2018 IL App (1st) 181169-U

THIRD DIVISION
September 28, 2018

No. 1-18-1169

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RH FUND XIII, LLC an Oregon Limited Liability Company, as assignee of Kirkland Financial, LLC, as assignee of Banco Popular North America,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellant,	)	
v.	)	No. 17 CH 2341
MARK GIZYNSKI a/k/a MAREK GIZYNSKI, an individual; WEST BEND MUTUAL INSURANCE COMPANY, a Wisconsin state corporation; THE STATE OF ILLINOIS, UNKNOWN TENANTS, UNKNOWN OWNERS and NON-RECORD CLAIMANTS,	)	Honorable William B. Sullivan, Judge Presiding.
Defendant-Appellee.	)	

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

ORDER

¶ 1. *Held*: The judgment of the circuit court of Cook County which denied plaintiff's motion for the appointment of a receiver is reversed and the cause remanded with instructions; plaintiff showed that it had a reasonable probability of succeeding in its foreclosure action against defendant because plaintiff alleged the debt on the loan had matured with the full unpaid principal and accrued interest due, and defendant failed to make any payments on the mortgage since May 2010.

¶ 2. This case is an interlocutory appeal of a denial of a motion to appoint a receiver under Supreme Court Rule 307(a)(2). Ill. S. Ct. Rule 307(a)(2) (eff. Nov. 1, 2017). Plaintiff, RH Fund XIII, LLC, an Oregon limited liability company, acquired defendant's mortgage from Kirkland Financial, LLC (Kirkland). Plaintiff initiated a foreclosure action against defendant, Mark Gizynski. Plaintiff filed a motion to appoint a receiver for the properties during the pendency of plaintiff's mortgage foreclosure action against defendant. The motion alleged plaintiff was permitted to take possession under the mortgage agreement and assignment of rents, and that plaintiff had a reasonable probability of success in its mortgage foreclosure action because defendant had defaulted on his loan. The trial court denied plaintiff's motion for appointment of a receiver finding plaintiff failed to show it had a reasonable probability of success in the mortgage foreclosure action because of a discrepancy over the amount of interest due. The court also found plaintiff did not provide any facts supporting its assertion that defendant defaulted on his loan, and that therefore plaintiff had not shown it had a reasonable probability of succeeding in its foreclosure action. For the reasons that follow, we reverse the judgment of the trial court and remand the cause with instructions.

¶ 3. BACKGROUND

¶ 4. In 2004, defendant secured a loan from Banco Popular North America (Banco Popular) to purchase the property at 4938-44 West Belmont Avenue in Chicago, Illinois (the "Belmont property"). On June 25, 2004, Banco Popular entered into a mortgage agreement with defendant, and the mortgage was recorded on July 1, 2004. Banco Popular lent defendant a principal amount of $975,000.00.

¶ 5. Under the terms of the mortgage defendant was required to repay the balance "in 59 regular payments of $6,807.66 each and one irregular last payment estimated at $830,158.57.

Borrower's first payment [was] due August 5, 2004, and all subsequent payments [were] due on the same day of each month after that. Borrower's final payment [was] due on July 5, 2009, and [was] for all principal and all accrued interest not yet paid." Defendant also signed an assignment of rents on June 25, 2004, as well as a promissory note. The assignment of rents was recorded on July 1, 2004. Plaintiff, the grantor, assigned his right, title, and interest in and to the rents from the Belmont property. The assignment stated: "This assignment is given to secure (1) payment of the indebtedness and (2) performance of any and all obligations of borrower and grantor under the note, this assignment, and the related documents." In the promissory note dated June 25, 2004, plaintiff promised to pay Banco Popular $975,000 together with 5.6% interest per annum. The note had a maturity date of July 5, 2009.

¶ 6. On July 5, 2009, plaintiff and defendant entered into a modification of the loan. Defendant signed a promissory note, agreeing to pay Banco Popular the principal amount of $833,283.34 "in 59 regular payments of $7,031.38 each and one irregular last payment estimated at $737,513.92. Borrower's first payment [was] due August 5, 2009, and all subsequent payments [were] due on the same day of each month after that. Borrower's final payment [was] due on July 5, 2014, for all principal and all accrued interest not yet paid." The note had a maturity date of July 5, 2014.

¶ 7. On August 22, 2016, Banco Popular entered into an agreement with Kirkland to assign defendant's mortgage and assignment of lease and rents to Kirkland for $10 and other valuable consideration. Also on August 22, Banco Popular assigned its right to defendant's promissory note to Kirkland. Banco Popular's assignment of mortgage and assignment of lease and rents were recorded on September 20, 2016.

¶ 8. On August 25, 2016, defendant received a letter from an account officer with Kirkland

informing defendant that Kirkland had acquired his note and mortgage from Banco Popular. The account officer wanted to speak with defendant: "I understand there have been some past legal issues, but your mortgage has been reinstated (is no longer foreclosed) and we would like to work with you to keep you in the property." The account officer listed the last due date for the account (May 5, 2010), the last payment amount ($8,640.00), and the officer stated that his record showed the balance on defendant's account was $817,788.62.

¶ 9. On November 21, 2016, Kirkland assigned its interest in the mortgage executed by defendant for the Belmont property, as well as its interest in defendant's assignment of rents, to plaintiff. Kirkland also conveyed its interest in defendant's promissory note to plaintiff.

¶ 10. On December 20, 2016, plaintiff sent a demand letter to defendant informing him that the promissory note fully matured on July 5, 2014, and demanding payment in full of defendant's outstanding debt on the note by January 20, 2017. The letter stated defendant owed a principal balance of $817,788.62, interest charges of $722,039.20, and penalty charges of $17,578.50 for a total balance due of $1,557,406.32. Plaintiff stated that if defendant did not pay the full amount then plaintiff could initiate foreclosure proceedings.

¶ 11. On February 16, 2017, plaintiff initiated a foreclosure action against defendant, and filed an amended complaint for mortgage foreclosure and other relief with the trial court on November 2, 2017. In its amended complaint, plaintiff alleged defendant was in default on his mortgage. The complaint alleged defendant's "amount of original indebtedness: $975,000.00, and, as modified, $833,283.34." On that same page of the amended complaint, plaintiff alleged defendant owed $817,788.62 on the principal balance, owed $722,039.20 in interest as of December 13, 2016, and had unpaid late charges of $17,578.50. Plaintiff's amended complaint further alleged the debt had matured and defendant breached his obligation to repay the unpaid

principal and interest due on the promissory note. Plaintiff attached to the complaint a copy of defendant's mortgage agreement, assignment of rents, and promissory note.

¶ 12. In his answer to the amended complaint, defendant denied the allegations that his mortgage was in default and denied plaintiff's allegations as to the remaining charges and outstanding balance on his mortgage.

¶ 13. On January 4, 2018, plaintiff filed a motion for appointment of receiver. Plaintiff argued it was entitled to possession of the Belmont property under the Illinois Mortgage Foreclosure Law (Foreclosure Law). 735 ILCS 5/15–1702 (West 2016). Plaintiff claimed it was entitled to take possession of the property, collect rents, and operate the property through appointment of a receiver pending resolution of the mortgage foreclosure action. Plaintiff attached to the motion its amended complaint, a copy of the original mortgage agreement, assignment of rents, and promissory note, as well as the affidavit of Kevin Kidd, the managing member of Red Hills Holdings, LLC, and manager of RH Fund XIII, LLC, dated December 28, 2017. Kidd averred he is familiar with the mortgage for the Belmont property. Kidd further averred defendant "is in default of the subject Mortgage dated June 25, 2004 and underlying loan due to, *inter alia*, its failure to make payments as agreed upon pursuant to the terms of the subject mortgage." Kidd stated plaintiff "has repeatedly demanded that the Mortgagor cure the defaults existing under the subject Mortgage and the Mortgagor has refused to do so."

¶ 14. On February 26, 2018, the trial court held a hearing on a motion to dismiss filed by defendant and on plaintiff's motion to appoint a receiver. The trial court first heard arguments on defendant's motion to dismiss. The court denied defendant's motion to dismiss under section 2-615, and then heard defendant's arguments for dismissal under section 2-619. 735 ILCS 5/2-615, 2-619 (West 2016). In denying defendant's motion to dismiss, the court found the Kirkland

letter lacked a foundation because defendant did not provide some proof that it is a reliable document. The court did not prohibit defendant from using the letter in the litigation and stated its "ruling is not going to preclude your right to raise it later."

¶ 15. In his answer to the motion for appointment of receiver, defendant argued plaintiff had not shown a reasonable probability that it will prevail in its foreclosure action. Defendant stated he depended on the Kirkland letter to state the amount due on the loan, defendant claimed plaintiff failed to prove defendant was in default and that the Kidd affidavit did not prove anything because it contained mere allegations not supported with any proof.

¶ 16. Defendant further argued that plaintiff could not have proven defendant was in default because plaintiff alleged defendant defaulted in May 2010, but defendant received a letter from Kirkland on August 25, 2016 stating his mortgage was reinstated. Therefore, defendant argued that even if he had defaulted in May 2010, his mortgage on the Belmont property was no longer in default as of August 2016. Defendant argued the Kidd affidavit did not attach a payment history or contain any specific facts that would support plaintiff's claim defendant had defaulted. Defendant further argued that because of the Kirkland letter, the loan was reinstated in August 2016 and the debt owed could not have grown from $817,788.62 in August 2016 to over $1.5 million in December 2016.

¶ 17. Plaintiff argued the Kirkland letter could not have reinstated the mortgage and cured the default because defendant failed to act in reliance of the letter by making further payments. Plaintiff further contended that even if the Kirkland letter had reinstated the loan and cured the default, that defendant was again in default because he had not made any subsequent payments or paid subsequent taxes. Plaintiff argued that the debt matured on July 5, 2014 and the unpaid principal and interest on the loan was due and payable on that date. Plaintiff argued defendant

had not alleged he had made any payments since receiving the Kirkland letter or since May 2010.

¶ 18. Plaintiff argued the Foreclosure Law provided that the trial court was obligated to appoint a receiver if plaintiff showed it was entitled to appointment of a receiver, that it had a reasonable probability of succeeding in its foreclosure action, and defendant failed to show good cause to not appoint a receiver. Under the Foreclosure Law, "Whenever a mortgagee entitled to possession so requests, the court shall appoint a receiver." 735 ILCS 5/2-1702(a) (West 2016). The Foreclosure Law further provides that "[t]he word 'shall' as used in this Article means mandatory and not permissive." 735 ILCS 5/15-1105 (West 2016).

¶ 19. The trial court denied plaintiff's motion for appointment of a receiver without prejudice and gave plaintiff leave to file the motion again depending on the results of the cross-motions for summary judgment. The court compared "the Kirkland letter to the notice of default issued by [plaintiff]. And there are significant discrepancies with regard to the amounts due and owing in the Kirkland letter and the notice of default letter from December." The court found plaintiff had not shown defendant was in default because of those "significant discrepancies."

> "THE COURT: There are two clearly contradictory letters coming from plaintiff's side. The first contradictory letter is from Kirkland Financial, the August 25, 2016 letter, and the second contradictory letter is from [plaintiff] from December of 2016. So since those letters are inconsistent, they both come from the plaintiff's side, I cannot determine whether or not there has in fact been a default and/or whether or not the alleged amount of defaults are reasonably appropriate that would result in my ruling at this juncture that there's a reasonable probability that the plaintiff would be successful on the merits."

The trial court therefore found: "I don't have enough evidence before me to allow me to make that finding to authorize the appointment of a receiver at this juncture." The court denied without prejudice plaintiff's motion for appointment of receiver. On June 4, 2018, plaintiff filed its notice of interlocutory appeal, under Supreme Court Rule 307(a)(2), from the trial court's May 24, 2018 order denying plaintiff's motion for appointment of receiver. Ill. S. Ct. Rule 307(a)(2) (eff. Nov. 1, 2017). This appeal followed.

¶ 20. ANALYSIS

¶ 21. Plaintiff claims defendant's mortgage was in default for failure to make payments as due since 2010. Plaintiff also claims the debt had matured and that the full amount of the unpaid principal and interest was due and payable on July 5, 2014. Plaintiff argued that under the terms of the mortgage agreement plaintiff was authorized to take possession, and that a receiver should be appointed over the Belmont property because plaintiff had a reasonable probability of succeeding in the foreclosure action. Plaintiff argues the trial court erred denying its motion to appoint a receiver because the Foreclosure Law uses mandatory language.

¶ 22. Defendant claims the trial court did not err in making the factual finding that plaintiff made a conclusory allegation that defendant was in default on his mortgage without support of specific facts and that the Kidd affidavit did not contain any specific facts that could support plaintiff's allegations.

¶ 23. We have jurisdiction over this interlocutory appeal under Supreme Court Rule 307(a)(2). Ill. S. Ct. Rule 307(a)(2) (eff. Nov. 1, 2017) ("An appeal may be taken to the Appellate Court from an interlocutory order of court *** appointing or refusing to appoint a receiver or sequestrator."). "Rule 307 is designed to permit interlocutory review of the trial court's exercise of its equitable powers to grant or deny relief including appointment of a receiver." *Asset*

Guaranty Reinsurance Co. v. American National Bank & Trust Co. of Chicago, 254 Ill. App. 3d 713, 719 (1993). Our review of the trial court's order denying plaintiff's motion for appointment of receiver is *de novo*. *Bank of America, N.A. v. 108 N. State Retail LLC*, 401 Ill. App. 3d 158, 165 (2010).

¶ 24. We note that throughout its appellant brief plaintiff relied on multiple unpublished decisions filed under Supreme Court Rule 23, and defendant argued in his appellee brief that plaintiff's brief should be stricken for violating supreme court rules. Illinois Supreme Court Rules "are not mere suggestions. They have the force of law, and they should be followed." *People v. Glasper*, 234 Ill. 2d 173, 189 (2009). Nevertheless, "violation of a supreme court rule does not mandate reversal in every case." *Id.* at 193. "Where violations of supreme court rules are not so flagrant as to hinder or preclude review, the striking of a brief in whole or in part may be unwarranted." *Merrifield v. Illinois State Police Merit Board*, 294 Ill. App. 3d 520, 527, 691 (1998). Though we admonish plaintiff for its violations of supreme court rules, those violations were not so misleading as to hinder our analysis, and we will not strike the briefs.

¶ 25. "Pursuant to Illinois law, a mortgagee may foreclose its interest in real property upon 'either the debt's maturity or a default of a condition in the instrument.' [Citation.] A mortgagee establishes a *prima facie* case for foreclosure with the introduction of the mortgage and note, after which the burden of proof shifts to the mortgagee to prove any applicable affirmative defense." *PNC Bank, National Ass'n v. Zubel*, 2014 IL App (1st) 130976, ¶ 18. Under the Foreclosure Law, a plaintiff's complaint of foreclosure should contain:

> "(2) Attached as Exhibit "A" is a copy of the mortgage and as Exhibit "B" is a copy of the note secured thereby.
>
> (3) Information concerning mortgage:

* * *

(J) Statement as to defaults, including, but not necessarily limited to, date of default, current unpaid principal balance, per diem interest accruing, and any further information concerning the default;

* * *

(R) Facts in support of a request for appointment of mortgagee in possession or for appointment of receiver, and identity of such receiver, if sought." 735 ILCS 5/15-1504 (a) (West 2016).

¶ 26. The Foreclosure Law provides that "[w]henever a mortgagee entitled to possession so requests, the court shall appoint a receiver" (735 ILCS 5/15–1702(a) (West 2016), and the Foreclosure Law also defines shall as "mandatory and not permissive." 735 ILCS 5/15-1105 (West 2016). "[A]s this court has previously held, the Foreclosure Law creates a presumption in favor of the mortgagee's right to possession of nonresidential property during the pendency of a mortgage foreclosure proceeding [citations,] and a mortgagor can retain possession only if it can show 'good cause' for permitting it to do so." *Bank of America, N.A.*, 401 Ill. App. 3d at 164.

¶ 27. Whether Plaintiff has a Reasonable Probability of Success in its Foreclosure Action

¶ 28. Plaintiff seeks appointment of a receiver over the units of the Belmont property not occupied by defendant. Apart from the unit defendant occupies, the remaining units at the Belmont property are commercial units used as store fronts and apartments, and are nonresidential. *BMO Harris N.A. v. Kautz*, 2014 IL App (2d) 140399, ¶ 13. Here, the terms of the mortgage allowed plaintiff to take possession and have a receiver appointed while the foreclosure suit was pending. Defendant does not contest that the terms of his mortgage and assignment of rents permit defendant to take possession of the units at the Belmont property he

does not occupy if he is in default on the mortgage. Therefore, plaintiff has met the first step of establishing a right to appoint a receiver over the Belmont property.

¶ 29. However, defendant contests plaintiff's allegation his mortgage is in default, claiming plaintiff failed to provide more than mere conclusory allegations not supported by specific facts that defendant defaulted. Plaintiff's entitlement to appointment of a receiver turns on whether plaintiff showed it had a reasonable probability of succeeding in its foreclosure action.

¶ 30. The issue in this case is whether Plaintiff has shown a reasonable probability of success in its foreclosure action. Plaintiff claims it provided evidence of defendant's default by claiming defendant had not made a payment on his loan since 2010, that defendant owes $817,788.62 on his principal balance, and that defendant has not provided any evidence that he has made a payment or that his mortgage is not in default. Plaintiff also argued that while defendant disputes the amount of interest due, defendant did not dispute that he signed the note and mortgage and that under the terms of the modified note, the debt matured and the entire unpaid principal and interest on the note was due and payable on July 5, 2014. Defendant has not alleged he made payment. "Pursuant to Illinois law a mortgagee may foreclose its interest in real estate upon either the debts maturity or a default of a condition in the instrument." *PNC Bank, National Ass'n*, 2014 IL App (1st) 130976, ¶18.

¶ 31. Plaintiff attached to its amended complaint a copy of the mortgage note, assignment of rents, the original promissory note, and the promissory note dated July 5, 2009 with a maturity date of July 5, 2014. Therefore, plaintiff established a *prima facie* case for foreclosure. Although defendant claims plaintiff has not specified any particular payment missed, because the debt has matured plaintiff claims it has the right to foreclose on this basis alone. *Id.*

¶ 32. Defendant argues plaintiff failed to provide any facts supporting the assertion that

defendant is in default, and that the Kidd affidavit failed to provide specific facts. Defendant introduced into evidence an August 2016 letter from Kirkland informing defendant his mortgage was no longer in default and the mortgage was reinstated. Defendant claims that not only did plaintiff fail to provide specific facts of a default, but also that there are too many discrepancies in the amount of the remaining principal balance and interest and penalty charges that plaintiff claimed. Defendant claims the Kidd affidavit did not provide specific facts of the default and that plaintiff has not supported its claim that defendant is in default. The trial court found plaintiff had not supported its claim that defendant is in default because plaintiff did not resolve discrepancies in the complaint and the Kirkland letter. We disagree.

¶ 33. Here plaintiff pleaded that the debt matured and the unpaid principal and interest became due. Defendant has not disputed that the principal balance is $817,788.62. Since the debt is mature and unpaid, plaintiff was entitled to foreclose on this basis alone. *PNC Bank, National Ass'n*, 2014 IL App (1st) 130976, ¶18. Defendant claims he denied plaintiff's allegations he is in default on his mortgage because defendant provided the Kirkland letter, alleged his mortgage was not in default, and disputed the amount he owed. Defendant claims the Kirkland letter reinstated his mortgage and therefore that he denied his mortgage was in default. However, that letter supports plaintiff's assertion that defendant's loan was in default prior to the letter. Although defendant argues the Kirkland letter modified his mortgage, the Kirkland letter did not prevent plaintiff from demanding payment of the outstanding balance under the terms of the mortgage agreement. The letter did not forgive the outstanding principal balance due after the note matured.

¶ 34. Plaintiff demanded defendant pay the outstanding balance and defendant has not alleged that he has done so. Therefore, under the terms of the mortgage agreement, plaintiff has shown

defendant is in default. See *PNC Bank, National Ass'n*, 2014 IL App (1st) 130976, ¶ 22. Defendant apparently argues that the Kirkland letter was a novation reinstating his mortgage, and that therefore he is not in default on his mortgage. We disagree. "A novation is defined as *** the substitution of a new debt or obligation for an existing one which is thereby extinguished. [Citation.] The essential elements of a novation are: (1) a previous, valid obligation; (2) a subsequent agreement of all the parties to the new contract; (3) the extinguishment of the old contract; and (4) the validity of the new contract." *Thomas v. Frederick J. Borgsmiller, Inc.*, 155 Ill. App. 3d 1057, 1061 (1987). The party invoking the novation as an affirmative defense has the burden of proving the novation by a preponderance of the evidence. *Id.* at 1062.

¶ 35. "A novation requires contractual consideration. When money is due, a mere promise to forebear its collection to some future date upon consideration of payment of part of the amount is not enforceable." *Life Savings & Loan Ass'n of America v. Palos Bank & Trust Co.*, 155 Ill. App. 3d 748, 753 (1987). In the present case, defendant has not met his burden of showing a novation. Defendant did not allege he accepted the offer from the Kirkland letter and did not allege that he supported any acceptance with consideration. Consideration is defined as a bargained for exchange, typically involving the promisor receiving a benefit and the promisee suffering some detriment. *Vassilkovska v. Woodfield Nissan, Inc.*, 358 Ill. App. 3d 20, 26 (2005). Defendant here has not alleged he provided any consideration for his acceptance of the offer from the Kirkland letter. At most, defendant has shown the Kirkland letter represented a gratuitous promise. A gratuitous promise is unenforceable, and therefore "there [is] no material issue of fact concerning a novation among the parties." *Life Savings & Loan Ass'n of America*, 155 Ill. App. 3d at 753. Based on the record before us, defendant has not shown the elements of contract formation necessary to prove the Kirkland letter was a novation.

¶ 36. Assuming *arguendo* that defendant's mortgage was reinstated by the Kirkland letter, full payment of the mortgage was still due when the mortgage was reinstated because reinstating the mortgage did not prohibit plaintiff from requiring performance by paying the remaining balance. Under the terms of the mortgage agreement a waiver on one occasion does not prevent the lender from insisting on strict performance later:

> "Lender shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender to a provision of this Mortgage shall not prejudice or constitute a waiver of lender's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of Grantor's obligations as to any future transactions."

Therefore, plaintiff could still require defendant to perform the contract and make the final payment. Defendant has not alleged he is no longer required pay the remaining principal balance, and therefore he has not denied that his mortgage is currently in default.

¶ 37. Although the trial court was rightly concerned with the discrepancies in plaintiff's allegations of the amount of defendant's default, it was still undisputed that the debt had matured and payment for the principal balance of $830,158.57 was due on July 5, 2014. Defendant signed a promissory note on July 5, 2009 for a principal amount of $833,283.34, with a maturity date of July 5, 2014, at which time the entire unpaid principal and interest was due and payable. There is no evidence the full payment of the principal balance was made and defendant does not

claim he paid the principal balance owed. The Kirkland letter was not a legally enforceable modification of his obligation. Therefore, we find plaintiff showed a reasonable probability that it would succeed in its mortgage foreclosure action because defendant is in default. Even if plaintiff's pleading may require amendment, our review of the record reveals that plaintiff has a reasonable probability of succeeding in its foreclosure action because the debt has matured with an unpaid principal balance.

¶ 38. Defendant claims that plaintiff is seeking almost double what defendant owes, and that therefore plaintiff has not proven a default. However, defendant's claim of plaintiff charging excessive interest and penalties on the principal balance does not refute the existence of defendant's default, though it does contest the amount of damages plaintiff is entitled to. Defendant has not refuted that the note became mature in July 2014 and that over $800,000 remains due.

¶ 39. In this case, plaintiff has shown it is entitled to possession based upon the pleadings and exhibits that are part of this record because the mortgage permits plaintiff to take possession in the event of a default. Defendant had not made a payment on the mortgage since 2010. We find plaintiff has demonstrated it has a reasonable probability of succeeding in its mortgage foreclosure action because the loan has matured and there exists an unpaid principal balance plus interest as provided in the note and mortgage. Therefore, we reverse the trial court's order denying plaintiff's motion for appointment of a receiver and direct the trial court on remand to enter an order appointing a receiver over the requested nonresidential units in the Belmont property.

¶ 40. CONCLUSION

¶ 41. For the foregoing reasons the judgment of the circuit court of Cook County is reversed

and the cause remanded with instructions.

¶ 42. Reversed and remanded with instructions.