FIRST DIVISION
September 29, 2017

No. 1-16-0751

ABN AMRO MORTGAGE GROUP, INC., Plaintiff, v. TONY BRYANT, et al., Defendant,	)	Appeal from the Circuit Court of Cook County
CHICAGO TITLE LAND TRUST COMPANY AS TRUSTEE UNDER TRUST NO. 127632 AS SUCCESSOR TRUSTEE TO LASALLE BANK NATIONAL ASSOCIATION AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 10, 2001 AND KNOWN AS TRUST NO. 127632, Counterplaintiff-Appellant, v. BANK OF AMERICA, N.A., et al., Counterdefendants-Appellees.	)	No. 07 CH 03857 The Honorable Mary L. Mikva, Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

ORDER

¶ 1 *Held*: Appellant's brief suffers from several Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013) deficiencies that prevent us from reaching the merits of its claims.

¶ 2 Defendant Chicago Title Land Trust Company as Trustee under Trust No. 127632 dated May 10, 2001 (the Trust, or defendant), appeals from a mortgage foreclosure action in which the circuit court denied its motion to amend the pleadings, denied its motion for direct criminal contempt, dismissed count II of its counterclaim, and subsequently denied its motions to reconsider and vacate. Defendant raises 27 specific issues of error on appeal. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On June 30, 2000, Tony Bryant executed a promissory note in favor of ABN AMRO (ABN) in the amount of $750,000, and contemporaneously executed a mortgage in favor of ABN, securing the note. On November 16, 2000, Bryant recorded a trust deed transferring title to Chicago Title Land Trust Company as trustee. In November 2006, the loan fell into default.

¶ 5 On February 2, 2007, ABN through Fisher and Shapiro, LLC (Fisher) filed a complaint to foreclose upon a mortgage secured by the property located at 420 West Grand Avenue, Unit #1A, in Chicago (the property). The foreclosure action named Bryant as the mortgagor and the trust as the title holder. On April 2, 2008, LaSalle Bank, N.A. was substituted as plaintiff for ABN and thereafter the caption was amended to reflect that the plaintiff was actually LaSalle Bank.

¶ 6 On June 9, 2009, the Trust filed a counterclaim against ABN for breach of contract (count I) and "liability of counter defendant Mutual Bank" (count II) ("if counter-plaintiffs or any of them are liable to counter-defendant ABN on its foreclosure complaint here, then counter-defendant Mutual Bank is liable to counter-plaintiffs for the same claims). Pursuant to plaintiff's 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2012)), the circuit court dismissed count I of

the counterclaim against LaSalle Bank, the breach of contract claim, on September 18, 2009, with leave to amend and re-plead within 14 days. Defendant never filed an amended count I counterclaim. Count II was not disposed of.

¶ 7 On March 29, 2012, a second foreclosure action was filed due to Bryant's nonpayment. The complaint alleged that Bank of America, N.A. was the holder of the mortgage and note. On April 2, 2012, Pierce & Associates, P.C. (Pierce) moved to substitute as attorney for plaintiff and to voluntarily dismiss the 2007 case. On July 10, 2012, the trial court granted LaSalle Bank Midwest's motion to voluntarily dismiss the complaint pursuant to section 2-1009 (735 ILCS 5/2-1009 (West 2012)) without prejudice upon payment of costs. The court ordered defendant's claim to be continued for status. On September 20, 2012, Pierce issued a check to Bryant/the Trust's attorney for reimbursement of the court costs.

¶ 8 Pierce withdrew its representation of plaintiff from the 2012 case on April 24, 2014.

¶ 9 On August 25, 2015, defendant filed its petition for adjudication of direct criminal contempt supported by ten exhibits and requested a prompt hearing in the 2007 case. The petitioner alleged that Bank of America, Bank of America's vice-president Weston, Pierce and Fisher engaged in hindering and obstructing justice by: (1) knowingly submitting and causing false documents to be submitted to the court; (2) knowingly misrepresenting, concealing from the court and failing to discharge the duty to disclose material facts; (3) aiding and abetting fraud; (4) making material misrepresentations to the court; and (5) fraudulently obtaining orders on behalf of the non-party. On August 27, 2015, the court set a briefing schedule on the petition.

¶ 10 On September 28, 2015, defendant moved to file an "amended counterclaim naming new parties" to wit: Bank of America, Vice-President Weston, Fisher, and Pierce, in conjunction with

the 2007 foreclosure action. On October 2, 2015, Pierce filed is motion to dispose of the petition for adjudication of criminal contempt. On November 19, 2015, Bank of America filed its response in opposition to defendant's motion for leave to file an amended counterclaim naming new parties. On December 17, 2015, the court dismissed defendant's petition and denied the motion to amend. The court also dismissed count II of defendant's pending counterclaim with prejudice on the court's own motion. Count II of the counterclaim was never disposed of when the 2007 case was voluntarily dismissed. On February 11, 2016, the court denied defendant's motion to reconsider and vacate. This appeal followed.

¶ 11 ANALYSIS

¶ 12 Defendant appeals from the circuit court's December 17, 2015, order denying its motion for leave to amend the counterclaim, dismissing count II of the counterclaim with prejudice, and denying its motion for direct criminal contempt. Defendant also appeals from the February 11, 2016, order denying the motion to reconsider and vacate the December 17, 2015, orders. Defendant raises 27 specific issues of error.

¶ 13 We first choose to discuss defendant's brief and its violation of Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013). Rule 341(h)(6) requires the appellant to include a "Statement of Facts" outlining the pertinent facts "accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." Ill. S.Ct. R. 341(h)(6) (eff. Feb. 6, 2013). Plaintiff has violated this rule by providing a sometimes incomprehensible fact section replete with argument and highly prejudicial accusations, while failing to provide citations to the record for these numerous "factual" assertions. The Illinois Supreme Court Rules are not suggestions. Rather, they have the force of law and must be complied with. *People v. Campbell*,

224 Ill. 2d 80, 87(2006). Where a brief has failed to comply with Rule 341(h)(6), we may strike the statement of facts or dismiss the appeal should the circumstances warrant. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 9.

¶ 14 In addition to defendant's noncompliant statement of fact, defendant has failed to provide us with an adequate record. The Illinois Supreme Court Rules set forth how the appellant must preserve the record. Relevant to the instant case, Illinois Supreme Court Rule 321 provides that "[t]he record on appeal shall also include any report of proceedings or bystander's report prepared in accordance with Rule 323." Ill. S. Ct. R. 321 (eff. Feb. 1, 1994). In turn, Rule 323(a) requires the report of proceedings to "include all the evidence pertinent to the issues on appeal." Ill. S.Ct. R. 323(a) (eff. Sept.23, 1996). Pursuant to Rule 323(c), "[i]f no verbatim transcript of the evidence of proceedings is obtainable the appellant may prepare a proposed report of proceedings from the best available sources, including recollection." Ill. S.Ct. R. 323(c) (eff. Sept.23, 1996). These rules are requirements, not guidelines. See *In re Marriage of Thomsen*, 371 Ill. App. 3d 236, 241 (2007).

¶ 15 Defendant seeks review of several of the circuit court's rulings that occurred on December 17, 2015. On that date, the circuit court denied defendant's motion to amend the pleadings, denied its petition for direct criminal contempt, and dismissed count II of its counterclaim. Our review of the record in this case shows that, other than the written order dated December 17, 2015, there is nothing in the record that indicates why the circuit court denied defendant leave to amend the pleadings, denied defendant's motion for direct criminal contempt, or dismissed count II of the counterclaim "on the court's own motion."

¶ 16 As the appellant in this case, defendant bears the burden of providing a sufficient record for us to assess the circuit court proceedings. 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." *Webster v. Hartman*, 195 Ill. 2d 426, 431 (2001) (quoting *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). There is no transcript of the hearing on that date, or any reference thereto. There similarly is no report of proceedings bystanders report from December 17, 2015. Because we have no record of the reasons underlying the circuit court's reasons for her rulings, we find that the circuit court's decision to deny defendant's motion to amend the pleadings, its decision to deny defendant's motion for direct criminal contempt, and its decision to dismiss count II of the counterclaim were proper.

¶ 17 From the record presented, we are unable to determine whether the circuit court abused its discretion in making these rulings. "The trial court has broad discretion in motions to amend pleadings prior to entry of final judgment," and this court will not find that denial of a motion to amend is prejudicial error unless there has been a manifest abuse of such discretion. *Mundt v. Ragnar Benson, Inc.*, 61 Ill. 2d 151, 160-61 (1975). Whether a party is guilty of contempt is a question of fact for the circuit court, and a reviewing court should not disturb the circuit court's determination unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion. *In re Marriage of Logston*, 103 Ill. 2d 266, 286-87 (1984)). The record is likewise insufficient for us to conduct a meaningful review of defendant's motion to reconsider and vacate.

¶ 18 With respect to the court's *sua sponte* dismissal of count II of defendant's counterclaim, we note that count II of defendant's counterclaim depended for its viability on the breach of

contract claim alleged in count I of the counterclaim that had been dismissed without prejudice but was never repled. Count II alleged "if counter-plaintiffs or any of them are liable to counter-defendant ABN AMRO on its foreclosure complaint here, then counter-defendant Mutual Bank is liable to counter-plaintiffs for the same claims."

¶ 19 "There is little question that a trial court has the authority, on its own motion, to strike a complaint that is insufficient in substance or fails to sufficiently define the issues and order that other pleadings be prepared. See 735 ILCS 5/2–612(a) (West 1994). The trial court on its own motion also possesses the authority to dismiss any claim that fails to state a cognizable cause of action." *Mitchell v. Norman James Construction Co., Inc*., 291 Ill. App. 3d 927, 937-38 (1997) (citing *Rhodes v. Mill Race Inn, Inc*., 126 Ill. App. 3d 1024, 1028 (1984)). Count II of defendant's counterclaim failed to state a cognizable cause of action, and thus the circuit court possessed the authority to dismiss that count.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 22 Affirmed.