

FIFTH DIVISION
May 11, 2012

No. 1-11-0645

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

U.S. BANK, NATIONAL ASSOCIATION, AS)	Appeal from the
SUCCESSOR TRUSTEE TO BANK OF AMERICA,)	Circuit Court of
N.A., A SUCCESSOR BY MERGER TO LASALLE)	Cook County.
BANK NATIONAL ASSOCIATION, AS TRUSTEE)	
FOR MERRILL LYNCH FIRST FRANKLIN)	
MORTGAGE LOAN TRUST, MORTGAGE LOAN)	
ASSET-BACKED CERTIFICATES, SERIES 2007-5,)	
)	
Plaintiffs-Appelles,)	
)	
v.)	No. 09 CH 7000
)	
ROMEL TAYLOR,)	Honorable
)	Mathias W. Delort,
Defendant-Appellant.)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Epstein and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the circuit court's judgment where plaintiff had standing to bring this mortgage foreclosure action, and the circuit court did not abuse its discretion in confirming the judicial sale of the subject property.

¶ 2 Defendant Romel Taylor a/k/a Ife Osagie Romel Ahmed Bey, *pro se*, appeals from the

circuit court's order approving the report of sale and distribution of the property commonly known as 21551 Peterson Avenue, Sauk Village, Illinois, for plaintiff U.S. Bank. On appeal, defendant contends that U.S. Bank did not have standing to bring this foreclosure action, and that the trial court abused its discretion by failing to conduct a hearing on the confirmation of the sale. We affirm.

¶ 3 The record shows that on May 25, 2007, defendant secured a mortgage with Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for First Franklin Financial, for the subject property on a \$165,750 note. Defendant also signed an "Adjustable Rate Note" for the same sum. The mortgage was recorded on June 25, 2007, and pledged the property as security for the loan. On February 18, 2009, LaSalle Bank, as trustee for Merrill Lynch First Franklin Mortgage Loan Trust, filed a complaint to foreclose the mortgage against defendant. According to the complaint, defendant was in default for the monthly payments for November 2008 through the time the complaint was filed, and the balance due on the note and mortgage was the total of the principal balance of \$164,232.40, plus interest, costs and fees, and advances if any, made by LaSalle Bank. As relief, LaSalle Bank requested a judgment of foreclosure and sale, attorney fees, costs and expenses, an order approving the foreclosure sale and an order granting possession, a personal judgment for deficiency, an order granting a shortened redemption period, appointment of mortgagee in possession or receiver, and further relief as the court deemed just. On September 4, 2009, LaSalle Bank filed a motion to substitute U.S. Bank as plaintiff because LaSalle Bank merged with U.S. Bank. The trial court granted LaSalle Bank's motion on September 11, 2009, and U.S. Bank was substituted as plaintiff.

¶ 4 Although defendant was served with a copy of the complaint and summons on February 23, 2009, he failed to file an appearance or answer the complaint. On September 11, 2009, on U.S. Bank's motions, the trial court entered an order of default against defendant and entered a

judgement for foreclosure and sale of the subject property.

¶ 5 Beginning on October 22, 2009, defendant started to file various documents with the court. On November 25, 2009, the trial court entered a written order striking these documents and enjoining the filing of such documents without leave of court. Despite this order, defendant continued filing similar documents, which the trial court struck throughout the duration of the proceedings in this case. On December 15, 2009, the property in question was sold and U.S. Bank submitted the winning credit bid.

¶ 6 On April 23, 2010, defendant filed additional documents, which the trial court construed as a section 2-1301(e) motion to vacate the default judgment of foreclosure and sale entered on September 11, 2009. 735 ILCS 5/2-1301(e) (West 2010). The trial court also stated that a federal claim under the Fair Credit Reporting Act (15 U.S.C. § 1681 *et seq.*), "might be hiding somewhere in the documents filed on April 23." On April 27, 2010, the trial court denied defendant's motion to vacate, holding that defendant's reasons for vacating the order of foreclosure are not compelling and are based on doctrines not recognized by Illinois or federal law. The court also struck defendant's federal claim under the Fair Credit Reporting Act because defendant failed to seek permission to bring it.

¶ 7 On November 18, 2010, U.S. Bank filed a motion requesting an order approving the selling officer's report of sale and distribution and for possession against defendant. Defendant filed various documents claiming to be a third-party intervener and objecting to the entry of an order confirming the sale. On January 25, 2011, the trial court denied defendant leave to intervene and struck the motions he had filed. On January 28, 2011, the trial court entered an order confirming the sale to U.S. Bank.

¶ 8 Defendant filed a notice of appeal on February 28, 2011, seeking to vacate all orders in this case. He also indicated in his notice of appeal that he was appealing the default judgment

entered on September 11, 2009, and the order approving sale, distribution, and possession on January 28, 2011. In his reply brief, however, defendant maintained that he was not appealing the default judgment order, but was only appealing from the January 28 order approving the judicial sale of the subject property.

¶ 9 Defendant first contends on appeal that U.S. Bank lacked standing to bring the foreclosure action because it never provided defendant or the court with any assignment showing that it was a proper party.

¶ 10 As an initial matter, defendant, relying on *Glisson v. City of Marion*, 188 Ill. 2d 211, 220-21 (1999), maintains that because this cause involves a claim of lack of standing, the standard of review is *de novo*. However, we agree with U.S. Bank that the *Glisson* opinion does not support defendant's contention. The court in *Glisson* stated that lack of standing is an affirmative matter that is properly raised under section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9)), and an order granting this type of motion to dismiss is given *de novo* review. *Glisson*, 188 Ill. 2d at 220. Here, however, the trial court never entered an order dismissing the instant case for lack of standing, and, therefore the *de novo* standard of review does not apply. Instead, the trial court entered an order approving the sale of the subject property.

¶ 11 Section 15-1508(b) of the Foreclosure Law (735 ILCS 5/15-1508 (West 2010)), provides that, after the foreclosure and judicial sale, the trial court shall confirm the sale unless the court finds that a required notice was not given, the terms of the sale were unconscionable, the sale was conducted fraudulently, or that justice was otherwise not done. *Mortgage Electronic Registration Systems v. Barnes*, 406 Ill. App. 3d 1, 4 (2010). The Foreclosure Law confers broad discretion on trial courts in approving or disapproving judicial sales, and that exercise of discretion is not disturbed absent an abuse of discretion. *Barnes*, 406 Ill. App. 3d at 4. Here, defendant does not

contend that the trial court should have disapproved the sale based on the above exceptions. Instead, defendant essentially argues that the trial court lacked jurisdiction because U.S. Bank failed to plead proof of standing. We disagree.

¶ 12 The doctrine of standing is designed to preclude people who have no interest in a controversy from bringing suit and assures that the issues are raised only by those parties with a real interest in the outcome of the controversy. *Glisson*, 188 Ill. 2d at 221. Lack of standing in a civil case is an affirmative defense that is waived if not raised in a timely fashion in the trial court. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252-53 (2010). In this case, defendant failed to timely raise the standing issue before the trial court where he was properly served with the complaint but failed to answer it, was defaulted, and raised the standing issue for the first time on appeal. Defendant forfeited the standing issue through his default. See *Barnes*, 406 Ill. App. 3d at 6-7. Furthermore, defendant's default resulted in his admission that U.S. Bank had standing because, when he defaulted, defendant admitted the material facts stated in the complaint. See *Universal Casualty Co. v. Lopez*, 376 Ill. App. 3d 459, 465-66 (2007) (a default is regarded as an admission of the material facts stated in the complaint).

¶ 13 Defendant's default notwithstanding, the record establishes that U.S. Bank had standing to bring this foreclosure action. On September 11, 2009, the trial court granted LaSalle Bank's motion to substitute U.S. Bank as a party plaintiff, resolving the standing issue. Defendant's contention that U.S. Bank was without standing to foreclose on the mortgage was thus rendered moot when U.S. Bank was substituted as a proper party plaintiff and had standing as the holder of the mortgage as of September 11, 2009. See *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 522-23 (2001) (stating that an appeal is moot when it involves no actual controversy or the reviewing court cannot grant the complaining party relief). Furthermore, U.S. Bank pleaded that it was the trustee for the holder of the mortgage given as security, and the Foreclosure Law

expressly contemplates that a trustee may bring suit on behalf of a trust. See 735 ILCS 5/15-1504(a) (West 2008) (setting forth a suggested form of complaint by which a plaintiff may plead its capacity as "the trustee under a trust deed or otherwise"); *Barnes*, 406 Ill. App. 3d at 7.

¶ 14 Defendant also contends that the trial court abused its discretion by failing to comply with section 15-1508 of the Foreclosure Law (735 ILCS 5/15-1508 (West 2010)). He specifically maintains that the trial failed to conduct a hearing on the confirmation and sale as required by statute.

¶ 15 Section 15-1508(b) of the Foreclosure Law contains an express provision for hearings. It states:

"Upon motion and notice in accordance with court rules applicable to motions generally, which motion shall not be made prior to sale, the court shall conduct a hearing to confirm the sale." 735 ILCS 5/15-1508(b) (West 2010).

This language was intended to create a new, but limited, level of inquiry into foreclosure sales, and was not intended to require an extended evidentiary hearing after each sheriff's sale.

Resolution Trust Corp. v. Holtzman, 248 Ill. App. 3d 105, 114-15 (1993). The extent of the hearing afforded a mortgagor is left to the sound discretion of the trial court. *Deutsche Bank National v. Burtley*, 371 Ill. App. 3d 1, 6 (2006).

¶ 16 Here, the trial court's order confirming the sale of the subject property on January 28, 2011, specifically stated that it examined the report of sale, and found that "no objections [were] filed." Therefore, there was no dispute for the trial court to settle, and it approved and confirmed the report of sale accordingly. We further note that defendant fails to allege in his briefs the reasons why an evidentiary hearing was necessary in this case. He simply asserts that, "[t]he trial court abused its discretion by failing to comply with obligations under the statute which requires

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a hearing on the confirmation of the sale under 15-1508(b)." We thus find that the trial court did not abuse its discretion in confirming the order of sale.

¶ 17 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 18 Affirmed.