

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

MB Financial Bank, N.A.,)	
)	
Plaintiff,)	
)	
v.)	No. 12 CH 28247
)	
Board of Directors of Aztlan, an Illinois not-for-)	1831 S. Racine Ave.
profit corporation, Casa Aztlan Community Center,)	Chicago, IL 60608
an Illinois not-for-profit corporation, Unknown)	
Owners and Nonrecord Claimants,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

One purpose of a motion to reconsider is to inform the court how it misapplied the law. Here, the defendants' motion claims that this court misapplied the law by issuing an occupancy-and-use order favoring a third-party purchaser after the court had lost jurisdiction. As a matter of law, the entry of the order complied with the Illinois Mortgage Foreclosure Act; consequently, the defendants' motion must be denied.

Facts

On May 24, 2013, Corona Investments, LLC purchased the foreclosed property at a judicial sale resulting in a \$153,925.14 surplus of funds. On September 17, 2013, this court entered an order that, among other things: (1) approved the foreclosure report of sale of the mortgaged property; (2) entitled Corona to the right of possession after October 17, 2013; (3) authorized the issuance of a deed; and (4) directed the Cook County Sheriff to evict the defendants from the property after October 17, 2013. On November 6, 2013, this court entered another order requiring the defendants to provide Corona with a "comprehensive written list, identifying the legal name & telephone number, if any, of any & all persons, entities, groups or other[s] that remain in possession & or currently occupy, in any way, the subject property no later than 5 pm on Nov. 8, 13." On November 19, 2013 – 11 days late – the defendants supplied Corona with an incomplete list of occupants.

At a November 20, 2013 status, a representative of the defendants told the court that there were approximately 14 leases, some written and some oral, and that many community organizations were still operating inside Corona's property.

Based on that representation, this court entered an order compelling Corona to “change the locks on the premises . . . entitl[ing it] to possession of said premises on 12/1/13 without further order of court notwithstanding the existence of any tenants or occupants at the property. . . .”

On November 26, 2013, Judge Moshe Jacobius entered two orders in this same case on a related matter. The first ordered the circuit court clerk to issue a \$120,000 check to the Board of Directors of Aztlan, reserving the balance of the surplus funds pending briefing and arguments as to their proper disbursement. A second order set a briefing schedule on the defendants’ petition for turnover of surplus funds. That order calls for a hearing on January 15, 2014.

Statutes at Issue

In all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief.

735 ILCS 5/2-1203(a).

The authority of the court continues during the entire pendency of the foreclosure and until disposition of all matters arising out of the foreclosure.

735 ILCS 5/15-1103.

Analysis

The purpose of a motion to reconsider “is to bring to the trial court’s attention newly discovered evidence not available at the time of the first hearing, changes in the law, or errors in the previous application of existing law to the facts at hand.” *River Village I, LLC v. Central Ins. Cos.*, 396 Ill. App. 3d 480, 492 (1st Dist. 2009). The defendants do not bring to the court’s attention any newly discovered evidence or legal changes. Rather, their argument focuses on this court’s alleged misapplication of the law.

The defendants argue first that this court violated the Code of Civil Procedure on November 20, 2013 by entering an occupancy-and-use order without jurisdiction since more than 30 days had passed after the entry of judgment. Motion at 4-5, citing 735 ILCS 5/2-1203 (2008). This argument defies logic. If it were true, this court would be barred from entertaining the defendants’ motion to reconsider since they filed it more than 30 days after the entry of judgment.

Further, the argument would bar Judge Jacobius from considering the defendants' motion to disburse surplus funds since they also filed that motion more than 30 days after the entry of judgment. The defendants cannot have it both ways.

The irony inherent in the defendants' argument points to its essential flaw: a party's failure to obtain leave of court to file a motion outside the 30-day deadline may violate section 2-1203(a) but does not deprive a court of jurisdiction under section 15-1103. The reason is that, under the rules of statutory construction, each provision stands "in its own sphere" because "each address[es] different actors under different circumstances. . . . Thus, the statutes are not in conflict. . . ." *Harris v. Thompson*, 2012 IL 112525, ¶ 24, quoting *Lanning v. Harris*, 342 Ill. App. 3d 965, 968 (3d Dist. 2003). In short, a court "must construe statutes relating to the same subject matter with reference to one another so as to give effect to the provisions of each, if reasonable." *Id.*, at ¶ 25, citing *Henrich v. Libertyville H.S.*, 186 Ill. 2d 381, 391-92 (1998).

Here, section 2-1203(a) is a limitation on the parties – they must file a post-trial motion within 30 days of the judgment. In contrast, section 15-1103 is an authorization for the courts – they may consider and dispose of all matters in a foreclosure proceeding. The two provisions do not conflict since they address different subjects and different actors. It follows, therefore, that this court had the authority under 15-1103 to consider Corona's occupancy-and-use motion since it was a matter directly related to the foreclosure proceeding on the defendants' property.

The defendants' second argument is that this court erred by considering Corona's motion for occupancy and use as an emergency. What constitutes an emergency is, of course, within the court's discretion, and none of the irrelevant cases cited by the defendants indicate otherwise. Here, Corona had purchased the property at a May 24, 2013 judicial sale. A September 27, 2013 order approving the sale gave Corona had the right to occupancy as of October 27, 2013.

Despite the September 27 order, the defendants impeded Corona's right to occupancy through various delaying tactics. For example, at the November 6 hearing, it became clear that various community organizations and possibly the defendants were still occupying the property. Corona requested in open court copies all leases executed between the defendants and community organizations so that Corona could provide them with notice. The defendants' attorney who attended that day informed the court that no leases existed. Since lease information did not exist, the court tried to reach the same end by ordering the defendants to provide Corona by November 8, 2013 with contact information for each community organization occupying the property. The defendants violated this court's order by sending to Corona's attorney an incomplete list of occupants and their contract information 11 days late.

On November 20, a different defendants' attorney came to court with a party defendant representative. The latter told the court that there were, in fact, approximately 14 leases, either oral or written. The defendants' other attorney's November 6 misstatement was, therefore, either intentional to mislead the court or negligent (thereby achieving the same result) because the attorney had failed to fulfill his obligation of communicating with his client, apparently hoping to rely on the deniability that comes with tag-team lawyering.

The defendants' attorneys teeter on sanctionable conduct by writing that they came to the November 6 hearing willing to tender to Corona the keys to the property. Motion at 6-7. Neither the defendants' attorney nor the party representative ever said such a thing. Indeed, had they made such a representation, this court would not have ordered the defendants to provide Corona with the community organizations' contact information. Given the defendants' conduct, it was incumbent on this court to end the charade as soon as possible.

The defendants' third argument is an ill-formed, denial-of-due-process claim. Motion at 7-9. They suggest that they had a constitutional right to file a written response and make an oral argument in an eviction proceeding. This argument fails for a variety of reasons. First, the defendants fail to cite to a single authority supporting such a remarkable proposition; but that is not surprising since there exists no such constitutional protection. Second, if the defendants were ready and willing to turn over the keys to the property as they claim, then there was no eviction, but a voluntary relinquishment of the property. Finally, the defendants apparently forget that this has been and continues to be a foreclosure proceeding, not an eviction proceeding. Corona never sought to evict the community organizations using the property.

Within this third argument, the defendants switch gears and argue that Oscar Corona's affidavit failed to meet Illinois Supreme Court Rule 191 standards. Motion at 8-9. This argument is waived since the defendants never raised it previously. Yet even if the affidavit were deficient, the defendants failed to provide a Rule 191(b) affidavit indicating the affidavit's deficiencies or their need to depose Corona. Ultimately, it is irrelevant whether Corona's affidavit was inaccurate because the court did not enter the November 20 order because Corona was losing money. Rather, the court was justified in ruling as it did because the defendants had misled the court as to the status of the leases, violated a court order to provide information to Corona, and sought to delay the orderly transfer of the property to its lawful owner by having different attorneys attend different hearings.

Given the substantial failings of the defendants' arguments, their motion to reconsider is denied.

Dated: 17 December 2013


John H. Ehrlich
Circuit Court Judge

Judge John H. Ehrlich

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Circuit Court 2075