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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

U.S. BANK NATIONAL ASSOCIATION, as)	Appeal from the Circuit Court
Trustee for Citigroup Mortgage Pass-Through)	of Du Page County.
Certificate Series 2007-6,)	
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CH-2576
)	
BOZENA GORCSOS,)	Honorable
)	Robert G. Gibson
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant received adequate notice of confirmation hearing; trial court did not apply incorrect standard in ruling on defendant's motion to vacate judgment of foreclosure and its decision was not otherwise an abuse of discretion; defendant failed to establish that plaintiff lacked standing; and defendant waived objection to affidavit plaintiff submitted in support of its summary judgment motion.

¶ 2 I. INTRODUCTION

¶ 3 Defendant, Bozena Gorcsos, appeals a series of orders of the circuit court of Du Page County pertaining to the foreclosure on and subsequent sale of her house. Defendant alleges a

number of primarily procedural irregularities. As we find none of defendant's contentions well taken, we affirm.

¶ 4

II. BACKGROUND

¶ 5 Plaintiff filed the complaint initiating this action on May 6, 2010. Defendant filed a *pro se* appearance and answer on June 6, 2010. Plaintiff moved for summary judgment on October 31, 2011. A hearing was set for January 6, 2012. Defendant did not respond to plaintiff's motion. The trial court entered summary judgment at the January 6 hearing and entered a judgment of foreclosure and sale. On July 5, 2012, defendant filed, by counsel, a motion to vacate the summary judgment. Defendant argued that she was a legally unsophisticated party, that she was diligent, and that she had a meritorious defense, namely, that plaintiff lacked standing. The trial court denied the motion, finding defendant was not diligent. It noted that defendant, after initially appearing *pro se*, did not appear again until two years later when she appeared with counsel and filed a motion to vacate the summary judgment that had essentially been entered against her in default. Moreover, the court found she did not have a meritorious defense, as plaintiff produced the original note executed by defendant and endorsed in blank (such a note is payable to the bearer (810 ILCS 5/3-205(b) (West 2010))).

¶ 6 The property was sold at a judicial sale on October 11, 2012. Plaintiff was the purchaser. It moved to confirm the sale on November 28, 2012. Defendant also filed a motion to reconsider the denial of her earlier motion to vacate the summary judgment against her. Both motions were continued to December 5, 2012. At the December 5 hearing, the trial court stated it would treat defendant's motion to reconsider as a response to plaintiff's motion to confirm the sale. Also, after plaintiff's counsel tendered a note to the trial court, it made a finding that the note had been signed by defendant and was endorsed by the original lender to American Home Mortgage, who,

in turn, endorsed it in blank. The court then found that the note was bearer paper and plaintiff was the bearer. The trial court set a briefing schedule and continued the matter to January 31, 2013. Defendant was represented by “step-up counsel” during this hearing, who was covering for defendant’s retained attorney.

¶ 7 Defendant next presented an emergency motion to strike the December 5 order. In it, defendant asserted that “step-up counsel” had improperly forfeited defendant’s right to challenge the propriety of the sale and the earlier summary judgment by allowing the court to recharacterize her motion to reconsider as a response to plaintiff’s motion to confirm. A hearing was held on January 14, 2013. With the exception of the findings regarding the note, the December 5 order was stricken, and a hearing was set for February 21, 2013. The court expressly stated, “We’ll hear it before the order approving the sales is entertained.” On February 21, a continuance to April 11, 2013 was granted (the record does not contain a transcript of the proceedings that took place on February 21, 2013; however, the written order continuing the cause states “Counsel for both parties [are] present and no further notice [is] necessary”).

¶ 8 On April 11, 2013, defendant’s retained attorney again did not appear. “Step-up counsel” stated that they had been unable to contact him for five days and sought a continuance. The trial court denied that request, denied defendant’s motion to reconsider, and granted plaintiff’s motion to confirm the sale. On July 25, 2013, defendant presented a motion to vacate the order confirming the sale. Defendant argued that the trial court improperly converted the hearing on her motion to reconsider its denial of her motion to vacate the summary judgment into a hearing on plaintiff’s motion to confirm the sale. According to defendant, she had no notice that plaintiff’s motion to confirm would be heard on that date. The trial court denied this motion, and this appeal followed.

¶ 9

III. ANALYSIS

¶ 10 On appeal, defendant raises four main issues. First, she contends that she was not given notice of the confirmation hearing. Second, she argues that the trial court applied the incorrect standards and made erroneous findings in ruling on her motion to vacate an earlier judgment of foreclosure summarily entered against her. Third, defendant claims plaintiff lacked standing to prosecute this action. Fourth, she asserts that the plaintiff's motion for summary judgment was not properly supported by affidavit. We will address these issues *seriatim*.

¶ 11

A. Notice of the Confirmation Hearing

¶ 12 Defendant first argues that she did not receive notice of the confirmation hearing. Notice and an opportunity to be heard are fundamental cornerstones of due process. *Najas Cortes v. Orion Securities, Inc.*, 362 Ill. App. 3d 1043, 1049 (2005). Thus, “[p]arties to actions in the circuit court are entitled to notice, either personally or upon their counsel of record, of pending motions or hearings.” *Stewart v. Lathan*, 401 Ill. App. 3d 623, 626 (2010). Here, however, the record indicates that defendant had adequate notice that plaintiff's motion for confirmation would be addressed on April 11, 2013.

¶ 13 Plaintiff initially filed a motion to confirm that was set for hearing on November 28, 2012. Defendant does not contend that she did not receive notice of this hearing. The matter was then continued to December 5, 2012. Continuing the matter did not require further notice to defendant. See *In re G.L.*, 133 Ill. App. 3d 1048, 1051 (1985) (“Continuances following the first hearing do not constitute ‘resetting of the date’ for hearing. Further, upon occurrence of the first, noticed hearing, all participating parties will have actual notice of continuances ordered. We find no due process violation in failure to notify a defaulting party of continuances after initial hearing on a petition.”); *Solomon v. Arlington Park/Washington Park Race Track Corp.*, 78 Ill.

App. 3d 389, 399 (1979) (“[I]n the instant case there was an unbroken chain of continuances from the date set in the notice to the prove-up, such that notice of the prove-up was effectively given.”). On December 5, the matter was continued to January 31, 2013. In the interim, defendant filed an emergency motion to strike the order that resulted from the December 5 hearing, which was heard on January 14, 2013. At the January 14 hearing, the matter was continued to February 21, 2013. Defendant argues that at this point, the trial court was only continuing her motion to reconsider and not plaintiff’s motion to confirm. Defendant is simply incorrect. The trial court plainly stated, “We’ll hear it before the order approving the sales [*sic*] is entertained.” Thus, the trial court made it abundantly clear that plaintiff’s motion to confirm the sale would be heard on February 21, 2013. On February 21, defendant claims, another continuance was entered without referencing plaintiff’s motion to confirm. However, no transcript from this date appears in the record of proceedings, and we must construe this omission against defendant, as the appellant (*Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984)).

¶ 14 Defendant cites Eighteenth Judicial Circuit Rule 6.04 (eff. May 10, 1993) for the proposition that plaintiff’s motion to confirm should be deemed abandoned. Defendant represents that the rule states: “Any motion not called for hearing within sixty (60) days of filing may be stricken ‘g’ [*sic*] motions not presented or supported by the moving party when called, pursuant to motion may be denied.” The rule actually states:

“Any party may call a motion for hearing, but the burden for calling a motion for hearing shall be on the movant. Any motion not called for hearing within sixty (60) days of filing may be stricken *upon motion, or by the Court without any notice to any party.* *** Motions not presented or supported by the moving party when called, pursuant to notice, may be denied.” (Emphasis added.)

Defendant does not identify where she moved to strike the motion or, in the alternative, where the trial court did on its own motion. Our review of the record indicates, in fact, that neither event occurred. As such, the rule defendant attempts to invoke has no bearing here.

¶ 15 As proper notice of plaintiff's motion to confirm was given and an unbroken chain of continuances leads from the initial date that motion was set to the date it was resolved, defendant's claim that she was not given proper notice of the proceeding is not well taken. See *Solomon*, 78 Ill. App. 3d at 399. We therefore reject defendant's first argument.

¶ 16 B. The Motion To Vacate Summary Judgment

¶ 17 Defendant filed a motion to vacate the summary judgment entered against her. As defendant did not respond to the summary judgment motion, this was essentially a default judgment. The motion to vacate states that it is brought pursuant to sections 2-1301 and 2-1401 of the Civil Practice Law. 735 ILCS 5/2-1301, 2-1401 (West 2012). Defendant now contends that the motion should have properly been considered a section 2-1301 motion, and the trial court improperly applied standards pertinent to a section 2-1401 motion in ruling upon it. Defendant points out that the manner in which a motion is titled or designated is not dispositive, and courts will look to the substance of a motion to determine what section of the Civil Practice Law controls. *Scott Wetzel Services v. Regard*, 271 Ill. App. 3d 478, 481 (1995). Whether the trial court applied the appropriate legal standard presents a question of law subject to *de novo* review. *Shulte v. Flowers*, 2013 IL App (4th) 120132, ¶ 23.

¶ 18 Section 2-1301 provides, in pertinent part, as follows: "The court may in its discretion, before final order or judgment, set aside any default, and may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable." 735 ILCS 5/2-1301(e) (West 2012). The trial court cited defendant's lack of

diligence and the lack of a meritorious defense in denying her motion to vacate summary judgment. Defendant contends that such considerations are pertinent to a section 2-1401 motion rather than a motion brought pursuant to section 2-1301. See *Andreasen v. Suburban Bank of Bartlett*, 173 Ill. App. 3d 333, 340 (1988) (“The moving party is no longer required to show diligence or good cause in failing to timely answer, and he need not necessarily establish that he has a meritorious defense on the face of the motion, as he would be required to do in a petition to vacate a final judgment under section 2–1401 of the Code of Civil Procedure.”).

¶ 19 Plaintiff counters that while a trial court is not required to consider diligence or the existence of a meritorious defense in ruling on a section 2-1301 petition, it nevertheless may do so. We agree with plaintiff. Our supreme court has explained that “[w]hen a court is presented with a request to set aside a default under section 2–1301(e), the overriding consideration, as we have already observed, is simply whether or not substantial justice is being done between the litigants and whether it is reasonable, under the circumstances, to compel the other party to go to trial on the merits.” *In re Haley D.*, 2011 IL 110886, ¶ 69. Furthermore, “[i]n making this assessment, a court should consider all events leading up to the judgment.” *Id.* Relevant factors include “diligence or the lack thereof, the existence of a meritorious defense, the severity of the penalty resulting from the order or judgment, and the relative hardships on the parties from granting or denying vacatur.” *Jacobo v. Vandervere*, 401 Ill. App. 3d 712, 715 (2010) (quoting *Jackson v. Bailey*, 384 Ill. App. 3d 546, 549 (2008)). Quite simply, there was nothing improper about the trial court considering defendant’s lack of diligence or whether a meritorious defense existed.

¶ 20 Defendant also contends that, even if the trial court applied the appropriate legal standard, its ruling was an abuse of discretion. See *Jackson*, 384 Ill. App. 3d at 548. We may

disturb such a decision only if no reasonable person could agree with the trial court's decision. *Shaw v. St. John's Hospital*, 2012 IL App (5th) 110088, ¶ 18. Defendant contests the trial court's finding that she was not diligent in that, after appearing *pro se* in June 2010, she did not appear again until counsel filed an appearance in July 2012. She intimates that plaintiff lulled her into complacency by waiting approximately 14 months after the filing of the (amended) complaint in this matter to file its summary judgment motion. The summary judgment motion, to which defendant did not respond, was filed on October 31, 2011 and granted on January 6, 2012. Defendant does not contend that she lacked notice of the motion for summary judgment. Having received notice of the motion, we fail to see how plaintiff's alleged delay in filing it could have lulled defendant to inaction. At the very least, it is simply not the case that no reasonable person could come to such a conclusion and reject defendant's contention. Thus, it was no abuse of the trial court's discretion to conclude that defendant was not diligent.

¶ 21 Defendant asserts that her motion to vacate should have been granted because she is not a sophisticated legal party. However, it is well established that *pro se* litigants are held to the same standard as attorneys. *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009). She further points out that she is a Polish immigrant who became a citizen in 2000. We note, on the other hand, that she has been in the country since substantially before that year, and there is no allegation that she does not speak or understand English. In any event, given the trial court's findings regarding diligence and lack of a meritorious defense (a subject we will address further below), we cannot say that this consideration, even if well founded, would be sufficient to render the trial court's ultimate decision an abuse of discretion.

¶ 22

C. Standing

¶ 23 Defendant next contends that plaintiff lacked standing. A defendant has the burden of pleading and proving that a plaintiff lacks standing. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252 (2010). The issue of standing presents a question of law subject to *de novo* review. *In re County Treasurer*, 2013 IL App (3d) 120999, ¶ 16. Standing is an affirmative defense, which a defendant forfeits if it is not pleaded in a timely fashion. *Lebron*, 237 Ill. 2d at 252-53.

¶ 24 Initially, we note that defendant did not raise this issue until after the trial court rendered summary judgment; hence, the assertion of this defense was not timely and we deem it forfeited. *Id.* Moreover, it appears to us to lack merit. Plaintiff was in possession of a note evincing defendant's indebtedness. *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 26; see also *Commercial Credit Co. v. Maxey*, 289 Ill. App. 209, 218 (1937) ("Where, however, a note is payable to bearer or is indorsed in blank, its actual possession is prima facie evidence of the possessor's authority to receive payment thereon."). The note was endorsed in blank, rendering it bearer paper. 810 ILCS 5/3-205(b) (2012). Thus, "[p]laintiff's production of the note showed that it had an interest in the mortgage." *Rosestone Investments, LLC*, 2013 IL App (1st) 123422, ¶ 26.

¶ 25 Defendant makes a number of brief contentions regarding plaintiff's alleged lack of standing. She states that in an affidavit supporting plaintiff's motion for judgment, the affiant states that she works for Wells Fargo rather than plaintiff. Defendant does not explain the significance of this fact. Indeed, the affiant also states that Wells Fargo is the servicing agent for plaintiff and that she is authorized to execute the affidavit on plaintiff's behalf. Defendant points out that the Mortgage Electronic Registration System reveals that the "investor" in the mortgage is "CMLTI Securitizations, master serviced by Citicorp" and the "servicer" is "Wells Fargo

Bank, N.A., d/b/a America's Servicing Company.” Defendant asserts that this establishes that CMLTI is the true owner of the claim. However, we note that the mortgage had been assigned several times, and plaintiff is in possession of the note which was endorsed in blank. Defendant then acknowledges that there was, in fact, an assignment to “America's Servicing Company, as servicer for” plaintiff. However, defendant asserts (without citation to the record) that this assignment was executed by “nationally infamous robo-signer John Kennerty.” Such vague and unsubstantiated speculation is insufficient to carry defendant's burden of establishing that plaintiff lacked standing.

¶ 26 In short, even if defendant had not forfeited this claim, we would find it unpersuasive.

¶ 27 D. Plaintiff's Affidavit Regarding Summary Judgment

¶ 28 Defendant's final contention is that plaintiff's affidavit in support of its motion for summary judgment did not comply with Illinois Supreme Court Rule 191 (eff. January 4, 2013). Defendant complains that plaintiff did not attach all documents upon which the affiant relied, namely documents containing financial information pertaining to defendant's indebtedness. Generally, any objection to such an affidavit must be raised in a timely motion to strike or through some similar device. See *Bysom Enterprises, Ltd. v. Peter Carlton Enterprises, Ltd.*, 267 Ill. App. 3d 1, 6 (1994) (“PCP contends, however, that for a variety of reasons, the affidavit Bysom filed in support of its motion for summary judgment did not comply with Supreme Court Rule 191(a) [citation]. PCP failed to object to the affidavit by motion to strike or otherwise. Any complaint as to the affidavit is, therefore, waived.”). Here, not only did defendant fail to object to the affidavit, she did not raise this issue prior to this appeal. Of course, issues raised for the first time on appeal are forfeited. *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill. App. 3d 669, 695 (2010).

¶ 29 In her reply brief, defendant again relies on her *pro se* status in arguing that the forfeiture rule should be relaxed. As noted above, *pro se* litigants are held to the same standards as attorneys. *Pellico*, 394 Ill. App. 3d at 1067. Moreover, defendant was represented by counsel at the time her motion to vacate summary judgment was filed, but this issue was not raised in the motion. Thus, it was the failure to include this issue while represented, rather than her *pro se* status, that resulted in this issue being raised for the first time on appeal.

¶ 30

IV. CONCLUSION

¶ 31 In light of the foregoing, the judgment of the circuit court of Du Page County is affirmed.

¶ 32 Affirmed.