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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HSBC BANK USA, a National Association, as Trustee for FBR Securitization Trust 2005-3,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CH 13978
)	
MARY WILLIAMS,)	Honorable
)	David B. Atkins,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Karnezis concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's orders approving the report of sale of defendant's residential property and granting possession of that property to plaintiff are affirmed where there is no indication plaintiff failed to comply with the law, plaintiff had standing to bring the foreclosure suit, and defendant did not provide a sufficient record to show the circuit court erred when it denied her motion to amend her answer to the complaint.

¶ 2 In this mortgage foreclosure action, *pro se* defendant, Mary Williams, appeals from orders of the circuit court approving the report of sale and distribution of her residential property and granting possession of that property to plaintiff, HSBC Bank USA, N.A., as trustee for FBR Securitization Trust 2005-3. On appeal, defendant contends the circuit court erred when it entered summary judgment in favor of plaintiff because plaintiff failed to provide her with a notice of default as required by statute. Defendant also contends: the promissory note presented by plaintiff was not properly authenticated; plaintiff did not have standing to bring the foreclosure action against her and;

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the court erred when it denied her motion to amend her answer to the complaint. We affirm.

¶ 3 Documents in the record show that in August 2005, defendant obtained a mortgage in the amount of \$124,000 for a single-family home located in Park Forest, Illinois. The mortgagee was Mortgage Electronic Registration Systems, Inc. (MERS), acting as nominee for the lender, Fremont Investment and Loan (Fremont). On March 30, 2009, plaintiff filed a complaint to foreclose, claiming defendant defaulted on the mortgage in October 2007. MERS and Fremont were named as codefendants to terminate any interest they may have had in the mortgage. The complaint stated plaintiff was bringing the foreclosure action as the mortgagee, pursuant to an assignment.

¶ 4 Attached to plaintiff's complaint were copies of the mortgage, the promissory note and the assignment of the mortgage. The mortgage expressly stated that MERS had the right to foreclose and sell the property. It further stated that the note, together with the mortgage, could be sold one or more times without prior notice to the borrower. The assignment of mortgage indicates that on January 18, 2008, MERS assigned and transferred defendant's mortgage to plaintiff. The assignment specifically stated that the mortgage was being transferred "together with note or notes therein described or referred to."

¶ 5 On May 4, 2009, defendant filed her *pro se* appearance and verified answer to the foreclosure complaint. In her answer, defendant stated she had insufficient information, neither to admit nor deny, the information contained in every paragraph of the complaint.

¶ 6 In September 2009, plaintiff filed a motion for summary judgment arguing defendant's answer failed to set forth any facts or supporting documentation that indicated a genuine issue of material fact existed. Thereafter, defendant filed a *pro se* motion to amend her answer to the complaint. Defendant stated she had obtained "new information" which she had not been aware of when she filed her original answer. She did not provide any specific details or further elaboration regarding the "new information." The circuit court denied defendant's motion to amend her answer and set a briefing schedule for plaintiff's motion for summary judgment. The court's order, as to the

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motion to amend, merely stated: "Defendant's motion [to amend] is denied."

¶ 7 Defendant then filed a *pro se* "Petition to Quash Summary Judgment." Defendant argued plaintiff failed to meet the conditions precedent for commencing a foreclosure action because it failed to serve her with proper notice of default. She further argued plaintiff did not have proper assignment of the note from the original lender, and that it was not entitled to seek foreclosure because it did not own the mortgage and note. Defendant attached an affidavit to her "petition" averring that she did not receive a notice of default in accordance with section 15-1504 of the Illinois Mortgage Foreclosure Law. 735 ILCS 5/15-1504 (West 2008).

¶ 8 Plaintiff subsequently filed a memorandum in support of its motion for summary judgment. Plaintiff argued that because defendant did not explicitly deny the allegations in the complaint, they were deemed admitted which, therefore, established defendant defaulted on her mortgage payments, and plaintiff was entitled to judgment as a matter of law. Plaintiff further argued that the note attached to the complaint was endorsed in blank by Fremont, the original mortgagee and, as holder of that note, plaintiff was presumed to be the rightful owner. It also argued defendant did not expressly deny in her answer that plaintiff was the holder of the note and, thus, waived any objection to plaintiff's status at summary judgment. In addition, plaintiff noted that defendant did not submit a counter-affidavit opposing the motion for summary judgment pursuant to Illinois Supreme Court Rule 191. Ill. S. Ct. R. 191 (eff. July 1, 2002). Consequently, plaintiff argued that the facts in its motion for summary judgment must be taken as true.

¶ 9 Defendant then filed an "Affirmative Defense to Plaintiff's Complaint," maintaining her argument that plaintiff did not have proper assignment of the mortgage from the original lender. Defendant continued to argue that plaintiff was not entitled to bring the foreclosure action because it did not own the note.

¶ 10 On February 11, 2010, the circuit court entered an order for summary judgment in favor of plaintiff. The order stated that the court reviewed defendant's answer, which was without sufficient

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supporting documentation, and determined it did not raise an issue of material fact sufficient to preclude the entry of summary judgment in favor of plaintiff. A separate order entered simultaneously with the order for summary judgment stated plaintiff tendered the original note, endorsed in blank, to the court for inspection. The court also entered a default judgment for foreclosure against MERS and Fremont because they failed to appear or plead in the case. In addition, the court entered a judgment for foreclosure and sale, which stated that all of the allegations in plaintiff's complaint were found to be true and proven.

¶ 11 On May 3, 2011, plaintiff filed a motion for an order approving the sale of the property and for possession. Plaintiff attached a report, certificate, and receipt of sale, indicating that it had purchased the property at a public auction on April 18, 2011. On May 16, 2011, the circuit court entered an order approving the report of sale and distribution, and for possession.

¶ 12 Defendant subsequently filed a *pro se* motion to reconsider the circuit court's order for summary judgment, its order approving the report of sale and distribution, and its order for possession. Therein, defendant again argued that she never received a notice of default and, thus, the court did not have jurisdiction over the foreclosure action. Defendant also cited to case law stating documents must be authenticated before they are admitted into evidence, and to a section of the Illinois Code of Civil Procedure (735 ILCS 5/8-1501 (West 2010)), stating courts can prove handwriting by comparison with writings in the court file admitted to be genuine. Defendant did not present an argument related to the case law and statute she cited in her written motion.

¶ 13 On August 18, 2011, the circuit court denied defendant's motion to reconsider the order of summary judgment as untimely. The order further stated that defendant's motion to reconsider the order approving the report of sale was denied, without further explanation. The order also noted that defendant did not appear at the "confirmation hearing."

¶ 14 On appeal, *pro se* defendant first contends the circuit court erred when it entered summary judgment in favor of plaintiff because plaintiff failed to provide her with a notice of default as

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required by statute. Defendant claims section 15-1504(c)(9) of the Illinois Mortgage Foreclosure Law required plaintiff to provide her with a notice of default. She also claims section 15-1504 precludes filing of a foreclosure suit and deprives the circuit court of subject-matter jurisdiction unless all the "conditions" stated in that statute have been met.

¶ 15 Our review of the statutory language reveals that defendant has misinterpreted this statute. Section 15-1504(a) provides the form for a foreclosure complaint, enumerating the information that must be contained in that complaint. 735 ILCS 5/15-1504(a) (West 2008). Subsection (c) explains that when a complaint complies with the form provided in subsection (a), the statements in that complaint are deemed and construed to include several enumerated allegations. 735 ILCS 5/15-1504(c) (West 2008). Subsection (c)(9) is one of those allegations, and states "that any and all notices of default *** or other notices required to be given have been duly and properly given." 735 ILCS 5/15-1504(c)(9) (West 2008). Thus, contrary to defendant's assertion, subsection (c)(9) does not itself require plaintiff to issue a notice of default. Instead, the subsection declares that the statements in the complaint are construed to include the allegation that the notice of default was properly given.

¶ 16 Defendant further claims plaintiff was required to mail her a notice of default under section 15-1502.5 of the Mortgage Foreclosure Law. 735 ILCS 5/15-1502.5 (West 2009). Defendant quotes language she claims appears in section 15-1502.5, and argues the circuit court lacks subject-matter jurisdiction where plaintiff has not complied with the notice requirement in this statute.

¶ 17 Section 15-1502.5 addresses homeowner protection (735 ILCS 5/15-1502.5) (West 2009)), and subsection (c) requires a mortgagee to send a grace-period notice to its mortgagor prior to filing a complaint to foreclose on a mortgage for residential real estate. 735 ILCS 5/15-1502.5(c) (West 2009). This statute became effective on April 6, 2009, after plaintiff filed its complaint to foreclose on March 30, 2009. Section 15-1502.5 does not expressly address its temporal reach. Consequently, "the court must determine whether the new statute would have retroactive effect, keeping in mind

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the general principle that prospectivity is the appropriate default rule.'" *Lazenby v. Mark's Const., Inc.*, 236 Ill. 2d 83, 94 (2010) (quoting *John Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 405 (2009)).

¶ 18 Initially, defendant misquotes the statute as stating: "The statu[t]e deprives the court of subject matter jurisdiction until there is compliance with the statu[t]e." No such language appears anywhere in the statute. Moreover, defendant has made no argument, whatsoever, to support her assertion that the statute in question, which became effective after the complaint in this case was filed, applies here. Plaintiff argues section 15-1502.5 should be applied prospectively because retroactive application would have severe consequences, requiring mortgagees in all pending foreclosures commenced before April 6, 2009, to recommence their foreclosure proceedings from the very beginning.

¶ 19 It is the burden of the appellant to provide this court with reasoned argument and authority to support her claim of error. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *23-25 Bldg. Partnership v. Testa Produce, Inc.*, 381 Ill. App. 3d 751, 755 (2008). It is not the duty of this court to search the record and research the law for reasons to reverse the circuit court's judgment. *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459 (2009). Based on defendant's failure to provide this court with a cohesive argument supported by legal authority, we find she has waived the applicability of section 15-1502.5 on appeal. *Id.*

¶ 20 Defendant next contends that the promissory note presented by plaintiff was not properly authenticated. Defendant argues that at the hearing on the motion for summary judgment, she repeatedly claimed the signature on the note produced by plaintiff was not hers. She claims this conflict constituted a dispute over a material issue of fact and, therefore, the circuit court should not have granted summary judgment to plaintiff. Defendant asserts the circuit court should have allowed a handwriting analysis to determine if the signature was hers.

¶ 21 We find our review of this issue is impeded by an incomplete record. The appellant has the

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burden of presenting a sufficiently complete record of the circuit court proceedings to support any claim of error and, in the absence of such a record, this court will presume the circuit court's order conformed with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Furthermore, any doubts arising from an incomplete record will be resolved against the appellant. *Id.*

¶ 22 Pursuant to Supreme Court Rule 323 (Ill. S. Ct. R. 323 (eff. Dec. 13, 2005)), in lieu of a trial transcript, an appellant may file a bystander's report (Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005)) or, an agreed statement of facts. Ill. S. Ct. R. 323(d) (eff. Dec. 13, 2005). In this case, however, the record does not contain a report of proceedings in any format for any of the hearings before the circuit court.

¶ 23 Here, the record before this court consists of one volume of common-law documents. None of those documents mention a challenge to defendant's signature on the promissory note. There is no indication in the record of what occurred at the hearing on plaintiff's motion for summary judgment. Consequently, this court has no knowledge of what arguments were made, what findings the court made, or the reasoning and rationale that provided the basis for the court's granting of summary judgment in favor of plaintiff. The circuit court's written order merely stated that it reviewed defendant's answer, which it found was without sufficient supporting documentation, and determined the answer did not raise an issue of material fact sufficient to preclude the entry of summary judgment in favor of plaintiff. A separate order stated that plaintiff tendered the original note endorsed in blank to the court for inspection. Apparently, after its inspection, the circuit court determined the note was authentic. Under these circumstances, this court must presume the circuit court acted in conformity with the law and ruled properly after considering the evidence before it. *Webster v. Hartman*, 195 Ill. 2d 426, 433-34 (2001); *Foutch*, 99 Ill. 2d at 391-92.

¶ 24 Defendant next contends plaintiff did not have standing to bring the foreclosure action against her because it did not have proper assignment of the mortgage from the original lender, Fremont. Defendant argues that the assignment document attached to plaintiff's complaint is an

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assignment of the mortgage from MERS to plaintiff, but not an assignment of the promissory note. She claims there is no assignment of the note in any of plaintiff's documents. Defendant argues that plaintiff is foreclosing on a note it does not own.

¶ 25 Pursuant to the Mortgage Foreclosure Law, the legal holder of a promissory note securing a mortgage has the capacity to bring a foreclosure action. See 735 ILCS 5/15-1504(a)(3)(N) (West 2008). Under the Uniform Commercial Code, a promissory note indorsed in blank is payable to the bearer, and may be negotiated by transfer of possession alone until the note is specially indorsed. 810 ILCS 5/3-205(b) (West 2008).

¶ 26 In this case, the circuit court entered an order simultaneously with the order granting plaintiff summary judgment, stating plaintiff had tendered the original note indorsed in blank for the court's inspection. As holder of the original note indorsed in blank, plaintiff had standing to bring this foreclosure action.

¶ 27 Furthermore, the assignment of a mortgage note also transfers the mortgage that secures that note. *Federal Nat. Mortg. Ass'n v. Kuipers*, 314 Ill. App. 3d 631, 635 (2000). "The assignee stands in the shoes of the assignor-mortgagee with regard to the rights and interests under the note and mortgage." *Id.*

¶ 28 Here, the record shows that MERS was the mortgagee, acting as nominee for the original lender, Fremont. The mortgage expressly stated MERS had the right to foreclose on defendant's property, and that the note, together with the mortgage, could be sold. In addition, the assignment specifically stated the mortgage was being transferred from MERS to plaintiff "together with note or notes therein described or referred to." Therefore, as the assignee, when defendant's promissory note and mortgage were transferred to plaintiff, plaintiff assumed the rights and interests that MERS had under those instruments. Those rights included standing to bring the foreclosure action against defendant.

¶ 29 Finally, defendant contends the circuit court erred when it denied her motion to amend her

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answer to the foreclosure complaint because, under the Illinois Code of Civil Procedure, amendments to an answer may be made at any time before final judgment. Defendant argues that by denying her motion to amend her answer, the court prevented her from being able to properly defend herself in this action.

¶ 30 The circuit court may allow a party to amend its pleadings at any time before final judgment "on just and reasonable terms." 735 ILCS 5/2-616(a) (West 2008). The circuit court has broad discretion when determining whether to grant a motion to amend a pleading, and the court's denial of a motion to amend is not erroneous unless there was a manifest abuse of discretion. *Hills of Palos Condominium Ass'n v. I-Del, Inc.*, 255 Ill. App. 3d 448, 480 (1993).

¶ 31 Here, the record shows defendant filed a motion to amend her answer to the complaint claiming she had "new information" which she had not been aware of when she filed her original answer. In her motion, defendant did not provide any specific details or further elaboration regarding the "new information." The court's order merely stated: "Defendant's motion is denied." As stated above, the record does not contain a report of proceedings in any format for any of the hearings before the circuit court. Consequently, this court has no knowledge as to the reasoning and rationale that provided the basis for the circuit court's denial of defendant's motion to amend. It was defendant's burden to present this court with a sufficiently complete record to support her claim of error. *Foutch*, 99 Ill. 2d at 391-92. Under these circumstances, we must presume the circuit court acted in conformity with the law and ruled properly after considering the evidence and arguments presented to it. *Webster*, 195 Ill. 2d at 433-34; *Foutch*, 99 Ill. 2d at 391-92. Accordingly, we cannot say the circuit court abused its discretion when it denied defendant's motion to amend her answer.

¶ 32 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 33 Affirmed.