2018 IL App (1st) 162860-U
No. 1-16-2860

SECOND DIVISION
February 20, 2018

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

J.P. MORGAN CHASE BANK, N.A., Plaintiff-Appellee, v. JOSE ABREGO; MARIA D. ABREGO; JPMORGAN CHASE BANK N.A., as purchaser of the loans and other assets of Washington Mutual Bank, F/K/A Washington Mutual Bank, FA, from the FDIC, acting as receiver for the Savings Bank and pursuant to the Federal Deposit Insurance Act; Unknown Owners and Nonrecord Claimants, Defendants (Jose Abrego and Maria D. Abrego, Defendants-Appellants).	)	Appeal from the Circuit Court of Cook County. No. 10 CH 30033 The Honorable Michael F. Otto, Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Hyman and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* Summary judgment in favor of plaintiff, judgment of foreclosure, and order confirming sale affirmed where defendants failed to properly challenge the trial court's ruling on standing, were not entitled to a grace period notice prior to the institution of foreclosure

proceedings because of the statute's repeal, and waived all of their other contentions on appeal by failing to timely raise the issues in the trial court, failing to provide a sufficient record on appeal, and failing to support their contentions on appeal with adequate argument and citation to authorities.

¶ 2 In this mortgage foreclosure case, defendants Jose Abrego and Maria D. Abrego ("defendants") challenge the grant of summary judgment in favor of Bayview Loan Servicing, LLC ("Bayview"), the judgment of foreclosure, and the order approving sale on numerous grounds. For the reasons that follow, we conclude that none of defendants' contentions have any merit.

¶ 3 BACKGROUND

¶ 4 On July 13, 2010, J.P. Morgan Chase Bank, N.A. ("Chase") filed its foreclosure complaint against the defendants, alleging that they had not made a payment on their residential mortgage loan since September 2009. Defendants were given until June 2, 2011, to file an answer or otherwise plead. On that date, defendants filed a motion for extension of time, which does not appear to have been ruled upon. On September 21, 2011, defendants filed a motion for leave to file their answer and affirmative defenses *instanter*. Because, however, defendants failed to appear at the hearing on their motion, it was stricken and defendants' answer and affirmative defenses were not filed.

¶ 5 Rather than refiling their answer, defendants, nearly 10 months later, filed a motion to dismiss the complaint pursuant to section 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619 (West 2012)), arguing that Chase had failed to send the required notices to them before instituting the foreclosure proceedings and that Chase lacked standing to institute the foreclosure proceedings. Three months later, defendants voluntarily withdrew their motion to dismiss.

¶ 6 On March 26, 2014, defendants filed an answer and affirmative defense. In their affirmative defense, defendants alleged that Chase lacked standing to maintain the foreclosure proceedings. Around this same time, Chase filed a motion to substitute Bayview as the party plaintiff, based on Chase's transfer of the servicing rights on the mortgage loan to Bayview. The trial court granted the motion to substitute.

¶ 7 Bayview then filed a motion to strike defendants' affirmative defense, arguing that it did, in fact, have standing to foreclose on the loan based on the fact that it was in possession of the original note endorsed in blank. The trial court granted Bayview's motion to strike, but allowed defendants until August 6, 2014, to replead their affirmative defense.

¶ 8 On August 7, 2014, defendants filed a motion for leave to file their amended affirmative defense *instanter*. In their proposed amended affirmative defense, defendants again argued a lack of standing. In response, Bayview filed a motion for partial summary judgment on the amended affirmative defense or, in the alternative, a motion to strike the amended affirmative defense. Bayview argued that not only did it have standing, but also that defendants' amended affirmative defense was insufficient in that it failed to allege facts establishing that Bayview lacked standing. At a hearing on defendants' motion for leave to file the amended affirmative defense *instanter* and Bayview's motion for partial summary judgment or to strike the amended affirmative defense, no one appeared on behalf of defendants. Although the trial court granted defendants' motion and deemed their amended affirmative defense timely filed, it also granted Bayview's motion to strike the amended affirmative defense, this time without leave to further amend or replead.

¶ 9 Bayview subsequently filed a motion for summary judgment, and the trial court gave the defendants until March 17, 2015, to respond. On March 30, 2015, defendants filed a motion for

leave to file their response *instanter*. In their proposed response, defendants challenged Bayview's right to judgment, once again, on the basis of standing. Defendants also argued that they were never sent the grace period notice required under section 15-1502.5 of the Illinois Mortgage Foreclosure Law ("IMFL") (735 ILCS 5/15-1502.5 (West 2010)). Before the trial court ruled on defendants' motion for leave to file their response *instanter*, defendants filed an emergency motion to continue the hearing on Bayview's motion for summary judgment, which the trial court granted. Thereafter, the trial court denied defendants' request for leave to file their summary judgment response *instanter* "for the reasons set forth on the record." Despite that denial, the trial court nevertheless ordered Bayview to respond to defendants' claim that they had not received a grace period notice. The trial court also noted in that order that "the standing issue has already been decided."

¶ 10 Per the trial court's directive, Bayview filed a supplemental brief in support of its motion for summary judgment, arguing that a grace period notice had been sent to defendants. In support, Bayview submitted the affidavit of a Chase employee, attesting that his review of Chase's records related to the loan at issue revealed that a grace period notice was sent to defendants. Defendants, in response, filed a motion to strike the supporting affidavit on the basis that it was legally insufficient. After a hearing, the trial court denied Bayview's motion for summary judgment "for the reasons stated on the record" and, accordingly, denied defendants' motion to strike the supporting affidavit.

¶ 11 In December 2015, Bayview renewed its motion for summary judgment, and the trial court gave defendants until February 25, 2016, to respond. On April 5, 2016, the day set for hearing on Bayview's renewed motion for summary judgment, defendants filed a motion for leave to file their response to Bayview's renewed motion for summary judgment *instanter*. In

their proposed response, defendants argued that the trial court should deny summary judgment to Bayview because it had denied Bayview's previous motion for summary judgment, Bayview lacked standing, and Bayview's affidavit of amounts due was insufficient. That same day, at the hearing on the renewed motion for summary judgment, the trial court denied defendants' request to file their response *instanter* "for the reasons set forth on the record." In addition, the trial court granted Bayview's renewed motion for summary judgment and entered a judgment of foreclosure against defendants.

¶ 12 On July 1, 2016, defendants filed a motion for leave to file a motion to vacate in excess of the Cook County Circuit Court's 15-page limitation. In the proposed motion to vacate, defendants argued that Bayview should not have been granted summary judgment because the trial court had denied Bayview's first motion for summary judgment and because Bayview lacked standing. Although the trial court never explicitly ruled on defendants' motion for leave to file the motion to vacate, it ultimately disposed of the motion to vacate by denying it "for the reasons stated in the record."

¶ 13 Thereafter, defendants' property was sold, and Bayview, on July 22, 2016, filed a motion for an order approving the sale. On September 8, 2016, defendants filed their objections to Bayview's motion to approve the sale, combined with a second motion to vacate the summary judgment and judgment of foreclosure. In their objections, defendants argued that they had not received the required grace period notice and that Bayview lacked standing. In their second motion to vacate, defendants argued that they had not received a default and acceleration notice pursuant to the terms of the loan, no foreclosure notice had been sent to the alderman of the district where the subject property was located, and Bayview's loss mitigation and amounts due

affidavits were legally insufficient. On October 5, 2016, the trial court denied defendants' second motion to vacate and entered an order confirming the sale of the property.

¶ 14 Defendants timely appealed.

¶ 15 ANALYSIS

¶ 16 On appeal, defendants raise a number of arguments as to why it was error for the trial court to grant summary judgment in favor of Bayview and subsequently enter a judgment of foreclosure and order confirming the sale of the property, namely: (1) Chase failed to state a valid cause of action in its complaint, because Chase lacked standing at the time of filing; (2) Chase failed to send defendants a grace period notice prior to instituting foreclosure proceedings; (3) Chase failed to send defendants a default and acceleration notice prior to instituting foreclosure proceedings; (4) Bayview's loss mitigation affidavit was legally insufficient; (5) Bayview's amounts due affidavit was legally insufficient; and (6) the trial court violated their due process rights when it (a) struck their initial affirmative defenses without permitting a written response, (b) granted Bayview partial summary judgment on defendants' amended affirmative defense without a written response from defendants, (c) denied their motion for leave to file their response to Bayview's first motion for summary judgment *instanter*, and (d) denied their motion for leave to file their response to Bayview's renewed motion for summary judgment *instanter*. We address each of these contentions in turn, but find none of them warrant reversal.

¶ 17 Summary judgment is appropriate when the pleadings, depositions, affidavits, and admissions show that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2016). Our review of the trial court's grant of summary judgment is *de novo*. *Federal National Mortgage Association v. Kuipers*, 314 Ill. App. 3d 631, 634 (2000). As for the trial court's order confirming the sale of the property,

we will disturb it only if the trial court abused its discretion. *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008). Once a property has been sold in a judicial sale and a motion to confirm that sale has been filed, the sale may be set aside only if the objecting party demonstrates one of the four grounds listed in section 15-1508(b) of the IMFL (735 ILCS 5/15-1508(b) (West 2016)). *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 18. The four grounds identified in section 15-1508(b) for declining to confirm the sale are: "(i) a notice required in accordance with subsection (c) of Section 15-1507 was not given, (ii) the terms of sale were unconscionable, (iii) the sale was conducted fraudulently, or (iv) justice was otherwise not done." 735 ILCS 5/15-1508(b). As will be discussed below, defendants make no attempt to argue that any of the claimed errors qualifies as a ground identified in section 15-1508(b) for declining to confirm the sale of foreclosed property.

¶ 18 Failure to State a Claim/Standing

¶ 19 Defendants first argue that the trial court erred in entering summary judgment, a judgment of foreclosure, and an order confirming the sale of the property, because Chase failed to state a valid cause of action in that Chase lacked standing to foreclose on the loan at the time these proceedings were instituted. This contention is without merit for multiple reasons.

¶ 20 Initially, we note that defendants' framing of this issue is rather misleading for several reasons. First, although defendants attempt to cast the alleged lack of standing as a failure to state a claim, they never filed a motion to dismiss pursuant to section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)), which would have been the proper vehicle for a contention that the pleadings were defective. Second, however, an actual lack of standing (rather than just failing to adequately plead standing) is not a defect in the pleadings, but instead is an "affirmative matter avoiding the legal effect of or defeating the claim" properly raised in a

motion to dismiss under section 2-619(a)(9) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(9)). See *Glisson v. City of Marion*, 188 Ill. 2d 211, 220 (1999). Although defendants did file a section 2-619 motion to dismiss based on Chase's alleged lack of standing, they voluntarily withdrew it before the trial court ruled on it.

¶ 21 Third, defendants claim that the trial court erred in entering summary judgment in favor of Bayview because Chase lacked standing at the time it filed the complaint. Defendants, however, did not have on file a response to Bayview's renewed motion for summary judgment raising this issue, because they were denied leave to file their response over a month late.[1] Accordingly, defendants' standing argument was not at issue on the renewed motion for summary judgment. Instead, the standing issue was decided prior to Bayview's first motion for summary judgment, when the trial court granted Bayview's motion to strike defendants' amended affirmative defense and denied defendants' leave to amend or replead. Despite this fact, defendants make no contention that the trial court erred in granting that motion to strike, and, even if they did, we would be unable to review it because defendants have failed to include in the record on appeal any transcripts from any of the trial court proceedings. Accordingly, we have no basis on which to determine whether the trial court erred. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) ("[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and *** [a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant.").

¶ 22 Defendants attempt to skirt these procedural obstacles by arguing that Chase's failure to state a valid cause of action renders all of the trial court's subsequent orders void. Void orders, of course, may be attacked at any time. *JoJan Corp. v. Brent*, 307 Ill. App. 3d 496, 502 (1999).

[1] We note that defendants also argue on appeal that the trial court erred in denying them leave to file this response *instanter*. As we will discuss, we find no error in the trial court's denial.

Putting aside the fact that an actual lack of standing is not the same as failing to adequately plead standing, a lack of standing is not a basis on which an order may be found to be void. "[W]hether a judgment is void in a civil lawsuit that does not involve an administrative tribunal or administrative review depends solely on whether the circuit court which entered the challenged judgment possessed jurisdiction over the parties and the subject matter." *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 32. A lack of standing does not defeat jurisdiction:

> "A different outcome is not required by the fact that the purported defect in plaintiff's claim was plaintiff's failure to plead its standing. To be sure, the supreme court has stated that standing is 'an element of justiciability.' " [Citation.] This is not to say, however, that a plaintiff who lacks standing cannot assert a 'justiciable matter.' Indeed, if such were the case, the plaintiff's lack of standing would itself defeat the trial court's subject matter jurisdiction, and the defendant could not forfeit the lack of standing. [Citation.] Thus, though standing might be 'an element of justiciability' [citation], it is not a requirement for a 'justiciable matter.' "

Nationstar Mortgage, LLC v. Canale, 2014 IL App (2d) 130676, ¶ 15; see also *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252 (2010) ("[I]ssues of standing and ripeness do not implicate our subject matter jurisdiction."). Because an order is void only if the trial court lacks jurisdiction and because a lack of standing does not defeat the trial court's jurisdiction, it necessarily follows that a lack of standing does not render an order void.

¶ 23 In sum, defendants' lack of standing contention fails because (1) they have not challenged the trial court's decision to grant Bayview's motion to strike defendants' amended affirmative defense; (2) even if they did challenge the trial court's grant of Bayview's motion to strike, they failed to provide a sufficient record on which we could conduct a meaningful review;

(3) they failed to raise the standing issue in response to Bayview's renewed motion for summary judgment; (4) even if defendants did raise the issue in response to Bayview's motion for summary judgment, they have failed to provide a sufficient record on which we could conduct a meaningful review; and (5) any lack of standing that might exist does not render the trial court's orders void.

¶ 24 Grace Period Notice

¶ 25 Defendants also argue that the trial court erred in granting summary judgment to Bayview—and thus entering a judgment of foreclosure and an order confirming the sale of the property—where Chase failed to send a grace period notice as required by section 15-1502.5 of the IMFL. At the time Chase filed the complaint, section 15-1502.5 of the IMFL required that at least 30 days prior to the filing of a complaint of foreclosure, the mortgagee must send to the mortgagor a grace period notice in which the mortgagee informs the mortgagor that he is more than 30 days delinquent on his loan and that he has a 30-day grace period in which to seek approved housing counseling. 735 ILCS 5/15-1502.5. According to defendants, Chase's failure to send such a notice to them precluded the trial court from entering summary judgment against them, entering a judgment of foreclosure, or confirming the sale of the property.

¶ 26 Since the institution of the present foreclosure proceedings, section 15-1502.5 of the IMFL was repealed, effective July 1, 2016. The repeal of section 15-1502.5 during the pendency of defendants' foreclosure proceedings means that defendants are not entitled to any recourse under that provision. As explained in our recent decision of *U.S. Bank, N.A. v. Coe*, 2017 IL App (1st) 161910, ¶ 19, where a statute is expressly repealed and does not contain a savings clause, that statute has no effect on any cases that remain pending following the date of repeal. *Id.* at ¶ 9. Even in situations where final judgment was entered in the trial court but the case is

pending on appeal, the appellate court is bound to follow the law as it exists at the time of the appellate court's decision, not as it existed prior to the repeal. *Id.* Accordingly, because section 15-1502.5 of the IMFL was repealed while this matter was pending in the trial court and because the repealing statute did not contain a savings clause, any failure by Chase to send defendants a grace period notice has no effect on the trial court's judgment. *Id.* at ¶ 19.

¶ 27 Default and Acceleration Notice

¶ 28 Defendants' next contention is that Chase failed to send them a default and acceleration notice as required under the terms of their mortgage loan, or, in the alternative, that there existed a genuine issue of material fact as to whether Chase sent them a default and acceleration notice. Defendants have waived this contention. First, although defendants initially included this contention as an affirmative defense in the answer and affirmative defenses that they attempted to file *instanter* in 2011, they were not permitted to do so because they failed to appear at the hearing on their motion for leave to file *instanter*. After that, defendants raised the issue in their 2-619 motion to dismiss, but, as previously discussed, they voluntarily withdrew that motion to dismiss. Defendants did not attempt to include it in their proposed response to Bayview's renewed motion for summary judgment or in their first motion to vacate. Instead, defendants did not effectively raise this issue until they filed their objections to Bayview's motion for an order approving the sale of the property and second motion to vacate. Accordingly, this contention is waived. See *Sewickley, LLC v. Chicago Title Land Trust Co.*, 2012 IL App (1st) 112977, ¶¶ 35-37 (holding that the defendants would not be permitted to raise an issue for the first time in a motion for rehearing and reconsideration filed after the trial court entered an order approving the sale of property in a foreclosure); see also *American Chartered Bank v. USMDS, Inc.*, 2013 IL App (3d) 120397, ¶ 13 ("Issues cannot be raised for the first time in the trial court in a motion to

reconsider and issues raised for the first time in a motion to reconsider cannot be raised on appeal.").

¶ 29 Second, even putting aside defendants' failure to timely raise this issue in the trial court and considering it only as an argument directed against the motion for approval of the sale, defendants have failed to offer any argument or authority as to how Chase's failure to send a default and acceleration notice qualifies as a ground for declining to confirm the sale under section 15-1508(b) of the IMFL. For this reason too, defendants have waived their contention. See *Sakellariadis v. Campbell*, 391 Ill. App. 3d 795, 804 (2009) ("The failure to assert a well-reasoned argument supported by legal authority is a violation of Supreme Court Rule 341(h)(7) [citation], resulting in waiver.").

¶ 30 Third, defendants' contentions in this respect are further waived for failure to provide any transcripts of *any* of the proceedings in the trial court. We are unable to address the propriety of the trial court's decisions when we cannot review what, if any, arguments and/or evidence defendants presented to the trial court in support of their positions. See *Foutch*, 99 Ill. 2d at 391-92.

¶ 31 Finally, defendants' contention that there existed a genuine issue of material fact as to whether Chase sent them a default and acceleration notice also fails. Attached to their objections to confirmation of the sale of the property and second motion to vacate were two "Verification[s] by Certification"—one for each defendant. In those "Verifications," each defendant stated that they had not received a default and acceleration notice from Chase and that they had no personal knowledge of whether Chase had mailed one to them. It is these "Verifications" that defendants contend create the genuine issue of material fact "preventing" the entry of summary judgment in favor of Bayview. This contention fails for two very obvious reasons. First, these

"Verifications" were not filed until five months *after* summary judgment was entered in favor of Bayview. Accordingly, we can hardly fault the trial court for failing to identify a genuine issue of material fact and deny summary judgment based on documents that had not yet been filed. Second, the defendants' "Verifications" are unsigned, essentially rendering them meaningless. See *Wolf v. Liberis*, 153 Ill. App. 3d 488, 495 (1987) (stating that unsigned and unsworn statements cannot be considered in reviewing a motion for summary judgment).

¶ 32 Loss Mitigation Affidavit

¶ 33 Next, defendants argue that the loss mitigation affidavit submitted by Bayview in support of its renewed motion for summary judgment was legally insufficient, because it did not contain the specific dates on which defendants were allegedly contacted and because it was not signed. Defendants also contend that Jose's "Verification" attached to his second motion to vacate created a genuine issue of material fact with respect to whether Bayview's loss mitigation affidavit was sufficient, because Jose denied ever being contacted about loss mitigation on the mortgage.

¶ 34 We again conclude that defendants have waived this contention. First, defendants raised this issue for the first time when they filed their objections to Bayview's motion to approve the sale of the property and second motion to vacate. Defendants made no attempt to raise this issue in response to Bayview's renewed motion for summary judgment. See *Sewickley, LLC*, 2012 IL App (1st) 112977, ¶¶ 35-37. Second, even if defendants had raised this issue in response to Bayview's renewed motion for summary judgment, they have provided no report of proceedings on the hearing on the renewed motion for summary judgment, thereby preventing us from conducting any meaningful review of whether they demonstrated a genuine issue of material fact. See *Foutch*, 99 Ill. 2d at 391-92. Third, having raised this issue only after Bayview filed its

motion to approve sale, defendants were required to satisfy one of the four requirements of section 15-1508(b) of the IMFL. They have made no argument or cited any authority on appeal explaining how the insufficiency of the loss mitigation affidavit meets one of those requirements. See *Sakellariadis*, 391 Ill. App. 3d at 804. Fourth and finally, defendants' "Verifications" cannot create a genuine issue of material fact—even if they were on file at the time of the renewed motion for summary judgment—because they are not signed. See *Wolf*, 153 Ill. App. 3d at 495.

¶ 35 Amounts Due Affidavit

¶ 36 Defendants' contentions regarding the alleged insufficiency of Bayview's amounts due affidavit are similarly waived. Although defendants attempted to raise this issue in their proposed response to Bayview's renewed motion for summary judgment, they were denied leave to file that response. Accordingly, the first time that this issue was actually raised in the trial court was in defendants' second motion to vacate. For the reasons discussed above, this constitutes waiver of the issue. See *Sewickley, LLC*, 2012 IL App (1st) 112977, ¶¶ 35-37. In addition, despite having not raised this issue until after Bayview filed its motion to confirm the sale, defendants offer no argument or authority for how the insufficiency of the amounts due affidavit satisfies the requirements of section 15-1508(b) of the IMFL. For this reason, too, this contention is waived. See *Sakellariadis*, 391 Ill. App. 3d at 804.

¶ 37 Due Process Violations

¶ 38 Last, defendants contend that the trial court violated their due process rights in several ways: striking their initial affirmative defenses without permitting a written response; granting Bayview partial summary judgment on defendants' amended affirmative defense without a written response from defendants; denying their motion for leave to file their response to Bayview's first motion for summary judgment *instanter*; and denying their motion for leave to

file their response to Bayview's renewed motion for summary judgment *instanter*. As with essentially all of defendants' other contentions, these contentions are also waived for numerous reasons.

¶ 39 First, defendants did not raise any of these issues in the trial court and have, instead, chosen to raise them for the first time on appeal. *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996) ("It is well settled that issues not raised in the trial court are deemed waived and may not be raised for the first time on appeal."). Second, defendants have failed to provide us with any transcripts for any of these proceedings and, accordingly, we are unable to conduct any meaningful review of the trial court's decisions to forego a written response from defendants or to deny defendants leave to file late responses. See *Foutch*, 99 Ill. 2d at 391-92. This is especially problematic in the context of the trial court's denial of defendants' requests to file their responses to Bayview's two motions for summary judgment *instanter*, because the written orders state that the trial court denied defendants leave to do so for the reasons stated on the record. Absent a record, we have no ability to identify—much less assess the validity of—the trial court's reasons.

¶ 40 Finally, other than citing general authority that due process requires that litigants be given the opportunity to be heard in court, defendants have not cited any authority for the proposition that such a right requires the trial court to continuously afford a litigant endless continuances and filing extensions and to always allow a litigant a written response. See *Sakellariadis*, 391 Ill. App. 3d at 804. Moreover, our review of the record reveals that defendants were given ample opportunities to be heard by the trial court but they (or their counsel) squandered them through repeated late filings, ignoring deadlines, and failing to appear at court hearings. For example, at the very beginning of the case, defendants did not file their answer within the time allowed by

the trial court. Instead, three months later, they requested leave to file it *instanter* but then failed to appear at the hearing on their motion to file it *instanter*. Thereafter, defendants filed or attempted to file the following documents after the deadlines set by the trial court: amended affirmative defense, response to Bayview's first motion for summary judgment, and response to Bayview's renewed motion for summary judgment (over a month late).[2] Defendants and their counsel also failed to appear at the hearing on Bayview's motion to strike defendants' amended affirmative defenses. Accordingly, to the extent that defendants believe that they were not heard, the fault belongs to defendants and their counsel, not the trial court.

¶ 41 In addition, there are several points to note with respect to each of the instances identified by defendants. Although the trial court decided the motion to strike defendants' initial affirmative defenses and Bayview's first motion for summary judgment without any written response by defendants, in neither instance did defendants suffer any prejudice, as they were granted leave to replead their affirmative defenses and Bayview's first motion for summary judgment was denied. As for the claim that the trial court granted Bayview partial summary judgment on defendants' affirmative defense, that is incorrect; the trial court granted Bayview's motion to strike defendants' affirmative defense. In addition, defendants can hardly be heard to complain that such motion was improperly decided without a written response from defendants when neither defendants nor defense counsel appeared at the hearing on the motion.

[2] We observe that this behavior appears to be common practice for defense counsel. During the pendency of this appeal, counsel filed four separate requests to extend the time for filing defendants' brief. Upon granting the fourth request, we stated that no further extensions would be allowed and set a final date for defendants' brief to be filed. Two weeks after that date had passed, defense counsel filed a motion for leave to file defendants' brief *instanter*. Such a persistent pattern of behavior throughout the trial and appellate proceedings in this case negates the defendants' contentions that unexpected circumstances outside defense counsel's control—heavy case load and medical issues—gave rise to the necessity of their late filings in the trial court. Although we cannot comment on the veracity of defense counsel's claims of medical issues, we do certainly suggest that defense counsel endeavor to better organize his caseload in order to more effectively serve his clients and meet deadlines.

¶ 42 Given defendants' waiver of these contentions and their and defense counsel's handling of this matter in the trial court, we conclude that defendants are not entitled to reversal on due process grounds

¶ 43 CONCLUSION

¶ 44 For the foregoing reasons, the judgment of the Circuit Court of Cook County is affirmed.

¶ 45 Affirmed.