

2017 IL App (2d) 160807-U
No. 2-16-0807
Order filed July 19, 2017

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
SECOND DISTRICT

MONTY TITLING TRUST 1,)	Appeal from the Circuit Court
)	of Lake County.
Plaintiff-Appellee,)	
)	
v.)	No. 15-CH-1336
)	
JOHN C. GRAFFT; CHICAGO TITLE LAND)	
TRUST COMPANY, as successor to North Star)	
Trust Company, as successor to Harris Trust)	
and Savings Bank, as Trustee under Trust)	
Agreement dated March 25, 1985, and known)	
as Trust No. 11-3383; UNKNOWN OWNERS;)	
UNKNOWN OCCUPANTS; UNKNOWN)	
TENANTS; and NON-RECORD)	
CLAIMANTS,)	Honorable
)	Luis Berrones,
Defendants-Appellants.)	Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices Schostok and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Trial court did not abuse its discretion in denying defendants' motion to compel discovery responses where motion related to a discovery request served in a separate lawsuit pending in another county and where the record indicates there was no additional evidence for plaintiff to produce; (2) trial court properly entered summary judgment in favor of plaintiff because there were no genuine issues of material fact; and (3) defendants forfeited challenge to trial court's ruling on their

postjudgment motion by failing to develop argument on appeal or cite any authority in support thereof.

¶ 2 On July 22, 2015, plaintiff, Monty Titling Trust 1, filed in the circuit court of Lake County a complaint for foreclosure and other relief against defendants, John C. Grafft (Grafft); Chicago Title Land Trust Company, as successor to North Star Trust Company, as successor to Harris Trust and Savings Bank, as Trustee under Trust Agreement dated March 25, 1985, and known as Trust No. 11-3383 (Trust); unknown owners; unknown occupants; unknown tenants; and non-record claimants. On November 17, 2015, defendants filed their answer and affirmative defenses. Plaintiff subsequently moved for summary judgment. Defendants did not respond to plaintiff's motion for summary judgment, but instead filed a "Motion to Compel Compliance and for Sanctions." On April 14, 2016, the circuit court denied defendants' motion to compel, granted plaintiff's motion for summary judgment, and entered a judgment of foreclosure and sale. Following the denial of defendants' postjudgment motion, the property at issue was sold at a sheriff's sale. The circuit court later granted plaintiff's motion to confirm sheriff's sale, for immediate possession, and for a deficiency judgment. Defendants then initiated this appeal, challenging the trial court's decisions denying their motion to compel, granting plaintiff's motion for summary judgment, and denying their postjudgment motion. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On June 14, 2002, Grafft executed in favor of plaintiff's predecessor in interest a collateral assignment of beneficial interest (CABI) relating to property commonly known as 626 Glenview Avenue, Highland Park, Illinois (subject property). On November 22, 2006, Grafft executed a promissory note (Note) in favor of plaintiff's predecessor in interest in the original principal amount of \$3.5 million, which is secured by the CABI. The Note is also secured by certain other real property that is the subject of a separate foreclosure proceeding filed by

plaintiff against defendants in Cook County (Cook County litigation). Following the assignment of the Note and CABI from plaintiff's predecessor in interest to plaintiff, plaintiff filed a two-count complaint for foreclosure and other relief, naming as defendants Grafft, the Trust (the owner of the subject property), unknown owners, unknown occupants, unknown tenants, and non-record claimants.¹ The complaint alleged that on August 6, 2008, defendants defaulted under the terms of the Note for failing to make timely and complete payment due thereunder on or before the maturity date of August 5, 2008. Plaintiff requested the court to enter a judgment of foreclosure and sale, a judgment for attorney fees and expenses against Grafft, a personal deficiency judgment against Grafft, and such other relief as the court deems just and proper. Attached to plaintiff's complaint were several documents, including the CABI and the Note.

¶ 5 On August 13, 2015, plaintiff filed a "Motion for Immediate Possession and Appointment of Receiver" (motion to appoint receiver). At a hearing on August 20, 2015, the trial court entered an order: (1) granting counsel for defendants leave to file an appearance by September 3, 2015; (2) setting a briefing schedule on the motion to appoint receiver; (3) providing defendants until September 17, 2015, to answer plaintiff's complaint; and (4) setting a hearing on the motion to appoint receiver for September 15, 2015.

¶ 6 Counsel for defendants failed to file an appearance by September 3, 2015, and did not respond to the motion to appoint receiver. At the September 15, 2015, hearing, the trial court granted the motion to appoint receiver. Further, over plaintiff's objection, the court: (1) granted defendants leave to file an appearance and motion to dismiss by September 17, 2015; (2) entered

¹ Throughout this litigation, documents were inconsistently filed on behalf of Grafft or on behalf of both Grafft and the Trust. In the interest of consistency, we refer to all documents filed on behalf of either Grafft or both Grafft and the Trust as being collectively filed by "defendants."

a briefing schedule on defendants' impending motion to dismiss; and (3) set a hearing for October 13, 2015.

¶ 7 Counsel for Grafft did not file an appearance until September 28, 2015.² On or about that same date, defendants filed a "Motion to Dismiss and Objection to Appointment of Receiver" (motion to dismiss). Among other things, defendants argued that plaintiff's complaint should be dismissed with prejudice because plaintiff's predecessor in interest issued an Internal Revenue Service (IRS) Form 1099-A, which evidenced that the debt had been "formally forgiven."³ On October 5, 2015, plaintiff filed a "Combined Motion to Strike and Response in Opposition to Defendants' Motion to Dismiss." Plaintiff argued that defendants' motion to dismiss should be stricken because it was untimely, filed without leave of court, and without good cause. Alternatively, plaintiff asserted that the motion to dismiss should be denied because defendants' claim that the debt had been forgiven lacked merit. On October 13, 2015, after hearing oral

² The same attorney later filed an appearance on behalf of the Trust.

³ Although defendants represented that the Form 1099-A was attached to the motion to dismiss, the copy of the motion to dismiss in the record does not include any attachment. However, Form 1099-A is found elsewhere in the record. Form 1099-A is titled "Acquisition or Abandonment of Secured Property." It contains boxes to enter the following information: (1) the lender's name, address, and telephone number; (2) the lender's federal identification number; (3) the borrower's name and address; (4) the borrower's identification number; (5) the account number; (6) the date of the lender's acquisition or knowledge of abandonment; (7) the balance of principal outstanding; (8) the fair market value of the property; (9) whether the borrower was personally liable for repayment of the debt; and (10) a description of the property.

argument, the trial court denied defendants' motion to dismiss "in its entirety" and ordered defendants to file their answer to plaintiffs' complaint on or before November 3, 2015.

¶ 8 Notwithstanding the October 13 order, defendants did not file their answer to plaintiff's complaint for foreclosure until November 17, 2015. In addition to responding to the allegations in plaintiff's complaint, the answer contained two affirmative defenses. Relevant here, the second affirmative defense stated that, "[u]pon information and belief, Plaintiff's predecessor in interest, Harris Bank Barrington, NA [*sic*] has forgiven this underlying indebtedness and as such, Plaintiff cannot proceed with this foreclosure action." On November 19, 2015, plaintiff filed its verified reply to defendants' affirmative defenses, wherein it denied each affirmative defense. Moreover, with respect to defendants' second affirmative defense, plaintiff asserted that defendants raised this identical argument in their motion to dismiss, and it was denied by the court in its October 13, 2015, order.

¶ 9 On January 26, 2016, plaintiff filed a "Motion for Summary Judgment, Default Judgment and Judgment of Foreclosure and Sale" (motion for summary judgment) and a memorandum of law in support of the same. In its motion for summary judgment, plaintiff contended that there was no question of material fact as to the issue of liability with regard to the Note and CABI because: (1) the Note and CABI were executed by Grafft; (2) Grafft defaulted under the CABI and Note by failing to make payment in full thereunder on or before the maturity date; (3) Plaintiff performed all of its duties and obligations under the CABI and Note; and (4) Plaintiff had been damaged by Grafft's breach. Plaintiff also asserted that defendants' affirmative defenses were meritless and failed to create a genuine issue of material fact. With respect to defendants' affirmative defense that plaintiff's predecessor in interest had forgiven the loan, plaintiff asserted that the loan payment history evidences the indebtedness remains due and

owing. Moreover, plaintiffs asserted that the Form 1099-A did not signify that the indebtedness had been waived, but rather that the borrower had abandoned the mortgaged property as indicated by the fact that more than \$200,000 in delinquent real estate taxes had accrued on the subject property. As such, plaintiff urged the court to enter summary judgment against Grafft and the Trust. Plaintiff further contended that a default judgment should be entered against unknown owners, unknown tenants, and non-record claimants for their failure to answer or otherwise plead to the complaint for foreclosure.

¶ 10 Plaintiff's motion for summary judgment was supported by the six-page affidavit of Brian Doherty, a representative of plaintiff's authorized servicer. In his affidavit, among other things, Doherty: (1) stated that he had personal knowledge of all facts relating to the complaint, Note, and CABI; (2) set forth the preliminary facts and basis of his personal knowledge; (3) described the manner in which the business records he had reviewed were kept in plaintiff's regular course of business; (4) explained how plaintiff had received records from its predecessor in its regular course of business; (5) stated that the amounts due had never been "forgiven" by plaintiff, that a Form 1099-A does not stand for the proposition that the debt had been forgiven, and that the records supplied by plaintiff's predecessor evidenced the significant indebtedness due and owing at the time plaintiff acquired the loan documents; (6) set forth calculations supporting the amounts that were currently due and owing under the Note; and (7) stated that he was competent to testify to all facts contained in his affidavit. Several documents were attached to Doherty's affidavit, including a payoff letter, the loan payment history for the Note as reflected in plaintiff's records, and the loan payment history as tendered to plaintiff by its predecessor in interest.

¶ 11 On February 18, 2016, the trial court entered a briefing schedule on plaintiff's motion for summary judgment, ordering: (1) defendants to file their response on or before March 17, 2016; (2) plaintiff to file its reply on or before April 7, 2016; and (3) a hearing and oral argument to be set for April 14, 2016.

¶ 12 Defendants did not file a response to plaintiff's motion for summary judgment by March 17, 2016. In addition, defendants did not seek leave of court for an extension of time to file a response. Instead, on March 17, 2016, defendants filed a "Motion to Compel Compliance and for Sanctions" (motion to compel). In the motion to compel, defendants alleged that on February 11, 2016, they served upon plaintiff's counsel a "Request for Production of Documents" (request for production) in the Cook County litigation. Among other things, the request for production sought documents related to the issuance of a 2012 1099-A Form by plaintiff's predecessor in interest as well as documents "supporting the personal knowledge that Brian Doherty claims in his affidavits" that plaintiff's predecessor in interest did not "charge off or otherwise forgive the subject debt." Defendants asserted that despite repeated requests, plaintiff "has refused, and continues to refuse, to comply with the reasonable requests made therein, except for some pending real estate tax information." Defendants also noted that on February 17, 2016, plaintiff filed an objection to the request for production in Cook County. Defendants categorized as "[p]articularly egregious" plaintiff's refusal to comply with a request "to supply any basis for the statement of Brian Doherty, made under oath in his Affidavit that there was no forgiveness of the debt, pursuant to the 1099 tax form that Plaintiff's predecessor issued." According to defendants, the allegations in Doherty's affidavit "appear to be outside his knowledge and just his conjecture." Attached to the motion to compel was a copy of the request for production filed in Cook County and plaintiff's response and objections thereto.

¶ 13 In its response in opposition to defendants' motion to compel, plaintiff asserted that: (1) the motion to compel was improper because it seeks the production of documents pursuant to a discovery request served in a separate lawsuit pending in another county; (2) plaintiff had nevertheless complied with the discovery request served in the Cook County litigation and had attached a notarized affidavit of completeness to its response stating that the documents and information produced represented a full and complete disclosure of all relevant documents in plaintiff's possession; (3) plaintiff had already produced everything it could and could not be compelled to produce documents that do not exist; and (4) the motion to compel was filed in bad faith to create unnecessary delay. Attached to plaintiff's response was a supplemental affidavit in which Doherty confirmed that plaintiff did not possess any documents relating to either the filing of a Form 1099-A by either plaintiff or plaintiff's predecessor in interest or a charge off or forgiveness of any debt owed by defendants. Plaintiff also filed a reply in support of its motion for summary judgment, which noted that defendants had failed to respond to the motion for summary judgment, and further explained that defendants' affirmative defenses were unsubstantiated and failed to preclude summary judgment in favor of plaintiff. On April 14, 2016, after hearing oral argument, the trial court granted plaintiff's motion for summary judgment and entered a judgment of foreclosure and sale. In addition, the court denied defendants' motion to compel.

¶ 14 On April 29, 2016, defendants filed a "Motion for Entry of an Order Vacating the April 14, 2015 [*sic*], Order of Default and Judgment of Foreclosure and Order Denying Defendants' Motion to Compel Discovery Responses" (motion to vacate). In the motion to vacate, defendants contended that the court granted summary judgment to plaintiff based on "material omissions." Among the arguments advanced by defendants was the following. On February 18,

2016, Judge Daniel Jasica entered a briefing schedule on plaintiff's motion for summary judgment and set a hearing on the same for April 14, 2016, before Judge Luis Berrones. At that time, defendants argued that they would be unable to respond to the motion for summary judgment because plaintiff refused to comply with the request for production filed in the Cook County litigation. According to defendants, counsel for plaintiff agreed in open court "that it [*sic*] would not object to the Cook County discovery request being used in the Lake County case."⁴ Judge Jasica stated that upon the filing of a motion to compel, he would defer the briefing on plaintiff's motion for summary judgment and first decide the discovery issue. Despite the representation of its attorney, plaintiff objected to the discovery requests in its written response to defendants' motion to compel. Further, due to a conflict, defendants' usual counsel was not at the April 14 hearing before Judge Berrones. Although another attorney from the same firm appeared on defendants' behalf, he was not aware of Judge Jasica's decision to defer briefing on plaintiff's motion for summary judgment pending a ruling on the motion to compel. As a result, plaintiff's motion for summary judgment "was entered despite the pendency of a Motion to Compel Discovery Responses *only* because there was no response to Plaintiff's Motion for Summary Judgment" filed by defendants. (Emphasis in original.). Defendants also asserted that "the sole response" from plaintiff regarding their affirmative defense that the debt had been forgiven was the Doherty affidavit which defendants characterized as "woefully deficient and silent as to what [plaintiff's predecessor in interest] did or did not forgive/release or charge off in regards to this loan and the intent of the 1099 Form *** filed with the IRS."

⁴ A transcript of the February 18, 2016, hearing before Judge Jasica has not been made part of the record. Moreover, in ruling on defendants' motion to vacate, Judge Berrones noted that plaintiff's attorney denied the existence of such an agreement.

¶ 15 On or about May 2, 2016, plaintiff filed a response in opposition to the motion to vacate, stating that, in addition to being procedurally improper, the motion to vacate was an obvious attempt for defendants to “gain a second bite at the apple” and unnecessarily prolong the trial court’s final disposition in the matter. Following a hearing on May 4, 2016, the trial court took the motion to vacate under advisement and continued the matter to May 20, 2016.⁵

¶ 16 On May 20, 2016, the trial court issued an eight-page memorandum order denying the motion to vacate. In the order, the trial court first clarified that defendants incorrectly characterized its April 14, 2016, order as an “order of default.” The court stated that the order was not entered against defendants because they failed to file an appearance or plead. See 735 ILCS 5/2-1301(d) (West 2014). Rather, it was entered because “Graft [*sic*] *** failed to respond to the motion for summary judgment after he was given an opportunity to do so and therefore failed to raise a genuine issue of material fact as to [plaintiff’s] motion for summary judgment.” Under these circumstances, the court concluded that the ruling constituted an adjudication on the merits. The trial court then set forth the procedural history of the case before analyzing and rejecting defendants’ contentions. With regard to the motion to compel, the court remarked:

“At the May 4th hearing, Graft [*sic*] claimed that he could not respond to [plaintiff’s] motion for summary judgment absent a more complete production of documents than what was produced in response to the Cook County discovery requests. Even if the Court accepts Graft’s [*sic*] representation that the parties agreed to have the discovery served in the Cook County case also apply to the Lake County case, Graft’s [*sic*] motion to compel is without merit. Graft’s [*sic*] argument boils down to his belief that there has to be more

⁵ The record submitted on appeal does not include a transcript of the May 4, 2016, hearing or any other hearing held in this cause.

documents *** than what was produced. *** Even though Graft [*sic*] may be correct that the documents requested but not produced are documents that are typically found in a lender's file, that fact alone is not sufficient for the Court to conclude that there has not been compliance with the discovery rules by [plaintiff]; especially when [plaintiff's] response to the document requests contains an affidavit of completeness swearing under oath to the completeness of the document production. Absent any other evidence that the response to the document request is not complete, there is nothing for this Court to compel. Graft's [*sic*] motion to compel was originally denied because it was untimely and the Court believed that the motion to compel sought responses to discovery requests served only in the Cook County companion case; however, Graft's [*sic*] motion would have still been denied even if the attorney appearing for Graft [*sic*] on April 14th would have raised the arguments made at the May 4th hearing."

¶ 17 With regard to the grant of summary judgment, the trial court held:

"Graft's [*sic*] arguments at the May 4th hearing to vacate clearly show that Graft [*sic*] could have filed a substantive response to the motion for summary judgment even without the additional documents he claims he needed to respond to the motion for summary judgment. At the May 4th hearing, Graft [*sic*] argued in support of his motion that Doherty's affidavit supported Graft's [*sic*] position that more documents existed since Doherty made statements in his affidavit that were hearsay, conclusory and unsupported by the documents attached to the affidavit. The oral attack presented on Doherty's affidavit in support of Graft's [*sic*] motion to compel as to why more documents must exist [*sic*] was a textbook example on how to attack an affidavit for lack of foundation in a motion to strike. Thus, Graft [*sic*] could have filed a timely response

to the motion for summary judgment since he was served with the responses to the document request by email on February 17, 2016. Graft [*sic*] was therefore aware of these claimed deficiencies in Doherty's affidavit at the time the briefing schedule was set by Judge Jasica on February 18, 2016. Graft [*sic*] made the strategic decision to file a motion to compel despite the fact that a certificate of completeness was provided in accordance with Supreme Court Rule 214 instead of filing a motion to strike the affidavit of Doherty based on the arguments he made at the May 4th hearing with respect to the deficiencies in the Doherty affidavit. If Graft [*sic*] truly believed that there was more information solely under the control of [plaintiff], Graft [*sic*] could have also sought such discovery pursuant to Supreme Court Rule 191(b) and had the briefing schedule adjusted if the Court granted his motion. Instead Graft [*sic*] failed to file his motion to compel on a timely basis and ignored the Court's deadlines, thus Graft [*sic*] forfeited his right to challenge the contents of the motion for summary judgment, the affidavit, the motion for a judgment of foreclosure and any of the supporting materials used in support of these motions."

¶ 18 On July 12, 2016, the property at issue was sold at a sheriff's sale. On September 1, 2016, following contested briefing on plaintiff's motion to confirm sheriff's sale, for immediate possession, and for deficiency judgment, the trial court granted same and entered a final order in the matter. On September 26, 2016, defendants filed their notice of appeal.

¶ 19

II. ANALYSIS

¶ 20 Prior to addressing the issues raised in this appeal, we observe that defendants' brief fails to comply with numerous provisions of our supreme court rules. Illinois Supreme Court Rule 341(a) (eff. Jan. 1, 2016) governs the form of briefs. That rule requires briefs to be paginated

with the text double spaced. Ill. S. Ct. R. 341(a) (eff. Jan. 1, 2016). The same rule requires each brief to be “safely and securely bound” with the margins of the brief at least 1½ inches on the left side. Ill. S. Ct. R. 341(a) (eff. Jan. 1, 2016). Illinois Supreme Court Rule 341(c) (eff. Jan. 1, 2016) requires each brief to contain a certificate of compliance signed by the attorney certifying that the brief complies with the form and length requirements of Rules 341 (a) and (b). Illinois Supreme Court Rule 341(h)(8) (eff. Jan. 1, 2016) requires the appellant’s brief to include a “short conclusion stating the precise relief sought, followed by the names of counsel as on the cover.” Illinois Supreme Court Rules 341(h)(9) (eff. Jan. 1, 2016) and 342(a) (eff. Jan. 1, 2005) require the appellant’s brief to include an appendix containing “a table of contents to the appendix, a copy of the judgment appealed from, any opinion, memorandum, or findings of fact filed or entered by the trial judge ***, any pleadings or other materials from the record which are the basis of the appeal or pertinent to it, the notice of appeal, and a complete table of contents.”

¶ 21 Here, defendants’ brief is only partially paginated, the margins on the left side are less than 1½ inches, the text is not double spaced, and the certificate of compliance is not signed by defendants’ attorney. Further, neither defendants’ opening brief nor his reply brief are securely bound. In addition, the conclusion is not followed by the names of counsel and the appendix does not contain a copy of the judgment appealed from, findings of fact filed or entered by the trial court, pleadings or other materials from the record that are the basis of the appeal or pertinent to it, or a notice of appeal.

¶ 22 More significant, defendants fail to comply with Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016). That rule requires an appellant to include in its brief “[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on.” Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). A contention

that is undeveloped or is supported by some argument but does not cite any authority does not satisfy the requirements of Rule 341(h)(7). *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 37; *Vilardo v. Barrington Community School District 220*, 406 Ill. App. 3d 713, 720 (2010). Failure to comply with Rule 341(h)(7) with respect to an issue operates as a forfeiture as to that issue on appeal. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (“[p]oints not argued are waived and shall not be raised in the reply brief *** or on petition for rehearing”); *People v. Olsson*, 2016 IL App (2d) 150874, ¶ 22. In this case, defendants’ brief includes arguments that are not fully developed or are unsupported by citation to relevant authority or cogent legal argument.

¶ 23 The rules of our supreme court are mandatory rules of procedure, not mere suggestions. *Perona v. Volkswagen of America, Inc.*, 2014 IL App (1st) 130748, ¶ 21. They have the force of law, and all parties must comply with them. *Szczesniak v. CJC Auto Parts, Inc.*, 2014 IL App (2d) 130636, ¶ 8. As a result of the deficiencies identified above, plaintiff asks this court to dismiss this appeal. Although we have the discretion to strike an appellant’s brief and dismiss an appeal for failure to comply with the rules of our supreme court (*Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 77), we decline to invoke either of these remedies as the cited violations do not completely hinder our review (see *Budzileni v. Department of Human Rights*, 392 Ill. App. 3d 422, 439-41 (2009) (holding that reviewing court has discretion to review merits even in light of multiple violations of supreme court rules); *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 510-11 (same)). Nevertheless, we will consider as forfeited any argument raised by defendants that fails to comply with Rule 341(h)(7). Moreover, we admonish defendants’ attorney to follow the requirements of the supreme court rules in future submissions. With this preliminary matter behind us, we now turn to the merits of the appeal.

¶ 24 On appeal, defendants raise two issues. First, defendants argue that the trial court abused its discretion in denying their motion to compel and their oral motion for additional time to file a response to plaintiff's motion for summary judgment. Second, defendants argue that the trial court erred in granting plaintiff's motion for summary judgment and denying defendants' motion to vacate because a material question of fact was raised by defendants' affirmative defenses, thereby precluding summary judgment. We address each contention in turn.

¶ 25 A. Motion to Compel

¶ 26 Defendants' first contention of error concerns the trial court's denial of their motion to compel. According to defendants, the purpose of the motion to compel was to determine the basis of the claims in Doherty's affidavit that he had personal knowledge that plaintiff's predecessor in interest had not charged off or otherwise forgiven the indebtedness at issue. Defendants assert that this information was necessary to respond to plaintiff's motion for summary judgment. They further assert that this information was in plaintiff's control, and, other than the motion to compel, they had no way to ascertain the basis for Doherty's statements.

¶ 27 A trial court is afforded considerable discretion in ruling on matters related to discovery. *Kensington's Wine Auctioneers & Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 11 (2009). As such, the trial court's rulings on discovery matters will not be reversed absent an abuse of discretion. *Kensington's Wine Auctioneers & Brokers, Inc.*, 392 Ill. App. 3d at 11. The abuse-of-discretion standard is the most deferential standard of review. *Control Solutions, LLC v. Elecsys*, 2014 IL App (2d) 120251, ¶ 38. An abuse of discretion occurs where the trial court's decision is arbitrary or fanciful or where no reasonable person would take the view adopted by the trial court. *Control Solutions, LLC*, 2014 IL App (2d) 120251, ¶ 38. We find no abuse of discretion in this case.

¶ 28 First, the trial court did not abuse its discretion in denying the motion to compel because it related to a discovery request served in a separate lawsuit pending in another county. The present case was filed in Lake County. The motion to compel was also filed in Lake County. The motion to compel sought entry of an order compelling responses to the request for production defendants served in the *Cook County* litigation. Yet, there was no outstanding discovery request in Lake County for the trial court to compel. As the appellants, defendants bear the burden of persuasion on appeal regarding their contentions of error. See *City of Chicago v. Janssen Pharmaceuticals, Inc.*, 2017 IL App (1st) 150870, ¶ 29 (citing *Yamnitz v. William J. Diestelhorst Co.*, 251 Ill. App. 3d 244, 250 (1993)). Here, defendants do not cite any authority for the proposition that a court sitting in one county may enforce a discovery request filed in a separate lawsuit in another county.⁶ Although defendants represented in their postjudgment motion that plaintiff agreed to have the discovery request served in Cook County apply to the Lake County case, the trial court observed that counsel for plaintiff denied making such a representation. Further, there is no evidence of the purported agreement in the record, such as the transcript from the hearing at which the representation was allegedly made. See *Keener v. City of Herrin*, 235 Ill. 2d 338, 346 (2009) (stating that a party may not rely on matters outside the record to support its position on appeal); see also *Colburn v. Mario Tricoci Hair*

⁶ In support of their argument on the motion to compel, defendants discuss only two cases in their brief, *In re Estate of Hofer*, 2015 IL App (3d) 140542, and *Olive Portfolio Alpha, LLC v. 116 West Hubbard Street, LLC*, 2017 IL App (1st) 160357. Neither of these cases relates to the propriety of a trial court's ruling on a motion to compel related to a discovery request served in a separate lawsuit pending in another county.

Salons & Day Spas, Inc., 2012 IL App (2d) 110624, ¶ 29 (noting that it is the burden of the appellant to present a record of sufficient completeness to support a claim or error on appeal).

¶ 29 Second, even if the discovery requests served in the Cook County litigation could be deemed to have been served in this case, the trial court still did not abuse its discretion in denying the motion to compel. As the trial court observed in denying defendants' postjudgment motion, defendants' argument "boils down to his belief that there has to be more documents *** than what was produced." In its response and objections to defendants' request for production filed in the Cook County litigation, plaintiff stated that other than what it had already provided, it did not possess any additional documents related to defendants' affirmative defense. Plaintiff attached a notarized affidavit of completeness to its response, stating that documents and information produced represented a complete production of all relevant documents in plaintiff's possession. Furthermore, in responding to defendants' motion to compel, plaintiff attached a supplemental affidavit in which Doherty reaffirmed that plaintiff does not possess any documents relating to defendants' claim that the indebtedness at issue was forgiven. Defendants did not provide any evidence to show that plaintiff's document production was incomplete. Since the record indicates there was no additional evidence for plaintiff to produce, we cannot say that the trial court's decision to deny the motion to compel was arbitrary or fanciful or that no reasonable person would adopt the view adopted by the trial court.

¶ 30 Defendant makes several other brief contentions in support of their first claim of error. These arguments are principally undeveloped and unsupported by citation to any authority, thereby resulting in their forfeiture. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); *Ramos*, 2013 IL App (3d) 120001, ¶ 37. For instance, defendants claim that they should have been allowed an opportunity to file a motion to strike the Doherty affidavit for lack of foundation. However,

there is no indication in the record that they ever asked to file a motion to strike. See *Bridgeman v. Terminal R.R. Ass'n of St. Louis*, 195 Ill. App. 3d 966, 973 (1990) (“We cannot fault the trial court for refusing to grant a request never presented to it.”). Defendant also claims that the trial court abused its discretion in denying their oral motion for additional time to file a response to plaintiff’s motion for summary judgment. However, this argument is wholly undeveloped with the only reference to it appearing in the heading of the argument section. Even if defendants had developed this argument, we would be unable to address it as defendants have not included a transcript of the trial court proceedings in the record on appeal. See *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005) (stating that any issue relating to the court’s factual findings and the basis for its legal conclusions cannot be reviewed without a record of that proceeding); *Foutch v. O’Bryant*, 99 Ill. 2d 389, 392 (1984) (noting that in the absence of a sufficient record on appeal, it will be presumed that the trial court’s ruling was in conformity with the law).

¶ 31

B. Motion for Summary Judgment

¶ 32 Next, defendants argue that the trial court erred in granting plaintiff’s motion for summary judgment. Summary judgment is appropriate where “the pleadings, depositions, and admissions on file, together with the affidavits show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2014). A “material fact” is one that might affect the outcome of the case. *Bank of America National Ass’n v. Bassman FBT, LLC*, 2012 IL App (2d) 110729, ¶ 3. In reviewing whether a genuine issue of material fact exists, a court must construe the materials of record strictly against the movant and liberally in favor of the nonmoving party. *St. Martin v. First Hospitality Group, Inc.*, 2014 IL App (2d) 130505, ¶ 9. Although the nonmovant need not prove his case, he must present a factual basis that would arguably entitle him to a judgment in his

favor. *Churkey v. Rustia*, 329 Ill. App. 3d 239, 245 (2002). The opposing party may not stand on his or her pleadings in order to create a genuine issue of material fact. *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 49. Moreover, when the party moving for summary judgment files supporting affidavits containing well-pleaded facts and the party opposing the motion files no counteraffidavits, the material facts set forth in the movant's affidavits stand as admitted. *Parkway Bank & Trust Co.*, 2013 IL App (1st) 130380, ¶ 49. We review a trial court order granting summary judgment *de novo* (*BMW Financial Services, N.A. v. Felice*, 2017 IL App (2d) 160397, ¶ 6) and may affirm the trial court's grant of summary judgment on any basis supported by the record regardless of whether the trial court relied on that basis or whether the court's reasoning was correct (*Harlin v. Sears, Roebuck & Co.*, 369 Ill. App. 3d 27, 31-32 (2006)).

¶ 33 Defendants contend that material questions of fact were raised by their affirmative defenses. Specifically, defendants insist that the issuance of a Form 1099-A by plaintiff's predecessor in interest precludes entry of summary judgment in plaintiff's favor because it created a material question as to whether the debt at issue had been forgiven. Defendants do not cite any authority that issuance of a Form 1099-A evidences forgiveness of debt. Instead, they direct us to *In re Estate of Hofer*, 2015 IL App (3d) 140542.

¶ 34 At issue in *Hofer* was whether a creditor's issuance of IRS Form 1099-C created a material issue of fact as to whether the creditor had the right to collect the debt. *In re Estate of Hofer*, 2015 IL App (3d) 140542. In *Hofer*, the creditor's ledger showed that the debt in question had been "charged off." *Hofer*, 2015 IL App (3d) 140542, ¶ 5. The creditor also issued a Form 1099-C, entitled "Cancellation of Debt," which detailed the amount of debt cancelled and the date the debt was cancelled. *Hofer*, 2015 IL App (3d) 140542, ¶ 6. The *Hofer* court

concluded that the issuance of a Form 1099-C by the creditor coupled with additional evidence that the creditor had “charged off” the loan on its books created a genuine issue of fact as to the creditor’s right to collect the debt, thereby precluding entry of summary judgment. *Hofer*, 2015 IL App (3d) 140542, ¶¶ 5-6, 33-34.

¶ 35 In this case, defendants received a Form 1099-A, not a Form 1099-C. Form 1099-A concerns the acquisition or abandonment of secured property, not the cancellation of debt. Indeed, unlike Form 1099-C, nowhere on the face of Form 1099-A does the document reference any cancelled debt. Moreover, unlike the *Hofer* case, there is no other evidence indicating that the debt was “charged off.” To the contrary, the documents attached to Doherty’s affidavit showed that the debt remained outstanding. For these reasons, we find defendants’ reliance on *Hofer* misplaced. Although defendants concede that *Hofer* did not involve a Form 1099-A, they insist that that decision “makes clear that whether the 1099, of whatever type, stands as a discharge of the debt, raises a genuine issue of material fact precluding Summary Judgment.” As noted above, however, defendants cite no authority for the proposition that Form 1099-A “stands as a discharge of the debt.” Further, the *Hofer* court’s analysis is strictly confined to Form 1099-C. It never references Form 1099-A or any other variety of Form 1099. Hence, we decline to read *Hofer* as broadly as defendants suggest.

¶ 36 Defendants assert that another case, *U.S. Bank v. Kosterman*, 2015 IL App (1st) 133627, also “provides guidance.” In *U.S. Bank*, the plaintiff filed a complaint for foreclosure. *U.S. Bank*, 2015 IL App (1st) 133627, ¶ 5. The defendants filed an answer that included two affirmative defenses, including lack of standing. *U.S. Bank*, 2015 IL App (1st) 133627, ¶¶ 5, 8. The trial court dismissed the affirmative defenses with prejudice, after which the plaintiff filed a motion for summary judgment. *U.S. Bank*, 2015 IL App (1st) 133627, ¶ 5. The plaintiff

supported its motion for summary judgment with the affidavit of Carolyn Mobley, a bank official. *U.S. Bank*, 2015 IL App (1st) 133627, ¶ 12. In her affidavit, Mobley asserted that she had reviewed various records in support of her averments. *U.S. Bank*, 2015 IL App (1st) 133627, ¶ 12. However, none of the records were attached to Mobley's affidavit. *U.S. Bank*, 2015 IL App (1st) 133627, ¶ 12. The defendants replied with affidavits pursuant to Illinois Supreme Court Rule 191(b) (eff. Jan. 4, 2013), asserting that they could not adequately respond to the motion for summary judgment without the records or other information upon which Mobley relied. *U.S. Bank*, 2015 IL App (1st) 133627, ¶ 12. The plaintiff then faxed a loan-transaction history to the defendants. *U.S. Bank*, 2015 IL App (1st) 133627, ¶ 13. However, Mobley did not certify the document and there was no indication that Mobley relied on the loan-transaction history produced. *U.S. Bank*, 2015 IL App (1st) 133627, ¶ 13. The plaintiff then offered the defendants seven days to amend their response to the motion for summary judgment. *U.S. Bank*, 2015 IL App (1st) 133627, ¶ 13. The defendants did not file an amended response within this time frame. *U.S. Bank*, 2015 IL App (1st) 133627, ¶¶ 13-14. While the parties awaited a ruling on the motion for summary judgment, the defendants requested the opportunity to depose Mobley and to obtain the records supporting her affidavit. *U.S. Bank*, 2015 IL App (1st) 133627, ¶ 14. The trial court granted summary judgment in favor of the plaintiff. *U.S. Bank*, 2015 IL App (1st) 133627, ¶ 14. The plaintiff then moved to strike the defendants' outstanding discovery requests, including the deposition of Mobley, which the trial court granted. *U.S. Bank*, 2015 IL App (1st) 133627, ¶ 14. On appeal, the defendants challenged the trial court's dismissal of their affirmative defenses and its order granting summary judgment in the plaintiff's favor.

¶ 37 Initially, the reviewing court held that the trial court erred in dismissing defendants' affirmative defenses because it had previously determined that lack of standing in a foreclosure action is an affirmative defense that must be raised in an answer or it will be considered forfeited. *U.S. Bank*, 2015 IL App (1st) 133627, ¶ 10. The court then addressed the propriety of the trial court's entry of summary judgment. The court concluded that the defendants were improperly denied the opportunity to "mount a meaningful defense" because the plaintiff failed to produce the records relied upon by Mobley and refused to produce Mobley for a deposition. *U.S. Bank*, 2015 IL App (1st) 133627, ¶¶ 1, 17. The court stated that the harm to the defendants was compounded because the trial court did not acknowledge the defendants' Rule 191(b) affidavit averring that they needed to conduct discovery to rebut Mobley's attestations, thereby denying them the opportunity to depose "the only person offering testimony against them." *U.S. Bank*, 2015 IL App (1st) 133627, ¶¶ 17. Thus, the court found that the events leading up to the trial court's ruling "essentially amounted to summary judgment by ambush." *U.S. Bank*, 2015 IL App (1st) 133627, ¶ 17.

¶ 38 Defendants suggest that like the defendants in *U.S. Bank*, they too were "ambushed by Summary Judgment." We disagree and find *U.S. Bank* distinguishable. Here, unlike *U.S. Bank*, the documents upon which Doherty, plaintiff's affiant, relied were attached to his affidavit. Further, the court in this case could not have ignored defendants' Rule 191(b) affidavits or any request to depose plaintiff's affiant because no such documents were filed in this case. For these reasons, we reject defendants' reliance on *U.S. Bank* and their suggestion that they were ambushed by the trial court's summary judgment ruling in this case.

¶ 39 Defendants also assert that the trial court "disregarded [their] affirmative defenses and even appears to have stricken them *sua sponte*." In support of this claim, defendants cite to a

passage from the trial court's ruling on their motion to vacate wherein the court stated that it entered summary judgment in plaintiff's favor because defendants did not respond to the motion, thereby failing to raise a genuine issue of material fact. According to defendants, "[t]he court is mistaken that the Response is where [they] would have raised a genuine issue of material fact." Defendants add that they "did so in [their] still-pending Answer and Affirmative Defenses." We find nothing in the trial court language referenced by defendants to indicate that it disregarded or struck their affirmative defenses. We also point out that the party opposing a motion for summary judgment may not stand on his or her pleadings in order to create a genuine issue of material fact. *Parkway Bank & Trust Co.*, 2013 IL App (1st) 130380, ¶ 49. Thus, the status of defendants' answer to plaintiff's complaint is not relevant. In addition, we note that in its motion for summary judgment plaintiff argued that defendants' affirmative defenses were meritless and failed to preclude summary judgment. Following oral argument, the trial court granted the motion for summary judgment "in its entirety." Since plaintiff challenged the viability of defendants' affirmative defenses in its motion for summary judgment, we interpret the trial court's ruling to mean that it considered and rejected defendants' affirmative defenses. This is especially true given that defendants' failure to include in the record on appeal a transcript of the trial court proceedings. See *Foutch*, 99 Ill. 2d at 392 (holding that any doubts that arise from the incompleteness of the record will be resolved against appellant).

¶ 40 Finally, we note that although defendants, in the heading of their argument, contend that the trial court erred in denying their motion to vacate, they have forfeited this issue by failing to argue it or cite any authority in support of their claim. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

¶ 41

III. CONCLUSION

¶ 42 For the reasons set forth above, we affirm the judgment of the circuit court of Lake County.

¶ 43 Affirmed.