2013 IL App (1st) 112679-U

FIRST DIVISION
MARCH 29, 2013

No. 1-11-2679

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MICHIGAN 830 LLC (Substituted for 830 South Michigan, LLC),	)	Appeal from the Circuit Court of Cook County.
Plaintiff and Counterdefendant-Appellee,	)	
v.	)	No. 08 CH 42474
IVIVA GROUP, LLC,	)	Honorable Rita M. Novak,
Defendant and Counterplaintiff-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly granted summary judgment in favor of property owner's action to quiet title and dismissed the investor's counterclaim for lien foreclosure, where the investor's lien against the subject property was extinguished by a prior judgment of foreclosure relating to the subject property in a separate mortgage foreclosure action.

¶ 2 This appeal arises from an August 10, 2011 order entered by the circuit court of Cook County, which granted summary judgment in favor of the plaintiff and counterdefendant-appellee, Michigan 830 LLC (Michigan 830), and against the defendant and counterplaintiff-appellant, IVIVA

Group, LLC (IVIVA), in an action to quiet title. This appeal also arises from the circuit court's October 16, 2009 order granting Michigan 830's motion to dismiss IVIVA's counterclaim to foreclose on its lien, and the circuit court's May 11, 2010 order denying IVIVA's motion to reconsider the October 16, 2009 ruling. On appeal, IVIVA argues that the circuit court erred in granting summary judgment in favor of Michigan 830 and dismissing IVIVA's counterclaim to foreclose on its lien, where the lien was valid and had not been extinguished by a prior foreclosure judgment order in a separate cause of action. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 On October 28, 2005, IVIVA, as an investor, entered into an investment agreement with a development company, Renaissant Development Group LLC (Renaissant), whereby IVIVA agreed to provide $500,000 in "seed" money to Renaissant in connection with Renaissant's acquisition of real estate in Chicago, Illinois. The terms of the investment agreement provided that, IVIVA, in exchange for the seed money, would be a "[c]lass A [m]ember" that is entitled to "[c]lass A [m]embership [i]nterest of the entity that [Renaissant] forms in connection with the proposed [d]evelopment." It further specified that IVIVA would receive 12.5% of all profits and distributable cash earned on the development, and would receive a limited security interest of up to $500,000 of the profits earned by Renaissant in a separate development project at 830 South Michigan Avenue in Chicago (the property). The investment agreement specified that IVIVA's security interest in the property was subordinate to any lending institution that had provided financing to the "applicable Renaissant entity" responsible for the property, and to any entity or individual that had previously

been granted a security interest in the property. The investment agreement was signed by the manager of Renaissant, Warren Barr (Barr), and the manager of IVIVA, Igor Blumin (Blumin).

¶ 5 On February 15, 2008, in a separate cause of action (Case No. 05 CH 05972) from the instant appeal, Hermes Capital, LLC (Hermes), an entity with a security interest in the property, filed a mortgage foreclosure lawsuit (the Hermes lawsuit) against several individuals and entities, including Renaissant and 830 South Michigan, LLC (830 LLC)–an entity controlled by Renaissant. On February 21, 2008, a *lis pendens* notice was recorded against the property with the Cook County recorder of deeds for the Hermes lawsuit.

¶ 6 On July 22, 2008, IVIVA, Renaissant, Barr and 830 LLC executed a "first amendment" to the investment agreement (first amendment agreement), which provided that 830 LLC was an entity controlled by Renaissant and Barr; that the parties agreed that IVIVA shall be entitled to file a lien in the principal sum of $500,000 against the property, which was owned by 830 LLC; that the lien shall be repaid at the time the property is sold or refinanced; that Renaissant agreed to pay IVIVA interest at a rate of 10% per annum from October 8, 2005 to the date the "seed" money is repaid in full; and that, in the event of a conflict between the terms, provisions and conditions of the first amendment agreement and the October 28, 2005 investment agreement, the first amendment agreement shall control. The first amendment agreement specified that the October 28, 2005 investment agreement, except as modified by the first amendment agreement, "shall remain in full force and effect."

¶ 7 On August 5, 2008, IVIVA recorded its $500,000 lien against the property with the Cook County recorder of deeds.

¶ 8 On September 8, 2008, a judgment of foreclosure and sale (judgment of foreclosure) was entered by the circuit court in the Hermes lawsuit (Case No. 05 CH 05972) in favor of Hermes, as the mortgagee of the property. The judgment of foreclosure provided that Hermes' mortgage interest constituted a "valid, prior and paramount lien on the mortgaged real estate, which lien is prior and superior to the right, title, interest, claim, or lien of all parties *** whose interest in the mortgaged real estate is terminated by this foreclosure." The judgment of foreclosure also contained findings that "the interest of any defendants except unknown owners and non-record claimants is terminated by this order"; and that the defendants have "waived [r]edemption" in this case. The judgment of foreclosure stated that "there is no just reason to delay enforcement of or appeal from this final, appealable judgment order." Thereafter, no party appealed from the judgment of foreclosure.

¶ 9 On October 9, 2008, an order of default was entered by the circuit court in the Hermes lawsuit (Case No. 05 CH 05972), stating that "[u]nknown owners, unknown occupants and non-record claimants, are in default herein, and the relief sought by [Hermes] is hereby granted as set forth in its [c]omplaint."

¶ 10 In a letter dated October 31, 2008, counsel for 830 LLC requested that IVIVA release its lien on the property, stating that the terms of the investment agreement only allowed IVIVA a lien against Barr's distributable profits in the development project, rather than against the property itself, and that there was "no distributable profits from any sale or disposition" of the development project because the project "never even broke ground." The letter further stated that, pursuant to the investment agreement, IVIVA's lien was subordinate to the security interests of any lending institution and other entities that had previously been granted a security interest in the property. The letter also noted that

IVIVA had prior actual or constructive knowledge that its lien was subordinate to the senior lender, Broadway Bank, in the amount of $12,750,000, and to the junior lender, Hermes, in the amount of $4,250,000–both of which had mortgage security interest in the property. It further asserted that IVIVA was subject to the September 8, 2008 judgment of foreclosure in the Hermes lawsuit, which was entered against 830 LLC and all other claimants, including IVIVA.

¶ 11 In a response letter dated November 4, 2008, counsel for IVIVA refused to execute a release of IVIVA's lien on the property, arguing that the lien was valid and that it should be repaid at the time the property is sold or refinanced.

¶ 12 On November 12, 2008, the property was sold by 830 LLC to a third-party buyer, Michigan 830, LLC (Michigan 830),[1] in a private sale for $17,550,000. The closing settlement statement reflected that the mortgage loan payoff amounts were greater than the sale price, which resulted in an approximately $1.2 million deficiency.

¶ 13 On that same day, November 12, 2008, 830 LLC filed a complaint for declaratory judgment to quiet title against IVIVA, asking the court to enter an order declaring that IVIVA's purported lien was expressly subordinate to the mortgage interest held by mortgage lenders Broadway Bank and Hermes and all other lien holders who had recorded their mortgages, liens and claims prior to IVIVA's recording; that IVIVA's purported lien was invalid and a "cloud" on 830 LLC's title to the property; and that IVIVA's purported lien shall be removed from the property's chain of title.

¶ 14 On January 22, 2009, IVIVA filed a motion to dismiss 830 LLC's complaint, arguing that 830

[1]Purchaser Michigan 830 is allegedly unrelated to 830 LLC or any entities controlled by Renaissant.

LLC could not properly state a cause of action to quiet title to the property because it no longer possessed title to it. On that same day, January 22, 2009, IVIVA also filed a counterclaim for foreclosure on IVIVA's lien against the property (counterclaim for lien foreclosure), naming Michigan 830, 830 LLC, and "unknown owners" or "non-record claimants" as counterdefendants. A copy of the investment agreement, first amendment agreement and IVIVA's recorded lien were attached to the counterclaim for lien foreclosure.

¶ 15 On April 16, 2009, counsel for 830 LLC filed a motion for leave to substitute Michigan 830, the title holder of the property, as plaintiff in the instant cause of action, and requested leave to file an amended complaint to reflect the substitution. In the motion, counsel also noted that 830 LLC would remain in the case as a counterdefendant to IVIVA's counterclaim for lien foreclosure.

¶ 16 On April 20, 2009, the circuit court granted 830 LLC's motion to substitute Michigan 830 as the plaintiff of the cause of action, ordered that IVIVA's January 22, 2009 motion to dismiss 830 LLC's complaint be deemed moot, and allowed Michigan 830 leave to file an amended complaint. Thereafter, on May 4, 2009, Michigan 830, as the newly-substituted plaintiff, filed an amended complaint for declaratory judgment to quiet title (amended complaint), which was substantially similar in substance to the original complaint filed by 830 LLC. The amended complaint additionally requested the circuit court to declare that IVIVA's purported lien against the property was extinguished by the September 8, 2008 judgment of foreclosure in the Hermes lawsuit (Case No. 05 CH 05972).

¶ 17 On April 24, 2009, Michigan 830 filed a motion to dismiss IVIVA's counterclaim for lien foreclosure (motion to dismiss counterclaim), arguing that IVIVA's lien was subordinate to the

property's two prior mortgages; that the first amendment agreement did not amend or nullify the subordination of IVIVA's lien; that the absence of any profits from the sale of the property negated IVIVA's lien; and that the September 8, 2008 judgment of foreclosure in the Hermes lawsuit (Case No. 05 CH 05972) extinguished IVIVA's lien. Subsequently, Michigan 830 was granted leave to file an amended motion to dismiss IVIVA's counterclaim for lien foreclosure (amended motion to dismiss counterclaim).[2]

¶ 18 On July 10, 2009, IVIVA filed a response to the amended motion to dismiss counterclaim.

¶ 19 On July 17, 2009, in the Hermes lawsuit (Case No. 05 CH 05972), the circuit court entered a case management order stating that the case was dismissed pursuant to section 2-1009 of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-1009 (West 2008)), "with leave to reinstate upon [m]otion supported by [a]ffidavit, filed and presented within one (1) year of this dismissal ***."

¶ 20 On August 6, 2009, Michigan 830 and 830 LLC[3] filed a reply and later, an amended reply, in support of their amended motion to dismiss counterclaim in the instant case.

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[2]Although the record shows that on April 30, 2009, the circuit court granted Michigan 830 leave to file an amended motion to dismiss the counterclaim, it is unclear in the record as to when Michigan 830 actually filed the motion, as it appears that no copy of such an amended pleading was included in the record. However, based on our examination of subsequent pleadings in the record, it could reasonably be inferred that the amended motion to dismiss counterclaim was in fact filed jointly by Michigan 830 and 830 LLC, as counterdefendants in the counterclaim.

[3]830 LLC remained in the case as a counterdefendant to IVIVA's counterclaim for lien foreclosure after Michigan 830 was substituted as the plaintiff in the amended complaint in April 2009.

¶ 21 On October 16, 2009, the circuit court granted Michigan 830 and 830 LLC's amended motion to dismiss counterclaim, finding that the September 8, 2008 judgment of foreclosure in the Hermes lawsuit (Case No. 05 CH 05972) extinguished IVIVA's lien against the property. The circuit court also included Rule 304(a) language in the order that there was "no just reason to delay enforcement or appeal."

¶ 22 On November 16, 2009, IVIVA filed a motion to reconsider and clarify the October 16, 2009 ruling (motion to reconsider), arguing that the private sale of the property constituted redemption, which did not extinguish subordinate liens; and that the September 8, 2008 judgment of foreclosure in the Hermes lawsuit (Case No. 05 CH 05972) was not a final judgment and did not extinguish IVIVA's lien against the property.

¶ 23 On November 30, 2009, IVIVA filed a motion to dismiss Michigan 830's amended complaint.

¶ 24 On February 4, 2010, Hermes, in the Hermes lawsuit (Case No. 05 CH 05972), filed a motion to voluntarily dismiss its case with prejudice, stating that the circuit court's July 17, 2009 case management order dismissing the case *without* prejudice was entered through "inadvertence because there were no additional monies to [Hermes] from defendants, and [Hermes] and defendants had settled their disputes arising from this mortgage foreclosure lawsuit with respect to the outstanding mortgage debt at the time the order was entered." The motion further requested that the court enter an order, *nunc pro tunc* as of July 17, 2009, dismissing the Hermes lawsuit *with* prejudice.

¶ 25 On February 18, 2010, the circuit court in the Hermes lawsuit (Case No. 05 CH 05972)

entered an order, *nunc pro tunc* to July 17, 2009, dismissing the Hermes lawsuit *with* prejudice.[4]

¶ 26 On May 11, 2010, the circuit court in the instant case denied IVIVA's motion to reconsider the court's October 16, 2009 order and denied IVIVA's motion to dismiss Michigan 830's amended complaint. On that same date, the circuit court, upon reconsideration, also vacated its prior Rule 304(a) finding that was contained in the October 16, 2009 order, in which the court granted Michigan 830's and 830 LLC's amended motion to dismiss counterclaim.

¶ 27 On June 2, 2010, IVIVA filed an answer and affirmative defenses to Michigan 830's amended complaint, to which Michigan 830 replied on July 6, 2010. Thereafter, the parties engaged in discovery.

¶ 28 On February 28, 2011, Michigan 830 filed a motion for summary judgment on the amended complaint, arguing that the circuit court, in its October 16, 2009 ruling, had already decided "the dispositive issue in this case that [IVIVA's] $500,000 [l]ien which is recorded against the subject property was extinguished by a previous [j]udgment of [f]oreclosure [in the Hermes lawsuit]"; that the October 16, 2009 ruling had not been modified or vacated and thus, was "law of the case"; and that there were no contested issues of material fact on the main issue in this case.

¶ 29 On May 25, 2011, IVIVA filed a response to the motion for summary judgment, arguing that genuine issues of material fact existed concerning the validity of the closing on the property, which precluded the entry of summary judgment, and that the circuit court's October 16, 2009 ruling did not constitute "law of the case" because it was not a final judgment. IVIVA also argued that the

[4]This order was not included in the record before this court; however, the parties do not dispute the contents of this order.

September 8, 2008 judgment of foreclosure in the Hermes lawsuit (Case No. 05 CH 05972) did not extinguish IVIVA's lien against the subject property because 830 LLC, as the owner and seller of the property, thereafter voluntarily consented to a private sale of the property, which constituted a "redemption" of the property by 830 LLC. Thus, as a result, there existed a genuine issue of material fact regarding the effects of the closing of the property upon IVIVA's lien.

¶ 30 On August 10, 2011, the circuit court granted Michigan 830's motion for summary judgment. The court found IVIVA's recorded lien against the property to be invalid and a "cloud" against the property's title, and ordered that it be removed from the property's chain of title.

¶ 31 On September 8, 2011, IVIVA filed a notice of appeal, appealing from the circuit court's October 16, 2009 order dismissing IVIVA's counterclaim for lien foreclosure, the May 11, 2010 order denying IVIVA's motion to reconsider the court's October 16, 2009 ruling, and the August 10, 2011 order granting summary judgment in favor of Michigan 830 on its amended complaint.

¶ 32 ANALYSIS

¶ 33 We determine the following issues on appeal: (1) whether the circuit court erred in entering the October 16, 2009 order dismissing IVIVA's counterclaim for lien foreclosure and the May 11, 2010 order denying IVIVA's motion to reconsider the October 16, 2009 ruling; and (2) whether the circuit court erred in entering the August 10, 2011 order granting Michigan 830's motion for summary judgment on its amended complaint.

¶ 34 IVIVA[5] argues that the September 8, 2008 judgment of foreclosure in the Hermes lawsuit

[5]IVIVA has not filed a reply brief before this court.

(Case No. 05 CH 05972) did not extinguish its lien against the property, where the judgment of foreclosure was not a final order.

¶ 35 Michigan 830[6] argues that IVIVA's lien against the property was extinguished by the September 8, 2008 judgment of foreclosure in the Hermes lawsuit (Case No. 05 CH 05972) and thus, the circuit court properly dismissed IVIVA's counterclaim for lien foreclosure and granted summary judgment on Michigan 830's amended complaint to quiet title.

¶ 36 A motion to dismiss pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2008)) admits the legal sufficiency of the plaintiff's complaint, but asserts an affirmative defense or other matter that avoids or defeats the plaintiff's claim. *Harris N.A. v. Sauk Village Development, LLC*, 2012 IL App (1st) 120817, ¶ 15. Summary Judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2008). We review *de novo* the circuit court's dismissal of IVIVA's counterclaim for lien foreclosure, its denial of IVIVA's motion to reconsider the dismissal, and the grant of summary judgment in favor of Michigan 830's amended complaint to quiet title. See *JP Morgan Chase Bank v. Fankhauser*, 383 Ill. App. 3d 254, 259, 890 N.E.2d 592, 598 (2002) ("where a motion to reconsider raises a question of whether the trial court erred in its previous application of existing law, we review *de novo* the trial court's determination of legal issues"). On appeal, we may affirm the circuit court's ruling on any proper basis found in the record. See *CNA International, Inc. v. Baer*, 2012 IL App (1st) 112174, ¶ 31 (reviewing circuit court's grant of motion to dismiss claim); see also

[6]On appeal, Michigan 830, as plaintiff and counterdefendant-appellee, has filed a response brief. However, 830 LLC, as counterdefendant, has not filed a brief before this court.

Catom Trucking, Inc. v. City of Chicago, 2011 IL App (1st) 101146, ¶ 9 (reviewing circuit court's grant of summary judgment).

¶ 37 The resolution of this appeal turns on whether IVIVA, as the investor in the development of the subject property, had a valid lien against the property. Thus, our relevant inquiry is two-fold: (1) whether the September 8, 2008 judgment of foreclosure in the Hermes lawsuit (Case No. 05 CH 05972) was nullified by the subsequent voluntary dismissal of the Hermes cause of action, with prejudice; and (2) what effect, if any, did the September 8, 2008 judgment of foreclosure have upon IVIVA's lien against the instant property.

¶ 38 It is well-settled that a judgment ordering the foreclosure of mortgage is not final and appealable until the court enters an order approving the foreclosure sale and directing the distribution. *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 11; *In re Marriage of Verdung*, 126 Ill. 2d 542, 555-56, 535 N.E.2d 818, 824 (1989). The reason a judgment of foreclosure is not final and appealable is because it does not dispose of all the issues between the parties and it does not terminate the litigation. *Kemp*, 2012 IL 113419, ¶ 11. Specifically, a judgment foreclosing a mortgage or a lien "determines fewer than all the rights and liabilities in issue" because the circuit court has yet to enter a subsequent order approving the foreclosure sale and directing distribution. *Id.* Thus, generally, a court's order confirming the foreclosure sale, rather than the judgment of foreclosure, is the final and appealable order in a foreclosure action. *Fankhauser*, 383 Ill. App. 3d at 260, 890 N.E.2d at 599. However, "a judgment of foreclosure is final and immediately appealable where it contains language pursuant to Rule 304(a) that there is no just reason for delaying enforcement or appeal." *Id.*; *Kemp*, 2012 IL 113419, ¶ 12 (a judgment of foreclosure is final and

appealable where it includes Rule 304(a) language); see Ill. S. Ct. R. 304(a) (eff. Jan. 1, 2006).

¶ 39 In *Plaza Bank v. Kappel*, on May 3, 2000, the circuit court entered a judgment of foreclosure which included Rule 304(a) language stating that there was " 'no just reason to delay in the enforcement of or appeal from this final judgment,' " and directed the sale of the subject property by public auction. *Plaza Bank v. Kappel*, 334 Ill. App. 3d 847, 849, 779 N.E.2d 359, 360 (2002). Thereafter, on March 15, 2001, the circuit court dismissed the foreclosure action for want of prosecution. *Id.* On April 3, 2001, the subject property was sold to the highest bidder at a public auction. *Id.* at 849, 779 N.E.2d at 361. On May 14, 2001, the circuit court granted the plaintiff's motion to vacate the dismissal and confirmed the sale of the property on June 28, 2001. *Id.* On appeal, the issue before the *Plaza Bank* court was whether the circuit court could confirm a judicial sale of the property that occurred after the case had been dismissed but before it had been reinstated. *Id.* at 852, 779 N.E.2d at 364. In upholding the validity of the sale, the *Plaza Bank* court noted that the May 3, 2000 judgment of foreclosure was unaffected by the March 15, 2001 dismissal of the foreclosure action for want of prosecution. *Id.* at 850 n. 2, 779 N.E.2d at 362. The *Plaza Bank* court based this conclusion on the fact that the judgment of foreclosure was rendered final and appealable by its inclusion of the Rule 304(a) language; that no postjudgment motion was filed and the judgment of foreclosure was not appealed; that the circuit court lacked jurisdiction to modify or vacate the final judgment of foreclosure 30 days after the entry of that judgment; and that, accordingly, the May 3, 2000 judgment of foreclosure was not affected by the court's March 15, 2001 dismissal of the foreclosure action for want of prosecution, which was entered more than 30 days after the judgment of foreclosure was entered. *Id.*

¶ 40 We find *Plaza Bank* to be instructive. The record shows that the September 8, 2008 judgment of foreclosure in the Hermes lawsuit (Case No. 05 CH 05972), expressly contained Rule 304(a) language that "there is no just reason to delay enforcement of or appeal from this final, appealable judgment order." We find that, pursuant to the Rule 304(a) language on the face of the September 8, 2008 judgment of foreclosure, the judgment was final and appealable. There does not appear in the record,[7] and the parties do not allege, that a postjudgment motion was filed in the case, nor was an appeal taken from the Hermes court's September 8, 2008 judgment of foreclosure. Thus, the circuit court in the Hermes lawsuit (Case No. 05 CH 05972) lost jurisdiction to modify or vacate the final judgment of foreclosure 30 days after the entry of that judgment. See *Holwell ex rel. Holwell v. Zenith Electronics Corp.*, 334 Ill. App. 3d 917, 922, 779 N.E.2d 435, 440 (2002) (following the expiration of the 30-day period after the entry of judgment, the court "lacks the necessary jurisdiction to amend, modify, or vacate its judgment"); *Plaza Bank*, 334 Ill. App. 3d at 850 n. 2, 779 N.E.2d at 362 (2002) (same). As a result, although the circuit court in the Hermes lawsuit (Case No. 05 CH 05972) subsequently entered a February 18, 2010 order,[8] *nunc pro tunc* to July 17, 2009, dismissing the Hermes lawsuit *with* prejudice, we find that such dismissal order,

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[7]Any doubts which may arise from the incompleteness of the record on appeal will be resolved against the appellant, IVIVA. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392, 459 N.E.2d 958, 959 (1984).

[8]A copy of the February 18, 2010 order was included in the appendix to Michigan 830's brief before this court, but was not included in the record on appeal. However, the parties do not dispute the contents of this order and we take judicial notice of its existence. See *Village of Riverwoods v. BG Ltd. Partnership*, 276 Ill. App. 3d 720, 724, 658 N.E.2d 1261, 1265 (1995) (judicial notice is proper where the document in question is part of the public record and where such notice will aid in the efficient disposition of a case).

which was entered well beyond the 30-day period following the entry of judgment, could not and did not modify or vacate the September 8, 2008 judgment of foreclosure.

¶ 41 Having determined that the September 8, 2008 judgment of foreclosure in the Hermes lawsuit (Case No. 05 CH 05972) was neither modified nor vacated by the later dismissal, with prejudice, of the Hermes cause of action, we next determine what effect, if any, the September 8, 2008 judgment of foreclosure had upon IVIVA's lien against the property in the instant case.

¶ 42 Section 15-1503 of the Mortgage Foreclosure Act provides the following regarding notice of foreclosure:

> "A notice of foreclosure, whether the foreclosure is initiated by complaint or counterclaim, made in accordance with this [s]ection and recorded in the county in which the mortgaged real estate is located *shall be constructive notice of the pendency of the foreclosure to every person claiming an interest in or lien on the mortgaged real estate, whose interest or lien has not been recorded prior to the recording of such notice of foreclosure*." (Emphasis added.) 735 ILCS 5/15-1503 (West 2010).

¶ 43 The *lis pendens* statute, under section 2-1901 of the Code, provides in pertinent part the following:

> "Except as otherwise provided in [s]ection 15-1503, every condemnation proceeding, proceeding to sell real estate of decedent to pay debts, or other action seeking equitable relief, affecting or

> involving real property shall, from the time of the filing in the office of the recorder in the county where the real estate is located, of a notice signed by any party to the action or his attorney of record or attorney in fact, on his or her behalf, setting forth the title of the action, the parties to it, the court where it was brought and a description of the real estate, *be constructive notice to every person subsequently acquiring an interest in or a lien on the property affected thereby*, and every such person and every person acquiring an interest or lien as stated above, not in possession of the property and whose interest or lien is not shown of record at the time of filing such notice, shall, for the purposes of this [s]ection, be deemed a subsequent purchaser and *shall be bound by the proceedings to the same extent and in the same manner as if he or she were a party thereto.*" (Emphases added.) 735 ILCS 5/2-1901 (West 2010).

A *lis pendens* is not an injunction because it does not formally restrain sale, conveyance, or purchase. *First Midwest v. Pogge*, 293 Ill. App. 3d 359, 363, 687 N.E.2d 1195, 1198 (1997). Under the doctrine of *lis pendens*, "one who obtains an interest in the property during the pendency of a suit affecting it, and who has constructive notice of the suit, is bound by the result of that litigation as if he had been a party from the outset." *Voga v. Voga*, 376 Ill. App. 3d 1075, 1081, 878 N.E.2d 800, 805 (2007); *Pogge*, 293 Ill. App. 3d at 363, 687 N.E.2d at 1198. "One purpose of *lis pendens* is the avoidance of endless litigation of property rights precipitated by transfers of interest and the

necessity of then filing a new suit against the transferee." *Pogge*, 293 Ill. App. 3d at 363, 687 N.E.2d at 1198.

¶ 44 The record reveals that on February 15, 2008, Hermes, as a mortgagee for the property at issue, filed a mortgage foreclosure action (Case No. 05 CH 05972) against Renaissant and 830 LLC, an entity controlled by Renaissant. On February 21, 2008, a *lis pendens* notice for the Hermes lawsuit was recorded with the recorder of deeds in Cook County, the county where the subject property is located. The parties do not raise any challenges to the validity and effectiveness of the February 21, 2008 *lis pendens* notice. It is undisputed that on August 5, 2008, approximately six months *after* the *lis pendens* notice was filed, IVIVA recorded its $500,000 lien against the property with the Cook County recorder of deeds. Because IVIVA did not acquire its interest in the property until it recorded its lien on August 5, 2008, during the pendency of the Hermes lawsuit (Case No. 05 CH 05972), we find that, as a matter of law, IVIVA had constructive notice of the Hermes lawsuit and was deemed a "subsequent purchaser" who was bound by the result of the mortgage foreclosure proceedings as if it were a party from the outset. See 735 ILCS 5/15-1503; 2-1901 (West 2008); *Edward M. Cohen & Associates, Ltd. v. First National Bank of Highland Park*, 249 Ill. App. 3d 929, 939, 618 N.E.2d 676, 683 (1993) (lending institution did not acquire its interest in the property until it recorded its mortgage against the property); see also *Voga*, 376 Ill. App. 3d at 1081-82, 878 N.E.2d at 805 (finding that a judgment lien creditor, who had constructive notice of the pending dissolution of marriage action under the *lis pendens* statute, was a subsequent purchaser bound by the result of the marriage dissolution action extinguishing the debtor's interest in the property); *Pogge*, 293 Ill. App. 3d at 364-65, 687 N.E.2d at 1199-1200 (doctrine of *lis pendens* applied to bind mortgagee to

the judgment entered in the underlying action, where mortgagee had notice of the action). Accordingly, IVIVA was bound by the final September 8, 2008 judgment of foreclosure in the Hermes lawsuit (Case No. 05 CH 05972).

¶ 45 As discussed, the September 8, 2008 judgment of foreclosure was entered by the circuit court in the Hermes lawsuit (Case No. 05 CH 05972) in favor of Hermes, as a mortgagee of the property. The judgment of foreclosure provided that Hermes' mortgage interest constituted a "valid, prior and paramount lien on the mortgaged real estate, which lien is prior and superior to the right, title, interest, claim, or lien of all parties *** whose interest in the mortgage real estate is terminated by this foreclosure." Further, the judgment of foreclosure expressly stated that "the interest of any defendants except unknown owners and non-record claimants is terminated by this order." Because IVIVA was bound by the September 8, 2008 judgment of foreclosure, as if it were a party to the Hermes lawsuit from the outset, we find that the judgment of foreclosure, which expressly terminated the property interest of "any defendants," effectively extinguished IVIVA's lien interest in the property. See 735 ILCS 5/15-1506(i)(2) (West 2010) ("[u]pon the entry of the judgment of foreclosure, the rights in the real estate subject to the judgment of foreclosure of (i) all persons made a party in the foreclosure *** shall be solely as provided for in the judgment of foreclosure and this [a]rticle"). Thus, because IVIVA's lien interest was extinguished by the judgment of foreclosure in the Hermes lawsuit (Case No. 05 CH 05972), we find that IVIVA could not later state a cause of action for lien foreclosure. Therefore, the circuit court in the case at bar properly dismissed IVIVA's counterclaim for lien foreclosure and appropriately denied IVIVA's motion to reconsider that ruling. Likewise, as a result of the extinguishing of IVIVA's lien interest by the judgment of foreclosure, we

hold that the circuit court properly granted Michigan 830's motion for summary judgment on its amended complaint to quiet title, finding that IVIVA's lien was "invalid, of no force or effect, and therefore a cloud against the subject property's title and should be removed."

¶ 46 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 47 Affirmed.