

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

Colfin Bulls A Finance Sub, LLC,
a Delaware limited liability company,

Plaintiff,

v.

Ken Sik Ham, Hyoun Ok Ham, Lawrence Fruit
Market, Inc., an Illinois corporation, Chicago Title
Land Trust Company, as trustee under trust agreement
dated October 29, 1991 known as trust no. 114729-09,
Non-Record Claimants and Unknown Owners,

Defendants.

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) No. 13 CH 5552
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) 3318 W. Bryn Mawr
) Chicago, IL 60659
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) 3334 W. Bryn Mawr
) Chicago, IL 60659
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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 entering an order appointing a receiver for residential real estate. As a matter of fact and law, the court's order complied with the Illinois Mortgage Foreclosure Act; consequently, the defendants' motion must be denied.

Facts

On August 29, 2013, this court entered an order appointing a receiver for the two properties located at 3318 and 3334 West Bryn Mawr Avenue in Chicago. The defendants use the 3318 West Bryn Mawr Avenue address for their business, Lawrence Fruit Market, while the adjoining 3334 address is used for storage. The defendants argue that the 3334 address has also been their "principal residence" since 2005. The defendants' affidavit attached to their motion states, instead, that the defendants live there. A 2010 promissory note executed by the defendants lists their address as 8310 Keystone Avenue, Skokie, Illinois 60076.

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 Illinois Mortgage Foreclosure Act.

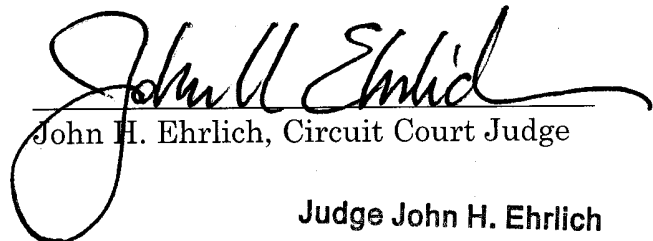
As a factual matter, the August 29, 2013 order is proper because it is a fair inference that the defendants do not live at 3334 West Bryn Mawr. Although the defendants aver that they live there, they also admit that the address is used for storage. It is highly dubious that anyone, let alone the defendants, would use a storage space as their home. Additionally, a 2010 promissory note executed by the defendants three years before the filing of this lawsuit, lists their address as 8310 Keystone Avenue in Skokie. The defendants' recent affidavit simply cannot overcome the presumption based on a promissory note executed three years before the location of their primary residence became an issue.

As a legal matter, the defendants have failed to address the statutory basis for this court's appointment of a receiver – 735 ILCS 5/15-1704. They address various other provisions, but not the one relied on by the court. The court explicitly recalls explaining to the parties at an October 8, 2013 hearing the reason section 1704 applied in this instance. The court also recalls indicating that the appointment of a receiver for both properties was reasonable since they adjoin and the defendants stated that they take good care of both properties. The court reasoned that there would not be much for the receiver to do and, therefore, the receiver would not be intrusive on the defendants' living space (such as it is). Despite the court's explanation, however, the defendants have chosen not to address section 1704 in their motion.

The defendants' omission is obvious. Section 1704 authorizes the appointment of a receiver "for the mortgaged real estate," without limitation. In other words, section 1704 may be applied to residential, commercial, or mixed real estate. The defendants may call 3334 West Bryn Mawr Avenue whatever they want, but section 1704 still applies. For that reason

IT IS ORDERED THAT:

The defendants' motion to reconsider is denied.



John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

JAN 15 2014

Circuit Court 2075