

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PNC BANK, N.A., Successor by Merger,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 12 CH 33363
)	
STEPHEN MERRITT and LUCILLE MERRITT,)	The Honorable
)	Robert E. Senechelle,
Defendants-Appellants.)	Judge, presiding.
)	

PRESIDING JUSTICE HYMAN delivered the judgment of the court.
Justices Neville and Mason concur in the judgment.

ORDER

¶ 1 *Held:* The trial court's grant of summary judgment for plaintiff bank and denial of defendants' motion for reconsideration affirmed. Plaintiffs forfeited the issue of bank's alleged non-compliance with Supreme Court Rule 191.

¶ 2 Defendants Stephen and Lucille Merritt argue that PNC Bank's affidavit in support of its complaint for foreclosure did not strictly comply with Illinois Supreme Court Rule 191 (eff. July 1, 2002) as the acceleration notice attached to the affidavit was not certified or sworn to as authentic. We affirm. The trial court's order was proper because the Merritts forfeited the issue

regarding PNC Bank's non-compliance by failing to raise the issue of receipt of the notice of acceleration in their answer to PNC Bank's complaint.

¶ 3 BACKGROUND

¶ 4 No transcripts or bystander's report of any hearings appear in the record. The following facts are gleaned from the three-volume record on appeal consisting of pleadings and exhibits in the common law record.

¶ 5 In 2001, the Merritts signed a promissory note in favor of National City Mortgage Services, which was secured by a mortgage on real property in Country Club Hills, IL. The mortgage required notice to the borrower before acceleration following a breach. The Merritts failed to make the required payments, and in May 2012, defaulted under the terms of the note. On August 31, 2012, PNC Bank (National City's successor in interest) filed a complaint to foreclose the mortgage. The Merritts' answer asserted as an affirmative defense that PNC Bank lacked standing because PNC Bank was not the holder of the note and mortgage.

¶ 6 In July 2014, PNC Bank moved for summary judgment (735 ILCS 5/2-1005 (West 2012)) and judgment of foreclosure and sale. In their response, the Merritts objected that the affidavit was not based on the personal knowledge of the affiant and failed to meet threshold requirements of Rule 191(a). The Merritts also filed a "supplemental response" asserting they received no letter of default or notice of acceleration before the filing of the foreclosure action.

¶ 7 The trial court granted summary judgment in favor of PNC Bank and entered a judgment of foreclosure and sale. The Merritts moved to reconsider the summary judgment order, arguing, in part, that the trial court did not allow the Merritts to amend their answer to deny the deemed allegations of PNC Bank's complaint "because an oral motion was made to the court instead of a written motion." The Merritts sought to amend their answer to assert the defense that they had

not received notices of the loan's default and acceleration. The trial court denied the Merritts' motion to reconsider on all issues except the notice of acceleration and ordered a hearing on whether a notice of acceleration was sent. On May 6, 2015, the trial court denied the motion to reconsider after PNC Bank filed a sworn affidavit stating PNC Mortgage sent notices of default and the grace period to the Merritts on July 17, 2012.

¶ 8 An order of confirmation of sale and order of possession were entered July 29, 2015. The Merritts appeal the orders entered May 6 and July 29, 2015, and ask this court to reverse the decision of the trial court, vacate the judgment, and remand to the trial court with directions to vacate the summary judgment.

¶ 9 STANDARD OF REVIEW

¶ 10 We review a trial court's grant of summary judgment *de novo*; we need not defer to the trial court's reasoning and our review is completely independent of the circuit court's decision. *Nationwide Advantage Mortgage Co. v. Ortiz*, 2012 IL App (1st) 112755, ¶ 20.

¶ 11 ANALYSIS

¶ 12 As a preliminary matter, PNC Bank challenges the Merritts' statement of facts in their brief (no reply brief was filed) as violating Rule 341, which requires an appellant's brief contain a statement of facts "which shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." PNC urges this court to disregard the statement of facts because the Merritts misstate the case's procedural progression and provide minimal recitation to the record. We do not take lightly a disregard of our rules of procedure. See *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 10. Where a party's briefs lack compliance with the

court's rules, we may strike the briefs and dismiss the appeal. *Miller v. Lawrence*, 2016 IL App (1st) 142051, ¶ 18.

¶ 13 Rule 341(h) (6) requires the appellant to set out the facts “with appropriate reference to the pages of the record on appeal.” The Merritts’ statement of facts includes only three page references to the common law record. The first page reference cites 61 consecutive pages of the common law record comprising the entire complaint for foreclosure; the second cites 114 pages that include numerous separate documents beginning with a “Motion Slip” that appears to be filed in March 2014 and ending with a status report dated October 2014; and the third cites 20 pages containing the Merritts’ “Supplemental Response to Plaintiff’s Motion for Summary Judgment.” The remainder of factual statements has no citation to the record. Not only are the citations to multiple consecutive pages unhelpful, but they also create unnecessary work for us by failing to direct this court to the pertinent pages of the record.

¶ 14 Notwithstanding the appellant’s noncompliance with the rule, this court retains the discretion to consider an appellate brief. Striking an appellate brief, in whole or in part, is a “harsh sanction,” and should be applied “only when the violations of procedural rules hinder our review.” *Miller*, 2016 IL App (1st) 142051, ¶ 18 (citing *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 15 (citing *In re Detention of Powell*, 217 Ill.2d 123, 132 (2005))). Therefore, we will not strike the statement of facts because the violations are not so egregious that they hinder our *de novo* review. PNC Bank has responded to the Merritts’ arguments, and we choose to address this appeal. See *Korzen*, 2013 IL App (1st) 130380, ¶ 10 (reviewing court has discretion to review appeal despite multiple Rule 341 violations).

¶ 15 Rule 191 Compliance - Sufficiency of PNC Bank’s Affidavit

¶ 16 As noted, the record contains no transcripts of any hearings on the motions filed. Any incompleteness of the record on appeal will be resolved against the appellant. *Foutch v O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). We may affirm on any basis in the record. *Miller*, 2016 IL App (1st) 142051, ¶ 22.

¶ 17 The Merritts contend that PNC Bank did not comply with Rule 191(a), arguing PNC Bank's affidavit supporting the motion for summary judgment failed to provide "sworn or certified copies of all papers" on which it relied. The Merritts assert that PNC Bank did not "provide a certification or sworn statement of the document's authenticity" and this failure to comply prevents the entry of summary judgment against them.

¶ 18 In their answer the Merritts only asserted a lack of standing for PNC Bank. The answer was silent regarding notices of default and acceleration of the loan. In *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, this court explained: "[s]ection 15-1504 of the Foreclosure Law (735 ILCS 5/15-1504 (West 2010)) sets forth a form complaint which is often used virtually verbatim. Under subsections (c), (d), and (e) of that section, if the complaint is 'substantially' in the specified statutory form, the allegations in the complaint 'are deemed and construed' to also include 12 more statutorily specified allegations. Among these additional allegations, set forth in section 15-1504(c), are: '(1) that, on the date indicated, the obligor of the indebtedness or other obligations occurred by the mortgage was justly indebted in the amount of the indicated original indebtedness to the original mortgage or payee of the mortgage note; (2) that the exhibits attached are true and correct copies of the mortgage and note * * * [.]' 735 ILCS 5/15-1504(c)(West 2010)." *Id.*, 2013 IL App (1st) 130380, ¶ 43.

¶ 19 Here, as in *Korzen*, by failing to deny these presumed allegations, the Merritts admitted the authenticity of the copy of the mortgage and note attached to the complaint. *Id.* Further

support is found in *Wells Fargo Bank, N.A. v. Simpon*, 2013 IL App (1st) 142925, ¶ 49, where this court held “the failure to deny a deemed allegation in an answer to a mortgage foreclosure complain must be given its normal and usual significance, resulting in the allegation being admitted.”

¶ 20 The Merritts’ brief states the trial court did not allow the Merritts to amend their answer to deny the deemed allegations of PNC Bank’s complaint “because an oral motion was made to the court instead of a written motion.” Apparently, the Merritts sought to amend their answer to assert the defense that they had not received default and acceleration notices. The common law record reveals the trial court held a hearing on the issue of the acceleration notice (no transcript of the hearing is included in record) and then entered an order denying the motion to amend.

¶ 21 The reviewing court will presume that the order entered by the trial court conformed with the law and had a sufficient factual basis, and will resolve any doubts arising from the incompleteness of the record against the appellant. *US Bank, National Ass’n v. Avdic*, 2014 IL App (1st) 121759, ¶ 16. Without the hearing transcript, we presume the trial court made its ruling on the law with a sufficient factual basis. *Id.* Based on this record, we conclude the trial court properly granted summary judgment for PNC Bank and denied the Merritts motion to amend their answer. See *id.*, ¶32 (sufficient evidence to establish plaintiff’s case, with no competing affidavit or evidence to contradict this evidence).

¶ 22 Motion to Reconsider

¶ 23 A motion to reconsider brings to the trial court’s attention “newly discovered evidence that was not available at the time of the first hearing, changes in the law, or errors in the court’s previous application of existing law.” *Woolums v. Huss, M.D.*, 323 Ill. App. 3d 628, 639-40 (2001). The decision to admit new matter raised in a motion to reconsider “lies in the discretion

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of the trial court and should not be allowed absent a reasonable explanation of why it was not available at the time of the original hearing.” *Id.* at 640. Under these circumstances, the trial court did not abuse its discretion by denying the motion to reconsider.

¶ 24 Affirmed.