No. 2—10—0145
Order filed January 14, 2011



---

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

---

| | | |
|---|---|---|
| DEUTSCHE BANK NATIONAL TRUST COMPANY, as Trustee for the Holders of Asset-Backed Pass Through Certificates, Series 2004—W7, | ) | Appeal from the Circuit Court of Du Page County. |
| Plaintiff-Appellee, | ) | |
| v. | ) | No. 06—CH—1094 |
| BILLY and SUSAN TORAIN, | ) | Honorable Bonnie M. Wheaton, |
| Defendants-Appellants. | ) | Judge, Presiding. |

---

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and McLaren concurred in the judgment.

**ORDER**

*Held*: Trial court properly granted summary judgment in favor of plaintiff bank despite plaintiff's failure to file answers to defendant homeowners' affirmative defenses and counterclaims, where matters raised in defendants' pleadings did not constitute defense to foreclosure action and counterclaims were legally insufficient.

In June 2006, the plaintiff, Deutsche Bank National Trust Company, brought an action to foreclose the mortgage of the defendants, Billy and Susan Torain. The defendants filed verified affirmative defenses and counterclaims. On June 28, 2007, the trial court granted summary judgment in favor of the plaintiff on all claims and counterclaims. The defendants appeal, asserting

that summary judgment was improper because the verified allegations of their affirmative defenses and counterclaims (to which the plaintiff did not respond) raised genuine issues of material fact, and because the trial court erred as a matter of law in its interpretation of section 226.4 of Regulation Z (12 CFR § 226.4), which implements the Truth in Lending Act (TILA or Act) (15 U.S.C. § 1601 *et seq*. (2005)). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The following facts, which are taken from the briefs and various pleadings, are undisputed except where noted. In January 2004, the defendants refinanced their mortgage. Southern Star Mortgage (SSM) was the mortgage broker, and the lender was Argent Mortgage Company, LLC. The mortgage required the "Borrower" (the defendants) to maintain property insurance on their home and provided, in pertinent part, that "[t]he insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice." Approximately one month after the closing, the defendants received notification that Liberty Mutual would be providing the property insurance, and that they were required to pay the premium. The defendants did not seek out or select Liberty Mutual as their insurer. However, they accepted the insurance and paid the premium.

The defendants fell behind on their mortgage payments and in June 2006 the plaintiff filed a foreclosure action against them. The defendants filed a motion to dismiss, arguing among other things that because they did not choose their insurance carrier, the lender had violated section 226.4 of Regulation Z by not including the cost of the insurance premium as part of the disclosed finance charges, with the result that under the Act the defendants were permitted to rescind their mortgage. (The defendants also asserted that they had taken the steps necessary to effectuate a rescission,

including giving notice of their intent to rescind). In January 2007, the trial court denied their motion to dismiss. The defendants thereafter filed an unverified answer to the complaint, which included several affirmative defenses and counterclaims reiterating the TILA violation argument and asserting, among other things, that the plaintiff lacked standing because the defendants' lender was Argent.

In May 2007, the plaintiff filed a motion for summary judgment, asserting that it was entitled to judgment in its favor because the defendants had not contested most of the elements necessary for foreclosure (the exception being standing); there were no material factual disputes; and the affirmative defenses and counterclaims were not valid legally. The plaintiff attached as exhibits to its motion (1) an affidavit by Damen Fashaw, an employee of Litton Loan Servicing (the mortgage servicing company affiliated with the loan), stating that he had reviewed the defendants' loan file and that the documents therein showed that the plaintiff was the legal holder of the defendants' mortgage pursuant to assignments that had taken place on January 28, 2004; and (2) copies of the assignments. The plaintiff also argued that Regulation Z did not require Argent to include the cost of the property insurance premium in the statement of finance charges, and so the affirmative defenses and counterclaims relating to the Act and rescission under the Act were invalid. The defendants sought leave to file an amended answer, which was granted.

On June 1, 2007, the defendants filed both their response to the motion for summary judgment and a verified amended answer containing affirmative defenses and counterclaims. An affidavit from the defendant Billy Torain was attached to the response brief. In it, Torain averred among other things that the premium for the property insurance was not disclosed on the HUD—1A form that the defendants were given in connection with their refinancing, that the defendants did not

choose the property insurer, and that a debt collector identified Litton Loan Servicing rather than the plaintiff as the creditor to whom the debt was owed. The response brief also argued that the assignments had no legal effect because the first assignment (from Argent to Ameriquest, who then executed the second assignment to the plaintiff) was undated. Therefore, the defendants argued, the plaintiff had not shown that it owned their mortgage.

The verified amended answer admitted most of the allegations of the complaint, but again contested standing. In addition, it contained four affirmative defenses and seven counterclaims. The first affirmative defense asserted that Argent had violated TILA and Regulation Z by not including the cost of the property insurance premium in the statement of finance charges provided to the defendants. The second affirmative defense stated that the defendants had validly rescinded the mortgage based on the TILA violation described in the first affirmative defense. The third affirmative defense alleged that the plaintiff was subject to equitable estoppel because it (through Litton Loan Servicing) had concealed an unsigned HUD—1A form despite the defendants' request for information and documents relevant to the debt. The fourth affirmative defense asserted that the plaintiff had falsely stated that it was the holder of the mortgage and therefore had standing to bring suit. The counterclaims were based on similar theories. Two counterclaims were premised on the alleged concealment of material facts, *i.e.*, the identity of the holder of the debt: count I (sounding in common-law fraud) and count IV (brought under the Fair Debt Collection Practices Act (FDCPA) (16 U.S.C. § 1692 *et seq*. (2005)). Another two counterclaims related to the alleged TILA violation (count III, under a common-law fraud theory, and count VI, under the FDCPA), and two more related to the alleged rescission (count II, on a common-law fraud theory, and count V, under the FDCPA).

Finally, the seventh counterclaim alleged civil conspiracy to commit fraud, based on all of the defendants' various theories (concealment of lack of standing, TILA violation, and rescission).

In its reply brief, the plaintiff asserted that the amended answer raised no new factual matters and the new defenses and counterclaims could be decided as a matter of law, so summary judgment was still possible and appropriate. The plaintiff then replied to the defendants' legal arguments.

Following a hearing on June 28, 2007, the trial court granted summary judgment in the plaintiff's favor on all claims and counterclaims. The defendants filed a motion for reconsideration, which was denied on August 1, 2007, and a judgment of foreclosure was entered on September 5, 2007. The defendants' home was eventually sold at a sheriff's sale, and an order confirming the sale was entered on January 5, 2010. This appeal followed.

ANALYSIS

On appeal, the defendants (who have represented themselves throughout) raise five arguments: (1) the plaintiff admitted the truth of all of the allegations in the defendants' affirmative defenses and counterclaims by failing to file a reply to the defenses or answer the counterclaims; (2) the trial court erred in its interpretation of the law regarding the alleged TILA violation; (3) the plaintiff's admissions-through-failure-to-answer precluded the entry of summary judgment in the plaintiff's favor; (4) the trial court did not address matters raised in the amended answer, affirmative defenses and counterclaims that were not susceptible to summary judgment; and (5) the plaintiff's attorneys acted in bad faith by advancing meritless legal arguments, failing to file an answer to the counterclaims, and untimely filing the reply brief related to the motion for summary judgment without seeking leave of court. Although we address all of these arguments here, we do not always take them in the order in which they were raised by the defendants.

A motion for summary judgment is properly granted where the pleadings, depositions, admissions, and affidavits establish that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2—1005 (West 2008); *Gaylor v. Village of Ringwood,* 363 Ill. App. 3d 543, 546 (2006). We review the grant of summary judgment *de novo. Ioerger v. Halverson Construction Co., Inc.,* 232 Ill. 2d 196, 201 (2008).

Admissions Due to Failure to File Reply or Answer

We begin by addressing the defendants' contention that because the plaintiff failed to file a reply to their amended affirmative defenses or an answer to their amended counterclaims, all of the allegations of those defenses and counterclaims must be deemed admitted. The defendants filed their amended affirmative defenses and counterclaims on June 1, 2007. At that time, the plaintiff's motion for summary judgment had been filed and was being briefed. Under Supreme Court Rule 182, both the reply to the affirmative defenses and the answer to the counterclaims would have been required to be filed within 21 days. No such reply or answer was filed. Rather, on June 25, 2007, the plaintiff filed its reply brief in support of its motion for summary judgment. On June 28, 2007, the trial court heard arguments on the motion for summary judgment and granted the motion, entering judgment in favor of the plaintiff on all pending claims and counterclaims.

The defendants are generally correct that, when a party fails to reply to an affirmative defense, the facts contained in the affirmative defense may be deemed to have been admitted by the party. *Andrews v. Cramer,* 256 Ill. App. 3d 766, 770 (1993). Similarly, factual allegations in a counterclaim are admitted unless expressly denied in an answer. See 735 ILCS 5/2—608(d) (West 2006) (answer to a counterclaim has the same effect as an answer to a complaint); 735 ILCS

5/2—610(b) (West 2006) (allegations not specifically denied in an answer are admitted). However, these principles are subject to several important limitations.

The first limitation is that, under the express language of section 2—602 of the Code of Civil Procedure (735 ILCS 5/2—602(b) (West 2006)), a reply is only required when the affirmative defense contains "new matter," that is, allegations that were not previously controverted by the allegations of the complaint. *Greer v. Illinois Housing Development Authority,* 150 Ill. App. 3d 357, 366 (1986). Here, for instance, the plaintiff alleged in its complaint that it was the holder of the mortgage, and so the defendants' fourth affirmative defense, which alleged that the plaintiff "falsely stated" that it held the mortgage via a series of assignments from Argent and Ameriquest, did not require a reply. *See In re Marriage of Sreenan,* 81 Ill. App. 3d 1025, 1928 (1980) (an affirmative defense that amounts to no more than an argumentative denial of the allegations of the complaint does not require a reply).

A further limitation is that only the facts alleged in the defense or counterclaim are admitted, not allegations that state legal conclusions. *Andrews*, 256 Ill. App. 3d at 770; *see also Mitchell Buick & Oldsmobile Sales, Inc. v. National Dealer Services, Inc.,* 138 Ill. App. 3d 574, 586 (1985) ("a failure to reply merely amounts to an admission of truth of new factual matter and does not amount to an admission that such new matter constitutes a valid legal defense"). As an example from this case, the allegation in ¶ 4 of the first affirmative defense that "[t]he defendants did not choose the insurer" relates solely to factual matters and thus may be within the scope of the matters deemed admitted. However, the assertion in ¶ 6 of that defense—that "[b]ecause the defendants did not chose [*sic*] the insurer, the premium was a part of the finance charge" and the failure to disclose it as such entitled the defendants to rescind the mortgage—is a legal conclusion, and thus would not

be deemed admitted. *Andrews*, 256 Ill. App. 3d at 770; *Mitchell Buick,* 138 Ill. App. 3d at 586. Further, if the entire affirmative defense raises only an issue of law, no reply is necessary. *Andrews*, 256 Ill. App. 3d at 770.

Finally, a party may raise matters outside the formal pleadings by way of a motion for summary judgment, sufficiently placing them in controversy to avoid forfeiture or concession of the issues even when they are not raised in formal pleadings. *See Falcon Funding, LLC v. City of Elgin,* 399 Ill. App. 3d 142, 156 (2010) ("a challenge to the sufficiency of the pleading of any affirmative defenses can be raised in a *** summary judgment motion"). Here, both the plaintiff's original motion for summary judgment and its reply brief in support of that motion disputed the defendants' arguments that it violated TILA, that the defendants were entitled to rescind the mortgage, and that it lacked standing because it did not legally hold the mortgage. The motion for summary judgment was filed even before the defendants' amended answer. Thus, none of these arguments constituted "new matter" as to which the plaintiff was required to file a reply.

The net effect of all of these limitations is that only factual allegations that did not relate to matters previously placed in controversy by existing pleadings and the summary judgment motion could be deemed admitted as a result of the plaintiff's failure to file a reply to the defendants' affirmative defenses. After reviewing the record, we determine that these factual allegations include the following: the date and amount of the refinancing (first aff. def. ¶ 1); the amount of the property insurance premium and that it was not included in the disclosures on the HUD—1A which the defendants received in connection with the closing on the refinancing (first aff. def. ¶ 3); that the defendants did not initially select the property insurance carrier (first aff. def. ¶ 4); the dates on which the defendants sent the plaintiff a notice of rescission (second aff. def. ¶ 9); that the plaintiff

did not respond to the notice of rescission (second aff. def. ¶ 10); that the plaintiff did not take "any steps to reflect termination of the security interest in defendants' home within 20 days of receiving the notice of rescission" (second aff. def. ¶ 12); and the plaintiff (allegedly acting through Litton Loan Servicing, a conclusion) did not provide the defendants with an unsigned version of the HUD—1A form related to their refinancing (third aff. def. ¶ 13). Accordingly, these allegations comprise the only "new factual matter" that the plaintiff can be deemed to have admitted through its failure to file a reply to the affirmative defenses. No reply was necessary as to the remaining allegations, all of which contained either legal conclusions or argument concerning issues raised previously. (We note that, although the allegation in ¶ 5 of the first affirmative defense contains the factual assertion that "the insurer was selected either by Argent or SSM [the mortgage broker] on Argent's behalf," this allegation was not "new" matter, as it was controverted by the plaintiff's previous arguments relating to the purported TILA violations and its statement in its motion for summary judgment that the defendants could not show that the property insurance was purchased from or through Argent.)

As to the plaintiff's failure to timely answer the defendants' amended counterclaims, we note that all of them relate to legal arguments raised in the initial pleadings filed by the defendants, which were discussed in the motion for summary judgment—the alleged TILA violation, the availability of rescission, and the plaintiff's ownership of the debt (and therefore its standing to bring the action). The defendants filed their first answer (which included some similar counterclaims) on March 14, 2007. On March 20, 2007, the trial court gave the plaintiff 28 days to answer or otherwise plead to the counterclaims. Then, on April 24, 2007, the trial court entered an order allowing the plaintiff until May 4, 2007, to file its motion for summary judgment. This motion attacked the legal basis for

all of the counterclaims, and it is apparent from the record that the trial court and the plaintiff viewed the motion as the plaintiff's response to the defendants' counterclaims, made in lieu of answering them. This was not improper. A motion for summary judgment may attack the viability of claims that are raised. *See Illinois State Bar Ass'n Mutual Insurance Co. v. Mondo,* 392 Ill. App. 3d 1032, 1036 (2009) (summary judgment motion may assert the absence of evidence supporting the nonmovant's position, or it may affirmatively show that "some element of the case must be resolved in the defendant's favor" as a matter of law, or both). In addition, a motion for summary judgment may be filed at any time, even before an answer is filed, and the arguments raised in that motion may be considered despite not being raised in such an answer. *SwedishAmerican Hospital Ass'n v. Illinois State Medical Inter-Insurance Exchange,* 395 Ill. App. 3d 80, 97 n.4 (2009).

The defendants note (correctly) that amended pleadings supersede prior pleadings, and argue that the motion for summary judgment responding to their initial pleading was likewise superseded and was of no further effect after June 1, 2007. However, the plaintiff's reply in support of its motion for summary judgment noted that, although the defendants had filed an amended answer and counterclaims since the motion was filed, the amended pleading was sufficiently similar that the arguments raised in the motion applied equally well to the amended pleading. The reply thus had the effect of reiterating these arguments with respect to the amended pleading. As we have noted, arguments raised in a motion for summary judgment may be sufficient to controvert matters raised in a formal pleading (*Falcon Funding,* 399 Ill. App. 3d at 156), especially where (as here) the issue is whether the claims raised in the formal pleading state a legally viable cause of action. Accordingly, we hold that the plaintiff did not concede the validity of the defendants' counterclaims by its failure to file a formal answer to those claims.

The Alleged TILA Violation

We now examine the legal effect of the factual allegations that the plaintiff is deemed to have admitted in the context of each of the legal theories advanced by the defendants, beginning with the defendants' argument that, under TILA and Regulation Z, Argent (the plaintiff's predecessor in interest) was required to disclose the cost of the property insurance premium as part of the finance charges prior to the consummation of the refinancing. In reviewing the applicable law, we find the summary of TILA and Regulation Z provided in *Adams v. GMAC Mortgage Corp.,* No. 94—C—3233,1994 WL 702639 (N.D. Ill. Dec. 14, 1994), to be helpful:

> "The Truth in Lending Act, or TILA, was enacted to promote 'the informed use of credit' through the guarantee of 'meaningful disclosure of credit terms' to consumers. 15 U.S.C. § 1601 [2003]; *Anderson Bro[thers] Ford v. Valencia,* 452 U.S. 205, 219 (1981). *** The purpose of the statute is to protect consumers by providing them with accurate information when they shop for credit. *Anderson Bro[thers] Ford,* 452 U.S. at 219. Since the complexity and variety of credit transactions defy exhaustive regulation by a single statute, Congress 'delegated expansive authority to the Federal Reserve Board to elaborate and expand the legal framework governing commerce in credit.' *Ford Motor Credit Co. v. Milhollin,* 444 U.S. 555, 559-60 (1980) (citations omitted).
>
> The Board exercised its responsibility by promulgating Regulation Z [12 C.F.R. § 226] and by issuing Official Staff Commentary [12 C.F.R. Pt. 226, Supp. I] on the regulation." *Adams,* 1994 WL 702639 at *2-3.

Courts defer to Regulation Z and the official staff commentary on that regulation as the authoritative interpretation of TILA by the agency charged with its administration. *Szumny v. American General Finance, Inc.,* 246 F.3d 1065, 1069 (2001).

Generally speaking, TILA requires the finance charges for a particular credit transaction to be disclosed to the consumer in advance, and Regulation Z defines "finance charges" to include "premiums or other charges for insurance against loss of or damage to property *** written in connection with a credit transaction." 12 C.F.R. § 226.4(b)(8). However, the regulation also provides that the cost of a property insurance premium may be excluded from the disclosed finance charges if two conditions are met. First, the lender must inform the consumer that the property insurance may be obtained from any carrier of the consumer's choice (subject to the lender's right to reasonably reject the carrier). 12 C.F.R. § 226.4(d)(2)(i). Second, if the insurance is obtained from or through the lender, the lender must disclose (as part of the finance charges) the cost of the premium for the initial term of the insurance. 12 C.F.R. § 226.4(d)(2)(ii). The official staff commentary to this provision states that "the creditor must allow the consumer to choose the insurer and disclose that fact," and this disclosure must be made regardless of whether such insurance is available from the creditor, but "[t]he premium or charge must be disclosed only if the consumer elects to purchase the insurance from the creditor." 12 C.F.R. Pt. 226, Supp. I, § 226.4(d)(8).

In this case, the mortgage stated plainly that the defendants had the right to choose the carrier who would provide property insurance for their home: "The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove the Borrower's choice, which right shall not be exercised unreasonably." The defendants do not dispute that this fact. However, they argue that, because they did not exercise their right to choose their insurance provider as an

initial matter (instead acquiescing in the mortgage broker's choice of Liberty Mutual), the lender did not really "allow [them] to choose the insurer." As the trial court explained, however, regardless of whether the defendants made the initial choice of insurer, they clearly retained the right to refuse that choice and select a different insurer. The fact that they did not exercise this right and instead voluntarily chose to accept the insurer engaged by the broker does not negate the fact that the lender did, in fact, "allow them to choose" their insurance provider as Regulation Z and TILA required. 12 C.F.R. Pt. 226, Supp. I, § 226.4(d)(8). Accordingly, the lender met the first condition for excluding the cost of the insurance premium from the finance charges.

The second condition for exclusion of the premium applies only where the consumer obtains the property insurance from the lender. 12 C.F.R. Pt. 226, Supp. I, § 226.4(d)(8). Here, the defendants have not presented evidence (or even contended) that Liberty Mutual, the insurance provider, was a subsidiary or affiliate of the lender, Argent. Thus, the defendants did not "purchase the insurance from the creditor." 12 C.F.R. Pt. 226, Supp. I, § 226.4(d)(8). None of the facts that the plaintiff is deemed to have admitted raised a genuine issue of material fact as to either of these conditions. Accordingly, both of the conditions necessary to exclude the cost of the insurance premium from the finance charges disclosed to the defendants were met here, and the lender did not violate TILA by not including the insurance premium in the finance charges.

As there was no violation of TILA by the lender, the trial court did not err in entering summary judgment on the defendants' first affirmative defense (which asserted the existence of such a violation) and their third and sixth counterclaims, both of which were premised on the existence of such a violation. 735 ILCS 5/2—1005 (West 2008) (summary judgment is proper where no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of

law.); *Gaylor*, 363 Ill. App. 3d at 546 (same). Further, given the fact that the defendants' legal arguments that they were entitled to rescind the mortgage were based on the premise that the lender had violated TILA, and we have found that the lender did not violate TILA, the defendants' second affirmative defense and first and fourth counterclaims lack any legal basis. Thus, regardless of whether the defendants properly notified the plaintiff of their intent to rescind the mortgage (as they asserted in their factual allegations that were deemed admitted), the defendants were not legally entitled to rescind and the trial court did not err in granting summary judgment as to these claims and defense.

Standing/Ownership of the Indebtedness

The defendants' principal remaining argument is that the plaintiff lacked standing to bring the foreclosure action against them because it did not own their mortgage. The defendants raised this argument in, among other places, their amended answer and their fourth affirmative defense, which alleged that the plaintiff's "false" statements asserting that they owned the debt barred the plaintiff from maintaining the foreclosure action under the doctrine of unclean hands. (The defendants also relied on the argument made in the fourth affirmative defense as the basis for their second and fifth counterclaims.) In support of its motion for summary judgment, the plaintiff submitted an affidavit from an employee of the loan servicing company who stated that the plaintiff owned the defendants' mortgage as a result of two assignments, the first transferring the mortgage from Argent to Ameriquest, and the second transferring the mortgage from Ameriquest to the plaintiff. The plaintiff also attached to its motion copies of the assignments.

Before the trial court, the defendants argued that the assignments were not valid because the first assignment was undated. On appeal, the defendants have not repeated this argument (which they failed to produce any applicable legal support for in the trial court). Accordingly, it is forfeited.

Where a party's brief does not offer any argument on an issue or meaningful authority in support of that argument, the argument is forfeited. 210 Ill. 2d R. 341(h)(7) (eff. July 1, 2008); *Mikolajczyk v. Ford Motor Co.,* 374 Ill. App. 3d 646, 677 (2007). Instead, in challenging standing the defendants rely solely on their argument that all of the allegations of their affirmative defenses and counterclaims were admitted by the plaintiff's failure to file formal pleadings in response. As we have already rejected this argument, it need not detain us longer. The defendants produced no evidence refuting the validity of the assignments, and failed to raise a genuine issue of material fact as to the plaintiff's ownership of the mortgage and its standing to bring the foreclosure action. Accordingly, the trial court did not err in granting summary judgment in favor of the plaintiff on the fourth affirmative defense and the second and fifth counterclaims.

Remaining Arguments

The defendants complain that the trial court did not address some of its other claims when it entered summary judgment in favor of the plaintiff on all claims, affirmative defenses and counterclaims. However, we may sustain a trial court's decision on any basis appearing in the record (*City of Chicago v. RN Realty, L.P.,* 357 Ill. App. 3d 337, 344 (1st Dist. 2005)), and this rule applies even when the trial court has not set out its own reasoning regarding a particular issue. Moreover, as our review is *de novo*, we may proceed directly to the merits of these issues without regard to the trial court's resolution of them.

The third affirmative defense, the only one not previously addressed, does not merit lengthy discussion. That defense asserted that the plaintiff should be equitably estopped from proceeding with its foreclosure action on the ground that it concealed material facts when, allegedly acting through a debt collection attorney and/or Litton Loan Servicing, it failed to provide the defendants

with an unsigned HUD—1A form related to their refinancing when they contested their debt. Although the defendants have cited case law listing the elements of equitable estoppel among their arguments on appeal, they have not identified any case supporting the specific proposition they advance here—that the failure to produce an unsigned copy of a disclosure form, when the parties were in possession of a signed version of the form, constitutes the "concealment of material facts" necessary to create equitable estoppel. Nor are we aware of any legal support for this proposition. The fact that the unsigned version may have differed from the signed version does not in itself demonstrate that the unsigned form was "material," and so it does not affect this analysis. Accordingly, we hold that summary judgment was correctly entered as to the third affirmative defense.

We turn to the validity of the defendants' only remaining counterclaim (the seventh), in which they asserted that all of the plaintiff's actions alleged elsewhere in their amended pleading—the TILA violation, the failure to acknowledge the defendants' attempts to rescind the mortgage, the failure to produce the unsigned form, and the assertion that the plaintiff had standing to bring the foreclosure action—amounted to civil conspiracy to commit fraud. However, we have rejected the legal arguments on which this claim rests, and the only evidence supporting such a claim is the handful of factual allegations listed *supra*, which we held the plaintiff admitted by failing to file formal responsive pleadings. Whether taken singly or together, however, those allegations are insufficient to make out a claim of civil conspiracy to commit fraud. Accordingly, the summary judgment was properly entered in the plaintiff's favor on the seventh counterclaim as well.

Finally, the defendants assert on appeal that the trial court erred in not imposing sanctions on the plaintiff's attorneys pursuant to Supreme Court Rule 137 (eff. Feb. 1, 1994). Rule 137

permits a trial court to impose sanctions on an attorney who signed a "pleading, motion or other paper" if the statements and arguments in that document are "not well-grounded in fact" or "warranted by existing law," or if the document was "interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Ill. S. Ct. R.137 (eff. Feb. 1, 1994). The defendants sought the imposition of such sanctions in their motion to reconsider the grant of summary judgment, which the trial court denied. The imposition of sanctions is a matter within the trial court's discretion, and we will reverse only if the trial court has abused that discretion, that is, the ruling is arbitrary, fanciful, or no reasonable person would take the view of the trial court. *People v. Stefanski,* 377 Ill. App. 3d 548, 550 (2007).

On appeal, the defendants' primary argument regarding sanctions is that the plaintiff's attorneys' arguments relating to the alleged TILA violation were not well-grounded in law or fact. However, we must reject this contention, as we have affirmed that the legal argument advanced by the plaintiff's attorney—that the property insurance premium was not required to be disclosed as a finance charge—is correct, and that its application is supported by the facts in this case. Accordingly, the raising of such an argument cannot be the basis for sanctions under Rule 137. The defendants also argue that the plaintiff's attorneys acted improperly in failing to file formal pleadings responding to the amended affirmative defenses and counterclaims, and filing late the reply in support of the motion for summary judgment. However, even if this conduct amounted to negligence in the attorneys' professional duties, there is no indication in the record that the attorneys' conduct was motivated by any improper purpose. Moreover, the defendants have not claimed that they were prejudiced by this failure to file timely responses: they cannot point to any argument that they were unable to raise or other manner in which they were harmed by this failure. To the

contrary, the defendants took full advantage of the plaintiff's failure to file timely responses, attempting to use that failure as a basis to argue that the plaintiff should be held to have conceded certain points. The trial court did not abuse its discretion in refusing to impose Rule 137 sanctions on the plaintiff.

## CONCLUSION

For all of the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

Affirmed.