

No. 14-3360

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 DISTRICT

CHICAGO PATROLMEN'S FEDERAL CREDIT UNION,)	Appeal from the Circuit Court of Cook County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11 CH 14050
)	
GEORGE CORNISH AND JOSEPHINE CORNISH,)	
)	
Defendants-Appellants.)	Honorable Alfred Swanson Judge Presiding

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Pierce and Justice Neville concurred in the judgment.

ORDER

- ¶ 1 *Held:* There is no genuine issue of material fact concerning plaintiff's standing. The trial court properly entered summary judgment in plaintiff's favor.
- ¶ 2 This is a mortgage foreclosure case in which plaintiff sought and was awarded an order of foreclosure following a summary judgment order in its favor. Here, as at the summary judgment stage, defendants argue that plaintiff lacks standing. We affirm.

¶ 3

BACKGROUND

¶ 4 On May 24, 2007, defendants George and Josephine Cornish executed a mortgage to secure a loan to purchase the property commonly known as 20930 Cambridge Lane, Olympia Fields, Illinois. Defendants timely made payments for a few years, but, beginning around January 1, 2011, the payments stopped. On April 14, 2011, plaintiff Chicago Patrolmen's Federal Credit Union filed this foreclosure case.

¶ 5 Defendants, *pro se* at the time, filed what they titled a motion to compel and a motion to quash. In those documents, defendants alleged that there was no assignment of the mortgage from Argent Mortgage to plaintiff and that plaintiff only held a mortgage on the property, not title to the property so it did not have the right to sue for foreclosure. The trial court denied those motions. Defendants later answered the complaint and some discovery was exchanged. In response to requests for admission, defendants admitted that they signed the mortgage and the promissory note and that they had not made payments since January 1, 2011. Plaintiff also produced the original copies of the note and mortgage in open court for defendants to inspect.

¶ 6 Plaintiff thereafter moved for summary judgment. Plaintiff's motion for summary judgment was denied due to a deficient prove-up affidavit. Plaintiff filed a second motion for summary judgment. Defendants responded to the motion with an affidavit from Rosemarie Urbanski. Urbanski averred that she is a forensic document examiner and that she was hired by defendants to conduct a forensic examination of the photocopied document entitled "satisfaction of mortgage." That document purports to be initialed by an individual named Noriko Colston. Urbanski's opinion is that it is "highly probable" that the initials on the satisfaction of mortgage do not have the same author as another set of initials in a document from an unrelated case that

No. 14-3360

purported to be those of Noriko Colston. Relying on Urbanski's assessment, defendants argued that the releases produced by plaintiff were fraudulent and asked the court to deny plaintiff's request for judgment. The trial court denied plaintiff's motion, but gave no reason for its decision. Plaintiff then filed a third motion for summary judgment which was granted and an order of possession was eventually entered.

¶ 7 Defendants now appeal arguing that plaintiff was not entitled to summary judgment because plaintiff lacks standing. Defendants' argument, brought into clearer focus in their reply brief, is that Urbanski's affidavit creates a genuine issue of material fact as to whether the signature on the assignment of mortgage was fraudulent. Accordingly, defendants posit, there is a genuine issue of material fact as to whether plaintiff was assigned the mortgage and became its holder and, therefore, whether plaintiff has standing.

¶ 8 ANALYSIS

¶ 9 We review the grant of summary judgment *de novo*. *Cook v. AAA Life Insurance Co.*, 2014 IL App (1st) 123700, ¶ 24. Summary judgment is appropriate when the pleadings, depositions, admissions and affidavits, viewed in a light most favorable to the nonmovant, fail to establish a genuine issue of material fact, thereby entitling the moving party to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2012); *Progressive Universal Insurance Co. of Illinois v. Liberty Mutual Fire Insurance Co.*, 215 Ill. 2d 121, 127-28 (2005). If disputes as to material facts exist or if reasonable minds may differ with respect to the inferences drawn from the evidence, summary judgment may not be granted. *Associated Underwriters of America Agency, Inc. v. McCarthy*, 356 Ill. App. 3d 1010, 1016-17 (2005).

¶ 10 The doctrine of standing is designed to preclude persons who have no interest in a

No. 14-3360

controversy from bringing suit, and assures that issues are raised only by those parties with a real interest in the outcome of the controversy. *Nationwide Advantage Mortgage Co. v. Ortiz*, 2012 IL App (1st) 112755, ¶ 24. Standing requires some injury in fact to a legally cognizable interest. *Id.* When the issue of standing is raised by a defendant in a mortgage foreclosure case, summary judgment is proper when there is no genuine issue of material fact concerning the plaintiff's right to enforce the instrument. *Aurora Bank FSB v. Perry*, 2015 IL App (3d) 130673, ¶ 31.

¶ 11 We will primarily focus on the arguments defendants make in their reply brief because the arguments made in their opening brief focus on whether plaintiff had title to the property when it sued, which defendants concede is irrelevant. So, defendants' principal contention is that there is a question of fact regarding plaintiff's right to sue because there is a question about a forgery on the document purporting to assign the mortgage to plaintiff. Defendants argue that because plaintiff was not properly assigned the mortgage, it lacks standing to bring suit.

¶ 12 But plaintiff is not bringing this suit on the basis of any assignment. Plaintiff filed this case in its capacity as mortgagee. The mortgage itself names plaintiff as the lender and mortgagee, as does the underlying promissory note. In the mortgage, defendants agreed that "Lender (*plaintiff*) *** may foreclose this Security Instrument by Judicial Proceeding." The right to do so never abated. Under Illinois Mortgage Foreclosure law, a person that qualifies as a mortgagee has standing to prosecute a foreclosure case. *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1, 6-8 (2011); 735 ILCS 5/15-1504(a)(3)(N). A mortgagee can be the holder or anyone qualified to act on the holder's behalf. 735 ILCS 5/15-1208. Plaintiff clearly meets this definition. In addition, defendants do not contest plaintiff's status as mortgagee. They also admitted plaintiff's status as mortgagee in response to

No. 14-3360

requests for admissions. See *US Bank, N.A. v. Avdic*, 2014 IL App (1st) 121759, ¶¶ 35-38.

There is no genuine issue of material fact concerning plaintiff's right to sue.

¶ 13 Whether there was a "forgery" on the satisfaction of mortgage is not material because the satisfaction of mortgage itself is not material. It has no bearing on whether plaintiff is entitled to enforce defendants' obligations and sue on the mortgage. The rest of the elements required to entitle plaintiff to summary judgment are admitted by defendants and not challenged on appeal. They indeed took out a loan, secured by the subject property, and failed to make payments when due. Summary judgment was properly entered.

¶ 14 CONCLUSION

¶ 15 Accordingly, we affirm.

¶ 16 Affirmed.