbo agreed to pay $25,000 as earnest money upon execution of the contract. Among its terms was a provision which required, as a condition to closing, Metropolitan to tender the following performance at closing: "dismissal of the mortgage foreclosure proceeding filed against the Real Estate by the Seller with no additional charges or costs assessed against the Real Estate or the Defendants in such proceeding[.]" The document provided that until the Real Estate Sale Agreement was executed by both parties, it would only constitute "an offer by the first Party executing same."

¶ 21 On June 10, 2015, plaintiffs filed a motion in Cook County circuit court seeking to stay an order of possession entered in favor of Metropolitan in the Kane County litigation. The Cook

County circuit court denied the motion. On June 24, 2015, plaintiffs filed a motion for a temporary restraining order (TRO) in Cook County circuit court, requesting that the court prohibit defendants from destroying any structures on the property or evicting plaintiffs, which the circuit court also denied on June 29, 2015.[5] Plaintiffs filed a motion on July 22, 2015, for reconsideration of the order denying their request for a TRO. On September 30, 2015, the Cook County circuit court granted the motion for reconsideration. Defendants filed an interlocutory appeal in this court challenging the TRO. This court reversed the TRO on October 19, 2015 (Case No. 1-15-2835).

¶ 22 Meanwhile, on July 10, 2015, defendants filed a motion to dismiss the amended complaint pursuant to section 2-615 (735 ILCS 5/2-615 (West 2014)) and section 2-619. Defendants asserted that the amended complaint failed to state a claim. Defendants asserted that the alleged Oral Agreement was barred by the Credit Agreements Act and the Statute of Frauds (740 ILCS 80/2 (West 2014)). They asserted that the complaint amounted to a collateral attack on the orders of the circuit court of Kane County and the Second District, and was barred by collateral estoppel and *res judicata*. Plaintiffs responded that the Oral Agreement did not constitute or relate to a credit agreement under the Act, they performed their obligations under the Oral Agreement, and they were not collaterally attacking another court's judgment.

¶ 23 On November 4, 2015, the circuit court of Cook County held a hearing on the motions to dismiss. The court concluded that the Credit Agreements Act barred all of plaintiffs' claims and it dismissed the amended complaint with prejudice. The court found the alleged Oral Agreement was not a separate, unrelated agreement for the purchase and sale of real estate. Rather, the court found that the agreement fell within the Act and was required to be in writing, and therefore all

[5] Plaintiffs also filed motions in Kane County circuit court and in the Second District to stay the proceedings and eviction, which were denied.

of plaintiffs' claims were barred and must be dismissed with prejudice under section 2-619. Plaintiffs now appeal to this court.

¶ 24 II. ANALYSIS

¶ 25 A. Standard of Review

¶ 26 This court reviews motions to dismiss under section 2-615 and 2-619 of the Code *de novo*. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009).

¶ 27 When reviewing the circuit court's decision on a motion under section 2-615 of the Code, this court examines "whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, and taking all well-pleaded facts and all reasonable inferences which may be drawn from those facts as true, are sufficient to establish a cause of action upon which relief may be granted." *Dratewska-Zator v. Rutherford*, 2013 IL App (1st) 122699, ¶ 14.

¶ 28 "The purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proved issues of fact at the outset of litigation." *Van Meter v. Darien Park District,* 207 Ill. 2d 359, 367 (2003). In a section 2-619 motion to dismiss, the moving party "admits the legal sufficiency of the complaint, but asserts an affirmative defense or other matter to defeat the plaintiff's claim." *Id.* Grounds for dismissal include that the claim is barred by the Statute of Frauds, a prior judgment, or "other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a) (West 2014). "If a defendant satisfies its initial burden of presenting affirmative matter defeating a plaintiff's complaint, the burden then shifts to the plaintiff to show that the asserted defense is unfounded or leaves unresolved issues of material fact as to an essential element." *Badette v. Rodriguez,* 2014 IL App (1st) 133004, ¶ 16.

¶ 29 Moreover, "we may affirm on any basis supported by the record, regardless of whether the trial court based its decision on the proper ground." *In re Marriage of Gary*, 384 Ill. App. 3d 979, 987 (2008).

¶ 30 Additionally, this case involves the interpretation and application of the Credit Agreements Act. We review the construction and application of statutory language *de novo*. *People v. Perez*, 2014 IL 115927, ¶ 9. This court's "primary objective is to ascertain and give effect to the legislature's intent, keeping in mind that the best and most reliable indicator of that intent is the statutory language itself, given its plain and ordinary meaning." *Id.* We consider a statute as a whole and construe its language in light of other statutory provisions. *Id.*

¶ 31 B. Credit Agreements Act

¶ 32 The Act defines a "credit agreement" as "an agreement or commitment by a creditor to lend money or extend credit or delay or forbear repayment of money not primarily for personal, family or household purposes, and not in connection with the issuance of credit cards." 815 ILCS 160/1(1) (West 2014). Pursuant to section 2 of the Act, a credit agreement must be in writing and signed by the parties in order to be effective. Section 2 provides:

> "[a] debtor may not maintain an action on or in any way related to a credit agreement unless the credit agreement is in writing, expresses an agreement or commitment to lend money or extend credit or delay or forbear repayment of money, sets forth the relevant terms and conditions, and is signed by the creditor and the debtor." 815 ILCS 160/2 (West 2014).

¶ 33 Additionally, section 3 provides, in part:

> "The following actions do not give rise to a claim, counter-claim, or defense by a debtor that a new credit agreement is created, unless the agreement satisfies the requirements of Section 2:
>
> ***
>
> (3) the agreement by a creditor to modify or amend an existing credit agreement or to otherwise take certain actions, such as entering into a new credit agreement, forbearing from exercising remedies in connection with an existing credit agreement, or rescheduling or extending installments due under an existing credit agreement." 815 ILCS 160/3(3) (West 2014).

¶ 34 On appeal, plaintiffs contend that the Act does not apply to its claims. Plaintiffs claim the Oral Agreement constituted a new, separate agreement not subject to the Act as it did not require any extension of credit by Metropolitan. They contend that it did not modify any existing credit agreement.

¶ 35 i. Whether the Oral Agreement Fell Within the Credit Agreements Act

¶ 36 Defendants argue that the Oral Agreement constitutes either a new oral "credit agreement" under the Act or an oral agreement to modify or amend an existing credit agreement because it provided for the delayed repayment of amounts due under the Loan Agreement until after the judicial sale and obligated Metropolitan to re-convey the property to plaintiffs, thereby giving up its contractual right to complete the foreclosure process and take title and possession of the property.

¶ 37 In construing the Act, our court has found that it "is broadly worded" to bar actions by a debtor " 'on or in any way related to a credit agreement' unless there is a written agreement." *First National Bank in Staunton v. McBride Chevrolet, Inc.*, 267 Ill. App. 3d 367, 372 (1994). As

the court in *McBride Chevrolet* explained, "[t]here is no limitation as to the type of actions by a debtor which are barred by the Act, so long as the action is in any way related to a credit agreement. *** The language of the Act bars all actions by a debtor based on, or related to, an oral credit agreement. *** Therefore, all actions which depend for their existence upon an oral credit agreement are barred by the Act." *Id.* The particular language of the Act stands in contrast to that of the Frauds Act, "which bars actions *upon* certain agreements which are not in writing." *Id.* (citing 740 ILCS 80/1 (West 1992)). Our court in *McBride* recognized that this interpretation of the Act could engender "a harsh result for bank customers in some circumstances. The Act is very broadly worded, however, and dictates such a result. *** There is no justifiable reliance on an oral credit agreement as a matter of law in Illinois." *Id.* at 372-73.

¶ 38 We agree with the circuit court's view that the Oral Agreement constituted a "credit agreement" and related to or relied upon the Loan Agreement (which the parties do not dispute constituted a credit agreement). Tellingly, in the amended complaint, plaintiffs referred to the alleged Oral Agreement not as an entirely new, separate contract, but as the "*Settlement Agreement*." (Emphasis added.) That is, an agreement which settles the claims between the parties regarding the amount due under the loan and ownership of the horse farm.

¶ 39 The amended complaint specifically alleged that under the Oral Agreement, Metropolitan agreed to allow Robert Oury to retain the property "on condition that he obtain other sufficient financing to *pay off the mortgage and cover the Bank's attorney fees*." (Emphasis added.) Plaintiffs alleged that after the bank instituted foreclosure proceedings, Keneman repeatedly offered Robert Oury the opportunity to pay the outstanding amount due along with costs and fees and keep the property, but Robert Oury lacked the necessary funds. Plaintiffs alleged that the day before the judicial sale, on February 19, 2014, Keneman offered to let plaintiffs "retain

ownership of the Property in exchange for payment of the *outstanding loan balance* together with *the Bank's costs and fees* incurred in the foreclosure action." (Emphasis added.)

¶ 40 As further indication that the Oral Agreement constituted a credit agreement or was related to the parties' existing credit agreement, the written, unsigned "Real Estate Sale Agreement" recited a purchase price roughly equal to the amount owed to Metropolitan under the Loan Agreement. The document also required Metropolitan to tender the following performance at closing: "*dismissal of the mortgage foreclosure proceeding* filed against the Real Estate by the Seller with no additional charges or costs assessed against the Real Estate or the Defendants in such proceeding[.]" (Emphasis added.)

¶ 41 Plaintiffs' complaint repeatedly referred to the Mortgage and the "outstanding loan balance" as existing obligations of plaintiffs related to the Loan Agreement. They alleged that the Oral Agreement was entered into in order to allow plaintiffs to retain the property while satisfying the original loan obligation to Metropolitan. In keeping with our court's expansive reading of the Act, we find that the Oral Agreement as alleged in the amended complaint implicated the Act. Whether under section 3 (as an "agreement by a creditor to modify or amend an existing credit agreement or to otherwise take certain actions") or under section 1 (as a new credit agreement wherein Metropolitan would "lend money or extend credit or delay or forbear repayment of money"), the alleged Oral Agreement fell within the confines of the Act. Essentially, it called for plaintiffs to pay the amounts due under the Loan Agreement in exchange for Metropolitan agreeing to defer payment of these amounts until sometime after the judicial sale and allow plaintiffs to retain the property. Accordingly, section 2 of the Act required the Oral Agreement be in writing, set forth the relevant terms and conditions, and be signed by both

parties. 815 ILCS 160/2 (West 2014). There is no dispute the Oral Agreement did not fulfill these requirements.

¶ 42 Plaintiffs urge a narrower view of the Act, but rely on non-precedential cases from foreign jurisdictions in doing so. For example, in *Whirlpool Financial Corp. v. Sevaux,* 866 F. Supp. 1097, 1101-02 (N.D.Ill. 1994),[6] the United States District Court of the Northern District of Illinois, Eastern Division, denied a lender's motion to dismiss the borrower's counterclaims alleging that the loan was related to a larger investment the investor orally promised to make. We find this case inapposite as it does not involve similar circumstances, namely, there is no evidence that Metropolitan orally agreed to make a separate, larger, "investment" in plaintiffs' business, and *Whirlpool* did not involve the effect of a judgment of foreclosure.

¶ 43 If anything, the case cited by plaintiffs supports Metropolitan's position. On a subsequent motion for summary judgment, the same court granted the lender's motion as to the borrower's counterclaims and affirmative defenses, finding that they were barred by the Act. *Whirlpool Financial Corp. v. Sevaux*, 874 F. Supp. 181 (N.D. Ill. 1994). The Seventh Circuit Court of Appeals affirmed this determination on appeal. *Whirlpool Financial Corp. v. Sevaux,* 96 F.3d 216 (1996). The borrower's affirmative defenses and counterclaims sounded in fraud, estoppel, breach of fiduciary duty, and breach of contract, and the court held that these constituted "actions" within section 2 of the Act and were barred as they were based on an alleged oral agreement. *Id.* at 225-26.

¶ 44 Plaintiffs also rely on *Schafer v. UnionBank/Central*, 2012 IL App (3d) 110008. There, the defendant bank raised the Act as a defense to the plaintiff/debtors' conversion action which

[6] Decisions of lower federal courts are not binding precedent on Illinois courts. *People v. Thorpe*, 52 Ill. App. 3d 576, 579 (1977).

alleged that a bank officer mistakenly checked the wrong box on their credit agreement indicating that it secured all outstanding debts, rather than just a particular loan. *Id.* ¶ 27. The Third District held that the debtors were not asserting that a later oral modification of a written credit agreement occurred, but, rather, they asserted that the credit agreement, as written, was inaccurate. *Id.* ¶ 29. The court held that the debtors were not prohibited by the Act from challenging the validity of the credit agreement when "it is raised by the creditor as an affirmative defense to a complaint for conversion." *Id.* ¶ 28.

¶ 45 In contrast to *Schafer*, here, plaintiffs are not contending that the Loan Agreement, as written, was inaccurate and must be revised to reflect the parties' actual intent. Instead, plaintiffs contend that they entered into a separate oral agreement with Metropolitan which did not constitute a credit agreement in its own right and was not related to the Loan Agreement. Thus, *Schafer* does not support plaintiffs' position.

¶ 46 As defendants argue, the Oral Agreement related to the same property and same debt which was also the subject of the earlier Mortgage, Note, and Loan Agreement. As such, plaintiffs here were seeking to "maintain an action on or in any way related to a credit agreement." 815 ILCS 160/2 (West 2014). It is well-established that there are no limitations as to the type of actions by a debtor that are barred by the Act if they are in any way related to a credit agreement, whether they sound in tort or contract. *McBride Chevrolet*, 267 Ill. App. 3d at 372; *Schafer*, 2012 IL App (3d) 110008, ¶ 27.

¶ 47 ii. Doctrine of Merger

¶ 48 Plaintiffs argue that the Oral Agreement did not modify an *existing* credit agreement within the Act because the judgment of foreclosure had been entered at the time the Oral

Agreement was formed. They assert that the Mortgage and Note merged into the judgment of foreclosure and the loan, therefore, had been fully satisfied.

¶ 49 Defendants respond that the original Loan Agreement was not satisfied by and did not merge into the judgment of foreclosure. Rather, it merely determined that $2,854,180.67 was due to Metropolitan, but the judgment did not order plaintiffs to pay Metropolitan any money, terminate plaintiffs' interest in the property, or allow Metropolitan to take possession of the property, and it was not a final and appealable order.

¶ 50 Defendants also contend that plaintiffs failed to raise their merger argument below. A party forfeits appellate review of an argument by failing to raise it at the trial court level. *Poilevey v. Spivack*, 368 Ill. App. 3d 412, 417 (2006). However, as plaintiffs note, they asserted in the trial court that the Oral Agreement occurred after judgment and there were no remaining rights for the bank to enforce. As well, the doctrine of forfeiture is a limitation on the parties, not this court. *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 504-05 (2002). A reviewing court may consider a forfeited argument particularly where, as here, the issue is a legal one and is fully briefed by the parties on appeal. *Committee for Educational Rights v. Edgar*, 174 Ill. 2d 1, 11 (1996).

¶ 51 "The merger doctrine states that once a party obtains a judgment based upon a contract, the contract is entirely merged into the judgment. [Citation.] As a result, the contract 'ceases to bind the parties to its execution' and 'no further action at law *** can be maintained on' the contract." *Kenny v. Kenny Industries, Inc.*, 2012 IL App (1st) 111782, ¶ 15 (quoting *Poilevey v. Spivack*, 368 Ill. App. 3d 412, 414 (2006)). The merger doctrine applies only " 'to *causes of action* to bar relitigation of the same cause.' " (Emphasis in original.) *Id.* ¶ 16 (quoting *Stein v. Spainhour*, 196 Ill. App. 3d 65, 70 (1990)). The merger doctrine is not absolute and exceptions

exist. *Poilevey,* 386 Ill. App. 3d at 416. The doctrine "does not prevent a court from looking 'beyond the judgment to see upon what it is founded to give the judgment its just effect.' " *Id.* (quoting *Meeker v. Gray,* 142 Ill. App. 3d 717, 726 (1986)). Whether to apply the merger doctrine and to what extent merger occurs depends on the parties' intent as evidenced by the language of the contracts involved and surrounding circumstances. *Timothy Christian Schools v. Village of Western Springs,* 285 Ill. App. 3d 949, 953 (1997).

¶ 52 In *Kenny*, the merger doctrine did not apply where the defendant sought to enforce its contractual right to setoff against any payment due to a trust under the contract, and was not attempting to attack the underlying judgment. *Kenny*, 2012 IL App (1st) 111782, ¶ 16. The court held that "the merger doctrine does not necessarily preclude a judgment defendant from commencing subsequent litigation to enforce its contractual rights. [Citation.] If the defendant's complaint does not seek to attack the judgment itself, but rather attempts to enforce its separate rights under the contract, the merger doctrine does not apply." *Id.* See also *Stein,* 196 Ill. App. 3d at 70 (merger doctrine did not apply where claim sought attorney fees ancillary to primary cause of action).

¶ 53 Here, the parties entered into the alleged Oral Agreement after the judgment of foreclosure had been entered, but before the judicial sale occurred. According to plaintiffs' reasoning, the Note and Mortgage merged into the judgment of foreclosure, and, consequently, at the time they formed the Oral Agreement, plaintiffs had no outstanding obligations remaining to Metropolitan, which meant that the Oral Agreement could not have modified an existing credit agreement.

¶ 54 The judgment of foreclosure stated that by entry of the judgment, "the Mortgage and Note which is the subject matter of these proceedings is extinguished and merged into Judgment

and default no longer exists, but has been replaced by Judgment ***." The judgment held that Metropolitan was due $2,854,180.67, and ordered the judicial sale of the property. The judgment further provided that if Metropolitan was the purchaser, it "may offset against the purchase price *** the amounts due under the judgment of foreclosure ***." It also provided that Metropolitan would not be entitled to possession until 30 days after an order confirming the sale was entered.

¶ 55 While we acknowledge the language in the foreclosure judgment, we hold that the merger doctrine is inapplicable here. We find it significant that defendants are not instituting a cause of action or relitigating a cause of action based upon a contract which has merged into the judgment of foreclosure and sale. Defendants are not seeking to attack the judgment of foreclosure, at all. *Kenny*, 2012 IL App (1st) 111782, ¶ 16. Rather, they are defending against plaintiffs' cause of action concerning the alleged Oral Agreement. Defendants contend that plaintiffs' causes of action amount to an attempt to alter or interfere with their rights under the contract. Similar to the defendant in *Kenny*, defendants are attempting to ensure their contractual rights under the Loan Agreement are not vitiated by plaintiffs' lawsuit.

¶ 56 In addition, plaintiffs' argument fails to take into account the particular language of the judgment of foreclosure, Loan Agreement, and Mortgage. By its terms, the judgment of foreclosure merely determined the amount that plaintiffs owed Metropolitan and order the sale of the property. It did not order plaintiffs to pay this amount. It did not terminate plaintiffs' interest in the property or give Metropolitan possession of the property.

¶ 57 The Loan Agreement was separate from the Note and Mortgage and was not specifically referred to in the judgment of foreclosure. The judgment of foreclosure did not hold that the Loan Agreement was merged or extinguished with entry of the order. Further, the terms of the Loan Agreement provided that in the event of default, all of the obligations became immediately

due and payable and the bank had the remedies and rights provided for in the other agreements and under law, including the right to dispose of the collateral and the right to foreclose. Section 10 of the Loan Agreement provided that the Loan Agreement "*shall continue in effect until all of the Obligations have been paid, performed, or otherwise satisfied in full*." (Emphasis added.) Similarly, the Mortgage provided that "[n]o remedy or right of Mortgagee hereunder or under the Note or any of the other Loan Documents or otherwise, or available under applicable law, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under such document or under applicable law."

¶ 58 Accordingly, under the terms of the judgment of foreclosure, Loan Agreement, and Mortgage, the parties' original agreement continued in effect until all obligations were satisfied and paid in full, including the indebtedness and any associated attorney fees and costs. The judgment of foreclosure and sale did not fully satisfy plaintiffs' obligation to pay the amounts due under the Loan Agreement or satisfy Metropolitan's right to possession of the property. Thus, at the time the alleged Oral Agreement was formed, plaintiffs did, in fact, continue to have existing obligations to Metropolitan.

¶ 59 Plaintiffs rely on *BAC Home Loans Servicing, LP v. Popa*, 2015 Il App (1st) 142053, in contending that merger applies here and the original loan ceased to exist upon entry of the judgment of foreclosure. In *Popa*, the defendants argued that the circuit court erred in confirming the judicial sale because the bank included taxes it was not entitled to recover and it was only entitled to the note rate of interest, not the statutory interest rate under the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1101 *et seq*. (West 2012)), before the sale of the foreclosure property was confirmed. *Id.* ¶ 28. The court determined that, based on the

statutory language concerning the word "judgment" in the Foreclosure Law and the Code, the plaintiff was "entitled to the statutory interest rate from the date of the foreclosure judgment." *Id.* ¶ 35.

¶ 60 In reaching this conclusion, the court in *Popa* distinguished *CitiMortgage, Inc. v. Sharlow*, 2014 IL App (3d) 130107, ¶¶ 19-20, wherein the Third District held that postjudgment interest at the statutory rate should be computed from the date of the judgment of foreclosure if Rule 304(a) language is included in the judgment, rendering the judgment of foreclosure a final, appealable judgment. The Third District in *Sharlow* declined to decide whether that would be the case if no Rule 304(a) language was present. *Popa*, 2015 IL App (1st) 142053, ¶¶ 29-31. In contrast, the First District in *Popa*, held that postjudgment interest at the statutory rate may be recovered upon entry of a judgment of foreclosure even absent Rule 304(a) language. *Id.* ¶ 35. The First District based its conclusion on the fact that section 2-1303 of the Code[7] does not require that a judgment be final and appealable, only that a judgment be "recovered in any court." *Id.* ¶ 34. Further, section 1504(e)(3) of the Foreclosure Law indicated that a request for foreclosure means a request for the real estate to be sold to satisfy the amount due to the plaintiff "as set forth in the judgment, together with the interest thereon at the statutory judgment rate from the date of the judgment." *Id.* ¶ 35 (quoting 735 ILCS 5/15-1504(e)(3) (West 2012)). The court interpreted "judgment" to refer to the foreclosure judgment. *Id.* The court in *Popa* went on to note:

> "Illinois courts have long held that, upon the entry of a foreclosure judgment, the mortgage merges into the judgment and eliminates the contract, and therefore the judgment is controlled by statute, not the contract. *Aldrich v.*

[7] Section 2-1303 provides in part that "[j]udgments recovered in any court shall draw interest at the rate of 9% per annum from the date of the judgment until satisfied." 735 ILCS 5/2-1303 (West 2014).

> *Sharp*, 4 Ill. 260, 263 (1841); see also *Poilevey v. Spivack*, 368 Ill. App. 3d 412, 414 (2006) (observing that the 'merger doctrine' provides that when a judgment is obtained based on a contract, the contract 'becomes entirely merged into the judgment' and the contract 'ceases to bind the parties to its execution'); *Carson v. Rebhan*, 294 Ill. App. 180, 183 (1938) (concluding that the interest should have been calculated at the statutory rate after the date of the foreclosure decree, 'it then becoming in effect a judgment')." *Id.* ¶ 36.

¶ 61 We find *Popa* distinguishable from the present circumstances. Neither the interest rate nor the same statutes are at issue in the present case, and *Popa* did not involve application of the Credit Agreements Act. The court in *Popa* did not hold that a credit agreement is extinguished for all purposes under the merger doctrine when a judgment of foreclosure is entered. Although *Popa* cited several cases following its statement that a mortgage merges into a judgment of foreclosure, this notion was not central to the holding of the case. Additionally, the cases *Popa* cited for this proposition are distinguishable. See *Aldrich*, 4 Ill. at 263 (1841) (finding that the plaintiff was entitled to recover interest at the statutory rate rather than the rate provided for in the mortgage after entry of foreclosure judgment), *Carson*, 294 Ill. App. at 183 (same); *Poilevey*, 368 Ill. App. 3d at 414 (claim for attorney fees was not barred by merger as it was ancillary to primary cause of action).

¶ 62 On the other hand, we find defendants' citation to *Standard Bank & Trust Co. v. Callaghan*, 215 Ill. App. 3d 76, 84 (1991), helpful to our analysis. There, the Second District held that the trial court abused its discretion in failing "in accordance with the note's provisions, to award attorney fees for the period between the sheriff's sale and the resolution of" the case on appeal. The court rejected the mortgagors' contention that the bank was precluded from

recovering additional attorney fees after entry of the foreclosure judgment because the note merged into the judgment. *Id.* at 82. "Applying the doctrine of merger at the time a foreclosure decree is entered would bar any further recovery on the underlying notes." *Id.* The court held that such an interpretation "would be contrary to section 6 of the old Act (Ill.Rev.Stat.1983, ch. 95, par. 56), and section 15–1508(e) of the current Illinois Mortgage Foreclosure Law (Ill.Rev.Stat.1989, ch. 110, par. 15–1508(e)), which clearly authorize the entry of deficiency judgments after the entry of foreclosure decrees." *Id.*

¶ 63 As noted in *Callaghan*, such an interpretation comports with other sections of the Foreclosure Law. Section 15-1508(e) provides that, even after the judgment of foreclosure is entered, the circuit court has authority to enter a deficiency judgment against a party. It provides, in part:

> "In any order confirming a sale pursuant to the judgment of foreclosure, the court shall also enter a personal judgment for deficiency against any party (i) if otherwise authorized and (ii) to the extent requested in the complaint and proven upon presentation of the report of sale in accordance with Section 15-1508." 735 ILCS 5/15-1508(e) (West 2014).

¶ 64 Additionally, under section 15-1301 of the Foreclosure Law, a mortgage remains a lien upon the real estate from the time it is recorded, even after a judgment of foreclosure is entered.

> "from the time a mortgage is recorded it shall be a lien upon the real estate that is the subject of the mortgage for all monies advanced or applied or other obligations secured in accordance with the terms of the mortgage or as authorized by law, including the amounts specified in a judgment of foreclosure ***." 735 ILCS 5/15-1301 (West 2014).

¶ 65 Our supreme court has stated that "[i]t is well settled that a judgment ordering the foreclosure of mortgage is not final and appealable until the trial court enters an order approving the sale and directing the distribution." *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 11. The judgment of foreclosure is not final because "it does not dispose of all issues between the parties and it does not terminate the litigation." *Id.* "[A]lthough a judgment of foreclosure is final as to the matters it adjudicates, a judgment foreclosing a mortgage, or a lien, determines fewer than all the rights and liabilities in issue because the trial court has still to enter a subsequent order approving the foreclosure sale and directing distribution." *Id.* See *Turczak v. First American Bank*, 2013 IL App (1st) 121964, ¶ 36 ("After a judgment of foreclosure, only a judicial sale of the property followed by judicial confirmation of the sale will terminate 'with finality' the rights of third parties."); *Harris v. Schilling*, 108 Ill. App. 116, 119 (1903) (the court retains power to amend a judgment to correct clerical errors even after entry of the judgment of foreclosure); 55 Am. Jur. 2d Mortgages § 639 ("Although there is some conflict on the question, the view has been expressed that a decree of foreclosure does not merge the lien of the mortgage until it has been consummated by sale and satisfaction. The decree does not destroy the lien of the mortgage but, rather, judicially determines the amount thereof.").

¶ 66 Defendants alternatively assert that, even if the doctrine of merger applied and extinguished the original Loan Agreement upon entry of the judgment of foreclosure, the alleged Oral Agreement nevertheless constitutes a credit agreement under the Act in its own right. Based on the terms of the alleged Oral Agreement as alleged in the amended complaint set forth, *supra*, we agree that it was more than simply a new, independent agreement to sell the property to plaintiffs not involving any extension of credit or unrelated to any preexisting loan obligation. Rather, the amended complaint repeatedly referred to the loan and mortgage obligation as an

ongoing obligation. The judgment of foreclosure found that $2,854,180.67 was due to Metropolitan. The Oral Agreement called for plaintiffs to pay the bank the amount due, in addition to fees and costs, at a future date, in exchange for Metropolitan conveying the property to them. Metropolitan agreed to this delayed payment and to allow plaintiffs to retain the property. Significantly, the written "Real Estate Sale Agreement" which was to be executed by the parties memorializing the Oral Agreement obligated Metropolitan to dismiss the "mortgage foreclosure proceeding *** with no additional charges or costs" as a condition to closing. The Oral Agreement was essentially an agreement to extend credit to or accept delayed repayment of money that it was due and therefore constituted a credit agreement. Thus, regardless of whether it is a credit agreement in its own right or an agreement to modify an existing credit agreement, it still fell within the broad confines of the Act.

¶ 67 iii. The Credit Agreements Act Applies to All of Plaintiffs' Claims

¶ 68 Plaintiffs contend that, even if this court determines that the Oral Agreement was a credit agreement, the Act does not apply to the present circumstances because their claims were not raised as affirmative defenses or counterclaims attacking a credit agreement, their claims were not based on allegations that they were induced to enter a credit agreement, and their claims were not based on related agreements integral to a credit agreement. Further, plaintiffs argue that their claims for specific performance, fraud, breach of fiduciary duty, unjust enrichment, and intentional and negligent infliction of emotional distress should not have been dismissed because they do not rely on representations made in connection with the Oral Agreement.

¶ 69 Our case law is overwhelmingly clear that, under the broad language of the Act, there is no limitation as to the type of actions by a debtor barred by the Act so long as the action is "in

any way related" to an oral credit agreement. *McAloon v. Northwest Bancorp, Inc.*, 274 Ill. App. 3d 758, 764 (1995).

> "There is no limitation as to the type of actions by a debtor which are barred by the Act, so long as the action is in any way related to a credit agreement. *** The language of the Act bars all actions by a debtor based on, or related to, an oral credit agreement. *** Therefore, all actions which depend for their existence upon an oral credit agreement are barred by the Act." *First National Bank*, 267 Ill. App. 3d at 372 (the Act barred counterclaims including breach of contract, breach of implied covenant of good faith and fair dealing, and violation of the Consumer Fraud Act).

¶ 70 Courts have applied the Act despite recognition of its possible harsh or unfair results in some circumstances. *Id*. See, *e.g.*, *McAloon*, 274 Ill. App. 3d at 762-65 (developers' breach of contract and fraud actions against lender were barred by the Act as they depended on lender's alleged oral promise to loan money, and the Act barred traditional exceptions to the Statute of Frauds such as equitable estoppel); *Nordstrom v. Wauconda National Bank*, 282 Ill. App. 3d 142, 145 (1996) (the Act barred a promissory estoppel claim against a bank based on its oral promise to obtain insurance on collateral subsequently destroyed in a fire, because the oral agreement purported to modify an integral part of the credit agreement); *Machinery Transports of Illinois v. Morton Community Bank*, 293 Ill. App. 3d 207, 209-10 (1997) (claims of breach of contract, invasion of privacy, interference with contractual relationships, and fraud based on oral credit agreements barred by the Act, despite plaintiffs' full performance, and no unjust enrichment occurred); *Bank One, Springfield v. Roscetti*, 309 Ill. App. 3d 1048, 1056 (1999) (lender's oral promise to guarantor that it would closely monitor the borrower, raised as an affirmative defense

in lender's action to enforce the guaranty, was unenforceable under the Act as the guaranty and related documents constituted a "credit agreement" under the Act and the oral promise modified the terms of the guaranty).

¶ 71 Our review of the allegations in plaintiffs' amended complaint demonstrates that they were "in any way related" to a credit agreement and therefore barred by the Act. Plaintiffs repeatedly asserted that Metropolitan orally agreed on February 19, 2014, to allow plaintiffs to retain the property by paying the outstanding amount due under the mortgage along with costs and fees. Plaintiffs claimed Metropolitan entered into the Oral Agreement in order to dissuade plaintiffs from contesting the judicial sale or bidding on the property, and Metropolitan then refused to sell the property to plaintiffs for the agreed price. Thus, the alleged Oral Agreement related to the prior Loan Agreement and judgment of foreclosure regarding the amounts due the bank under the note and mortgage.

¶ 72 With specific regard to plaintiffs' claim for injunctive relief, plaintiffs alleged that Robert Oury accepted Metropolitan's alleged oral offer to allow plaintiffs "to retain the Property in exchange for payment of the mortgage and the Bank's costs and fees." Thus, this claim is based on Metropolitan's alleged breach of the oral agreement and inescapably relates to the oral credit agreement.

¶ 73 Similarly, in their claim for specific performance of the alleged Oral Agreement, plaintiffs alleged that Metropolitan entered into a binding oral contract when plaintiffs accepted its offer to re-convey the property to them after the judicial sale in exchange for payment of "the full amount of the mortgage and reimbursement of the Bank's attorneys' fees incurred in prosecuting the foreclosure." Plaintiffs requested that the court order Metropolitan to turn over title of the property "in exchange for payment of the amount remaining due on the loan taken by

Plaintiffs from the Bank ***." Accordingly, this claim related to a purported credit agreement that was not in writing, and was therefore barred under the Act.

¶ 74 With respect to plaintiffs' claims of intentional and negligent infliction of emotional distress, plaintiffs assert that they were predicated on Karann Oury's "special relationship" with Hannah, their long-time attorney who had an ownership interest in Metropolitan. The specific allegations in the complaint demonstrate that these claims are, in fact, "action[s] on or in any way related to" the Loan Agreement and Oral Agreement. 815 ILCS 160/2 (West 2014). Plaintiffs alleged that defendants' conduct in stating that plaintiffs could retain the horse farm "if they could pay off the loan and the Bank's attorney fees" and then refusing to follow through on the alleged agreement constituted "extreme and outrageous" conduct causing Karann Oury's physical and emotional distress. As stated, the Act is "broadly worded," such that "all claims, defenses, or counterclaims raised by the debtor were precluded under the Act if they are based on an oral agreement." *Machine Transports of Illinois*, 293 Ill. App. 3d at 210. Their claims essentially hinged on Metropolitan's statements in forming the Oral Agreement and its statements that it would not comply with the Oral Agreement. Because they were related to the alleged credit agreement, they are barred by the Act.[8]

¶ 75 Plaintiffs argue that their claims for fraud, breach of fiduciary duty, and unjust enrichment did not rely "solely" on oral representations connected to a credit agreement as they were in part predicated on a fiduciary relationship between the bank and plaintiffs. Application of the Act is not confined only to claims which "solely" rest on unwritten credit agreements.

[8] We note that defendants contend that plaintiffs forfeited their arguments that the infliction of emotional distress claims relied on the alleged relationship between Karann Oury and Hannah and that she was not a party to the Loan Agreement. We disagree, as the record reflects that these arguments were presented to the trial court. However, this is inapposite to our ruling as, in any case, the claims were "in any way related" to an alleged oral credit agreement under the Act.

Rather, as stated, the Act bars debtors from maintaining any "action on or in any way related" to an oral credit agreement. 815 ILCS 160/2 (West 2014).

¶ 76 Moreover, a fiduciary relationship generally does not exist between a debtor and creditor as a matter of law. *Santa Claus Industries, Inc. v. First National Bank,* 216 Ill.App.3d 231, 238 (1991). "Where the alleged fiduciary relationship does not exist as a matter of law, the party claiming that a fiduciary relationship exists must plead facts from which a fiduciary relationship arises." *Teachers Insurance & Annuity Ass'n of America v. LaSalle National Bank*, 295 Ill. App. 3d 61, 71 (1998). "The normal trust between contracting parties does not operate to turn a formal, contractual relationship into a fiduciary relationship unless one of the parties places great trust in and relies heavily on the judgment of the other party." *Id*.

¶ 77 Plaintiffs' focus on Hannah on appeal minimizes the fact that in their amended complaint, the crux of their claims focus on Metropolitan's representations that plaintiffs could retain the property if they paid the outstanding loan balance. That Hannah initially introduced plaintiffs to the bank or that they trusted him does not establish that these three claims were therefore unrelated in any way to the credit agreement. There was no allegation that Hannah promised plaintiffs that they could keep the property if they paid the loan balance. Plaintiffs did not allege facts indicating that their relationship with the bank surpassed a normal relationship of trust between borrower and lender such that plaintiffs relied heavily on the bank's judgment, or that a great disparity in age, health, education, or business acumen existed. See *Ransom v. A.B. Dick Co.*, 289 Ill. App. 3d 663, 673 (1997) (The court considers the degree of kingship between the parties; disparities in age, health, mental condition, education, and business experience; and the extent to which the party entrusted handling of its business affairs to alleged fiduciary and placed confidence and trust in it).

¶ 78 More specifically, in their fraud claim against Metropolitan, plaintiffs alleged that Keneman, on behalf of the bank, made a false statement when he told plaintiffs that they could retain the property "if they paid the outstanding loan amount" and the bank's costs and fees. Plaintiffs alleged that they detrimentally relied on this false promise by not actively opposing the foreclosure proceedings or bidding at the judicial sale. Similarly, in the fraud claim against Keneman, plaintiffs alleged that Keneman made false statements when he told plaintiffs they could keep the property and it would be conveyed back to them if they secured alternative financing to make the bank "whole by the payment of the outstanding loan amount along with the Bank's costs and fees incurred in the foreclosure action ***." As such, these claims were clearly premised on and related to the Loan Agreement and formed the basis of the alleged Oral Agreement, and they were therefore barred by the Act. See *McAloon*, 274 Ill App. 3d at 762-65 (developers' fraud actions against lender and individual corporate officers were all barred by the Act as they depended on lender's alleged oral promise to loan money to developer); *Machinery Transports of Illinois*, 293 Ill. App. 3d at 209-10 (claims of fraud based on oral credit agreements barred by the Act despite plaintiffs' full performance).

¶ 79 In their breach of fiduciary duty claim against Metropolitan, the Ourys alleged that they placed trust in Hannah and entrusted the handling of the loan to the bank, which breached its fiduciary duty to them in misrepresenting that they could retain the property "if they could pay off the loan and the Bank's attorneys fees, knowing that this was false ***." Again, this claim is plainly related to the alleged Oral Agreement and is therefore prohibited by the Act.

¶ 80 Lastly, and with a similar result, plaintiffs alleged in their claim of unjust enrichment that Keneman told them they could retain the property if they "paid the outstanding loan amount" with costs and fees, deterring plaintiffs from opposing the foreclosing proceedings or bidding at

the sale, and plaintiffs detrimentally relied on this false promise. This claim also relates to the alleged Oral Agreement and the Loan Agreement, and was prohibited under the Act. *Machinery Transports of Illinois,* 293 Ill. App. 3d at 209-10 (claims of breach of contract, invasion of privacy, interference with contractual relationships, and fraud based on oral credit agreements barred by the Act, despite plaintiffs' full performance, and no unjust enrichment occurred).

¶ 81 Based on the above allegations, we conclude that all of plaintiffs' claims were barred by the Act. Despite plaintiffs' assertions to the contrary, each cause of action depends for its existence on the alleged Oral Agreement with Metropolitan. The Act prohibits actions arising from or relating to verbal promises. Plaintiffs may not circumvent this prohibition by arguing on appeal that the Oral Agreement was not a credit agreement or that it was completely unrelated to the Loan Agreement, where the allegations in the amended complaint indicate otherwise.

¶ 82 Given our resolution of this issue, we need not address defendants' alternative arguments that this court should affirm the circuit court on other affirmative grounds, that is, plaintiffs' claims were barred by the Statute of Frauds, the doctrine of collateral attack, *res judicata*, and collateral estoppel, or that they should be dismissed pursuant to section 2-615 of the Code.[9]

¶ 83 III. CONCLUSION

¶ 84 We affirm the dismissal of plaintiffs' amended complaint pursuant to section 2-619 of the Code.

¶ 85 Affirmed.

[9] We note that it is well-established that the Act bars traditional exceptions to the application of the Statute of Frauds, such as full performance and equitable estoppel. *Machinery Transports of Illinois,* 293 Ill. App. 3d at 210; *McAloon,* 274 Ill. App. 3d at 765; *McBride,* 267 Ill. App. 3d at 372.