

2015 IL App (1st) 142872-U  
No. 1-14-2872  
July 21, 2015

SECOND DIVISION

**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).

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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JP MORGAN CHASE BANK, N.A.,	)	Appeal from the Circuit Court
	)	Of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09 CH 13309
	)	
RENATA KOLEWA,	)	The Honorable
	)	Anthony C. Kyriakopoulos,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Simon and Justice Pierce concurred in the judgment.

**ORDER**

¶ 1 *Held:* An affidavit from an FDIC officer, attesting that Chase Bank became the owner of another bank's loans by operation of law, sufficed to prove that Chase had standing to foreclose a mortgage made out to the other bank.

¶ 2 Renata Kolewa appeals from an order granting a motion for summary judgment entered in favor of JP Morgan Chase Bank in this action to foreclose a mortgage. Kolewa argues that Chase did not show that it owned the mortgage and the note, and that Chase breached its contract. We find that Chase sufficiently showed its ownership of the mortgage and the note,

and Kolewa never alleged facts that could support a finding that Chase breached its contract. Therefore, we affirm the circuit court's judgment.

¶ 3

### BACKGROUND

¶ 4

On July 1, 2004, Kolewa borrowed \$389,500 from Washington Mutual Bank. She gave Washington Mutual a mortgage on her home to secure her promise to repay the loan. On March 25, 2009, Chase filed a complaint to foreclose the mortgage, alleging that Kolewa failed to pay monthly installments due on and after November 1, 2008. Chase attached to the complaint the mortgage and the note, both made out to Washington Mutual, and the affidavit of Robert Schoppe of the Federal Deposit Insurance Corporation (FDIC). Schoppe swore that the Office of Thrift Supervision closed Washington Mutual and FDIC became the receiver for Washington Mutual. Under the auspices of the FDIC, "Chase became the owner of the loans and loan commitments of Washington Mutual by operation of law."

¶ 5

Kolewa said in her answer that she did not have sufficient information to admit or deny the allegation that she failed to pay the installments due. She also said she did not "have knowledge that [Chase] is Owner of Mortgage." Kolewa filed a separate document, labeled "Counterclaim," in which she said:

"(1) Due to 'Force Majeur' (act of God)

(a) illness that almost resulted in death for 6-8 months

(b) Extraordinary Downturn in Economy

So Asking for Continuance to Prepare & Resolve the Claim

(ii) Lack of Good Faith from Chase Bank."

¶ 6 She added no explanation for the charge that Chase showed a lack of good faith. Although the circuit court granted her a continuance, she never filed a counterclaim with factual allegations to support the claim for breach of good faith.

¶ 7 Chase moved for summary judgment, arguing that Kolewa's answer and counterclaim failed to raise any issue of material fact. Chase presented to the court a "Loss Mitigation Affidavit," in which a vice president of Chase swore that Chase contacted Kolewa and informed her of loss mitigation programs available to her. Kolewa never completed an application for any of the programs.

¶ 8 The circuit court granted the motion for summary judgment and entered a judgment of foreclosure. Chase bought the property for \$182,000 at the judicial sale. The circuit court approved the sale and entered a deficiency judgment against Kolewa for \$337,264.94. Kolewa now appeals.

¶ 9 ANALYSIS

¶ 10 Kolewa, *pro se*, argues on appeal that the court erred when it granted summary judgment in favor of Chase, because the record raises material issues of fact concerning (1) standing, (2) whether Chase sent a grace period notice, and (3) whether Chase breached its contract by acting in bad faith. We review *de novo* the order granting the motion for summary judgment. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 11 Standing

¶ 12 Chase presented to the circuit court copies of the mortgage and note, identifying Washington Mutual as lender and mortgagee. Chase also presented Schoppe's affidavit

stating that Chase became owner of all of Washington Mutual's loans. We find the evidence sufficient to show that Chase had standing, as holder of the note and mortgage, to sue for foreclosure. See *Scott v. JP Morgan Chase Bank, NA*, 214 Cal. App. 4th 743, 764-65 (2013); *JP Morgan Chase Bank, N.A. v. Shapiro*, 104 A.D.3d 411, 412 (N.Y. 2013). Kolewa presented no evidence in opposition to the affidavit and note, therefore, we find that she did not raise a triable issue of fact about standing. See *Shapiro*, 104 A.D.3d at 412.

¶ 13 Grace Period Notice

¶ 14 Section 15-1502.5 of the Foreclosure Law (735 ILCS 5/15-1502.5(c) (West 2010)) requires lenders to send a grace period notice to certain borrowers before filing a complaint for foreclosure. *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 67. The section came into effect on April 6, 2009. 735 ILCS 5/15-1502.5 (West 2010). Chase filed the complaint for foreclosure on March 25, 2009, about two weeks before the section took effect. Kolewa asks us to apply the statute retroactively.

¶ 15 Kolewa raised no issue concerning the grace period notice in the circuit court. We find that she forfeited the issue. *Leffler v. Engler, Zoghlin & Mann, Ltd.*, 157 Ill. App. 3d 718, 722 (1987); *Commonwealth Eastern Mortgage Co. v. Williams*, 163 Ill. App. 3d 103, 112 (1987).

¶ 16 Breach of Contract

¶ 17 In support of her argument that Chase breached the contract, Kolewa cites to the "Loss Mitigation Affidavit" Chase filed with the court. Kolewa, in her brief, makes several factual assertions about Chase's conduct, and claims that the conduct shows that Chase acted in bad

faith. She makes no reference to the record to support her allegations. We find no support in the record for her factual assertions. Accordingly, because Kolewa failed to present any evidence which raises an issue of material fact that Chase acted in bad faith, Chase is entitled to a judgment as a matter of law. *Berlin v. Sarah Bush Lincoln Health Center*, 179 Ill. 2d 1, 7 (1997).

¶ 18

#### CONCLUSION

¶ 19

In this case, because the record on appeal supports the circuit court's finding that Chase showed its right to a foreclosure judgment, and Kolewa failed to raise any issue of material fact, we affirm the circuit court's judgment.

¶ 20

Affirmed.