2019 IL App (5th) 180229-U

NO. 5-18-0229

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

DONALD W. BAUER, LAURETTA BAUER, KARLA BAUER, and DAVID BAUER, Plaintiffs-Appellants, v. JOHN P. NIEMERG, Effingham County Circuit Clerk, Deputy Clerk LYNETTE (last name unknown) and Other Unknown Deputy Clerks of John P. Niemerg, STEPHEN R. RYAN, THE LAW FIRM OF RYAN, BENNETT & RADLOFF, E.T. GRAHAM, JR., THE LAW FIRM OF BEAVERS, GRAHAM & CALVERT, FIRST MID ILLINOIS BANK & TRUST, DOUG KOPPLIN, Unknown Employee and/or Employees of First Mid Illinois Bank & Trust, BETTY A. LAUTH, ROSE ZIMMER, CAROL HEILMAN, RALPH BAUER, and RUTH SMITH, Defendants-Appellees.	)	Appeal from the Circuit Court of Effingham County. No. 17-L-7 Honorable Douglas L. Jarman, Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Cates and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: Circuit court did not err in dismissing claims of plaintiffs against circuit clerk and staff because assuming, without deciding, that the court had subject matter jurisdiction over the claims, the claims failed to allege a breach of a ministerial duty on the part of the clerk and staff in issuing a citation to discover assets, and failed to allege facts sufficient to establish

that any alleged tampering with an exhibit in a court file caused the plaintiffs' damages; counts alleging abuse of process on the part of individuals instituting a foreclosure action and their attorneys were properly dismissed because the plaintiffs failed to allege specific facts showing that the action was instituted for an improper purpose or that it was used to accomplish some result beyond the purview of a foreclosure action; counts alleging civil conspiracy arising from attorneys' representation of plaintiffs were properly dismissed as outside statute of limitations set forth in section 13-214.3(b) of the Illinois Code of Civil Procedure (735 ILCS 5/13-214.3(b) (West 2016)); complaint failed to allege a sufficient cause of action for civil conspiracy against all defendants because the allegations amounted to conclusions not supported by specific facts showing an underlying tortious act and an agreement by the various defendants to affirmatively assist in such an act.

¶ 2 The plaintiffs, Donald W. Bauer, Lauretta Bauer, Karla Bauer, and David Bauer, appeal the September 26, 2017, and March 29, 2018, orders of the circuit court of Effingham County, which ultimately resulted in the dismissal, with prejudice, of counts I through XII of their complaint and/or amended complaint, alleging various causes of action against the defendants, John P. Niemerg, Effingham County Circuit Clerk, Lynette Root,[1] Effingham County Deputy Circuit Clerk, other unknown deputy clerks of John P. Niemerg (the circuit clerk defendants), Stephen R. Ryan, The Law Firm of Ryan, Bennett & Radloff (the Ryan defendants), E.T. Graham, Jr., The Law Firm of Beavers, Graham & Calvert (the Graham defendants), First Mid Illinois Bank & Trust, Doug Kopplin, unknown employees of First Mid Illinois Bank & Trust (the Bank defendants), Betty A. Lauth, Rose Zimmer, Carol Heilman, Ralph Bauer, and Ruth Smith (the Lauth defendants). For the following reasons, we affirm.

[1]Although the caption of the complaint states that Lynette Root's last name is unknown, we insert it here as it is listed on all subsequent pleadings.

¶ 3 FACTS

¶ 4 The pleadings, affidavits, and court documents contained in the record on appeal establish the following background facts. The plaintiffs gave two notes and one mortgage to Ralph and L. Marie Bauer, on December 1, 1978. After Ralph and L. Marie died in 1986 and 1988 respectively, one of their sons, Robert, as their executor, "signed an 'Assignment of Interest in Promissory Note and Mortgage Relative Thereto,' " purporting to assign 1/8 interests in the note and mortgage to the Lauth defendants. In 2002, the Lauth defendants, who were represented by the Ryan defendants, filed a foreclosure action in the circuit court of Effingham County against the plaintiffs, who were represented by the Graham defendants. After a trial, the circuit court entered an order of foreclosure on October 18, 2013, making specific findings of fact regarding the plaintiffs' installment loan for the purchase of the property at issue and the accompanying mortgage, which had been recorded in Effingham County.

¶ 5 In its order of foreclosure, the circuit court found that the notes and mortgage had transferred to the Lauth defendants by virtue of a probate action when L. Marie Bauer passed away. The circuit court rejected the plaintiffs' argument in the foreclosure action that the note and mortgage had been cancelled in 1979 or were gifted to them. The circuit court further found that the plaintiffs discontinued payments on the note on January 28, 1999. Accordingly, the circuit court found the balance due and owing on each note was $82,066.18, for a total of $164,132.36. In addition, the circuit court found the interest rate on the loans was 6% as per the Lauth defendants' exhibit, which the circuit court found to be a true copy of the notes and mortgage. Accordingly, the circuit court added interest up

to the date of trial in the amount of $55,768.98, for a grand total of $219,901.34. The circuit court entered a judgment of foreclosure and sale, established a redemption period, and retained jurisdiction for the purpose of enforcement.

¶ 6 The Lauth defendants filed a citation to discover assets against the plaintiffs "on or before May 18, 2015." On December 4, 2015, the circuit court entered an order on the citation to discover assets. In its order, the circuit court found that the plaintiffs had tendered $249,901.34 to the Lauth defendants on March 17, 2015, but that this amount did not fully satisfy the judgment because additional postjudgment interest had accrued. The circuit court found that "[a] foreclosure judgment [(at least one that, like this one, lacks a finding of immediate appealability under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010))] is an interlocutory order that therefore remains modifiable by the trial court until the final judgment, which is the confirmation of the sale." The circuit court's December 4, 2015, order gave the plaintiffs a reasonable time to pay the balance of $33,782.96 in order to avoid a judicial sale of the subject property.

¶ 7 On March 14, 2017, the plaintiffs filed a *pro se* complaint against the defendants in the circuit court of Effingham County, consisting of 12 separate counts involving allegations surrounding the foreclosure action. The defendants filed various motions to dismiss directed toward each of the counts against them. The circuit court, after full briefing of the issues and oral argument, entered an order on September 26, 2017, dismissing some of the counts with prejudice and dismissing the remainder of the counts with leave to amend. The plaintiffs filed an amended complaint on November 28, 2017. Thereafter, the affected defendants filed motions to dismiss the counts of the amended

complaint directed at them. After full briefing and oral argument, the circuit court entered an order on March 29, 2018, dismissing all counts of the amended complaint with prejudice. On April 9, 2018, the plaintiffs filed a notice of appeal from both the September 26, 2017, and the March 29, 2018, orders. Additional facts will be set forth as necessary to our analysis of the issues raised on appeal.

¶ 8 ANALYSIS

¶ 9 "This court reviews the trial court's ruling on a motion to dismiss *de novo* and can affirm on any basis present in the record." *Riverdale Industries, Inc. v. Malloy*, 307 Ill. App. 3d 183, 185 (1999). In their brief, the plaintiffs present arguments challenging the circuit court's dismissal of the following: (1) counts I and XI of the original complaint as against the circuit clerk defendants; (2) counts II and III of the amended complaint as against the Lauth defendants and the Ryan defendants, respectively; (3) counts XI and XII of the original complaint as against the Graham defendants; and (4) counts XI and XII of the amended complaint as against the Lauth defendants, the Bank defendants, and the Ryan defendants. Points not raised in an appellant's brief and not argued on appeal are forfeited. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018); *Brown v. Tenney*, 125 Ill. 2d 348, 362-63 (1988). Accordingly, we find any argument regarding the dismissal of counts IV, V, VI, VII, VIII, IX, and X of both the original and amended complaints forfeited and affirm their dismissal. With regard to the remaining counts, we will address each of the arguments presented in the plaintiffs' brief on appeal, and find any argument not raised in the plaintiffs' brief is forfeited on appeal. *Id.*

¶ 10 1. *Count I—Negligence v. Circuit Clerk Defendants*

¶ 11 We begin by addressing the circuit court's dismissal of count I of the original complaint, which alleges a cause of action for negligence against the circuit clerk defendants with reference to their alleged duties related to the foreclosure action. According to count I, the circuit clerk defendants were negligent in performing their ministerial duties under sections 12 and 13 of the Clerks of Courts Act (705 ILCS 105/12, 13 (West 2014)) when they issued citations to discover assets of the plaintiffs on or about May 18, 2015. In particular, count I alleges the citations failed to comply with section 2-1402 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1402 (West 2014)) because they did not contain a certificate of attorney and because there was no enforceable judgment to justify the citations. Count I alleges these actions on the part of the circuit clerk defendants were "willful and wanton and intentional," and "aided some of the other defendants in this cause (which were plaintiffs in [the foreclosure action]) to extort more than $300,000" from the plaintiffs.

¶ 12 In addition to the filing of the citations to discover assets, count I alleges that, sometime after February 5, 2016, but before June 22, 2016, the circuit clerk defendants tampered with the evidence "of an escrow file marked as Plaintiffs' Exhibit #1" in the foreclosure action. Specifically, count I alleges the circuit clerk defendants removed over 50 pages from the exhibit, claiming the removed pages never existed. Count I alleges that, by removing the pages from the exhibit in the court file, the circuit clerk defendants "damage[d] the *** plaintiffs' key evidence to be used for the other counts herein against the [o]ther defendants herein."

¶ 13 The circuit court dismissed count I based on a lack of subject matter jurisdiction, finding that a suit against the circuit clerk defendants in the circuit court is barred by the State Lawsuit Immunity Act (745 ILCS 5/0.01 *et seq.* (West 2016)). On appeal, the plaintiffs argue that this is incorrect. Assuming, without deciding, that the plaintiffs are correct that the circuit court has subject matter jurisdiction over their claims against the circuit clerk defendants, we find that count I fails to state a cause of action for negligence against the circuit clerk defendants for the following reasons.

¶ 14 "Generally, to plead a cause of action for negligence, a plaintiff must plead that the defendant owed a duty of care to the plaintiff, that the defendant breached that duty, and that the breach was the proximate cause of the plaintiff's injuries." *Cowper v. Nyberg*, 2015 IL 117811, ¶ 13 (citing *Mt. Zion State Bank & Trust v. Consolidated Communications, Inc.*, 169 Ill. 2d 110, 116 (1995)). In particular, with regard to circuit clerks, the following applies:

> " 'As a public administrative officer or ministerial officer, a court clerk is answerable for any act of negligence or misconduct in office resulting in an injury to the complaining party, or a violation of applicable standards of professional conduct, in the absence of immunity.
>
> To render the clerk of a court *** liable for the clerk's misfeasance, the complaining party must show a duty on the part of the clerk, a breach of the duty, and consequent damage to the complainant, meeting the normal standards of direct and proximate cause.' " *Id.* (quoting 15A Am. Jur. 2d *Clerks of Court* § 55 (2011)).

¶ 15 While our supreme court has recognized that it is well-established that court clerks may be held liable for breaches of ministerial duties, it has simultaneously reinforced the long-standing common law rule that there can be no such liability for discretionary actions. *Id.* ¶¶ 15-16 (citing *Governor v. Dodd*, 81 Ill. 162 (1876); *People v. May*, 251 Ill. 54 (1911)).[2] "[A] clerk's duty is ministerial when it is 'absolute, certain[,] and imperative, involving merely the execution of a specific duty arising from fixed and designated facts.' " *Id.* ¶ 16 (quoting *May*, 251 Ill. at 57).

¶ 16 Here, the plaintiffs allege that the circuit clerk defendants breached their ministerial duties pursuant to sections 12 and 13 of the Clerks of Courts Act. 705 ILCS 105/12, 13 (West 2014). Section 12 provides that "[t]he clerks shall issue the process of their respective courts in the manner provided by law." *Id.* § 12. Section 13 provides, in relevant part, that "[t]he clerks shall *** preserve all the files and papers [of their respective courts], keep and preserve complete records of all the proceedings and determinations thereof, *** and do and perform all other duties pertaining to their offices." *Id.* § 13. It is in this context that we evaluate the plaintiffs' allegations to determine whether they have sufficiently pled a cause of action for negligence in count I.

¶ 17 First, the plaintiffs allege that the circuit clerk defendants issued citations to discover assets that did not meet the requirements set forth in section 2-1402 of the Code.

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[2]While this doctrine has been codified in section 2-201 of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/2-201 (West 2016)) with respect to local governmental entities and governmental employees, this codification simply "continued a rule that had already been established at common law and which had survived the abolition of sovereign immunity." *Cowper*, 2015 IL 117811, ¶ 17. Thus, it is unnecessary for us to make a determination as to whether the circuit clerk's office meets the definition of "local public entity" set forth in section 1-206 of the Tort Immunity Act (745 ILCS 10/1-206 (West 2016)) in this case, as it is clear that circuit clerks can only be held liable for negligence in the performance of ministerial tasks.

735 ILCS 5/2-1402 (West 2014). However, implicit in this allegation is an assumption that the circuit clerk defendants had some discretion to determine whether the citations would be "issued." If this were true, the circuit clerk's role would be discretionary, rather than ministerial, in nature. Nevertheless, assuming that the circuit clerk had a duty to ensure that a citation to discover assets conforms with section 2-1402 of the Code before it is issued, taking the allegations in the complaint as true, any failure to do so is not the proximate cause of the plaintiffs' alleged damages. The citation proceedings did not cause the judgment of foreclosure to be entered against the plaintiffs. It was the judgment of foreclosure, not the citation proceedings, that required the plaintiffs to either pay the amount due and owing or vacate the subject property. The only result of the citation proceedings was a clarification by the circuit judge of the amount due and owing and a reminder to the parties that the Lauth defendants would not be entitled to enforce its judgment before a sale of the property.

¶ 18 By the same token, assuming the truth of the other allegation in count I, that "sometime after February 5, 2016, but before June 22, 2016," the circuit clerk defendants removed 50 pages from the escrow account exhibit in the court file, such action did not proximately cause the plaintiffs' claimed damages, which is the money they paid the Lauth defendants to avoid foreclosure of the subject property. The foreclosure judgment was entered and the plaintiffs paid the judgment to the Lauth defendants to avoid the property sale well before the time they allege the circuit clerks removed the pages from the file. Accordingly, in no way did this alleged action on the part of the circuit clerks cause the plaintiffs to pay the judgment.

¶ 19 Additionally, the plaintiffs' allegation that the circuit clerk defendants "damage[d] the *** plaintiffs' key evidence to be used for the other counts herein against the [o]ther defendants herein" does not meet the proximate cause requirement because, for the reasons below, the circuit court's dismissal of all the other counts of the complaint was proper. For these reasons, we find that the plaintiffs failed to allege a cause of action for negligence against the circuit clerk defendants, and the circuit court's order dismissing count I is affirmed on this basis. We will address count XI, for civil conspiracy, against all of the defendants, including the circuit clerk defendants, below.

¶ 20 2. *Amended Counts II and III—Abuse of Process v. Lauth and Ryan Defendants*

¶ 21 Counts II and III of the amended complaint are directed toward the Lauth defendants and their counsel, the Ryan defendants, respectively. These counts allege a cause of action for abuse of process. The following principles inform our analysis of these claims:

> "Abuse of process is defined as the misuse of legal process to accomplish some purpose outside the scope of the process itself. [Citation.] The *only* elements necessary to plead a cause of action for abuse of process are: (1) the existence of an ulterior purpose or motive and (2) some act in the use of legal process not proper in the regular prosecution of the proceedings. [Citation.] In order to satisfy the first element, a plaintiff must plead facts that show that the defendant instituted proceedings against him for an improper purpose, such as extortion, intimidation, or embarrassment. In order to satisfy the second element, the plaintiff must show that the process was used to accomplish some result that is beyond the purview of

the process. [Citation.] The elements are strictly construed, as the tort of abuse of process is not favored under Illinois law. [Citation.]" *Kumar v. Bornstein*, 354 Ill. App. 3d 159, 165-66 (2004).

¶ 22 The plaintiffs argue that their claims for abuse of process, as stated in counts II and III of the amended complaint against the Lauth defendants and their counsel, the Ryan defendants, were improperly dismissed because the ulterior motive of the foreclosure action was to extort a money judgment from the plaintiffs. Additionally, the plaintiffs contend the Lauth defendants improperly used the citation to discover assets to force a cash settlement with the plaintiffs when, in reality, there was no final, enforceable judgment. However, in analyzing whether these allegations are sufficient to establish a cause of action for abuse of process, we must ignore conclusions of law or conclusions of fact unsupported by allegations of specific facts upon which such conclusions rest. *Id.* at 164.

¶ 23 The purpose of a mortgage foreclosure is to enforce the payment of the mortgagor's debt. *Skach v. Sykora*, 6 Ill. 2d 215, 221 (1955). The purpose of the redemption period is to give the debtor time and opportunity to avoid the loss of his or her property. *Id.* The plaintiffs' use of the word "extortion" is thus an improper legal conclusion. It is within the purview of the foreclosure action that the debtor may choose to redeem the property in order to avoid the judicial sale. It is true that, in the context of a mortgage foreclosure proceeding, in the absence of a Rule 304(a) finding in the judgment of foreclosure, it is the order confirming the sale, rather than the judgment of foreclosure, that operates as a final and appealable order. *Wells Fargo Bank, N.A. v. McCluskey*, 2013

IL 115469, ¶ 12. However, the foreclosure judgment is what initiates the redemption period, and it is not outside of the purview of the foreclosure process for the mortgagor to accept payment of the debt and forego the judicial sale. In addition, the citation to discover assets did not cause the foreclosure judgment, but is merely an avenue that a judgment creditor has to determine whether the judgment debtor has means to pay the judgment. See 735 ILCS 5/2-1402 (West 2016). Irrespective of whether the Lauth defendants, through counsel, filed a citation to discover assets, the effect of the foreclosure judgment was the same. The plaintiffs had a choice to either pay the judgment or allow the foreclosure action to proceed to judicial sale. *Skach*, 6 Ill. 2d at 221. For these reasons, we find the circuit court did not err in dismissing counts II and III, against the Lauth defendants and the Ryan defendants, respectively.

¶ 24 3. *Original Counts XI and XII v. Graham Defendants*

¶ 25 Counts XI and XII of the complaint allege causes of action for civil conspiracy. Count XI is directed toward the Lauth defendants, the Graham defendants, the Bank, and the circuit clerk defendants. Count XI alleges these defendants conspired to file and present documents obtained in response to the subpoena *duces tecum* in the circuit court in the foreclosure action that were false representations of the evidence, in that there were twice as many documents admitted into evidence as were obtained in response to the subpoena. In addition, count XI alleges the copy of the documents presented to the court did not include the original schedule of payments or the correct 5% interest rate on the mortgage loan, but instead contained a handwritten 6%, which concealed the original interest rate. Count XI alleges that the Graham defendants, as the plaintiffs' counsel in

the foreclosure action, refused the plaintiffs' requests to object to the stipulated exhibit. Count XI concludes that as a result of the use of this "tampered evidence," the circuit court entered a judgment against the plaintiffs in an amount of over $280,000. Count XII alleges an additional cause of action for civil conspiracy against the Graham defendants, the Ryan defendants, and the Bank, based upon the same general allegations.

¶ 26 We find that the circuit court properly dismissed counts XI and XII of the original complaint, as against the Graham defendants, based upon the two-year statute of limitations set forth in section 13-214.3(b) of the Code. 735 ILCS 5/13-214.3(b) (West 2014). That section provides that a claim based on tort, contract, or otherwise "against an attorney arising out of an act or omission in the performance of professional services" must be commenced within two years from the time the party bringing the action knew or reasonably should have known of the injury for which damages are being sought. *Id.* As there is no language in the statute restricting its application to legal malpractice claims, the plain language of the statute directs that the two-year limitation applies to all claims against an attorney arising out of acts or omissions in the performance of the professional services, and not just legal malpractice claims. *800 South Wells Commercial, LLC v. Horwood Marcus & Berk Chartered*, 2013 IL App (1st) 123660, ¶ 13. Although the plaintiffs argue in their brief that section 13-214.3(b) of the Code does not apply to their claims for civil conspiracy, they cite no authority in support of their argument, and it is therefore forfeited. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018). Nevertheless, it is clear on the face of the complaint that the allegations arise from the Graham defendants' representation of the plaintiffs in the foreclosure action.

¶ 27 In their brief on appeal, the plaintiffs argue that although the actions they allege underlie their claim for civil conspiracy against the Graham defendants occurred at the trial on the foreclosure action on July 5, 2013, affidavits attached to their motion to reconsider make clear that they did not discover the difference in the exhibits until "late fall-winter of 2015." However, as the Graham defendants point out, this is inconsistent with the plaintiffs' repeated statements, in the complaint and in affidavits appearing elsewhere in the record, that the plaintiffs were concerned about the accuracy of the exhibit at issue at the time of trial, and specifically, whether said exhibit contained the correct schedule of payments and interest rate.

¶ 28 The complaint alleges that the Graham defendants assured them that the exhibit contained the correct information, but when the circuit court ruled on the foreclosure judgment, it should have been obvious to the plaintiffs that there was a problem with the exhibit that had been stipulated to because the judgment used what the plaintiffs claim was the allegedly incorrect interest rate based on the exhibit to which the Graham defendants allegedly improperly stipulated. The statements in the plaintiffs' motion to reconsider that they discovered the injury in fall or winter of 2015 are in contradiction to the facts pled in the complaint. In any event, the facts, as pled, reveal that the plaintiffs were, at a minimum, on inquiry notice both of their alleged injury in the admission of the exhibit and that it was wrongfully caused, and as such, were under the obligation to inquire further to determine whether an actionable wrong was committed. See *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 86 (1995). Thus, we find that the circuit court was correct to dismiss counts XI and XII of the original complaint as against

the Graham defendants. In addition, we note that the analysis set forth below regarding the sufficiency of the plaintiffs' cause of action against all of the defendants for civil conspiracy provides an additional reason to affirm the circuit court's dismissal of these counts as well.

¶ 29 4. *Amended Counts XI and XII v. the Lauth, Bank, and Ryan Defendants*

¶ 30 Finally, the plaintiffs appeal the circuit court's dismissal of counts XI and XII of the amended complaint, which allege a cause of action for civil conspiracy against the Lauth defendants, the Bank defendants, and the Ryan defendants. Before we set forth the relevant legal principles governing a cause of action for civil conspiracy, we set forth, in detail, the allegations set forth in amended counts XI and XII in order to ascertain the nature of the alleged causes of action.

¶ 31 Amended count XI alleges that the Ryan defendants received a copy of documents pursuant to a subpoena *duces tecum* in the foreclosure action that was issued to the Bank defendants to retrieve the escrow file on the subject property. The Ryan defendants reviewed said documents "on or about 3/7/2011." The Ryan defendants then had a subpoena issued on June 24, 2013, and appeared at the offices of the Bank defendants to discuss the escrow file with them. The Ryan defendants "on or about 6/24/2013 viewed the said escrow file in [the] presence of [the Bank defendants]." According to amended count XI, at that time, the Ryan defendants "knew and/or should have known that the alleged original escrow file was not exactly the same as the earlier subpoenaed copy because the earlier file had half as many papers." Based on this, amended count XI

alleges the Ryan defendants "had to have a tacit agreement with [the Bank defendants] on how they could get the additional 50 pages or so to [c]ourt for the trial."

¶ 32 Amended count XI continues by alleging that the Graham defendants, Bank defendants, and Lauth defendants, through the Ryan defendants, "mutually agreed to a verbal stipulation before trial, but the verbal stipulation was never fully explained at trial, and represented to the [c]ourt at trial that Plaintiffs' Exhibit 1 was supposed to be the original escrow account and said Defendants' Exhibit 12 was an exact copy of *** Exhibit 1." Amended count XI alleges these representations were false and that the Bank defendants knew or should have known that the escrow file "had been tampered with." Amended count XI alleges that, as a result, the payment schedule presented to the circuit court in the foreclosure action was not the original schedule, but was an amended schedule showing a 6% interest rate rather than the correct interest rate of 5%.

¶ 33 Amended count XI alleges that, at trial, the plaintiffs were very concerned that the original schedule of payments would not be in Exhibit 1, but the Graham defendants, after purporting to check the exhibit, assured the plaintiffs that the exhibit did contain the schedule listing the 5% interest rate. The count alleges that, according to the transcript of the bench trial which the plaintiffs attached to the amended complaint, the Graham defendants, the Ryan defendants, and the Bank defendants all falsely represented at trial that Exhibit 1 and Exhibit 12 were duplicates. According to amended count XI:

> "[T]he Lauth defendants, the [Ryan defendants] and the [Bank defendants] *** knew or should have known their plan to use tampered evidence as stated aforesaid, and they did use the tampered evidence, would allow the *** judge to

disqualify [the plaintiffs'] claim that the interest rate had been altered after the opening of said escrow file, which could have been an affirmative defense for forgery-tampering with the evidence."

¶ 34 Amended count XI then sets forth the elements of the criminal offense of forgery and alleges the Lauth defendants, the Ryan defendants, and the Bank defendants "had a tacit understanding that their objective was to cause the *** plaintiffs to have a judgment entered against them, and doing whatever it would take, even if the judgment was never made enforceable, nor appealable, to accomplish that objective and probably other objectives."

¶ 35 Amended count XII is directed toward the Bank defendants and the Ryan defendants. It incorporates all allegations contained within amended count XI.

¶ 36 The elements of a civil conspiracy are (1) a combination of two or more persons; (2) for the purpose of accomplishing by some concerted action either an unlawful purpose or a lawful purpose by unlawful means; (3) in the furtherance of which one of the conspirators committed an overt tortious or unlawful act. *Redelmann v. Claire-Sprayway, Inc.*, 375 Ill. App. 3d 912, 923 (2007) (citing *Fritz v. Johnston*, 209 Ill. 2d 302, 317 (2004)). "The function of a conspiracy claim is to extend tort liability from the active wrongdoer to wrongdoers who may have only planned, assisted[,] or encouraged the active wrongdoer." *Id.* (citing *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 62-63 (1994)). " '[T]he mere characterization of a combination of acts as a conspiracy is insufficient to withstand a motion to dismiss.' " *Id.* (quoting *Buckner v. Atlantic Plant Maintenance, Inc.*, 182 Ill. 2d 12, 23 (1998)).

¶ 37 The plaintiffs argue that amended counts XI and XII sufficiently allege causes of action for civil conspiracy because they allege that the defendants "had a tacit understanding" to conceal the fact that the exhibit at trial in the foreclosure action was tampered with and to present tampered evidence to the circuit court. They conclude, without specific facts supporting their conclusion, that the circuit clerk, a bank and its employees, and two law firms, including their own attorney, "tacitly" agreed to work together to present a forged mortgage note to the circuit court in the underlying foreclosure action. They do not allege which of these alleged conspirators performed the underlying tortious act of forgery and how the various defendants agreed to participate in the forgery. In addition, the transcript of that portion of the bench trial dealing with the admission of the exhibit in question makes clear that the Graham defendants stipulated to the admission of the escrow file brought to trial by the Bank on the condition that it was the same file that was produced to them pursuant to the subpoena. This belies the allegations of conspiracy set forth by the plaintiffs. To the extent that there was a discrepancy in the exhibit admitted at trial and the documents produced by the Bank in discovery, it was within the circuit court's province to resolve that discrepancy, which it addressed in its order on rehearing in the foreclosure action. For these reasons, we find that the circuit court did not err in dismissing counts XI and XII of the original and amended complaint.

¶ 38 CONCLUSION

¶ 39 For the foregoing reasons, we affirm the September 26, 2017, and March 29, 2018, orders of the circuit court of Effingham County, which ultimately resulted in the

dismissal, with prejudice, of counts I through XII of the plaintiffs' complaint and/or amended complaint.

¶ 40 Affirmed.