

2012 IL App (2d) 101172-U
No. 2-10-1172
Order filed May 9, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THYSSENKRUPP ELEVATOR CORPORATION,)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellant,)	
v.)	No. 08-CH-925
COMMUNITY INVESTMENT CORPORATION,)	
Defendant-Appellee,)	
(Chicago Title and Land Trust Company, Successor Trustee Under Trust No. 5138 Dated October 21, 1996 and Garfield Associates L.P., beneficiaries of trust number 5138 Dated October 21, 1996, Community Development Commission of Du Page County, The City of Aurora, Unknown Owners and Non-Record Lien Claimants, Defendants).)	Honorable Alan Cargerman, Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Schostok concurred in the judgment.

ORDER

Held: Where a contractor obtained a lien foreclosure against a mortgagor and mortgagee for the mortgagor's breach of a repair contract, the trial court did not abuse its

discretion in amending the default against the mortgagee to show that section 17(b) of the Mechanics Lien Act afforded the mortgagee's previously-recorded lien priority over the portion of the judgment awarding the contractor attorney fees and costs.

¶ 1 Defendant Chicago Title and Land Trust Company, as successor trustee under Trust No. 5138 (the trust) owned a senior living center. Defendant Garfield Associates, LP, is the trust beneficiary that managed the property. The trust and Garfield (collectively, the property owners) hired plaintiff ThyssenKrupp Elevator Corporation (TKE) to perform elevator repairs, and a dispute arose over nonpayment.

¶ 2 Following a bench trial, TKE prevailed in its action to foreclose a mechanics lien and for breach of contract against the property owners. The trial court also entered an order of default against defendant Community Investment Corporation (CIC), the mortgagee of the property. After a hearing on attorney fees and interest, the trial court entered a judgment against the property owners and CIC for \$150,807, which includes \$16,494 for damages, \$11,852 for interest, \$111,988 for attorney fees, and \$10,473 for costs.

¶ 3 CIC objected to the judgment of foreclosure and moved to vacate the default. The trial court ruled that CIC's interest as mortgagee of the property was inferior to TKE's award for damages and interest but superior to TKE's award for fees and costs. TKE appealed, arguing that it has priority over CIC to recover the entire judgment, including attorney fees and costs, from the sale of the property.

¶ 4 On December 23, 2011, we dismissed the appeal as premature because TKE had failed to present us with a sufficient record to indicate that it was appealing from a final order. Although it was clear that the trial court sustained CIC's objection regarding the priority issue, the record presented did not show that the trial court disposed of CIC's motion to vacate the order of default.

¶ 5 Following the procedure outlined in *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1049 (2007), TKE filed a petition for rehearing, which we granted on February 15, 2012. TKE supplemented the record with (1) an order entered on January 3, 2011, showing that the trial court denied CIC's motion to vacate the order of default, and (2) an order entered on April 19, 2011, which denied CIC's motion to reconsider. TKE thereby established our jurisdiction to address the merits under the notice of appeal. See *Knoerr*, 377 Ill. App. 3d at 1050.

¶ 6 The trial court determined that, because section 17(b) of the Mechanics Lien Act authorizes the court to tax only the owner and no other party the reasonable attorney's fees of a lien claimant (see 770 ILCS 60/17(b) (West 2010)), the fee-shifting provision in the elevator service contract between TKE and the property owners did not give TKE's fees priority over CIC's previously-recorded lien. For the following reasons, we hold that the trial court did not err in ruling that CIC's interest as mortgagee is superior to TKE's interest in the attorney fees and costs. We affirm.

¶ 7 I. FACTS

¶ 8 Many facts are undisputed. The property owners took ownership of the property on October 21, 1996. CIC has an interest in the property by reason of a construction loan mortgage and security agreement with collateral assignment of leases and rents dated December 20, 1996, and recorded on January 14, 1997.

¶ 9 On July 7, 2006, the property owners entered into a written contract with TKE whereby TKE was to furnish labor and materials relating to the elevators on the property. At trial, TKE presented evidence that, in September 2006, pursuant to the contract, TKE furnished \$61,128 worth of labor and materials, which constituted a permanent improvement and enhanced the value of the property. On January 10, 2007, TKE recorded a lien in Kane County, showing that \$16,494 was due and

remained unpaid. The contract between TKE and the property owners contains a fee-shifting provision that states as follows:

“A service charge of 1½% per month, or the highest legal rate, whichever is less, shall apply to delinquent accounts. In the event of any default of the payment provisions herein, you agree to pay, in addition to any defaulted amount, all attorney fees, collection costs or court costs in connection therewith.

In the event a third party is retained to enforce, construe or defend any of the terms and conditions of this agreement or to collect any monies due hereunder, either with or without litigation, the prevailing party shall be entitled to recover all costs and reasonable attorney fees.”

¶ 10 On August 14, 2008, TKE filed an amended complaint for foreclosure of the mechanics lien. Count I was directed against all defendants and sought foreclosure of the lien. Counts II and III alleged breach of contract against the property owners only. CIC answered the amended complaint on September 12, 2008.

¶ 11 On June 25, 2010, the action proceeded to trial, after which the trial court ruled in favor of TKE and against the property owners on counts I, II, and III in the amount of \$16,494, plus interest, attorney fees, and costs. Also on that date, the court entered an order of default against CIC, stating that “any and all possible judgments” may be entered against CIC and in favor of TKE.

¶ 12 On September 28, 2010, the trial court heard TKE’s petition for interest, attorney fees, and costs. The court calculated that TKE was due an additional \$11,852 for interest, \$111,988 for attorney fees, and \$10,473 for costs. Accounting for the prior \$16,494 damage award, the court entered a judgment of \$150,807 against the property owners.

¶ 13 On October 7, 2010, the trial court entered a written judgment of foreclosure in which it set forth its findings and ordered the sale of the property if defendants could not satisfy the judgment. On October 15, 2010, CIC moved to vacate the order of default and objected to the terms of the judgment of foreclosure. First, CIC argued that, because CIC had answered the complaint, CIC could not be held in default under section 2-1301(d) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1301(d) (West 2010)) for failing to plead. Second, CIC argued that, because CIC was not a party to the repair contract between TKE and the property owners, section 17(b) of the Mechanics Lien Act (770 ILCS 60/17(b) (West 2010)) barred the court from including TKE's attorney fees and costs in a judgment against CIC.

¶ 14 On October 18, 2010, the trial court modified the judgment to state "while [TKE] shall have priority over CIC for its judgment amount plus interest pursuant to the contract, [TKE] does not have priority against any lender of record as to its fees and costs." The remainder of the judgment was unchanged.

¶ 15 On November 12, 2010, TKE filed a notice of appeal from the amended judgment. Initially, we dismissed the appeal because the record did not contain a report of proceedings from the October 18, 2010, hearing or any indication that the trial court considered CIC's underlying motion to vacate the order of default. In fact, TKE admitted in its brief that CIC had at least one postjudgment motion pending after the notice of appeal was filed. After the trial court disposed of CIC's last postjudgment motion, TKE established the effectiveness of the notice of appeal by filing a petition for rehearing and supplementing the record. See *Knoerr*, 377 Ill. App. 3d at 1050.

¶ 16

II. ANALYSIS

¶ 17 On appeal, TKE argues that the trial court erred in ruling that CIC's interest as mortgagee is superior to TKE's interest in the attorney fees and costs. The fees and costs account for \$122,461 of the \$150,807 judgment. CIC does not contest TKE's priority regarding the damages and interest.

¶ 18 TKE argues that (1) the Mechanics Lien Act gives TKE's fees priority over CIC's previously-recorded lien; (2) the fee-shifting provision in the contract between TKE and the property owners also gives TKE's fees priority over CIC's interest; (3) CIC's failure to appear at trial bars CIC from asserting priority over TKE's fees; (4) CIC did not timely move to amend the final judgment; and (5) the doctrines of waiver and estoppel bar CIC from raising the priority issue.

¶ 19 CIC responds that (1) TKE has forfeited these arguments by failing to raise them in the trial court; (2) the trial court properly held that the Mechanics Lien Act prohibits TKE from imposing attorney fees and costs on CIC; (3) the fee-shifting provision in the contract does not apply to CIC because CIC was not a party to the contract; (4) the trial court exercised its discretion in ruling that CIC's failure to appear at trial did not give TKE priority as to fees and cost; (5) CIC's motion to amend the final judgment was timely under section 2-1301(e) of the Code; and (6) TKE fails to develop and support with authority its argument that waiver and estoppel principles bar CIC from arguing the priority issue.

¶ 20 A. Forfeiture

¶ 21 CIC argues that TKE has forfeited its arguments on appeal by failing to raise them in the trial court below. CIC relies on two familiar rules. First, issues not raised in the trial court generally may not be raised for the first time on appeal. *Village of Lake Villa v. Stokovich*, 211 Ill. 2d 106, 121 (2004). Second, the appellant bears the burden of presenting a sufficiently complete record of the proceedings at trial, and any doubts that may arise from the incompleteness of the record will be

resolved against the appellant. See *Foutch v. O'Bryant*, 99 Ill.2d 389, 391-92 (1984). In this case, the record does not contain transcripts of the hearings where the priority issue was argued. CIC concludes that, to preserve the priority issue for appeal, TKE was required to submit to this court a bystanders report under Supreme Court Rule 323(c) (Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005)) or an agreed statement of facts under Rule 323(d) (Ill. S. Ct. R. 323(d) (eff. Dec. 13, 2005)) to show the legal theories on which TKE relied. In the absence of a transcript, bystanders report, or agreed statement of facts to show what transpired in the trial court, CIC asks us to presume that TKE made none of the priority arguments that it raises now.

¶ 22 CIC conflates the concepts stated in Foutch and forfeiture. In Foutch, the supreme court held, "an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Foutch at 391-92. Foutch does not stand for the proposition that, in the absence of a transcript or acceptable substitute, we presume that certain arguments were not made, thus establishing a forfeiture of those arguments.

¶ 23 In this case, TKE sought priority over CIC in its complaint and received that priority in the court's October 7, 2010 order. In its motion to vacate the order of default, CIC specifically objected to the inclusion of TKE's attorney's fees in the judgment against it. On October 18, 2010, the parties appeared and argued the motion to vacate, whereafter the court entered the amended judgment order. Throughout the proceedings TKE consistently maintained its position that its attorney's fees were entitled to priority over any interest CIC had in the property. If TKE is presenting arguments in

support of this position on appeal that it did not rely on in the trial court, CIC was free to supplement the record on appeal with a transcript or acceptable substitute in support of its forfeiture claim.

¶ 24 Therefore, we determine that CIC's forfeiture argument is not well-founded.

¶ 25 **B. Mechanics Lien Act**

¶ 26 TKE argues that the Mechanics Lien Act gives TKE's fees priority over CIC's previously-recorded lien. We disagree. Section 17(b) of the Mechanics Lien Act expressly forbids imposing fees and costs against a nonowner of property. Section 17(b) provides that "[i]f the court specifically finds that the owner who contracted to have the improvements made failed to pay any lien claimant the full contract price, including extras, without just cause or right, the court may tax that owner, *but not any other party*, the reasonable attorney's fees of the lien claimant who had perfected and proven his or her claim." (Emphasis added.) 770 ILCS 60/17(b) (West 2010). We have recently held that this provision unambiguously bars the assessment of fees against any party other than the owner who contracted for services and failed to pay. *Action Plumbing Co., Inc., Bendowski*, 402 Ill. App. 3d 681, 686 (2010).

¶ 27 In this case, TKE conceded in its complaint that Garfield and the trust owned the property and that CIC was not an owner, but rather a first mortgagee with a prior-recorded lien. We agree with CIC that it qualifies as "any other party" against which fees may not be taxed. See 770 ILCS 60/17(b) (West 2010).

¶ 28 In *Action Plumbing*, this court held that the trial court improperly included attorney fees in the foreclosure decrees in a way that would adversely impact the property's subsequent purchasers, who did not hire the contractor. *Action Plumbing*, 402 Ill. App. 3d at 685. We concluded that, by including the contractor's attorney fees in the foreclosure decrees, the trial court effectively taxed

those attorney fees on the subsequent purchasers in violation of section 17(b) of the Mechanics Lien Act. The erroneous foreclosure decrees placed the subsequent purchasers in a position where they had to either pay the contractor's attorney fees or have their homes subjected to judicial sale. *Action Plumbing*, 402 Ill. App. 3d at 685.

¶ 29 TKE contends that it is “not attempting to ‘impose’ its fees and costs on CIC. TKE merely seeks to have the amount of its fees and costs take priority over CIC concerning the disposition of the proceeds once a foreclosure sale of the property occurs.” TKE draws a distinction without a difference. Similar to the error in *Action Plumbing*, giving TKE's fees priority over CIC's previously-recorded lien would force CIC to pay the award to avoid a judicial sale of the property. If there were a sale, the proceeds would go to pay TKE's fee award first and CIC's mortgage second. We agree with the trial court that placing TKE's fee award ahead of CIC's lien would effectively tax CIC for the fees in violation of section 17(b) of the Mechanics Lien Act.

¶ 30 TKE points out that, in *Action Plumbing*, the property owner no longer had an interest in the property and had been found in default at the time the foreclosure order was entered, but in this case, the property owners still have an interest in the property. Other than a vague reference to a finding of unfairness in *Action Plumbing*, TKE does not explain why the distinction is relevant or how it justifies departure from the mandate of section 17(b) of the Mechanics Lien Act. Factual dissimilarities between this case and *Action Plumbing* notwithstanding, adopting TKE's position would force CIC to pay TKE's fee regardless of whether the property is sold.

¶ 31 C. Fee-Shifting Provision

¶ 32 TKE next argues that the fee-shifting provision in the contract between TKE and the property owners gives TKE's fee award priority over CIC's previously-recorded lien. We disagree. It is well-

settled that only the parties to a contract are bound by its terms. See, e.g., *Kiefer v. Reis*, 331 Ill. 38, 48 (1928) (a contractor is not bound to fee-shifting provision in mortgage agreement between mortgagee and mortgagor); *Brooks v. Cigna Property & Casualty Cos.*, 299 Ill. App. 3d 68, 72 (1998) (arbitration provision in a contract is not binding against party who is not a party to the agreement). In *Kiefer*, a mortgage included a provision that required the mortgagor to pay the mortgagee's attorney fees if the mortgagee was named a defendant in a lawsuit involving the property. A contractor filed and lost a mechanics lien claim that named the mortgagor and mortgagee. Citing the fee-shifting provision, the trial court ordered the mortgagor to pay the mortgagee's fees and costs. The mortgagor appealed, arguing that the contractor, who initiated and lost the suit, should pay the mortgagee's fees and costs. The supreme court disagreed, holding that "the provisions of the mortgage were binding upon the mortgagor and mortgagee but were not binding upon [the contractor]. The fee was properly taxed against [the mortgagor]." *Kiefer*, 331 Ill. at 48. CIC was not a party to the elevator service contract in this case, and therefore, CIC cannot be bound by the fee-shifting provision therein.

¶ 33 In *Action Plumbing*, we relied extensively on *Fair Play Development Organization v. Sarmach*, 263 Ill. App. 593 (1931), which we find equally instructive here. In *Fair Play*, the Sarmachs contracted with Fair Play's predecessor in interest to perform labor and furnish materials for improvements to the Sarmachs' property. *Fair Play*, 263 Ill. App. at 595. The contract included an agreement for attorney fees in the event of default of payment. *Fair Play*, 263 Ill. App. at 600. After the work was completed and the Sarmachs did not pay, Fair Play instituted a proceeding to foreclose on a mechanic's lien based on those improvements. *Fair Play*, 263 Ill. App. at 595. The

Sarmachs, the Calumet City State Bank (Bank), as trustee, and unknown owners of certain trust deed notes were made defendants to the proceeding. *Fair Play*, 263 Ill. App. at 595.

¶ 34 The Sarmachs did not appear and were defaulted, and Fair Play prevailed in its claim to foreclose. *Fair Play*, 263 Ill. App. at 595. The decree required “the said defendants, or some or other of them” to pay the entire sum due to Fair Play, including an amount for Fair Play’s attorney fees. *Fair Play*, 263 Ill. App. at 599.

¶ 35 On appeal, the Bank argued, in part, that the decree erroneously included attorney fees. *Fair Play*, 263 Ill. App. at 597. The reviewing court noted that attorney fees were claimed to be due not under the Mechanics Lien Act, but rather under the contract entered into between the owner and the contractor, to which contract the Bank was not a party. *Fair Play*, 263 Ill. App. at 600. The reviewing court further stated:

¶ 36 “The effect of the decree in this respect is to reduce the rights and obligations of the mortgagee to an equality with the owners of the fee as against the lien claimant, and places the bank in a position where it must either pay the lien claimant in full, or lose its rights entirely ***.” *Fair Play*, 263 Ill. App. at 599.

¶ 37 In *Action Plumbing*, we observed that “[i]n *Fair Play*, including the attorney fees as part of the foreclosure decree improperly taxed the wrong party. The defendant Bank in *Fair Play* could not be taxed with attorney fees, because the contract providing for the attorney fees was between the owner and the contractor.” *Action Plumbing*, 402 Ill. App. 3d at 688. We agree with CIC that it stands in the same shoes as the Bank in *Fair Play*. CIC never contracted with TKE or agreed to pay TKE’s fees and costs, and therefore, CIC cannot be taxed fees and costs under a contractual theory. The trial court did not err in reaching this conclusion on the undisputed facts.

¶ 38

D. CIC's Default

¶ 39 TKE argues that *Action Plumbing* and *Kiefer* are distinguishable from this case because CIC's failure to appear at trial should bar CIC from asserting priority over TKE's fees. TKE points out that, in *Action Plumbing*, the owner was defaulted, but in this case, the mortgagee, was defaulted. TKE also points out that *Kiefer* "does not involve a situation where a third-party mortgage lender (like CIC) was defaulted and did not involve a default order which specifically provided that any and all judgment could be entered against the defaulting lender."

¶ 40 TKE offers no explanation for the distinctions it draws, other than saying that "[t]he default order against CIC plainly provided that 'any and all possible judgment' could be entered against CIC." TKE implies that, by including broad language in the June 25, 2010, default order against CIC, the trial court lacked discretion to reconsider the priority issue and amend the judgment of foreclosure to show an order of priority.

¶ 41 Section 2-1301 allows the trial court to enter a default for want of an appearance, or for failure to plead. 735 ILCS 5/2-1301(d) (West 2010). Here, the trial court entered a default against CIC on count I, the Mechanics Lien Act claim that was directed against all defendants. Count I asked for interest and fees and costs incurred in bringing the claim. Count I also requested "[a] determination by the court that [TKE's] lien has priority over competing claims of all other persons, entities and parties, including all defendants referenced above."

¶ 42 After the court entered the final judgment of foreclosure, which incorporated the default, CIC moved to vacate the order of default and objected to the terms of the judgment of foreclosure. Section 2-1301(e) provides that "[t]he court may in its discretion, before final order or judgment, set aside any default, and may on motion filed within 30 days after entry thereof set aside any final order

or judgment upon any terms and conditions that shall be reasonable.” 735 ILCS 5/2-1301(e) (West 2010). Where a litigant seeks to set aside a default under section 2-1301(e), the overriding consideration is simply whether substantial justice is being done between the litigants and whether it is reasonable, under the circumstances, to compel the other party to go to trial on the merits. *In re Haley D.*, 2011 IL 110886 (2011), ¶ 57. The litigant need not necessarily show the existence of a meritorious defense (*Haley D.*, 2011 IL 110886 (2011), ¶ 57), but in this case, CIC did so. CIC persuasively presented its arguments that the fee-shifting provision did not apply to CIC and that section 17(b) of the Mechanics Lien Act barred the court from giving TKE’s attorney fees and costs priority over CIC’s previously-recorded interest.

¶ 43 The trial court’s consideration of the priority issue furthered the goal of doing substantial justice between CIC and TKE because it revealed TKE’s failure of proof on its claim for fees against CIC. In defaulting a party, “[t]he court shall determine the rights of the parties and grant to any party any affirmative relief *to which the party may be entitled on the pleadings and proofs.*” (Emphasis added.) 735 ILCS 5/2-1301(a) (West 2010). The court may in its discretion “require proof of the allegations of the pleadings upon which relief is sought.” 735 ILCS 5/2-1301(d) (West 2010). TKE’s complaint sought fees and costs and a finding of priority over competing claims, such as CIC’s interest. TKE presented evidence that it reasonably incurred the fees and costs claimed, but such evidence is not proof that TKE’s fees were entitled to priority over CIC’s interest. The fee-shifting provision of the service contract did not apply to CIC and the operation of section 17(b) showed that TKE was not entitled to priority in enforcing its judgment for fees against CIC. In amending the judgment of foreclosure to show the priority of CIC’s interest over TKE’s fees, the

trial court essentially found that TKE had not met its burden of proving that its fees had priority over CIC's competing claim.

¶ 44 It was reasonable, under the circumstances, to compel TKE to provide proof of its alleged priority. The order of default stated that “any and all *possible* judgments” may be entered against CIC and in favor of TKE. (Emphasis added.) The facts are virtually undisputed that CIC was not a party to the service elevator contract and that CIC qualifies as “any other party” against whom attorney fees and costs may not be taxed under section 17(b) of the Mechanics Lien Act. Thus, the advancement of TKE's fees ahead of CIC's interest cannot be part of a “possible” judgment under the Mechanics Lien Act. We reject the notion that the default judgment is somehow inconsistent with the amended judgment of foreclosure. We conclude that the trial court had discretion to amend the judgment of foreclosure to clarify the order of priority among TKE's damages and interest, CIC's secured interest, and TKE's fees. The default did not preclude the trial court from granting CIC interest priority over TKE's fees.

¶ 45 E. Timeliness of CIC's Objection

¶ 46 TKE contends that CIC did not timely move to amend the final judgment, and therefore, the trial court erred in amending the judgment to give CIC's interest priority over TKE's fee award. We conclude that CIC timely filed its motion to vacate the default under section 2-1301(e) of the Code. “Section 2-1301(e) is available to seek relief from any *nonfinal* order of default or from a *final* default judgment within 30 days of its entry.” (Emphasis in original.) *Jackson v. Hooker*, 397 Ill. App. 3d 614, 620 (2010). A motion to vacate a default is considered timely up to 30 days after the final default judgment was entered. *Jackson*, 397 Ill. App. 3d at 620.

¶47 Here, count I, the Mechanics Lien Act claim, was the only count in TKE’s complaint directed against CIC. The final order on count I was entered on October 7, 2010, at which time the trial court resolved all remaining issues between the parties. On October 15, 2010, CIC filed its motion to vacate the default and an objection to the judgment of foreclosure, arguing that section 17(b) of the Mechanics Lien Act precluded TKE’s award of fees and costs from taking priority over CIC’s secured interest. CIC filed its objection within 30 days of the final judgment, and TKE did not oppose the objection as untimely at that time. Pursuant to the objection, on October 18, 2010, the trial court amended the final judgment on count I to clarify that CIC’s interest retained priority over TKE’s fees and costs.

¶48 We disagree with TKE’s characterization of the June 25, 2010, order of default against CIC as a “final” order. To the contrary, “an order of default is not a final judgment because it does not dispose of the case and terminate the rights of the parties.” *Jackson*, 397 Ill. App. 3d at 620. Our prior dismissal of this appeal further shows why the June 25, 2010, default was not a final order. The June 25, 2010, default left remaining the issues of interest and attorney fees under the fee-shifting provision, and thus the order was not final.

¶49 TKE cites *Brigando v. Republic Steel Corporation*, 180 Ill. App. 3d 1016 (1989), for the proposition that the June 25, 2010, default order became final after 30 days, at which point the trial court lost jurisdiction over the cause of action. The *Brigando* court held that, when determining whether a trial court retains jurisdiction, it is necessary to “examine the scope of the [trial court’s] order.” *Brigando*, 180 Ill. App. 3d at 1020. Notably, the *Brigando* court analyzed whether the trial court had retained jurisdiction in terms of the trial court’s intent; it did not question the trial court’s power to retain jurisdiction to enforce the agreement.

¶ 50 In this case, the trial court intended to retain jurisdiction over the cause of action after the entry of the June 25, 2010, order of default against CIC. The order states that “[TKE’s] motions for default are granted [against CIC] and any and all possible judgment *may* be entered against [CIC].” (Emphasis added.) The court’s use of the word “may,” shows contemplation of entering a final judgment later. The court also entered a separate order, continuing the matter to August 24, 2010, for a hearing on interest and attorney fees, if any, and the entry of final judgment. The record completely refutes TKE’s suggestion that, under *Brigando*, the June 25, 2010, default order indicated the trial court’s intent to relinquish jurisdiction over the cause of action.

¶ 51 F. Contractual Waiver and Collateral Estoppel

¶ 52 Finally, TKE asserts in passing that the doctrines of waiver and estoppel bar CIC from claiming any rights it might have under the Mechanics Lien Act. TKE argues that “CIC cannot sit on the sidelines and then — after an adverse ruling is made — frantically come into court and attempt to resuscitate its rights. Under basic waiver and estoppels [*sic*] principles, CIC should not be able to set aside the default.” Illinois Supreme Court Rule 341(h)(7) requires that the argument section of TKE’s brief “contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on.” Ill. S. Ct. R. 341(h) (7) (eff. July 1, 2008) (“Points not argued are waived,” *i.e.* forfeited). TKE has not developed its argument regarding waiver and estoppel, and we consider it forfeited.

¶ 53 III. CONCLUSION

¶ 54 First, we hold that, because CIC was not an owner of the property, section 17(b) of the Mechanics Lien Act precludes TKE’s fee award from taking priority over CIC’s previously-recorded interest. Second, because CIC was not a party to the elevator service contract, the fee-shifting

provision therein does not give TKE's fee award priority over CIC's interest. Third, we conclude that the June 25, 2010, default against CIC did not preclude the trial court from exercising its discretion to amend the final judgment of foreclosure when TKE could not offer proof that its fee award was entitled to priority over CIC's interest. Fourth, CIC's objection and motion to vacate the default was timely. Finally, we agree with CIC that TKE has forfeited its conclusory estoppel and waiver arguments.

¶ 55 For the preceding reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 56 Affirmed.