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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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BANK OF AMERICA, N.A., as Successor by )	Appeal from the Circuit Court
Merger to BAC Home Loans Servicing, LP, )	of Winnebago County.
f/k/a Countrywide Home Loans )	
Servicing, LP, )	
	)
Plaintiff-Appellee, )	
	)
v. )	No. 12-CH-12
	)
WAYNE CANALE, )	
	)
Defendant-Appellant )	
	)
(BMO Harris Bank, N.A., as Successor )	
Trustee of Trust No. 97-1556-00-6, City )	Honorable
of Rockford, Unknown Owners, and )	J. Edward Prochaska,
Nonrecord Claimants, Defendants). )	Judge, Presiding.

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JUSTICE JORGENSEN delivered the judgment of the court.  
Justices McLaren and Hudson concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Plaintiff's purported failure to plead its standing, as purportedly required by statute, did not deprive the trial court of subject matter jurisdiction to enter a foreclosure judgment.
- ¶ 2 Defendant, Wayne Canale, the property owner in a foreclosure action, appeals after the trial court confirmed the judicial sale of the property at issue. He asserts that, because plaintiff,

Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP, f/k/a Countrywide Home Loans Servicing L.P., failed to comply with the statutory pleading requirements for a foreclosure action (see 735 ILCS 5/15-1504(a) (West 2010)), the trial court lacked subject matter jurisdiction to enter a foreclosure judgment for plaintiff. Following *Nationstar Mortgage, LLC v. Canale*, 2014 IL App (2d) 130676, we reject defendant's contention that the kind of pleading fault at issue here resulted in a lack of subject matter jurisdiction. We thus affirm.

¶ 3

### I. BACKGROUND

¶ 4 Plaintiff, identifying itself as Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, L.P., filed a foreclosure complaint relating to the property at 1436 Andrews Street, Rockford. It made defendant a defendant as the property owner and borrower. It alleged that "the mortgagee, trustee, or grantee in the Mortgage" was Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for the lender, Countrywide Bank, a division of Treasury Bank, N.A. The mortgage document was consistent with this allegation. Plaintiff stated that the capacity in which it brought the action was "mortgagee and holder of the note." The note bore an endorsement by Treasury Bank, N.A., to Countrywide Home Loans, Inc. Further, Countrywide Home Loans, Inc., had endorsed the note in blank. Also included as an exhibit to the complaint was an assignment by MERS to BAC Home Loans Servicing, LP (BAC). According to the assignment, BAC was formerly known as Countrywide Home Loans, Inc. Further included was a loan modification agreement between BAC and defendant.

¶ 5 No defendant answered or appeared, and, on July 11, 2012, the court entered an order of default against all defendants. At the same time, it also entered a judgment of foreclosure in favor of plaintiff. The judgment did not include a finding of immediate appealability or

enforceability under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). With its motion for default judgment and judgment of foreclosure, plaintiff also filed a motion seeking to have its name of record amended to, Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP, f/k/a Countrywide Home Loans Servicing, LP. The court granted that motion with the other motions.

¶ 6 The judicial sale took place on October 15, 2012; plaintiff was the successful bidder. On February 20, 2013, plaintiff filed a motion for approval of the report of sale and distribution. The court granted the motion that day.

¶ 7 On March 21, 2013, defendant filed a motion stating only that he sought to set aside the sale due to the insufficiency of the report. In an amended motion, defendant stated, among other things, that plaintiff lacked standing to bring the action. MERS, he argued, as the mortgagee's nominee, lacked power to assign any rights. On June 5, 2013, the court entered an order stating, "Defendant's amended motion to vacate and dismiss is argued, heard, and denied." Defendant filed a timely notice of appeal.

¶ 8 II. ANALYSIS

¶ 9 On appeal, defendant again asserts that plaintiff lacks standing and argues that this lack resulted in a lack of subject matter jurisdiction. He concedes that the supreme court held in *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252 (2010), that lack of standing is an affirmative defense and is thus the defendant's burden to plead and prove. He asserts, however, that this rule is "not necessarily the applicable law in a foreclosure action and is not applicable where the foreclosure action is so infirm as pled that it cannot be answered and fails to vest jurisdiction upon which a foreclosure could be entered." (Emphasis omitted.) He asserts that "[i]n order for a complaint to foreclose a mortgage to confer subject matter jurisdiction upon a

court of equity \*\*\* it must contain all the facts upon which the Plaintiff relies for relief.” However, he cites no authority for that proposition as a rule that applies to all causes of action.

¶ 10 For the proposition that omission in the complaint of any of the facts specified in section 15-1504(a) deprives the court of jurisdiction to decide the matter, defendant relies primarily on *City National Bank of Hoopston v. Langley*, 161 Ill. App. 3d 266, 276-77 (1987). He asserts that, under *Langley*, “the lack of the necessary allegations in a pled complaint [is] jurisdictionally fatal.” (Emphasis omitted.) He is incorrect.

¶ 11 As we discussed in *Nationstar*, 2014 IL App (2d) 130676, ¶¶ 12-14, *Langley* is no longer good law. The *Langley* court implied that any judgment rendered on a complaint that failed to comply with statutory pleading requirements would necessarily be void for lack of subject matter jurisdiction. *Langley*, 161 Ill. App. 3d at 276-77. In *Nationstar*, we recognized that, to invoke the court’s subject matter jurisdiction, an initial pleading need only state a justiciable matter. *Nationstar*, 2014 IL App (2d) 130676, ¶ 12. Moreover, a claim for foreclosure, “even if defectively stated, presents a ‘justiciable matter,’ *i.e.*, ‘falls within the general class of cases that the court has the inherent power to hear and determine.’ ” *Nationstar*, 2014 IL App (2d) 130676, ¶ 14 (quoting *In re Luis R.*, 239 Ill. 2d 295, 301 (2010)). Finally, although “ ‘[s]tanding is an element of justiciability’ ” (*In re M.I.*, 2013 IL 113776, ¶ 32 (quoting *People v. Greco*, 204 Ill. 2d 400, 409 (2003)), this is not the same “justiciability” that is required for the court to have subject matter jurisdiction. *Nationstar*, 2014 IL App (2d) 130676, ¶¶ 16-17.

¶ 12

### III. CONCLUSION

¶ 13 Because defendant’s argument relies entirely on his contention that plaintiff’s lack of standing deprived the court of subject matter jurisdiction, the rule in *Nationstar* is fatal to his

argument and to the success of his appeal. For the reasons stated, we affirm the judgment of foreclosure and the judgment confirming the sale.

¶ 14 Affirmed.