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2017 IL App (3d) 160284-U

Order filed April 19, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

BAYVIEW LOAN SERVICING, LLC,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Plaintiff-Appellee,)	Peoria County, Illinois,
)	
v.)	
)	
DALE W. LAMBERT;)	
REBECCA L. LAMBERT,)	
)	Appeal No. 3-16-0284
Defendants-Appellants,)	Circuit No. 14-CH-38
)	
and)	
)	
UNKNOWN OWNERS and NONRECORD)	
CLAIMANTS,)	Honorable
)	Katherine S. Gorman,
Defendants.)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* (1) This court does not have jurisdiction to consider whether summary judgment was proper as defendants did not timely appeal. (2) Notice of judicial sale was proper and the terms of the sale were not unconscionable. (3) Defendants forfeited any immediate possession issue.

¶ 2 Defendants challenge the summary judgment order, order confirming sale, and order granting possession of their foreclosed home, arguing the circuit court erred in: (1) granting plaintiff’s motion for summary judgment; (2) confirming the judicial sale; and (3) granting immediate possession to the buyer. We affirm.

¶ 3 **FACTS**

¶ 4 On January 24, 2014, plaintiff, Bayview Loan Servicing, LLC, filed a complaint to foreclose mortgage against defendants, Dale W. Lambert and Rebecca L. Lambert.¹ Plaintiff was the mortgage servicer.

¶ 5 After defendants answered the complaint, plaintiff moved for summary judgment. On October 7, 2015, the court granted plaintiff’s motion for summary judgment. The court then entered a judgment of foreclosure and sale. The judgment of foreclosure and sale stated, *inter alia*, “This is a final and appealable order and there is no just cause for delaying the enforcement of this judgment or appeal therefrom.” Defendants did not appeal.

¶ 6 The property was sold for \$53,450 on March 21, 2016. Plaintiff moved for the circuit court to confirm the sale. Defendants filed a response in opposition to confirmation of the sale, arguing that (1) notice of sale was insufficient, and (2) the terms of the sale were unconscionable as there was a deficiency in the sale of \$88,983.99. Defendants stated that the “unconscionably low sale price” was due to the insufficient notice and stated that “[b]y not including a legal description, Plaintiff intentionally drove away those bidders who may have bought the property for a more conscionable price.”

¶ 7 The certificate of publication stated:

¹Bank of America, NA was the original plaintiff in this action and filed the complaint. However, Bayview Loan Servicing, LLC, the current plaintiff, subsequently obtained the servicing rights to the loan and was substituted as plaintiff.

“This is to Certify that a notice, a true copy of which is hereto attached, was published in The Journal, a secular newspaper of general circulation in Peoria, in the County of PEORIA and the State of Illinois, once a week for three successive weeks; that the date of the first paper containing said notice was Monday the 14th day of December, 2015; and that the date of the last paper containing said notice was Monday the 28th day of December, 2015[.]”

The certificate included copies of the two notices as they appeared in the newspaper. On the first page, the notice was printed in the “Legal Notice” section of the newspaper and included the legal description of the property. On the second page, the notice was printed in the “Foreclosure Sales” section of the newspaper and did not include the legal description of the property.

¶ 8 On April 25, 2016, the court confirmed the sale of the property and ordered that the buyer of the property, DK Investments Group, was entitled to immediate possession of the property, crossing out language in the order that gave possession of the property 30 days after entry of the order. Defendants did not challenge the immediate possession order in the circuit court. Defendants’ notice of appeal was filed on May 20, 2016.

¶ 9 ANALYSIS

¶ 10 I. Summary Judgment

¶ 11 Defendants first argue that the court erred in granting plaintiff’s motion for summary judgment. In response, plaintiff argues that this court does not have jurisdiction to consider this challenge as the judgment orders were immediately appealable. Because we find that the judgment for foreclosure and sale included Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) language stating that the order was a final judgment and there was no just cause to delay

appeal, we hold that we do not have jurisdiction to hear defendants' argument regarding summary judgment.

¶ 12 It is well established that a judgment of foreclosure and sale is normally not a final and appealable order until the circuit court enters an order approving the sale. *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 11. However, the judgment of foreclosure and sale becomes immediately appealable with the addition of language pursuant to Illinois Supreme Court Rule 304(a). *Id.* ¶¶ 11-12. Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) states:

“If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. Such a finding may be made at the time of the entry of the judgment or thereafter on the court's own motion or on motion of any party.”

When the necessary language is used, Rule 304(a) further incorporates the mandatory 30 day time for filing a notice of appeal as set forth in Illinois Supreme Court Rule 303(a)(1) (eff. Jan. 1, 2015) computed from the day the final judgment was entered. The effect of failing to appeal an order made immediately appealable by Rule 304(a) is to lose the ability to challenge the issues resolved by that order. See *City National Bank of Murphysboro v. Vancloostere*, 230 Ill. App. 3d 723, 724-25 (1992); *Jo Jan Corp. v. Brent*, 182 Ill. App. 3d 70, 73 (1989); *American National Bank and Trust Co. v. Bentley Builders, Inc.*, 308 Ill. App. 3d 246, 254 (1999).

¶ 13 Here, the judgment of foreclosure and sale included Rule 304(a) language that the judgment was a final and appealable order and there was no just reason for delaying enforcement or appeal. Therefore, in order to challenge the judgment for foreclosure and sale or the summary

newspaper where legal notices are commonly placed” and a separate notice “in the section of such a newspaper, which (except in counties with a population in excess of 3,000,000) may be the same newspaper, in which real estate” notices are placed. *Id.* Where placed in both the legal and the real estate sections of a single newspaper, the notice in the real estate section need not include a legal description of the property. *Id.*

¶ 18 Plaintiff published a notice in both the legal section and the real estate section of “The Journal” in Peoria. The parties do not dispute that Peoria is not a county with a population in excess of three million, thus it was proper to publish the notice in two separate sections of the same newspaper. The notice in the legal section included the legal description of the property, and the notice in the real estate section did not, as allowed by statute. We find nothing improper with the notice plaintiff provided in the newspaper.

¶ 19 Defendants also argue that the terms of the sale were unconscionable, stating that had notice been proper, the property would have sold for a higher price. As we have found notice proper, we also find the terms of sale were not unconscionable on that basis.

¶ 20 **III. Immediate Possession**

¶ 21 Defendants lastly argue that the court erred in granting immediate possession to the buyers of the property. However, we find that defendants have forfeited this issue.

¶ 22 Arguments not raised in the circuit court are considered forfeited on appeal. *IPF Recovery Co. v. Illinois Insurance Guaranty Fund*, 356 Ill. App. 3d 658, 666 (2005). We note that we do not have the benefit of the report of proceedings from the court below as defendants did not file it. “When the record presented on appeal is incomplete, a court of review will indulge in every reasonable presumption favorable to the judgment from which the appeal is taken, including the presumption that the trial court ruled or acted correctly, and any doubt arising from

the incompleteness of the record will be resolved against the appellant.” *People v. Stewart*, 179 Ill. 2d 556, 565 (1997). The record we do have on appeal does not show that defendants challenged the granting of immediate possession to the buyer of the property. Therefore, the issue is forfeited.

¶ 23

CONCLUSION

¶ 24

The judgment of the circuit court of Peoria County is affirmed.

¶ 25

Affirmed.