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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BANK OF AMERICA, N.A.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	
SIMON GIVENS, JR.; CAPITAL ONE BANK (USA),)	
N.A. f/k/a CAPITAL ONE BANK; SIMON GIVENS;)	
UNKNOWN HEIRS AND LEGATEES OF SIMON)	No. 14 CH 11203
GIVENS, JR., if any; UNKNOWN HEIRS AND)	
LEGATEES OF SIMON GIVENS, if any;)	
UNKNOWN OWNERS AND NON RECORD)	
CLAIMANTS,)	
)	Honorable
Defendants)	Bridget Mitchell and
)	Gerald Vernon Cleary, III,
(Simon Givens, Jr., Defendant-Appellant).)	Judges Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly granted the plaintiff’s motion for summary judgment and judgment of foreclosure and sale. The trial court did not abuse its discretion in confirming the judicial sale.
- ¶ 2 The *pro se* defendant-appellant, Simon Givens, Jr. (Givens), appeals from the judgment

of the circuit court of Cook County granting summary judgment in favor of the plaintiff-appellee, Bank of America, N.A. (the Bank), entering a judgment of foreclosure and sale, and confirming the judicial sale. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3

BACKGROUND

¶ 4 In 1997, Givens, together with his mother (who passed away in 2010), executed a promissory note secured by a mortgage on a property located at 6525 South Mozart Avenue, Chicago, Illinois.¹ The record reflects that Givens entered into a loan modification agreement with the Bank in 2011.

¶ 5 The Bank filed a foreclosure complaint on July 8, 2014, alleging that Givens had failed to make any mortgage payments since April 2013. The mortgage, note, and assignment were attached to the complaint. Givens answered the Bank's complaint by admitting all seven paragraphs alleged in the foreclosure complaint, but he asserted an affirmative defense of fraud. Specifically, Givens claimed that the Bank committed fraud related to the loan modification agreement. He further alleged that the Bank should have paid off the remaining balance on the mortgage when his mother passed away in 2010, pursuant to an insurance policy she allegedly purchased.

¶ 6 On January 30, 2015, the Bank filed a motion for summary judgment and judgment of foreclosure, arguing that Givens' affirmative defense failed to assert any specific fraudulent conduct by the Bank.

¶ 7 Givens opposed the Bank's motion for summary judgment by again arguing that the Bank had committed fraud related to the modification of his loan. He also claimed that he had

¹The loan originated with St. Paul Federal Bank for Savings, the Bank's predecessor in interest.

been unsuccessful in trying to locate the insurance policy allegedly purchased by his mother. His response attached a letter Givens had written to the Bank requesting a copy of his mother's insurance policy, as well as a response letter from the Bank which stated: "[the Bank's] records do not indicate any payments were made for any optional insurance products nor are we able to locate any policies associated with the account."

¶ 8 Following a hearing², the trial court granted the Bank's motion for summary judgment and entered a judgment of foreclosure.³

¶ 9 Givens subsequently filed a notice of appeal. This court dismissed that appeal for lack of jurisdiction, as the trial court's order granting summary judgment and entering a judgment of foreclosure was not a final order. *Bank of America, N.A. v. Givens*, 2016 IL App (1st) 152314, ¶ 15 (table) (unpublished order under Illinois Supreme Court Rule 23) (it is well settled that a judgment of foreclosure is not final and appealable until the trial court enters an order confirming the judicial sale).

¶ 10 The case proceeded in the trial court and a notice of judicial sale was mailed to Givens. Givens filed two emergency motions to stay the judicial sale, which the trial court granted.⁴ Eventually, the trial court lifted the stay and a judicial sale occurred on January 8, 2018.

¶ 11 The Bank moved to confirm the judicial sale. Givens responded by arguing that the sale should not be confirmed because the Bank had committed fraud related to the loan modification agreement. He alleged that he had made payments for over a year following the execution of the

²The record indicates that a hearing was held on the Bank's motion for summary judgment. However, a transcript from the hearing is not included in the record on appeal.

³A different trial court judge, Honorable Bridget A. Mitchell, presided over the motion for summary judgment hearing.

⁴Givens was briefly represented by counsel while moving to stay the judicial sale.

loan modification agreement in 2011, and attached several different documents associated with the modification of his loan.

¶ 12 On June 5, 2018, following a hearing⁵, the trial court entered an order confirming the judicial sale. This appeal followed.

¶ 13

ANALYSIS

¶ 14 As an initial matter, we address the Bank's argument that we lack jurisdiction to hear this matter. Givens filed a timely notice of appeal following the trial court's June 5, 2018 order confirming the judicial sale. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. July 1, 2017). However, his notice of appeal states that he is appealing an order entered on *May* 5, 2018, not *June* 5, 2018. The Bank acknowledges that a notice of appeal which incorrectly identifies the date of an order is not fatal to an appellate court's jurisdiction. See *McGath v. Price*, 342 Ill. App. 3d 19, 31 (2003) (such an error does not divest this court of jurisdiction, as long as the notice of appeal provides a sufficient identification of the order and alerts the other party to the appeal). The Bank argues, however, that Givens' description does not provide a sufficient identification of the order, divesting our jurisdiction over this matter.

¶ 15 We disagree. We emphasize that notices of appeals are to be liberally construed and considered as a whole. *Jewel Companies, Inc. v. Serfecz*, 220 Ill. App. 3d 543, 547 (1991). Givens' description on his notice of appeal states: "[The Bank is] trying to commit fraud upon the court[.] I'm asking the honorable court to find in my favor and grant me relief [] and justice." Although this does not explicitly describe the trial court's June 5, 2018 order confirming the judicial sale, it logically follows that that is the order Givens intended to appeal. Givens filed his

⁵The record indicates that a hearing was held on the Bank's motion to confirm the judicial sale. However, a transcript from the hearing is not included in the record on appeal.

notice of appeal within 30 days of the June 5, 2018 order confirming the judicial sale, alerting the Bank that he was appealing that order. It is also clear that Givens sought to appeal the order confirming the judicial sale considering that we had previously dismissed his prior notice of appeal as premature because there had not yet been a final order confirming the judicial sale. Moreover, the Bank does not argue that it did not understand which order Givens intended to appeal. Under these facts and circumstances, it is apparent that Givens' notice of appeal referred to the trial court's June 5, 2018 order confirming the judicial sale and sought reversal of that order. We accordingly reject the Bank's argument and find that we have jurisdiction to hear this matter.

¶ 16 We now turn to the merits. Givens' arguments on appeal are, at times, overlapping, rambling, and incoherent. We note that, notwithstanding *pro se* status, it is an appellant's burden to articulate a coherent argument for our review in accordance with Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017). *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001). We nonetheless, in the interest of justice, attempt to discern and address his arguments. We have determined the issues before us to be: (1) whether the trial court erred in granting summary judgment in favor of the Bank and entering a judgment of foreclosure, and (2) whether the trial court abused its discretion in confirming the judicial sale.

¶ 17 Givens first argues that the trial court erred in granting summary judgment in favor of the Bank on its foreclosure claim because an issue of fact existed as to whether the Bank had committed fraud related to the loan modification agreement.

¶ 18 The purpose of summary judgment is to determine if a question of fact exists. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). Summary judgment should be granted only where the pleadings, depositions, admissions, and affidavits on file, when viewed in the

light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and that the moving party is clearly entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014); *Adams*, 211 Ill. 2d at 43. We review appeals from summary judgment rulings *de novo*. *Wells Fargo Bank, N.A. v. Norris*, 2017 IL App (3d) 150764, ¶ 19.

¶ 19 Here, the trial court granted summary judgment on the Bank's claim for foreclosure. A mortgagee is entitled to a judgment of foreclosure when the material allegations in its complaint are not denied by the mortgagor in a verified pleading. 735 ILCS 5/15-1506(a)(1) (West 2014). See *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 37 ("The failure of a defendant to explicitly deny a specific allegation in the complaint will be considered a judicial admission and will dispense with the need of submitting proof on the issue.") (quoting *Gowdy v. Richter*, 20 Ill. App. 3d 514, 520 (1974)).

¶ 20 At the outset, we note that Givens failed to include in the record on appeal, a transcript from the hearing on the Bank's motion for summary judgment. Our supreme court has long held that in order to support a claim of error on appeal, the appellant has the burden to present a sufficiently complete record. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "Any doubts arising from an incomplete record must be resolved against the appellant." *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 278 (2006). In the absence of transcripts, we must presume that the court followed the law and had a sufficient factual basis for its ruling. *Watkins v. Office of State Appellate Defender*, 2012 IL App (1st) 111756, ¶ 19. In any case, our *de novo* review does not reveal any material issue of fact.

¶ 21 The Bank's complaint alleged that Givens had been in default on his mortgage since April 2013. And Givens' answer admitted everything alleged in the Bank's complaint. He never denied that he was delinquent on his mortgage payments. He even admitted that he made

payments for only a year following the modification of his loan in 2011.

¶ 22 Givens raised an affirmative defense of fraud, but never provided any explicit details in support. In both his answer and opposition to the Bank's motion for summary judgment, he only alleged that the Bank had committed fraud in a vague and broad manner. He claimed that the fraud was related to the modification of his loan in 2011, but he failed to allege any specific fraudulent conduct by the Bank or offer any evidence. Additionally, he alleged that the Bank was required to pay off the remaining balance on the mortgage pursuant to a life insurance policy purchased by his mother, but his own documents did not show that his mother purchased such a policy from the Bank.

¶ 23 Based on both parties' pleadings, there was no issue of material fact as to whether Givens had defaulted on his mortgage payments. Therefore, the Bank was entitled to a judgment of foreclosure. The court did not err in entering summary judgment in favor of the Bank and ordering a judgment of foreclosure and sale.

¶ 24 Givens next argues that the trial court abused its discretion in confirming the judicial sale. He again alleges that the Bank committed fraud related to the loan modification agreement.

¶ 25 Section 15-1508(b) of the Code of Civil Procedure provides that, after a judicial sale has occurred and a motion to confirm the sale has been filed, the court shall confirm the sale unless the court finds that: (i) proper notice of the sale was not given; (ii) the terms of the sale were unconscionable; (iii) the sale was conducted fraudulently; or (iv) justice was otherwise not done.

735 ILCS 5/15-1508(b) (West 2014); *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 18. A trial court's decision to confirm or reject a judicial sale will not be disturbed absent an

abuse of discretion. *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008).⁶

¶ 26 The only argument Givens gave in opposition to the judicial sale was that the Bank had committed fraud related to the loan modification agreement. He again failed to provide any details or evidence in support of his argument. Most importantly, his fraud argument did not allege that there was fraud surrounding the *sale itself*. Indeed, Givens did not allege that any of the four enumerated elements listed in Section 15-1508(b) existed. Thus, it cannot be said that the trial court abused its discretion in confirming the judicial sale.

¶ 27 CONCLUSION

¶ 28 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 29 Affirmed.

⁶We note that Givens failed to include a transcript from the hearing on the Bank's motion to confirm the sale. Thus, any doubts arising from the incomplete record before us will be resolved against him. *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 278 (2006).