2013 IL App (2d) 121101-U
No. 2-12-1101
Order filed February 26, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MLCFC 2006-4 OFFICE 3000, LLC,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12-CH-3812
	)	
YPI BANNOCKBURN, LLC,	)	
	)	
Defendant-Appellant	)	
	)	Honorable
(Unknown Owners and Non-record Claimants,	)	Luis A. Berrones,
Defendants).	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant forfeited its arguments for reversal of the trial court's order appointing a receiver for its property. Regardless of forfeiture, defendant's arguments failed on their merits as contrary to or unsupported by law. Accordingly, we affirmed the trial court order appointing a receiver for defendant's property.

¶ 2 Plaintiff, MLCFC 2006-4 Office 3000, LLC, is suing under the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et seq.* (West 2010)) to foreclose the mortgage secured by a commercial office building located at 3000 Lakeside Drive, Bannockburn, Illinois (the Property), which is owned

by the defendant, YPI Bannockburn, LLC. Plaintiff motioned the court to appoint Robert DeMarke as receiver for the Property, and the court granted its motion on October 4, 2012. Defendant immediately filed a notice of interlocutory appeal pursuant to Illinois Supreme Court Rule 307(a)(2) (eff. Feb. 26, 2010) (permitting interlocutory review of appointments of receivers). For the reasons stated herein, we affirm the motion appointing the receiver.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff filed its verified complaint for foreclosure and other relief on July 26, 2012, seeking to foreclose the mortgage on the Property. On the same day, plaintiff also filed its motion for appointment of receiver for the Property. As of the time that defendant filed its notice of interlocutory appeal on October 4, 2012, it had not yet filed an answer to plaintiff's July 26 complaint.

¶ 5 On August 17, 2012, plaintiff presented its receiver motion to the trial court, but defendant appeared and requested time to file a written response. The court entered an order the same day granting extra time. The August 17 order required defendant to file a response to plaintiff's motion to appoint a receiver on or before September 14, 2012, and it further set a hearing for appointment of receiver on October 4, 2012.

¶ 6 Defendant never filed a response to plaintiff's motion. Instead, on September 14, 2012—the date on which the response was due—defendant filed its motion for substitution of judge as of right. Defendant noticed its motion for October 4, the same date as the hearing on the receiver motion. On September 27, 2012, plaintiff filed a motion to bar defendant's response to its motion to appoint receiver. Plaintiff also requested that the hearing on appointment of receiver be immediately re-set for prompt hearing upon reassignment to a new judge.

¶ 7 The trial court granted defendant's motion for substitution of judge on October 4, 2012. The case was transferred that day to the only other judge in the Lake County chancery division, Judge Berrones. As the only possible judge the case could be transferred to, Judge Berrones had been notified prior to his substitution of the motion to substitute judge and of the scheduled October 4 hearing to appoint receiver, and he had read plaintiff's brief on the matter. Ready to proceed, Judge Berrones held the hearing to appoint a receiver. Plaintiff was ready to proceed, but defendant objected, arguing that the court should assign a status date for seven days after the substitution per a pre-printed standing court order. Defendant, represented by counsel, also argued that its primary attorney could not attend the hearing that day, and that this fact warranted delaying the hearing.

¶ 8 The court found no reason to delay the hearing. Although acknowledging that a substituted judge will generally set a status hearing after receiving a transferred case, in this situation Judge Berrones stated that he knew he was going to receive the case and had been notified about the hearing before any substitution occurred. The case already had a briefing schedule set, the court had read plaintiff's brief, and defendant had not filed a responsive brief. The court found that defendant had "waived" the right to respond to plaintiff's motion by failing to file a responsive brief. Accordingly, the court was ready to rule on the briefs—the only brief being plaintiff's—and did so that day.

¶ 9 The court entered an order on October 4, 2012, appointing Robert DeMarke as receiver for the Property. Defendant filed its notice of interlocutory appeal that same day, timely appealing the appointment of the receiver.

¶ 10 II. ANALYSIS

¶ 11 Defendant raises three arguments as to why this court should reverse the trial court's order appointing Robert DeMarke as receiver for the Property. It argues: (1) the trial court erred by proceeding to hear the motion to appoint receiver after substitution of judge instead of setting the case for status within seven days, (2) plaintiff failed to establish that it was authorized to take possession of the Property under the terms of the mortgage, and (3) defendant showed good cause to deny the motion for appointment of receiver. As detailed herein, not only did defendant forfeit these arguments, but such arguments, if not forfeited, would fail on their merits.

¶ 12 A. Standard of Review

¶ 13 The standard of review for an appointment of a receiver under the Illinois Mortgage Foreclosure Law is *de novo*, at least when the trial court does not hold a fact-finding hearing on the matter. *Bank of America, N.A. v. 108 N. State Retail LLC*, 401 Ill. App. 3d 158, 165 (2010). Review of decisions related to the trial court's docket are reviewed for an abuse of discretion. See, *e.g.*, *Insulated Panel Co. v. Industrial Comm'n*, 318 Ill. App. 3d 100, 102 (2001) (trial court had inherent power to control docket, and it was not abuse of discretion to limit briefs to 10 pages).

¶ 14 B. Forfeiture of Arguments

¶ 15 Plaintiff argues that defendant "waived" its arguments for two independent reasons: (1) by failing to properly cite and support its arguments pursuant to Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008), and (2) by failing to raise its arguments before the trial court. We note that to accept plaintiff's contentions, defendant would have forfeited its arguments, not waived them. *People v. Blair*, 215 Ill. 2d 427, 444 n.2 ("waiver" is a voluntary relinquishment, whereas "forfeiture" is a failure to assert a right timely). But the difference in this case is one of form only—whether deemed forfeiture or waiver, either would defeat defendant's appeal.

¶ 16 Rule 341(h)(7) (eff. July 1, 2008), requires that the argument section of an appellate brief contain citations to authorities and to pages of the record relied on, and failure to include mandatory citations may result in forfeiture of the unsupported arguments. *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 38; *Baez v. Rosenberg*, 409 Ill. App. 3d 525, 534 (2011) ("A party forfeits review of an argument unsupported by citation to authority."). Defendant's first argument—that the trial court erred by hearing the motion to appoint receiver immediately after substitution of trial judge—does not have one authority cited in support. It cites only the record three times to recount some of the uncontested events surrounding the hearing to appoint receiver. Defendant likewise cites no case in support of its argument that plaintiff was not authorized by the terms of the mortgage to take possession of the property. For this argument, defendant only cites the general statutory authority for mortgagee authorization to take possession of real estate (735 ILCS 5/15-1701(b)(2) (West 2010)). Finally, in defendant's third argument that there was good cause to deny the motion to appoint receiver, defendant cites one case, but as plaintiff points out, it is a pre-IMFL case that only stands for the general proposition that the purpose of a receiver is to "protect and preserve the property for the benefit of all and to secure the property so that it may be subjected to such order or decree as the court may make." *First Federal Savings & Loan Ass'n of Chicago v. National Boulevard Bank of Chicago*, 104 Ill. App. 3d 1061, 1063 (1982). While this is the general purpose of a receiver, it says nothing as to what may constitute "good cause" warranting denial of the motion to appoint receiver under the Illinois Mortgage Foreclosure Law.

¶ 17 "The appellate court is not a depository in which the appellant may dump the burden of argument and research." (Internal quotation marks omitted.) *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 37. Here, the defendant has done exactly that—it has dumped arguments upon this

court without the mandatory support required by our supreme court. We find, therefore, that the arguments are forfeited.

¶ 18 Plaintiff also contends that defendant forfeited its arguments by failing to raise the arguments in the trial court, even if it had properly supplied supporting authorities in its brief. We agree with plaintiff. Defendant had ample time to file a response to the receiver motion yet failed to do so. Plaintiff served defendant with the receiver motion on July 30, 2012, and defendant had, per the briefing schedule, until September 14 to file its response. As of the time of defendant's notice of appeal on October 4, it had filed no response.

¶ 19 During the October 4 hearing, the trial court determined that defendant had "waived" its right to oral argument because of its failure to file a response brief, and it noted that defendant had not come in prior to the deadline to request additional time. Defendant still attempted to argue, for the first time, that the hearing should be delayed and that the court should not appoint a receiver. The court agreed with plaintiff's conclusion that defendant was engaging in tactics to delay the proceedings. Regarding defendant's conduct and arguments, Judge Berrones said, "I think it's just a delaying tactic. I can't interpret this any other way." Neither can we.

¶ 20 It is a well-established general rule that failure to raise an argument in the circuit court forfeits the argument on appeal. *E.g.*, *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill. App. 3d 669, 695 (2010). Here, defendant forfeited its right to argument in the trial court by failing to file a response to the motion. Although defendant tried to orally argue against the motion at the October 4 hearing, the trial court found that defendant had "waived its right to respond" to the motion and would rule on the briefs. In so doing, the court acted within its discretion. See *Parkway Bank & Trust Co. v. Meseljevic*, 406 Ill. App. 3d 435, 441 (2010) (barring

party from oral argument that failed to file response to the motion being argued); *Korbelki v. Staschke*, 232 Ill. App. 3d 114, 118-19 (1992) (finding oral argument is a privilege, not a right, accorded in the court's discretion). Therefore, not only are defendant's arguments forfeited for lack of authoritative support in the briefs, but even if supported the arguments cannot be raised for the first time before this court.

¶ 21 C. Arguments Fail on the Merits

¶ 22 Even if defendant had not forfeited its arguments, its arguments nonetheless fail on their merits. First, defendant argues that the court erred by holding the hearing for receiver immediately after granting a substitution of judge, instead of following a pre-printed order that stated a new judge would set a status call following reassignment to a case. Defendant supports this argument not with authority but by bemoaning the fact that its primary attorney for the case could not attend the October 4 hearing and that the two chancery judges must have communicated beforehand as to the case schedule so that the substituted judge could pick up right where the prior judge left off.

¶ 23 Plaintiff rightly responds that the circuit court has the inherent power to control its docket.[1] See, *e.g.*, *Cronin v. Kottke Associates, LLC*, 2012 IL App (1st) 111632, ¶ 39 ("[A] trial court has

[1]Plaintiff questions whether a circuit court's decision to hold a receiver hearing immediately after substitution of judge is even appealable. It cites *Short Brothers Construction, Inc. v. Korte & Luitjohan Contractors, Inc.*, 356 Ill. App. 3d 958, 960-61 (2005), which held that certain ministerial or administrative actions of the court were not appealable under Illinois Supreme Court Rule 307(a)(1) because they did not rise to the level of traditional injunctive relief; rather, they were actions pursuant to the inherent power of the court and had no effect on the parties outside of the litigation. We find this argument inapposite and that plaintiff misstates the issue. *Short Brothers* faced the issue of whether the order appealed was injunctive in nature, therefore invoking Rule 307(a)(1). Here, however, it is clear that defendant appeals the order appointing a receiver, not the court's decision to hold a receiver hearing on October 4. It is merely one of defendant's asserted grounds for reversal of the receiver order that the hearing on the motion should not have taken place on October 4. This comports with Rule 307(a)(2) because it is an interlocutory appeal of the appointment of a receiver—precisely what the rule authorizes.

inherent authority to control its docket and * * * the court's inherent authority is necessary to prevent undue delays in the disposition of cases caused by abuses of procedural rules, and also to empower courts to control their dockets."). Here, there was a briefing schedule, and defendant failed to comply with it. The mortgage foreclosure law requires a *prompt* hearing to appoint receiver (735 ILCS 5/15-1706(c) (West 2010)), and the court did its best to be prompt: Judge Berrones had read the briefs and was ready to continue the briefing schedule that had been set months beforehand. Defendant's argument that the two chancery judges communicated before the substitution of judge in order to maintain the original briefing schedule evidences only an efficient court; it does not signal any conceivable wrong wrought on defendant. If anything, the court should be commended for its efficiency, not criticized. Moreover, a substitution of judge as of right guarantees a new judge—it does not guarantee a delay in the proceedings, and should not be used to such an end. 735 ILCS 5/2-1001(a)(2) (West 2010).

¶ 24 Moving from one poorly conceived argument to another, it is undisputed that defendant was represented by counsel at the hearing. That it was not represented by its *preferred* counsel for the case is, essentially, no argument whatsoever. One of the most basic rules of professional conduct is Rule 1.1: Competence. Ill. Rs. of Prof. Conduct of 2010, R. 1.1 (eff. Jan 1, 2010). Rule 1.1 requires, *inter alia*, thoroughness and preparation necessary for the representation. Counsel for defendant knew that there was a hearing scheduled for October 4 and should have been prepared for it to proceed. Counsel is expected to be ready to represent its client before the court—this is lawyering 101. If counsel was not prepared, or as prepared as another attorney would have been, it was a failure of counsel and not of the court for proceeding.

¶ 25 Next, defendant argues that plaintiff was not authorized to take possession of the property by terms of the mortgage. The mortgage authorizes the mortgagee to take possession or have a receiver appointed, but defendant contends that there is insufficient evidence showing that plaintiff is the mortgagee. Acknowledging that the plaintiff attached assignment documents, defendant merely finds the documents insufficient evidence of valid assignments. This flies in the face of the unbroken chain of facially valid assignments attached to the verified complaint—which defendant has yet to answer—that end with assignment to plaintiff. This argument accordingly fails.

¶ 26 Finally, defendant argues that there was "good cause" warranting denial of the motion to appoint receiver. This "good cause" is a "lockbox" agreement, by which rents and income of tenants of the Property are paid directly into an account controlled by the plaintiff. Plaintiff provides money monthly to defendant to pay employees and expenses with regard to the property. Because of this agreement, defendant contends that there is no reason to protect and preserve the property, which is the purpose of a receiver appointment. Defendant equates adequate protection of the property with good cause under section 1701(b)(2) of the mortgage foreclosure law. 735 ILCS 5/15-1701(b)(2) (West 2010). The law, on the other hand, does not.

¶ 27 The mortgage foreclosure law authorizes a mortgagee to take possession of the mortgaged property when the terms of the mortgage allow it and there is a reasonable probability of success on the merits (735 ILCS 5/15-1701(b)(2) (West 2010)), and it requires appointment of a receiver when a mortgagee is entitled to possession of the property (735 ILCS 5/15-1701(a) (West 2010)). However, a mortgagor may remain in possession if it shows good cause. 735 ILCS 5/15-1701(b)(2) (West 2010). Here, the mortgage documents allow for an appointment of a receiver, and there is a reasonable probability of success because there is an undisputed default. See *CenterPoint Properties*

Trust v. Olde Prairie Block Owner, LLC, 398 Ill. App. 3d 388, 392 (2010) ("[A] proven default establishes a reasonable probability of success in a mortgage foreclosure action"). Therefore, unless defendant showed good cause, the trial court acted properly by appointing a receiver to the Property. The only good cause defendant asserted is adequate protection, which is irrelevant to a consideration of good cause under section 1701(b)(2). *Travelers Insurance Co. v. LaSalle National Bank*, 200 Ill. App. 3d 139, 144 (1990). Defendant's final argument accordingly fails on its merits.

¶ 28 III. CONCLUSION

¶ 29 Defendant forfeited its arguments for reversal of the receiver order by not raising them in the trial court and by not supporting them with authority pursuant to Rule 341(h)(7). Even had it not forfeited its arguments, all arguments fail on their merits. Therefore, we affirm the Lake County circuit court order appointing Robert DeMarke as receiver for the Property.

¶ 30 Affirmed.