

2017 IL App (1st) 151464-U  
No. 1-15-1464  
March 21, 2017  
Modified Upon Denial of Rehearing June 27, 2017

SECOND DIVISION

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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VENTEURS, LLC,	)	Appeal from the Circuit Court
	)	Of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 13 CH 23387
	)	
CHRISTINA MASON JOHNSON a/k/a	)	The Honorable
CHRISTINA MASON a/k/a CHRISTINA	)	Michael Otto,
JOHNSON a/k/a CHRISTINA MASON-	)	Judge Presiding.
JOHNSON a/k/a CHRISTINA F. MASON	)	
a/k/a CHRISTINA F. MASON JOHNSON	)	
	)	
Defendant-Appellant,	)	

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JUSTICE NEVILLE delivered the judgment of the court.  
Justices Pierce and Mason concurred in the judgment.

**ORDER**

¶ 1 **Held:** The circuit court abused its discretion when it struck the defendant's answer and entered a default judgment against the defendant for failure to file a timely answer, when defendant and her attorney did not act disrespectfully to the court and they filed the answer only three weeks after the court's extended date for filing, which the court did not label a final extension.



trust "hereby grants, assigns and transfers to: Assignee: Ellington Credit Fund 1 (USA), Inc. \*\*\* all of its right, title, and interest under" Johnson's original mortgage and note with Countrywide. In another document titled "Assignment of Mortgage," this one dated January 14, 2009, one month before the document which transferred Countrywide's rights to Ellington, a person who labeled himself attorney-in-fact for Ellington said that Ellington "hereby grants, assigns and transfers to: Assignee: Kondaur Capital Corporation \*\*\* all of its right, title and interest under" the mortgage and note Johnson signed. By another assignment of mortgage, Kondaur said it and its successors "hereby assign, and transfer to Venteurs \*\*\* all its right, title and interest in and to a certain Mortgage executed by \*\*\* Johnson \*\*\* together with the note or notes therein described or referred to."

¶ 6 In response to a request from Johnson's attorney, the circuit court granted Johnson an extension until May 27, 2014, to respond to the complaint. On June 12, 2014, Venteurs filed another motion for a default judgment. Johnson's attorney filed an answer to the complaint on June 17, 2014, about three weeks after the date of the second extension the court granted Johnson.

¶ 7 On July 3, 2014, the circuit court struck Johnson's answer as untimely, entered an order of default in favor of Venteurs, and entered a judgment of foreclosure. On Monday, August 4, 2014, Johnson filed a motion to reconsider the judgment and the decision to strike Johnson's answer. In the motion, Johnson asked the court to vacate the default judgment. On October 21, 2014, the circuit court entered an order in which it said, "This cause coming on to be heard on Defendant's Motion to Reconsider \*\*\* but no one appearing for Defendant,

and the Defendant not providing the court with courtesy copies, it is hereby ordered: Defendant's motion is stricken."

¶ 8 When Johnson's attorney arrived at the court on October 21, 2014, finding that the court had already stricken the motion to reconsider, he refiled the motion to reconsider, set it for hearing on November 4, 2014, and moved for a stay of the foreclosure sale. On October 22, 2014, the circuit court denied the motion for a stay and denied the motion to reconsider without waiting for its scheduled hearing date of November 4. The sale took place on October 22, 2014, the day the court entered the order denying the motion for a stay. Venteurs submitted the highest bid. The selling officer reported that the sale left Johnson liable for a deficiency of \$136,636.89.

¶ 9 On February 6, 2015, Johnson filed a motion to vacate the default judgment entered on July 3, 2014. She also sought leave to file her answer to the complaint. By order dated February 11, 2015, the circuit court struck the motion and entered an order approving the report of sale. Johnson filed a timely motion to reconsider the final judgment on March 10, 2015. Johnson stated on oath that before Countrywide assigned away its interest in the mortgage, she requested a loan modification from Countrywide, and Countrywide granted the request. Johnson made several payments pursuant to the modification. When Kondaur demanded payments from her, Johnson asked Kondaur to honor the modification of the loan. Kondaur agreed to the modification and accepted several payments from Johnson. Kondaur then assigned its interest in the loan to Venteurs. In her reply in support of the motion to

reconsider, Johnson suggested that Venteurs "may not even be a proper plaintiff in this matter" because it may never have legally acquired the note and the mortgage.

¶ 10 The circuit court denied the motion for reconsideration, finding that even though Venteurs presented no evidence to rebut Johnson's affidavit, Johnson did not show by a preponderance of the evidence that she applied for a trial modification of the loan. Johnson now appeals.

¶ 11 ANALYSIS

¶ 12 On appeal, Johnson argues that the trial court erred (i) when it struck Johnson's answer to the complaint and entered a default judgment because she had no answer on file; (ii) when it refused to vacate the default judgment; and (iii) when it denied her motion to reconsider the order approving the sale of her home.

¶ 13 Mootness

¶ 14 Venteurs answers first that this court lacks authority to grant some of the relief Johnson seeks. Venteurs asks us to take judicial notice of a deed, dated January 20, 2016, transferring ownership of the mortgaged property to two persons. Venteurs claims that the deed reflects a transfer of ownership to "third party bona fide purchasers," and therefore, under Supreme Court Rule 305(k) (Ill. S. Ct. R. 305(k) (eff. July 1, 2004)), any order or judgment this court enters cannot affect those two persons' right to the property. See *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 523-26 (2001). However, we cannot determine from the deed whether the persons named qualify as third parties, as the document bears no indication of their relationship to Venteurs. We cannot determine whether they qualify as "bona fide"

purchasers, as the document indicates nothing about what the named persons knew about the litigation at the time of purchase. See *Steinbrecher*, 197 Ill. 2d at 528. Moreover, the deed does not even show that the named persons purchased the property, as it does not show payment of a price for the property.

¶ 15

Answer

¶ 16

The circuit court granted Johnson two extensions of time for filing her answer to the complaint. Her attorney missed the deadline of May 27, 2014. He filed her answer on June 17, 2014. Motions for extensions of time to file answers, and motions to file answers *instanter*, usually qualify as routine motions. *Monroe v. United Air Lines, Inc.*, 565 F. Supp. 274, 284 (N.D. Ill. 1983); *Southern Discount Co. v. Williams*, 226 So. 2d 60, 61 (La. Ct. App. 1969); *Eaton v. Equitable Life Assurance Society*, 56 N.Y.2d 900, 908 (1982) *superseded by statute* CPLR 2005, as recognized in *Tewari v. Tsoutsouras*, 75 N.Y.2d 1, 12 (1989); *Kinnan v. Sitka Counseling*, 349 P.3d 153, 157 n. 12 (Alaska 2015). The circuit court has discretion to decide whether to permit a party to file a pleading late. *H.D., Ltd. v. Department of Revenue*, 297 Ill. App. 3d 26, 32 (1998). "Leave to file a late answer is generally permitted by the trial court." *Thompson Electronics Co. v. Easter Owens/Integrated Systems, Inc.*, 301 Ill. App. 3d 203, 209 (1998). However, the circuit court has authority to dispose of litigation "for failure to comply with court orders where the record shows deliberate and continuing disregard for the court's authority." *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48, 67 (1995).

¶ 17 The circuit court did not label the prior extensions of time "final." See *Brown v. Columbia Sussex Corp.*, 664 F.3d 182, 191-92 (7th Cir. 2011). Neither Johnson nor her attorney acted disrespectfully. The circuit court struck the answer and then held that the absence of an answer warranted the extreme sanction of entering a default judgment against Johnson. See *Sander*, 166 Ill. 2d 48, 67 (default is a drastic sanction).

¶ 18 We find that the circuit court abused its discretion when it used a late filing of the answer as grounds to dispose of the litigation at the pretrial stage. See *Kubian v. Labinsky*, 178 Ill. App. 3d 191, 202 (1988). Accordingly, we reverse the judgment and remand with directions that the court must permit Johnson to file her answer to the complaint. In light of our resolution of the first issue, we need not address the rulings on the motion to vacate the default judgment and the motion to reconsider the order approving the sale of the home.

¶ 19 **Petition for Rehearing**

¶ 20 In a petition for rehearing, *Venteurs* argues that the circuit court properly entered a default judgment against Johnson because when her attorney filed the answer late, the attorney failed to file a motion for extension of time under Supreme Court Rule 183 (Ill. S. Ct. R. 183 (eff. Feb. 16, 2011)). The circuit court has discretion to treat a pleading filed after a court-imposed deadline as an implicit motion under Rule 183 for an extension of time to file. *Office Electronics, Inc. v. Grafic Forms, Inc.*, 72 Ill. App. 3d 456, 459 (1979). The lack of a Rule 183 motion does not change the standards for entry of a default judgment. "The Code [of Civil Procedure] provides that pleadings shall be liberally construed so that disputes may be determined on their merits and not summarily dismissed. [Citation.] These provisions

further the policy behind the Code of settling disputes based on the merits of the parties' respective positions, rather than on procedural grounds." *Superior Bank FSB v. Golding*, 152 Ill. 2d 480, 486 (1992). Because the record showed the possibility of several meritorious defenses (see *Owens v. McDermott, Will & Emery*, 316 Ill. App. 3d 340, 350 (2000); *CitiMortgage, Inc. v. Lewis*, 2014 IL App (1st) 131272 ¶ 49; *Edward Don Co. v. Industrial Comm'n*, 344 Ill. App. 3d 643, 654 (2003)), and because the record did not show that Johnson acted with "deliberate and continuing disregard for the court's authority" (*Sander*, 166 Ill. 2d at 67), we find that the circuit court abused its discretion when it precipitately entered judgment against Johnson.

¶ 21 The facts here indicate that the case may involve questionable lending practices. See Kathleen C. Engel & Patricia A. McCoy, *The Subprime Virus: Reckless Credit, Regulatory Failure, and Next Steps* (2011), available at <http://ssrn.com/abstract=1762689> (last accessed June 19, 2017); Claire A. Hill, *Who Were the Villains in the Subprime Crisis, and Why It Matters*, 4 *Entrepreneurial Bus. L. J.* 323, 333-34 (2010) (explaining role of Countrywide in the subprime lending crisis). In light of the possibility of misconduct by mortgage lenders, the circuit court abused its discretion when it rushed to enter a judgment against the borrower, Johnson. The petition for rehearing is denied.

¶ 22 CONCLUSION

¶ 23 The circuit court abused its discretion when it struck Johnson's answer because she filed it three weeks late, and when it entered a default judgment against Johnson based on the lack of an answer, after it had stricken her answer. Venteurs's documents do not allow us to



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determine whether Rule 305(k) applies to this case. Accordingly, we reverse the circuit court's judgment and remand for proceedings in accord with this order, starting with permitting Johnson to file an answer to the complaint.

¶ 24           Reversed and remanded.