U.S. Bank Tr., N.A. v. Holub

Appellate Court of Illinois, First District, First Division

November 9, 2026, Order Filed

No. 1-25-1784

Reporter
2026 IL App (1st) 251784-U *; 2026 Ill. App. Unpub. LEXIS 2566 **; 2026 LX 692130

U.S. BANK TRUST, NATIONAL ASSOCIATION, not in its individual capacity but solely as Owner Trustee for RCF 2 ACQUISITION TRUST c/o U.S. BANK TRUST, NATIONAL ASSOCIATION, Plaintiff-Appellee v. DEAN HOLUB, as Trustee of the Trust Agreement Dated May 24, 2000, and known as Trust Number 3707, Defendant-Appellant.

Notice: THIS ORDER WAS FILED UNDER *SUPREME COURT RULE 23* AND MAY NOT BE CITED AS PRECEDENT BY ANY PARTY EXCEPT IN THE LIMITED CIRCUMSTANCES ALLOWED UNDER *RULE 23(e)(1)*.

Prior History: **[**1]** Appeal from the Circuit Court of Cook County. Honorable Edward N. Robles, Judge, Presiding. No. 22-CH-8760.

Disposition: Affirmed.

Judges: JUSTICE FITZGERALD SMITH delivered the judgment of the court. Presiding Justice Ellis and Justice Cobbs concurred in the judgment.

Opinion by: FITZGERALD SMITH

Opinion

ORDER

[*P1] *Held*: The trial court did not abuse its discretion by (1) ruling that defendant had waived all arguments for vacating the judgment of foreclosure by raising them for the first time in a motion to reconsider summary judgment; and (2) approving judicial sale where defendant failed to show he was prevented from raising challenges to the underlying foreclosure judgment in a timely manner.

[*P2] The defendant, Dean Holub, as Trustee of the Trust Agreement Dated May 24, 2000, and known as Trust Number 3707, appeals orders by which the trial court confirmed a judicial sale, denied his motion to vacate the judgment of foreclosure and dismiss this action, and denied his motion for reconsideration. We affirm.

[*P3] BACKGROUND

[*P4] The facts pertinent to this appeal are undisputed and relatively straightforward. In May 2007, Arthur Holub obtained a $50,000 home equity loan from Bank of America, N.A., secured by a mortgage on a single-family residence at 3707 South 59th Court in Cicero (subject property). When Arthur Holub signed the mortgage and note, **[**2]** he covenanted that he "is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property." He further asserted that he had all title and interest in the subject property and represented at closing that the mortgage would be a good and valid first mortgage free from all defenses. Approximately seven years earlier, however, a deed in trust had been recorded in the office of the Cook County Recorder reflecting Arthur Holub's conveyance of the subject property to the defendant trustee. No trust documents are contained in the record on appeal. The record indicates that Arthur Holub passed away on November 24, 2009.

[*P5] For apparently a decade following Arthur Holub's death, monthly payments continued to be made upon the mortgage. This ended with the monthly payment due January 6, 2020, and the mortgage went into default thereafter. Bank of America, N.A., later assigned its interests under the mortgage to the plaintiff, U.S. Bank Trust, N.A., not in its individual capacity but solely as Owner Trustee for RCF 2 Acquisition Trust.

[*P6] The plaintiff initiated the present mortgage foreclosure action on September 2, 2022, when it filed a four-count complaint **[**3]** against the defendant and Felicola M. Esteban. Count I sought foreclosure of the mortgage and sale of the subject property pursuant to the *Illinois Mortgage Foreclosure Law (735 ILCS 5/15-*

1101 et seq. (West 2022)). Count II sought to quiet title as to any interest Esteban had in the property and is not relevant to this appeal. Count III sought to have an equitable lien imposed on the property, and count IV sought foreclosure of that equitable lien.

[*P7] We note that count I of the complaint, for statutory foreclosure, was pled in accordance with section 15-1504(a) of the Mortgage Foreclosure Law (*id.* § 15-1504(a)). Thus, its allegations were "deemed and construed to include allegations," *inter alia*, "that the mortgage constitutes a valid, prior and paramount lien upon the indicated interest in the mortgaged real estate." See *id.* § 15-1504(c)(7).

[*P8] On March 1, 2023, the defendant, acting through counsel, filed an answer to the complaint. The defendant's answer did not deny the allegation deemed and construed as included in count I that the mortgage constituted a valid lien upon the indicated interest in the mortgaged real estate. It did not raise any affirmative defenses to the allegations of the complaint.

[*P9] On May 9, 2023, the plaintiff filed a motion for summary judgment against the defendant on all counts of the complaint. **[**4]** It asserted that the defendant's answer had failed to raise any genuine issue of material fact. It was supported by the affidavit of Verlina Griffin, an employee of the plaintiff's mortgage servicer. The relief sought was both the entry of summary judgment and a judgment of foreclosure and sale in favor of the plaintiff and against the defendant. The plaintiff also filed separate motions seeking orders specifically as to counts II, III, and IV of the complaint.

[*P10] The motion for summary judgment was entered and continued generally over the ensuing six months. Within this time, on October 19, 2023, the defendant's counsel filed a motion for leave to amend his answer to add an affirmative defense. The affirmative defense raised in that proposed answer was that the mortgage was not valid because Arthur Holub had not been the owner of the subject property at the time he signed the mortgage in May 2007, having transferred his interest in the property to the defendant trustee seven years earlier. The trial court struck the defendant's motion from the call when it was scheduled for presentment due to deficiencies in the notice of motion. The motion was never rescheduled for presentment, and **[**5]** a later order issued by the trial court confirms that it was never granted.

[*P11] On January 11, 2024, the trial court entered a briefing schedule directing the defendant to file a response to the plaintiff's motion for summary judgment within 45 days, *i.e.*, by February 25, 2024. However, the defendant never filed any response to the plaintiff's motion for summary judgment.

[*P12] We note that a purported e-mail dated February 23, 2024, from the defendant's attorney to the plaintiff's attorney was attached as an exhibit to the plaintiff's response to the defendant's later-filed motion for reconsideration. In that e-mail, the defendant's attorney affirmatively represented that the defendant was not intending to further contest the foreclosure and was "not filing a responsive pleading to your latest motion."

[*P13] On May 9, 2024, the trial court entered a series of orders. One was an order granting the motion for summary judgment in favor of the plaintiff and against the defendant. That order did not delineate specific counts of the complaint upon which summary judgment was or was not entered. Second, the trial court entered an order of default against Esteban. Third, it entered a judgment of foreclosure **[**6]** and ordered that the subject property be sold at a judicial sale unless the sum of $60,069.70, plus interest and costs were paid by the expiration of the redemption period on August 9, 2024. Finally, it entered an order appointing a selling officer for the subject property.

[*P14] Although the trial court entered the above orders on May 9, 2024, it did not enter orders on the plaintiff's separate motions specifically seeking orders of judgment on counts II, III, and IV of the complaint. Thus, on July 31, 2024, the plaintiff filed amended motions seeking orders as to those three counts specifically.

[*P15] On August 14, 2024, the plaintiff filed a motion for an order approving sale of the subject property that had occurred on August 12, 2024. The purchaser of the subject property was identified as Greystone Appraisals Inc., and the purchase price was $141,000.

[*P16] On August 16, 2024, an additional appearance was filed on the defendant's behalf by new counsel. That same day, the defendant's new counsel filed on his behalf a motion to vacate the judgment of foreclosure and to dismiss the action with prejudice. That motion requested that the trial court reconsider the motion for summary judgment and deny **[**7]** it on the basis that the mortgage was invalid due to Arthur Holub having no interest in the subject property or right to mortgage it as of May 2007 when he obtained the mortgage.

[*P17] On August 22, 2024, the trial court entered three orders specifically granting judgment in the plaintiff's favor on counts II, III, and IV of the complaint.

[*P18] On September 24, 2024, the defendant filed a response opposing the plaintiff's motion for an order approving sale. He first argued that the mortgage, the judgment of foreclosure, and the resulting foreclosure sale were all void due to Arthur Holub's lack of ownership interest in the subject property at the time he executed the mortgage. Second, he argued that there were no allegations in any of the pleadings that stated a legal basis for finding that an equitable lien existed. Third, he argued that the foreclosure sale was held improperly because it was conducted prior to any order establishing the existence of an equitable lien. Fourth, he argued that because there was no factual, legal, or equitable basis for the entry of a judgment of foreclosure and sale against the defendant or the subject property, conducting the judicial sale was unconscionable, **[**8]** fraudulent, and resulted in justice otherwise not being done under *section 15-1508(b) of the Mortgage Foreclosure Law* (*id.* *§ 15-1508(b)*). On October 7, 2024, the defendant filed a reply brief in support of his motion to vacate and dismiss which essentially raised these same arguments as additional reasons why the trial court should reconsider its entry of summary judgment. And on October 8, 2024, the defendant filed a "supplement motion" to dismiss on the grounds that Arthur Holub's estate or special representative was a necessary party not named in the complaint, thus defeating subject matter jurisdiction.

[*P19] On January 17, 2025, the trial court entered a written order granting the plaintiff's motion for an order approving sale and denying the defendant's motion to vacate and dismiss. The trial court found that the defendant had waived any challenges involving the failure to name a necessary party, the invalidity of the underlying mortgage or note, or any other basis why the plaintiff was not entitled to the underlying judgment due to the defendant's failure to raise these at any point prior to the plaintiff's filing of the motion to approve the sale. The trial court noted that the defendant had been represented by counsel throughout these proceedings **[**9]** and had failed to raise any challenges to the complaint or to the plaintiff's motion for summary judgment during the time he had to do so. The court added that the defendant's arguments were not valid bases for a motion for reconsideration of summary judgment because they were all based upon facts and evidence that had been available to him throughout the time the case was being litigated.

[*P20] On February 18, 2025, the defendant filed another motion to reconsider. The defendant argued in this motion that trial court had erred by ruling that he had waived his right to seek to vacate the judgment of foreclosure or to object to the equitable lien. He argued that the failure of the complaint to state a legally cognizable cause of action was a challenge that could be raised at any time and not waived, and the complaint was legally insufficient as to both its statutory and equitable lien foreclosure claims. He also argued that he could not waive a challenge to the trial court's subject matter jurisdiction, which he argued was absent on the basis that the plaintiff's claim for equitable lien was untimely as brought more than five years after the date of origination of the loan. He argued that **[**10]** the trial court erred in approving the sale because justice had not been done where the plaintiff had foreclosed on a loan that did not benefit the owner of the subject property, had been made to a person who did not own the subject property, and of which the true owner of the property had not even been aware.

[*P21] This motion was also fully briefed. On August 22, 2025, the trial court denied it in a written ruling that largely focused upon the defendant's failure to raise these arguments in a timely fashion. The trial court stated that the defendant was not identifying newly discovered evidence, changes in the law, or errors in the application of the law that would justify granting a motion to reconsider. Instead, he was simply raising "new and previously waived arguments, which is not grounds for reconsideration." Specifically as to the defendant's arguments concerning nonwaiver of the complaint's failure to state a cause of action, the trial court reasoned that the defendant was challenging "the sufficiency of Plaintiff's claims, and not their existence," which was a challenge he had waived. The defendant thereafter filed a timely notice of appeal.

[*P22] ANALYSIS

[*P23] The parties to this appeal **[**11]** dispute what issues are properly before us. The defendant argues that there are approximately ten different issues that this court may review *de novo* as a matter of law. In summary, the defendant's argument as to each of these stems from the proposition that, because Arthur Holub no longer had ownership interest in the subject property by May 2007 when he executed the mortgage, the

mortgage was void *ab initio* and cannot serve as the basis for a lien against the subject property or a statutory foreclosure action under the Mortgage Foreclosure Law. His contention is that foreclosure was arguably permissible only under an equitable lien theory, but he disputes that an equitable lien was appropriate in this instance where there is no evidence in the record that the defendant owed a debt or had received a benefit from the loan proceeds. His stronger point, however, is that the trial court had not yet expressly found that an equitable lien existed under count III of the complaint or authorized foreclosure upon it under count IV at the time it entered the judgment of foreclosure and sale. The judicial sale itself also occurred prior to the trial court's entry of orders specifically as to **[**12]** counts III and IV. The defendant contends that it was error for the trial court to enter the judgment of foreclosure and sale or to approve a sale that occurred under these circumstances. Accordingly, he urges us to vacate the order approving sale, vacate the judgment of foreclosure and sale, vacate the orders finding an equitable lien and authorizing foreclosure thereof, and dismiss this action with prejudice.

[*P24] For its part, the plaintiff argues that there are only two issues before us and that the abuse of discretion standard applies to both. The first issue is whether the trial court abused its discretion by finding that the defendant had waived the arguments above by raising them for the first time in a motion to reconsider, which was also filed after the plaintiff had filed its motion to approve the judicial sale. The second is whether the trial court abused its discretion in approving the judicial sale.

[*P25] We agree with the plaintiff that before we may conduct *de novo* review of any of the issues raised by the defendant, we must first address whether the trial court abused its discretion by finding that the defendant had waived these arguments and declining to consider them on the **[**13]** basis that they were first raised in a motion to reconsider.

[*P26] In this case, after the plaintiff filed its motion for summary judgment as to all four counts of its complaint, the defendant allowed that motion to be granted without filing any response in opposition. We observe that, as of that time, the defendant's answer on file failed to deny and thus effectively admitted an allegation, which was deemed and construed as included within count I of the plaintiff's standard-form mortgage foreclosure complaint, "that the mortgage constitutes a valid, prior and paramount lien upon the indicated interest in the mortgaged real estate." See *735 ILCS 5/15-1504(c)(7)* (West 2022); *Wells Fargo Bank N.A. v. Bednarz, 2016 IL App (1st) 152738, ¶ 8, 403 Ill. Dec. 442, 53 N.E.3d 1079* (defendant's failure to deny deemed-and-construed allegations in answer to a foreclosure complaint results in those allegations being considered admitted). We further observe that the defendant, who was represented by counsel throughout these proceedings, was clearly aware as of October 2024 that he could raise a defense that the mortgage was invalid as a lien against the subject property due to Arthur Holub's lack of ownership interest or title in it as of May 2007 when he executed the mortgage. The defendant's knowledge of this argument **[**14]** is shown by his filing of a motion for leave to file an amended answer proposing to raise this affirmative defense, which for reasons not clear from the record was never pursued to ruling or granted by the trial court. However, his attorney's e-mail of February 23, 2024, suggests an intentional decision as of that time not to contest the foreclosure.

[*P27] His argument that the mortgage was invalid was not raised in the trial court until he requested reconsideration of the order granting summary judgment as part of his motion to vacate the judgment of foreclosure and sale and to dismiss the case. At that same time, he also opposed the plaintiff's pending motion for an order approving the judicial sale on the grounds that (1) the mortgage was void *ab initio* due to Arthur Holub's lack of ownership interest in the subject property as of May 2007; (2) the underlying complaint established on its face that no cause of action existed; (3) no equitable lien had been found to exist as of the time the trial court entered its judgment of foreclosure and sale on May 9, 2024, or by the time the sale occurred on August 12, 2024, and this resulted in the judgment and the sale being void; and (4) the court **[**15]** erred in finding an equitable lien existed because there was no allegation of any connection between the defendant, who owned the subject property as trustee, and the debt upon which the plaintiff sought to foreclose. The defendant argued that approving the judicial sale under the above facts would be unconscionable, fraudulent, and result in justice otherwise not being done for purposes of *section 15-1508(b) of the Mortgage Foreclosure Law* (*735 ILCS 5/15-1508(b)* (West 2022)). The defendant also made these same arguments in his reply brief on the motion to vacate and dismiss, and he added the argument that the complaint had failed to name Arthur Holub's estate or

special representative as a necessary party.

[*P28] In its order of January 17, 2025, the trial court ruled that the defendant had waived any argument that the mortgage or note was invalid or that the plaintiff was otherwise not entitled to its underlying judgment of foreclosure, due to his failure to raise any timely opposition to the complaint, to the entry of summary judgment, or to the judgment of foreclosure and sale. It found that none of the defendant's arguments constituted proper grounds for a motion to reconsider. Instead, it stated, the defendant "having sat on his rights now seeks, in a **[**16]** motion to reconsider, to raise new theories and arguments to defeat a motion to approve sale, which theories and arguments are based upon evidence that was available to Defendant all the while this matter was being litigated." The trial court stated that allowing the outcome requested by the defendant would "turn the standard of review on motions to reconsider filed in Illinois on its collective head and this Court refuses Defendant's invitation to do so."

[*P29] We hold that the trial court did not abuse its discretion in finding that the defendant had waived any argument that the mortgage was void or invalid, along with his other challenges to the underlying judgment of foreclosure, due to his raising of these previously available arguments for the first time in a motion for reconsideration.

[*P30] This case presents a classic example of a litigant "standing mute," losing a dispositive motion, and then frantically gathering material in an attempt to show that the trial court erred in its ruling. See *Gardner v. Navistar International Transportation Corp., 213 Ill. App. 3d 242, 248, 571 N.E.2d 1107, 157 Ill. Dec. 88 (1991)*. This is a practice of which courts strongly disapprove in the interests of judicial efficiency and finality. See, *e.g., Vantage Hospitality Group, Inc. v. Q Ill Development, LLC, 2016 IL App (4th) 160271, ¶¶ 39-49, 410 Ill. Dec. 738, 71 N.E.3d 1*. As such, principles of waiver or forfeiture generally preclude consideration **[**17]** of legal arguments that were available to a party but not raised in response to an opponent's dispositive motion. See *Evanston Ins. Co. v. Riseborough, 2014 IL 114271, ¶ 36, 378 Ill. Dec. 778, 5 N.E.3d 158*; *Liceaga v. Baez, 2019 IL App (1st) 181170, ¶ 25, 430 Ill. Dec. 594, 126 N.E.3d 682*. The proper purpose of a motion to reconsider is to bring to the trial court's attention (1) newly discovered evidence, (2) changes in the law, or (3) errors in the court's previous application of existing law. *Liceaga, 2019 IL App (1st) 181170, ¶ 25*. It is not the place to raise a new legal theory or factual argument. *Id.* Accordingly, a trial court is well within its discretion to deny a motion to reconsider and ignore its contents when it is comprised of matter that was available prior to the challenged ruling but was not presented. *River Village I, LLC v. Central Insurance Companies, 396 Ill. App. 3d 480, 493, 919 N.E.2d 426, 335 Ill. Dec. 426 (2009)*.

[*P31] The trial court's finding of waiver and refusal to consider the arguments raised by the defendant here is fully consistent with these legal principles and was not an abuse of discretion. Because a party also forfeits appellate review of legal arguments raised for the first time in a motion to reconsider in the trial court (*Evanston Insurance Co., 2014 IL 114271, ¶ 36*), we have no basis to undertake *de novo* consideration of the issues raised by the defendant as grounds for reversing the entry of summary judgment or vacating the judgment of foreclosure and sale.

[*P32] This still leaves open the question of whether the trial **[**18]** court erred by granting the motion to approve the judicial sale of the subject property, which is a determination also reviewed for abuse of discretion. *Household Bank, FSB v. Lewis, 229 Ill. 2d 173, 178, 890 N.E.2d 934, 322 Ill. Dec. 15 (2008)*. As part of its order of January 17, 2025, the trial court found that the defendant was simply attempting to "couch his arguments" above within the statutory grounds for denying the approval of a judicial sale under *section 15-1508(b) of the Mortgage Foreclosure Law* (*735 ILCS 5/15-1508(b)* (West 2022)). The trial court found that the defendant's arguments amounted only to challenges to the underlying foreclosure judgment, which were not proper grounds for denying a motion to approve a judicial sale.

[*P33] The general rule in mortgage foreclosure cases is that once a motion to confirm a judicial sale has been filed, a defendant may no longer raise a challenge to the underlying judgment of foreclosure merely by asserting a meritorious defense to that judgment. *Wells Fargo Bank, N.A. v. McCluskey, 2013 IL 115469, ¶¶ 26-27, 999 N.E.2d 321, 376 Ill. Dec. 438*; accord *DLJ Mortg. Capital, Inc. v. Frederick, 2014 IL App (1st) 123176, ¶ 18, 382 Ill. Dec. 499, 12 N.E.3d 778*; *Beal Bank v. Barrie, 2015 IL App (1st) 133898, ¶ 25-26, 390 Ill. Dec. 29, 28 N.E.3d 198*. Once a judicial sale has occurred and a motion to confirm it is on file, "the court has discretion to see that justice has been done, but the balance of interests has shifted between the parties."

McCluskey, 2013 IL 115469, ¶ 25. Additional interests are at stake by this point, including the need for stability in the judicial sale process and to prevent borrowers from circumventing **[**19]** statutory time limitations for redemption and reinstatement. *Id.* Thus, as of this point in a mortgage foreclosure case, a defendant seeking to set aside an underlying foreclosure judgment must establish the existence of one of the four statutory bases for denying confirmation of the judicial sale under section 15-1508(b). Id. ¶¶ 26-27. That statute provides that, upon motion and notice, the trial court "shall" confirm the sale unless it finds that (i) proper notice of the sale was not given, (ii) the terms of the sale were unconscionable, (iii) the sale was conducted fraudulently, or (iv) "justice was otherwise not done." 735 ILCS 5/15-1508(b) (West 2022).

[*P34] On appeal, the defendant argues that, notwithstanding his failure to oppose summary judgment or foreclosure prior to the filing of a motion to approve judicial sale, this case presents an instance in which the trial court should have denied the motion to approve sale on the basis that "'justice was otherwise not done'" under section 15-1508(b)(iv). This is so, he argues, because the trial court "entered a judgment of foreclosure against a stranger to the underlying transaction where the essential elements of a foreclosure claim under the [Mortgage Foreclosure Law] were not set forth in the complaint (for **[**20]** example, the mortgage document was executed by someone who had no ownership interest in the Property)." Also, the court did not enter the order specifically finding that an equitable lien existed or authorizing foreclosure on it until after the subject property had been sold at judicial sale and the defendant's motion to vacate and dismiss was on file. And when it did so, it found an equitable lien to exist despite the required elements for such lien not being pled in the complaint (*i.e.*, there was no allegation that the defendant had any connection to the loan or mortgage or received any benefits therefrom). The defendant goes on to argue that confirming a judicial sale based on a "legally nonexistent lien" is a "prime example of injustice." Unlike ordinary defenses that may be forfeited through inaction, he asserts, the absence of an enforceable lien goes to the very foundation of the foreclosure action, since it is not merely a defense but a failure of the plaintiff to establish any right to relief. Where the record affirmatively demonstrates that the plaintiff never possessed a valid lien, he argues, confirmation of the sale operates to transfer property without legal basis, resulting **[**21]** in manifest injustice.

[*P35] Based upon our supreme court's interpretation of section 15-1508(b)(iv), we are constrained to reject the defendant's arguments and to hold that the trial court did not abuse its discretion by approving the judicial sale in this case. Our supreme court has interpreted section 15-1508(b)(iv) as limited specifically to meaning "that justice was not otherwise done because either the lender, through fraud or misrepresentation, prevented the borrower from raising his meritorious defenses to the complaint at an earlier time in the proceedings, or the borrower has equitable defenses that reveal he was otherwise prevented from protecting his property interests." McCluskey, 2013 IL 115469, ¶ 26. Thus, despite the provision's open-ended language, a court's discretion to deny approval of a judicial sale on the basis that "justice was otherwise not done" is "extraordinarily narrow." NAB Bank v. LaSalle Bank, N.A., 2013 IL App (1st) 121147, ¶ 16, 984 N.E.2d 154, 368 Ill. Dec. 429.

[*P36] In this case, the defendant's arguments are not within the scope of our supreme court's interpretation. There is no suggestion here that the defendant was "prevented" in any way—let alone through fraud or misrepresentation on the part of the plaintiff—from timely raising defenses in opposition to the motion for summary judgment that a valid mortgage or lien against **[**22]** the subject property was nonexistent in this case. Likewise, nothing suggests he was "prevented from protecting his property interests," as he had ample opportunity to raise these defenses at the appropriate point in the case. He clearly recognized the availability of these defenses at that time and simply did not raise them. As a result, and in light of the fact that his argument is an attack on the underlying foreclosure judgment first raised after a motion to approve the judicial sale has been filed, we reject the defendant's argument that justice was otherwise not done for purposes of section 15-1508(b)(iv).

[*P37] Finally, we will address the defendant's assertion that the failure of the complaint to state a cause of action is an issue that cannot be waived. The defendant cites to a series of cases, including Adcock v. Brakegate, Ltd., 164 Ill. 2d 54, 645 N.E.2d 888, 206 Ill. Dec. 636 (1994), and Wagner v. Kepler, 411 Ill. 368, 104 N.E.2d 231 (1951), that recognize the principle that, even where a case proceeds to verdict, "a defendant may raise at any time a claim that the complaint fails to state a cause of action." Adcock, 164 Ill. 2d at 61 (citing *Wagner, 411 Ill. at 371*). The application of this principle was explained in *Wagner* as follows: "While defects in a

complaint containing an incomplete or otherwise insufficient statement of a good cause of action may be waived, the question of **[**23]** whether a complaint absolutely fails to state or indicate any ground of liability which the law will recognize can be raised at any time." *Wagner, 411 Ill. at 371*. In other words, there is a distinction between a complaint that alleges no cause of action, which may be challenged at any time, and one which defectively or imperfectly alleges a recognized cause of action, challenges to which may be waived. See *Adcock, 164 Ill. 2d at 62*.

[*P38] The defendant contends based upon this principle that he can raise at any time a challenge that the plaintiff's complaint failed to state a cause of action for statutory mortgage foreclosure, equitable lien, or any other cognizable claim against him. He asserts that the complaint's allegations and attached exhibits demonstrate that Arthur Holub had conveyed his interest in the subject property to the defendant seven years prior to his execution of the mortgage in 2007. It contains no allegations suggesting that Arthur Holub had any interest in the property as of that time or that the defendant was a party to the loan or mortgage or received any benefit from it. He also asserts that Arthur Holub's estate or special representative needed to be named as a necessary party defendant in the case, and the **[**24]** plaintiff's failure to do so results in a jurisdictional defect that renders the judgment of foreclosure and sale void as a matter of law.

[*P39] We find the principle above to be of no aid to the defendant in overcoming the trial court's finding of waiver in its order of January 17, 2025. A cause of action to foreclose a mortgage under the Mortgage Foreclosure Law is clearly one that the law recognizes as valid, as is an action to impose an equitable lien. See *Bank of Am., N.A. v. Schroeder, 2021 IL App (3d) 200339, ¶¶ 23, 32, 454 Ill. Dec. 512, 189 N.E.3d 1073*. Thus, when the defendant's argument is properly characterized within the meaning of this rule, he is not arguing that the complaint fails to set forth a "ground of liability which the law will recognize." Instead, the shortcomings he identifies amount only to "defects in a complaint containing an incomplete or otherwise insufficient statement of a good cause of action," which is a challenge that may be waived if not raised in a timely manner in the trial court. See *Wagner, 411 Ill. at 371*. Thus, we agree with the trial court that the defendant can—and did—waive any challenge to the complaint's incomplete or insufficient statement of a cause of action for mortgage foreclosure or equitable lien due to the fact that he first raised it in the context of a **[**25]** motion to reconsider, which sought to challenge an underlying foreclosure judgment after a motion to approve judicial sale was on file. See *Evanston Insurance Co., 2014 IL 114271, ¶ 36*; *McCluskey, 2013 IL 115469, ¶¶ 26-27*.

[*P40] CONCLUSION

[*P41] For the foregoing reasons, the judgment of the trial court is affirmed.

[*P42] Affirmed.

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