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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

STRATEGIC REALTY FUND, LLC,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County, First Municipal
)	Division
v.)	
)	Nos. 15 M1 718076
RITA MARDELL POPE, UNKNOWN)	11 CH 38946
OCCUPANTS,)	
)	Honorable
Defendants-Appellants.)	Israel A. Desierto,
)	Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err by granting summary judgment in favor of plaintiff where defendant failed to raise a genuine issue of material fact regarding plaintiff's right to possession of the subject property as her challenge to the validity of plaintiff's title was improper and without merit.

¶ 2 The instant *pro se* appeal arises from the trial court's ruling on summary judgment pursuant to a forcible entry and detainer action, entering an order of possession in favor of plaintiff, Strategic Realty Fund, LLC, for residential property previously owned by and foreclosed upon defendant Rita Pope. On appeal, defendant contends that the trial court erred by

granting summary judgment in favor of plaintiff as (1) plaintiff is "[a]lleged to be in possession of [the] property due to [fraud] concerning [f]oreclosure [p]roceedings with an expired judgment in the [f]irst [d]istrict [c]ourt" and (2) the mortgage was discharged pursuant to bankruptcy proceedings prior to the filing of the foreclosure action. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 As a result of foreclosure proceedings instituted against defendant, the residential property in question, located at 1513 McDaniel Avenue in Evanston, was auctioned and sold to Federal Home Loan Mortgage Corporation ("Federal Home Loans"). Its sale was confirmed on September 18, 2014. In July 2015, Federal Home Loans conveyed the property to plaintiff. Thereafter, on September 9, 2015, plaintiff filed the instant eviction action seeking an order for possession of the property alleging defendant unlawfully withheld possession of the property at the time plaintiff became its owner. Attached to the complaint, *inter alia*, was a copy of the special warranty deed conveying title of the property from Federal Home Loans to plaintiff and a demand for possession of the property. Plaintiff also attached an affidavit of service indicating defendant was served on August 12, 2015, with plaintiff's demand for possession, notice of termination of tenancy, and notice of its intent to seek possession through eviction proceedings.

¶ 5 On October 16, 2015, plaintiff filed a motion for summary judgment alleging plaintiff was entitled to possession of the property as a matter of law as defendant failed to file an answer to the complaint and provide a counter-affidavit or supporting documentation to demonstrate that she had any possessory interest in the property or an interest superior to that of plaintiff's. Plaintiff additionally argued that defendant's general denial of its complaint was insufficient to create a genuine issue of material fact. A copy of the complaint and an additional copy of the documents attached thereto were tendered with plaintiff's motion.

¶ 6 On October 19, 2015, defendant filed, *inter alia*, a "motion by [defendant] for counterclaim," and a document entitled "Bill of Particulars/Attachments," in which she purports to "answer the complaint made against [her]." The document alleges plaintiff was not entitled to possession of the property as (1) the plaintiff in the foreclosure proceeding was not the owner of the mortgage or note at the time the action was filed, (2) the mortgage "was reported for home modification fraud and duplications of mortgage insurance claims," (3) the mortgage secured by the subject property was discharged pursuant to federal bankruptcy proceedings six months prior to the foreclosure proceedings and "in most instances the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor[']s property," (4) "all account numbers pertaining to the mortgage [are] blacked out or type[d] over with no substantive proof that the record in question is the defendant," (5) information concerning the "name of the original mortgagor" was incorrect, and (6) defendant never received a demand for possession due to the "missing elements aforementioned." Defendant also filed an additional document on November 4, 2015, entitled "Answer," which challenged plaintiff's motion for summary judgment on the basis that it contained "numerous," misleading errors and argued that plaintiff's counsel committed perjury as the statements contained in plaintiff's summary judgment motion were "not based on fact." Defendant thereafter filed a document entitled "Complaint/Compulsory Counterclaim to Illegal Forcible Entry/Detainer and Foreclosure" on November 13, 2015, in which she raised several arguments purporting to challenge the validity of the foreclosure and argued, *inter alia*, that she requested a trial by jury because she "believed that there are four counts of fraud in areas pertaining to refinancing in [Home Affordable Modification Program]." See 735 ILCS 5/15-1508(d-5) (West 2012) (component of the Making Home Affordable Program (MHAP) of the United States Treasury

requiring foreclosure courts to set aside a judicial sale if mortgagor can prove that they applied for assistance under the MHAP and the property was sold in violation of the program's requirements).

¶ 7 In support of its motion for summary judgment, plaintiff replied that no genuine issue of material fact existed regarding its possessory interest as (1) defendant was collaterally estopped from challenging the validity of the foreclosure judgment in the instant eviction action and (2) plaintiff established its superior right to possession of the property. Attached to its reply, plaintiff included, *inter alia*, a copy of defendant's initial appearance and answer to the complaint in the foreclosure action, a copy of the circuit court's order on summary judgment foreclosing on the property and ordering its judicial sale, the subsequent order confirming the sale and granting an order for possession against defendant, and the judicial sale and special warranty deeds transferring ownership of the property to Federal Home Loans and plaintiff, respectively. Subsequently, on December 18, 2015, the trial court entered an order granting summary judgment in favor of plaintiff and denying defendant's motion to reconsider. In a separate order, the trial court granted possession of the subject property to plaintiff. Defendant appeals.

¶ 8

ANALYSIS

¶ 9

A. Supreme Court Rule 341

¶ 10 As an initial matter, plaintiff argues that defendant's brief violates Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013), and should be stricken because it fails to make well-reasoned legal arguments as large portions of the brief are merely copies of documents from the trial court record or documents that were not presented to the court. In addition, plaintiff argues that the brief does not appear to have been written by defendant and contains citations to statutes and authority which are not relevant to the current issue on appeal. We acknowledge that defendant's

brief clearly violates Rule 341's mandates as it is mostly incoherent, contains inappropriate citations to legal authority, and also largely fails to state a clear and cohesive legal argument, among other errors. Accordingly, it is within this court's discretion to strike and dismiss the brief for failure to comply and dismiss the appeal. *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 18; see *Bank of Ravenswood v. Maiorella*, 104 Ill. App. 3d 1072, 1074-75 (1982). The fact that a party appears *pro se* does not relieve him or her from complying as nearly as possible with the rules of our court. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. Nonetheless, we may consider the merits of the appeal despite multiple Rule 341 mistakes. *Marzouki v. Najjar-Marzouki*, 2014 IL App (1st) 132841, ¶ 12. Because the record is simple and we can ascertain the issue on appeal we will consider the merits of defendant's claim. *First Capital Mortgage Corp. v. Talandis, Construction Corp.*, 63 Ill. 2d 128, 133 (1976). We note, however, that defendant's brief contains extensive documentation not previously presented to the trial court. Accordingly, we limit our consideration to the evidence found in the trial record. *Kessler v. Zekman*, 250 Ill. App. 3d 172, 188-89 (1993) (quoting *Catalano v. Pechous*, 69 Ill. App. 3d 797, 813 (1978) (" 'it is axiomatic that new evidence not offered during the trial of a cause cannot be introduced for the first time on appeal[.]' ")).

¶ 11

B. Plaintiff's Right of Possession

¶ 12 Defendant appears to argue on appeal that plaintiff is not entitled to possession of the property as it committed fraud by "mislead[ing] the court to believe that they were a part of the non-existed [*sic*] mortgage" and because the mortgage was discharged pursuant to bankruptcy proceedings prior to the institution of the underlying foreclosure action. Plaintiff responds that defendant's claims challenging the underlying mortgage agreement are barred by collateral estoppel and by section 15-1509(c) of the Illinois Mortgage Foreclosure Law. 735 ILCS 5/15-

1509(c) (West 2012). In this appeal, defendant challenges the propriety of the judgment entered in the forcible entry and detainer action based upon claimed improprieties in the prior mortgage foreclosure action. Plaintiff then patterns its response to specifically address those claims. The two actions are, however, separate and distinct. *Norwest Mortgage, Inc. v. Ozuna*, 302 Ill. App. 3d 674, 680 (1998). Application of the Forcible Entry and Detainer Act (Act) (735 ILCS 5/9-102 (West 2012)) dictates the outcome of this appeal. Thus, we need not look to either the doctrine of collateral estoppel or to foreclosure law for resolution of defendant's challenges to the judgment entered in the forcible entry and detainer action.

¶ 13 Before proceeding further, we first set out those well established principles related to summary judgment. When a party to suit files for summary judgment, the court must decide whether "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2012). If, after construing the evidence in the light most favorable to the non-movant, the court determines no genuine issue as to any material fact exists and the moving party is entitled to judgment as a matter of law, summary judgment must be granted. *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 305 (2005). "[T]o defeat a motion for summary judgment under the forcible entry and detainer act, defendant is required to file an affidavit setting forth with particularity facts upon which his or her defense is based." *100 W. Monroe Partnership v. Carlson*, 319 Ill. App. 3d 761, 767 (2001) (citing *North American Old Roman Catholic Church by Rematt v. Bernadette*, 253 Ill. App. 3d 278, 289 (1992)). "Even if the complaint and answer purport to raise an issue of fact, summary judgment is nevertheless appropriate if such issues are not further supported by evidentiary facts through affidavits or

other proper materials." *Id.* We review *de novo* the trial court's grant or denial of a summary judgment motion. *In re Estate of Hoover*, 155 Ill. 2d 402, 411 (1993).

¶ 14 " 'Forcible entry and detainer is a summary statutory proceeding to adjudicate rights to possession and is unhampered and unimpeded by questions of title and other collateral matters not directly connected with the question of possession.' " *Teton, Tack and Feed, LLC v. Jimenez*, 2016 IL App (1st) 150584, ¶ 14 (quoting *Spanish Court Two Condominium Ass'n v. Carlson*, 2012 IL App (2d) 110473, ¶ 20). The unique purpose of a proceeding under this Act is to determine which party has the right to immediate possession of the premises, not the validity of his or her title. *Jimenez*, 2016 IL App (1st) 150584, ¶ 16. Matters that are not germane to the issue of possession may not be raised. *Avenaim v. Lubecke*, 347 Ill. App. 3d 855, 861 (2004). "Germane matters" are those that are closely connected with, and relevant to the issue of possession. See *Rosewood Corp., v. Fisher*, 46 Ill. 2d 249, 256 (1970). Such matters typically fall into one of four categories: (1) claims asserting a paramount right of possession; (2) claims denying the breach of the agreement vesting possession in the plaintiff; (3) claims challenging the validity or enforceability of the agreement on which the plaintiff bases the right to possession; or (4) claims questioning the plaintiff's motivation for bringing the action. *Avenaim*, 347 Ill. App. 3d at 862. Serious title disputes may not be determined in a forcible entry and detainer action. *Wells Fargo Bank, N.A. v. Watson*, 2012 IL App (3d) 110930, ¶ 15. The only factual questions which need be answered in such a proceeding are which party is entitled to immediate possession and whether a defense which is germane to the distinctive purpose of that action defeats plaintiff's asserted right to possession. *First Illinois Bank & Trust v. Galuska*, 255 Ill. App. 3d 86, 90 (1993).

¶ 15 Based upon the foregoing precedent, defendant's arguments on appeal challenging plaintiff's right to possession based upon the invalidity of the underlying mortgage agreement are misplaced. Rather than argue that she or another entity had a superior right to immediate possession of the property, defendant attacked the validity of the mortgage agreement apparently in an attempt to establish a defective chain of title such that plaintiff did not actually possess an ownership interest in the property. However, "case law makes clear that a challenge to the validity of plaintiff's title is only 'germane' where it establishes or clarifies a defendant's right to immediate possession." *Jimenez*, 2016 IL App (1st) 150584, ¶ 15. Thus, the issue of title is irrelevant when a defendant challenges the validity of a plaintiff's title in an attempt to attack its right to possession without asserting his own. *Id.* ¶ 17. In the instant case, defendant failed to assert or prove that she (or a separate entity) maintained a competing ownership interest in the subject property. Defendant's challenges to plaintiff's title were therefore irrelevant to the issue on summary judgment. *Id.*

¶ 16 As relevant here, our review of the record demonstrates that plaintiff established defendant was divested of her possessory interest in the property pursuant to judicial foreclosure. Plaintiff provided copies of the foreclosure court's orders granting summary judgment against defendant and confirming the judicial sale, which directed the sheriff to "evict and dispossess" defendant "at the subject property." Conversely, plaintiff demonstrated its own possessory interest in the property by tendering copies of the judicial sale and special warranty deeds ultimately conveying title to plaintiff. Defendant failed to counter this proof or provide any evidence on the record to demonstrate she (or a third party) maintained a superior or competing ownership or possessory interest in the property. Accordingly, there was no genuine issue of

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material fact regarding plaintiff's right to possession. See *Bernadette*, 253 Ill. App. 3d at 289. The trial court did not err by granting summary judgment in favor of plaintiff.

¶ 17

CONCLUSION

¶ 18 In conclusion, the record affirmatively establishes that plaintiff was entitled to possession of the subject property as the holder of its title. Defendant has failed to establish genuine issues of material fact as her allegations are improper and wholly unsupported. The trial court's grant of summary judgment and order for possession of the property in favor of plaintiff was therefore proper.

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

¶ 20 Affirmed.