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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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WELLS FARGO BANK, N.A.,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09-CH-2251
	)	
EDWARD ZIMMERS and JODELL	)	
ZIMMERS,	)	
	)	
Defendants-Appellants.	)	Honorable
	)	Mitchell L. Hoffman,
	)	Judge, Presiding.

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JUSTICE MCLAREN delivered the judgment of the court.  
Justices Zenoff and Birkett concurred in the judgment.

**ORDER**

*Held:* Insufficient trial court record did not support defendants' claims that trial court erred in granting judgment of foreclosure, approving the report of sale, and denying defendants' motion to reconsider.

¶1 Defendants, Edward and Jodell Zimmers (Zimmers), appeal from the orders of the trial court (1) denying their motion to vacate a default judgment; (2) approving the report of sale; and (3) denying their motion for reconsideration. We affirm.

¶ 2

## I. BACKGROUND

¶ 3 Zimmers obtained a mortgage loan in the amount of \$734,000 from America's Wholesale Lender on September 1, 2006. The note was secured by a mortgage of the same date on Zimmers' home in Hawthorne Woods. Mortgage Electronic Registration Systems, Inc. (MERS), a separate corporation "acting solely as a nominee for Lender and Lender's successors and assigns," was the mortgagee. On May 11, 2009, MERS assigned its interest in the mortgage to plaintiff, Wells Fargo Bank, N.A., "as trustee for the holders of Harborview 2006-11."

¶ 4 On June 24, 2009, Wells Fargo filed a complaint for foreclosure of the mortgage, alleging that the mortgage had been in default since October 1, 2008. After Zimmers filed an answer and an affirmative defense of lack of standing, Wells Fargo filed a motion for summary judgment, to which Zimmers filed a response requesting the court to deny the motion. The trial court granted summary judgment on April 7, 2010. On that same date, the court entered an order of default against unknown owner-tenants and non-record claimants and an agreed judgment of foreclosure and sale; while the judgment order was an eight-page document apparently generated on a computer, the word "Agreed" was handwritten on the title of the judgment. While the right of redemption should have expired three months later on July 7, 2010, pursuant to section 15-1603(b)(1) of the Code of Civil Procedure (735 ILCS 5/15-1603(b)(1) (West 2010)), the order provided that the redemption period would expire on September 7, 2010.

¶ 5 On September 8, Zimmers filed an emergency motion seeking to substitute counsel and to continue for 60 days the sheriff's sale that was scheduled for September 9, alleging that they were still attempting to obtain a loan modification. While the substitution of counsel was granted, the motion to continue the sale was denied. On November 24, 2010, Zimmers filed a motion: (1) for

leave to file the appearance of a new attorney; (2) to vacate any orders of default; (3) to vacate the default judgment of mortgage foreclosure;<sup>1</sup> and (4) for time in which to file responsive pleadings. Zimmers filed an amended motion on December 7, in which Zimmers stated that “there may be procedural deficiencies in the entry of the order(s) of default and the judgment of foreclosure,” including an issue of personal jurisdiction. In addition, Zimmers raised “meritorious defenses” involving the publication of the notice of sale and Wells Fargo’s ability to act in its capacity as trustee. In the meantime, on December 1, 2010, Wells Fargo filed a motion for an order approving the report of the sale that had occurred on September 9 and for possession of the premises. The trial court granted leave for counsel to file a substitute appearance<sup>2</sup> and continued the case. On January 12, 2011, the trial court denied Zimmers’ motion to vacate “as the Judgment of foreclosure and Sale was agreed.” In a separate order entered that same day, the trial court also approved the report of sale and ordered Zimmers’ eviction from the property.

¶6 On February 10, 2011, Zimmers filed a motion to vacate the order approving the sale, arguing that, contrary to the trial court’s finding that the judgment of foreclosure and sale was an agreed order, Zimmers never agreed to the entry of that judgment. Attached to the motion were affidavits of Edward Zimmers and Arnold Kaplan, Zimmers’ counsel at the time of the judgment, in which both stated that he “never agreed to the entry of an agreed order of judgment of foreclosure and sale.” Zimmers argued that, since there was no agreement to the entry of judgment, “there is no basis of

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<sup>1</sup>Contrary to Zimmers’ arguments, the judgment of foreclosure was not a default judgment; indeed, no default judgments were entered against Zimmers in these proceedings.

<sup>2</sup>Although the trial court granted Fish, Brydges and Associates until December 21, 2010, to file its substitute appearance, counsel failed to do so until March 22, 2011.

record for the Court's finding that the judgment entered was an agreed order." Zimmers also alleged that he had "a number of meritorious defenses" to the foreclosure petition, including those based on loan originator misrepresentation, lack of assignment or proof of chain of title of ownership of the note or the mortgage, and improper institution of foreclosure proceedings. The trial court, Judge Nancy S. Waites presiding, deemed the motion to vacate to be a motion to reconsider Judge Hoffman's January 21 ruling and continued the case briefing and hearing. In his reply to Wells Fargo's written response, Zimmers noted that the "only agreement entered into on the date the judgment of foreclosure was entered was to extend the redemption period beyond the statutory 90 day redemption period."

¶ 7 After hearing argument on the motion, the trial court on March 22 found that "there is a question of fact regarding this court's prior ruling that the Judgment of Foreclosure & Sale was agreed, and withdraws that reference to the 1-12-11 ruling." The court further found that, pursuant to the "case of *MERS v. Barnes*, the defendant does not have a meritorious defense, as the issue of standing was previously adjudicated." Thus, the trial court denied the motion to reconsider "based on" the lack of a meritorious defense and the *Barnes* case. This appeal followed.

¶ 8

## II. ANALYSIS

¶ 9 We first point out that Zimmers admits in his brief that the record in this case "is deficient." Indeed, Zimmers' appellate counsel boldly claims, "Had I been involved in this case from the beginning, the Record might have been different, but I was not. So we must deal with the Record as we have it." While we must deal with the record "as we have it," we must also point out that certain deficiencies arose after the firm of Fish, Brydges and Associates entered the case. For instance, no reports of proceedings or bystanders reports were made part of the record. Reports of

the proceedings that led to the trial court's January 12 and March 22 orders would have been helpful to this court's analysis; alas, no such reports were made part of the record. However, in the absence of a more sufficient record, we will remind Zimmers that the burden of presenting a sufficiently complete record falls to the appellant, and any doubts that may arise from an incomplete record will be resolved against him. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984); *County of McHenry v. Thoma*, 317 Ill. App. 3d 892, 893 (2000).

¶ 10 We also note that Zimmers' reply brief does not comply with Supreme Court Rule 341(j). While a reply brief is to "be confined strictly to replying to arguments presented in the brief of the appellee," (Ill. S. Ct. R. 341(j) (eff. July 1, 2008)), Zimmers' reply brief is little more than a summarization of problems in the national mortgage foreclosure arena. Virtually nothing contained in the brief applies to this case specifically, and nothing is an actual reply to the appellee's brief. This court is not in a position to remediate the ills alleged therein. There is nothing of relevant merit to consider in the brief, and we admonish Mr. Brydges to restrain his zeal in conformity with Supreme Court rules.

¶ 11 Zimmers first contends that the trial court erred because, although it "acknowledged that there was a question of whether there was an Agreed Order[,] it did not reconsider its ruling of January 12, 2011, \*\*\*, due to the wrong assumption that there was an Agreed Judgment of Foreclosure and Sale." This contention is belied by the record "as we have it." In its March 22 order, the trial court found that "there is a question of fact regarding this court's prior ruling that the Judgment of Foreclosure & Sale was agreed, and withdraws that reference to the 1-12-11 ruling." The court then denied the motion to reconsider based on its application of the holding in *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1 (2010). Clearly, the trial court

reconsidered its entry of judgment and concluded that a different legal basis supported it. The fact that the trial court did not vacate its judgment of foreclosure and sale does not mean that the trial court “did not reconsider” the judgment.

¶ 12 Zimmers next argues that he has shown that Wells Fargo’s claim that there was an agreed judgment of foreclosure and sale resulted from a “fraudulent misrepresentation.” According to Zimmers, Wells Fargo alleged in its response to his motion to reconsider that Zimmers “knew that there was an Agreed Judgment of Foreclosure and Sale, since July 27, 2010.” The July 27 reference appears to be nothing more than an erroneous reference to Zimmers’ emergency motion to continue the sheriff’s sale in which Zimmers alleged that he had on *August 27*, 2010 retained a new attorney who attempted to reach Wells Fargo’s attorney about the motion to continue the sale that was ordered in the “Agreed Judgment of Foreclosure and Sale.” If anything, the record reflects that Zimmers should have known that the judgment was entered as “Agreed” since April 7, 2010, the date upon which the written judgment containing the word “Agreed” was entered in the trial court. The record does not support Zimmers’ assertion that “fraudulent misrepresentation” was involved.

¶ 13 Zimmers next requests that this court “modify the judgment of the lower Court, as it has not issued a ‘proper Rule 304(a) finding with respect to the judgment.’ ” As this case is before this court as a final judgment pursuant to Supreme Court Rule 303 (Appeals from Final Judgments of the Circuit Court in Civil Cases) (eff. May 30, 2008) (as Zimmers noted in his statement of jurisdiction), and not pursuant to Supreme Court Rule 304 (Appeals from Final Judgments That Do Not Dispose of an Entire Proceeding) (eff. Feb. 26, 2010), we find this request irrelevant.

¶ 14 Zimmers next argues that the record did not support the trial court’s finding that the judgment of foreclosure and sale was agreed. The trial court apparently agreed with Zimmers, as it found that

there was a question of fact regarding that prior ruling and withdrew “that reference for the 1-12-1 ruling.” The trial court then denied the motion to reconsider on a different basis. We need not analyze a basis for a trial court’s judgment that the trial court itself has since discarded and replaced.

¶ 15 Zimmers next argues that he “should be permitted to argue Meritorious Defenses.” The potential defenses that Zimmers lists in his brief were alleged in his initial November 24, 2010, motion to vacate but were not realleged in his amended motion to vacate filed on December 7, 2010. The amended motion specifically alleged meritorious defenses of improper publication of notice of sale and the invalidity of Wells Fargo’s actions as trustee without evidence of written direction from the beneficiaries of the trust. An amendment that is complete in itself and does not refer to or adopt a prior pleading supersedes the original, which ceases to be a part of the record and is considered abandoned or withdrawn. *Bonhomme v. St. James*, 2012 IL 112393, ¶ 17; *Redelmann v. Claire Sprayway, Inc.*, 375 Ill. App. 3d 912, 926 (2007). A pleading is defined as, “A formal document in which a party to a legal proceeding (esp. a civil lawsuit) sets forth or responds to allegations, claims, denials, or defenses.” Black’s Law Dictionary 1191 (8th ed. 2004). The purpose of a pleading is to present, define, and narrow the issues and limit the proof needed at trial. *Golf Trust of America, L.P. v. Soat*, 355 Ill. App. 3d 333, 336 (2005). A pleading produces an issue asserted by one side and denied by the other so that a trial may determine the actual truth. *Id.* at 336. It is clear that a motion to vacate a prior ruling is a pleading. Thus, Zimmers’ amended motion to vacate superseded his original motion to vacate, and the “meritorious defenses” raised in the original motion but not in the amended motion are considered abandoned, and we need not address them here.

¶ 16 Zimmers next contends that he should be permitted to argue the issue of standing. In its March 22, 2011 order, the trial court found that, based on the case of “MERS v. Barnes [406 Ill.

App. 3d 1] the defendant does not have a meritorious defense, as the issue of standing was previously adjudicated.” Zimmers argues that, “[d]ue to the unusual procedural history” of the case, his meritorious defenses based on Wells Fargo’s lack of standing “got lost in the shuffle.” We disagree. Zimmers raised the affirmative defense of Wells Fargo’s standing in his amended answer and affirmative defense filed in January 2010. Wells Fargo addressed the issue in its motion for summary judgment, and Zimmers further addressed it in his response to the summary judgment motion. Again, there is no report of proceedings or bystanders report covering the argument on the summary judgment motion or the trial court’s ruling thereon; in the absence of a more sufficient record, we will not conclude that the trial court did not consider and rule on the issue of standing that was raised and briefed during the summary judgment proceedings.

¶ 17 For these reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 18 Affirmed.