

No. 1-17-2897

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 JUDICIAL DISTRICT

MTGLQ INVESTORS, L.P.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CH 7451
)	
ROBERT W. SCOTT, MORTGAGE)	
ELECTRONIC REGISTRATION SYSTEMS,)	
INC., AS NOMINEE FOR COUNTRYWIDE)	
HOME LOANS, INC.,)	
)	
Defendants.)	
)	
(Robert W. Scott,)	Honorable
)	Michael F. Otto,
Defendant-appellant).)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 **Held:** We affirm the order of summary judgment granted in favor of plaintiff-appellee. We also affirm the order approving the sale of the subject property. Defendant failed to respond to the motion for summary judgment and arguments raised for the first time in a motion to reconsider are forfeited on appeal.

¶ 2 On September 12, 2003, defendant-appellant, Robert W. Scott, received a loan from Founders Bank in the amount of \$98,500 which was secured by a mortgage on property located at 14903 Terrace Lane, Midlothian, Illinois. Defendant failed to make the required July 2011 mortgage payment and the mortgage went into default. In February 2012, Bank of America, who held the mortgage and note at the time, filed the initial complaint for foreclosure. In April 2015, Bank of America assigned the note and mortgage to Federal National Mortgage Association (hereinafter “FNMA”). In September 2015, FNMA moved for summary judgment. In June 2016, FNMA assigned the note and mortgage to the current plaintiff-appellee, MTGLQ Investors, L.P. (hereinafter “MTGLQ”). In November 2016, the circuit court granted the summary judgment motion. In May 2017, the circuit court approved the sale.

¶ 3 Before this court, the defendant argues the circuit court erred in granting summary judgment. Defendant argues Bank of America and its successors failed to demonstrate a capacity to foreclose on the mortgage. Defendant also argues the circuit court improperly relied on the affidavits attached to the motion for summary judgment.

¶ 4 For the reasons stated more fully below, we affirm the judgment of foreclosure entered in favor of plaintiff. Defendant failed to respond to the motion for summary judgment. Accordingly, all arguments which could have been raised in opposition to the motion are forfeited and cannot be raised for the first time on appeal.

¶ 5 JURISDICTION

¶ 6 This foreclosure action commenced on February 1, 2012. On November 8, 2016, the circuit court granted summary judgment in plaintiff’s favor. On May 3, 2017, the circuit court approved the sale and order of possession. Defendant filed a motion to reconsider the grant of summary judgment on June 2, 2017. On October 25, 2017, the circuit court denied defendant’s motion to reconsider. On November 20, 2017, defendant timely filed his notice of appeal.

Accordingly, this court has jurisdiction over the summary judgment order pursuant to Article VI, Section 6 of the Illinois Constitution, and Illinois Supreme Court Rules 301 and 303. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); Ill. S. Ct. R. 303 (eff. May 30, 2008).

¶ 7

BACKGROUND

¶ 8 This appeal involves a loan of \$98,500 given on September 12, 2003, to defendant-appellant, Robert W. Scott, for a property located at 14903 Terrace Lane, Midlothian, Illinois. The original lender was Founders Bank. The loan was secured by a mortgage executed in favor of Founders Bank and recorded with the Cook County Recorder of Deeds on September 24, 2003. Defendant failed to make the required July 2011 payment and the mortgage went into default. On October 12, 2011, Founders Bank sold its rights and interest in the mortgage to Bank of America, N.A, successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP.

¶ 9 On February 1, 2012, Bank of America filed the initial foreclosure complaint. On December 19, 2012, defendant answered the complaint. The parties engaged in discovery and on February 25, 2014, Bank of America moved for summary judgment. Defendant responded and sought to depose Melissa Davidson, whose affidavit had been attached to Bank of America's motion.

¶ 10 On July 15, 2015, Bank of America sought to substitute Federal National Mortgage Association in as party-plaintiff. The motion to substitute party-plaintiff alleged that Bank of America sold defendant's mortgage to FNMA on April 15, 2015. FNMA recorded its interest with the Cook County Recorder of Deeds on April 22, 2015. On August 13, 2015, the circuit court granted the motion to substitute. In the same order, the circuit court allowed FNMA to withdraw the previously filed motion for summary judgment.

¶ 11 On September 28, 2015, FNMA filed its own motion for summary judgment. This motion was supported by affidavits for amounts due and owing and loss mitigation. On August 21, 2016, FNMA moved to substitute MTGLQ Investors, L.P. as party-plaintiff. The motion alleged that on June 25, 2016, FNMA had assigned its interest in defendant's mortgage to MTGLQ. On November 6, 2016, the circuit court granted the motion and MTGLQ substituted in as plaintiff. MTGLQ stood on the previously filed motion for summary judgment. The order granting the substitution also granted a judgment of foreclosure in favor of the new party-plaintiff, MTGLQ.

¶ 12 On May 9, 2017, the circuit court entered an order approving the sale of the subject property. On June 2, 2016, defendant filed a motion to reconsider the grant of summary judgment. The motion to reconsider alleged several defects in the affidavits attached to summary judgment filed by FNMA. After briefing from the parties, the circuit court denied defendant's motion to reconsider on October 25, 2017.

¶ 13 This timely appeal followed.

¶ 14 ANALYSIS

¶ 15 In his only issue before this court, defendant asserts the circuit court improperly granted summary judgment in favor of plaintiff. In support of this contention, defendant argues it was procedurally improper for the circuit court to grant the motion to substitute MTGLQ as plaintiff and simultaneously grant the motion for summary judgment which FNMA had filed. Defendant also argues the affidavits attached to the summary judgment motion failed to demonstrate Bank of America had standing to file the foreclosure lawsuit. Finally, defendant argues the affidavits attached to FNMA's motion for summary judgment failed to comply with Supreme Court Rule 191. See S. Ct. R. 191(a) (eff. Jan. 4, 2013) (listing requirements for an affidavit attached in support of a motion for summary judgment).

¶ 16 After reviewing the record, we decline to reach the merits of any of the arguments raised in defendant's appellate brief. The record demonstrates that defendant never filed a response to FNMA's motion for summary judgment and only made the above arguments for the first time in its motion to reconsider. By failing to raise any argument in response to the motion for summary judgment, defendant has forfeited all of the arguments he attempts to raise before this court. Motions to reconsider are meant to "bring to the court's attention newly discovered evidence that was not available at the time of the original hearing, changes in existing law, or errors in the court's application of the law." *Evanston Ins. Co. v. Riseborough*, 2014 IL 114271, ¶ 36 citing *Caywood v. Gossett*, 382 Ill. App. 3d 124, 133 (2008). "Arguments raised for the first time in a motion for reconsideration in the circuit court are forfeited on appeal." *Id.* By failing to respond to the motion for summary judgment at all, defendant has forfeited any argument he could have raised on appeal.

¶ 17 In reaching this conclusion, we are unpersuaded by the case law cited by defendant. In his reply brief, defendant argues the motion to reconsider was timely filed and that "a trial court is free to reconsider and vacate those orders at any point while it continues to have jurisdiction over the matter." Whether or not the motion to reconsider was timely filed is immaterial to our analysis on this issue. The two cases relied on by defendant, *Towns v. Yellow Cab Co.* (73 Ill. 2d 113 (1978)) and *Najas Cortes v. Orion Securities Inc.* (362 Ill. App. 3d 1043 (2005)), are not applicable here. Neither case calls for a different outcome because those cases do not involve arguments raised for the first time in a motion to reconsider. Defendant never raised any argument in opposition to summary judgment and cannot raise them now on appeal. *Evanston Ins. Co.*, 2014 IL 114271, ¶ 36.

¶ 18

CONCLUSION

¶ 19 For the reasons stated above, we affirm the grant of summary judgment entered in favor of plaintiff. The order approving the sale is also affirmed.

¶ 20 Affirmed.