2012 IL App (1st) 111014-U

FOURTH DIVISION
November 1, 2012

No. 1-11-1014

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

WFN, LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	
	)	
SOPHIA MEIMAROGLOU,	)	
	)	No. 07 CH 2358
Defendant-Appellant,	)	
	)	
(NGN, LLC, Ronald Gibson, the City of Chicago,	)	
Unknown Owners and Non-Record Claimants,	)	Honorable
	)	Lisa R. Curcio
Defendants).	)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Epstein and Pucinski concurred in the judgment of the court.

ORDER

¶ 1 *Held*: The trial court properly denied defendant's section 2-1401 petition where she failed to show the underlying judgment was void or that she discovered new evidence through the exercise of due diligence.

¶ 2 This appeal arises from the trial court's order denying the petition of defendant Sophia Meimaroglou to vacate all orders entered in the underlying foreclosure action pursuant to

section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)). On appeal, Meimaroglou asserts the trial court erred in denying her petition because the trial court lacked jurisdiction over the underlying foreclosure action and plaintiff WFN, LLC (WFN) lacked standing where WFN failed to show that it had been assigned the promissory note executed with the mortgage. We affirm.

¶ 3 We recite only those facts necessary to understand the issues raised on appeal. On January 24, 2007, WFN filed the underlying complaint to foreclose a mortgage against Meimaroglou, alleging that on August 25, 2000, she had executed a mortgage and assignment of rents in favor of Broadway Bank (Broadway) regarding the property located at 1456-62 West Fargo in Chicago. In addition, Meimaroglou executed a promissory note on the same date. WFN alleged in the complaint that it brought this action as the successor in interest to the original holder of the indebtedness and the mortgage, apparently referring to Broadway.

¶ 4 Central to the parties' dispute in the trial court was the "Assignment of Mortgage and Assignment of Rents" in favor of WFN, which Broadway signed on December 29, 2006. That document states, in pertinent part that Broadway "does hereby GRANT BARGAIN, SELL ASSIGN, TRANSFER AND CONVEY TO WFN, LLC *** any and all right, title or interest in and to the following described Real Estate situated in Cook County, Illinois by virtue of that certain Mortgage and Assignment of Rents dated August 25, 2000, *** to secure a Note in the principal sum of $1,950,000." Our record also includes an "Agreement to Assign Note and Loan Documents," which Broadway and WFN entered

into on December 29, 2006. That agreement states that Broadway "agrees to sell the Note under the terms of this Agreement" to WFN upon Broadway's receipt of $2.4 million.

¶ 5 On May 29, 2008, the trial court entered summary judgment against Meimaroglou and in favor of WFN "as to liability, only, under the Promissory Note." On June 17, 2008, the trial court entered a judgment of foreclosure and sale, finding that the mortgage balance due was $3,264,091.68. On March 16, 2010, more than three years after this action was commenced, Meimaroglou filed a "Motion to Vacate Void Judgment of Foreclosure," arguing that the Assignment of Mortgage and Assignment of Rents did not assign the promissory note to WFN. An evidentiary hearing was held on April 12, 2010, at which George Giannoulias, Broadway's chairman as well as the controlling member of Giannoulias Enterprises, which owned WFN, testified regarding the note assignment. Specifically, he testified that Broadway received $2.4 million in exchange for the promissory note. The trial court denied Meimaroglou's motion to vacate and continued to reject her subsequent arguments that WFN lacked standing absent a valid assignment of the note or that the trial court lacked jurisdiction. On September 20, 2010, the trial court entered a written order approving the sale of the property.

¶ 6 Meimaroglou did not file a direct appeal from the approval of sale. See *JP Morgan Chase Bank v. Fankhauser,* 383 Ill. App. 3d 254, 260 (2008) (Generally the judgment in a foreclosure case becomes final and appealable when the trial court enters an order confirming the sale.) Instead, on October 29, 2010, she sought collateral relief by filing a petition to vacate the judgment pursuant to section 2-1401. She reiterated her argument

that there had been no valid assignment of the note to WFN and thus, WFN had no standing in this action.

¶ 7 Meimaroglou added that in June 2010, she, along with the Federal Deposit Insurance Corporation (FDIC), which had become the receiver for Broadway in April 2010, began an investigation to determine whether any documentation of the assignment or endorsement of the note existed and if any consideration had been received by Broadway in exchange for the note. Meimaroglou also alleged that on July 24, 2010, she filed a Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2010)) request. Pursuant to this request, on October 19, 2010, she ultimately obtained an affidavit from Candice DeYoung, an employee of MB Financial Bank, N.A. (MB), which apparently had taken control of Broadway. DeYoung's affidavit stated that she had reviewed Broadway's records but did not find an " 'Agreement To Assign Note and Loan' or any note endorsement, allonge, or other document evidencing assignment of the note on the Fargo Loan to WFN from Broadway." DeYoung also stated that she reviewed Broadway's wire transfer receipts from December 2006 through April 2010 and found that Broadway had not received $2.4 million or any other amount from WFN during that time. Also attached was a letter from FDIC counsel stating that no records were located concerning (1) deposits and wire transfers received by Broadway in December 2006, and January 2007; (2) the amount and time of deposits or wire transfers received by Broadway from WFN; (3) note endorsements and assignments or agreements to assign notes from Broadway to WFN at any time; or (4) Meimaroglou's loan files. Furthermore, Meimaroglou's petition

had argued that she exercised due diligence in pursuing this evidence because she attempted to obtain proof of consideration received by Broadway after the evidentiary hearing on April 12, 2010.

¶ 8 WFN responded that Meimaroglou had not exercised due diligence in discovering this evidence because she could have began investigating the existence of documentation and consideration concerning the note assignment when the complaint was filed in 2007. WFN essentially argued that to investigate those matters, she could have propounded discovery requests, taken depositions and subpoenaed documents but had not done so. In response to WFN's contention that she had not exercised due diligence, Meimaroglou relied on correspondence between attorneys as well as discovery propounded in her bankruptcy proceedings. Following a hearing on March 3, 2011, the trial court denied Meimaroglou's petition, finding she had not met her burden of showing diligence in attempting to obtain evidence concerning the assignment of the note.

¶ 9 On appeal, Meimaroglou asserts the trial court erred in denying her petition because the trial court lacked jurisdiction over the underlying foreclosure action and WFN lacked standing where WFN failed to show that it had been assigned the promissory note executed with the mortgage. As a threshold matter, we note certain defects in Meimaroglou's brief. Specifically, her fact section is argumentative and includes inaccurate facts as well as excessive facts concerning other proceedings not before us. Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008). In addition, her brief fails to pinpoint citations to the legal authorities relied on. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). A party's failure

to comply with our supreme court's mandatory rules of procedure makes review of her claim more onerous and may result in waiver. *Menard v. Illinois Workers' Comm'n*, 405 Ill. App. 3d 235, 238 (2010). Notwithstanding the deficiencies in Meimaroglou's briefs, we choose to review her contentions on appeal.

¶ 10 The parties agree that we review the denial of defendant's petition on the pleadings without an evidentiary hearing *de novo*. *R.M. Lucas Co. v. Peoples Gas Light and Coke Company*, 2011 IL App (1st) 102955, ¶12-13. Section 2-1401 provides collateral relief from a judgment under certain circumstances. 735 ILCS 5/2-1401(b) (West 2010). The purpose of a section 2-1401 petition to vacate the judgment is to inform the trial court of facts that would have precluded the judgment entered had such facts been known, rather than to provide the litigant with the opportunity to do that which should have been done in a prior proceeding. *In re Marriage of Goldsmith*, 2011 IL App (1st) 093448, ¶14. To obtain relief under section 2-1401, the petitioner must demonstrate a claim or defense that would have precluded the entry of the original judgment and the petitioner's diligence in both discovering this claim or defense and in presenting her petition. *R.M. Lucas Co.*, 2011 IL App (1st) 102955, ¶14. To vacate a judgment based on newly discovered evidence, the petitioner must demonstrate that she did not know of the new evidence at the time of the original proceeding and could not have discovered the evidence with the exercise of reasonable diligence. *In re Marriage of Goldsmith*, 2011 IL App (1st) 093448, ¶15. Section 2-1401(f), however, permits a party to challenge a judgment as void without alleging a meritorious defense or due diligence. *Parker v. Murdock*, 2011

IL App (1st) 101645, ¶18. The petitioner bears the burden of demonstrating her right to relief. *In re Marriage of Goldsmith*, 2011 IL App (1st) 093448, ¶15.

¶ 11 Here, even assuming that Broadway did not effectively assign the promissory note at issue to WFN, Meimaroglou cannot satisfy the requirements for relief under section 2-1401. She primarily argues that in light of this deficiency, the judgment is void because the trial court lacked subject matter jurisdiction. In her appellant's brief, she argues that WFN had no interest in the Meimaroglou note and therefore, there were no adverse legal interests and no subject matter jurisdiction. Meimaroglou appears to confuse standing with subject matter jurisdiction. As our supreme court has stated, "[t]he function of the doctrine of standing is to insure that issues are raised only by those parties with a real interest in the outcome of the controversy." *Wexler v. Wirtz Corp.*, 211 Ill. 2d 13, 23 (2004). In addition, Meimaroglou recognizes in her reply brief that our supreme court has held that issues of standing do not implicate subject matter jurisdiction. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252 (2010). Furthermore, in *Lebron*, the court held that a lack of standing can be forfeited (*Id.* at 252-53), in contrast to a void judgment, which may be attacked at anytime (*In re County Treasurer*, 2012 IL App (1st) 101976, ¶31). Thus, pursuant to the supreme court's recent opinion in *Lebron*, it follows that even assuming WFN lacked standing to file the complaint in this case because the note was not properly transferred to WFN, this is not a defect that would render the judgment void.

¶ 12 We also note that although Meimaroglou argues in her reply brief that she "diligently

attempted to procure proof," her appellant's brief did not develop an argument that she exercised due diligence. Accordingly, this contention is forfeited. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *Cordeck Sales, Inc. v. Construction Systems, Inc.*, 382 Ill. App. 3d 334, 347 (2008). In any event, we observe that Meimaroglou points to nothing in the record showing any circumstance that prevented her from the inception of this case from formally pursuing methods of discovery and procedures to enforce discovery requests concerning evidence surrounding the alleged assignment. To the extent Meimaroglou notes that her attorneys repeatedly sought information concerning the note assignment through attorney correspondence, such informal requests are no substitute for authorized discovery methods. We agree with the trial court's finding that if further evidence concerning the transfer of the note existed, it could have been obtained much earlier without extraordinary efforts.

¶ 13 As stated, Meimaroglou failed to demonstrate that the underlying mortgage judgment was void or that she exercised due diligence in discovering evidence allegedly showing the absence of a valid assignment of the note. These defects are fatal to her petition for relief. As a result, the trial court properly denied her petition and we need not consider the parties' remaining arguments.

¶ 14 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 15 Affirmed.