2015 IL App (2d) 140428-U
No. 2-14-0428
Order filed January 21, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

BANK OF AMERICA, N.A.,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12-CH-4699
	)	
RITA L. STIGALL,	)	Honorable
	)	Robert G. Gibson,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: In this mortgage foreclosure case, the trial court did not abuse its discretion when it denied defendant's request for leave to withdraw her *pro se* answer and file an amended answer with an affirmative defense, where she offered no explanation for not presenting her affirmative defense earlier in the proceedings and where it would not have cured any defects in her initial pleading. Further, the court did not err in granting plaintiff summary judgment. Affirmed.

¶ 2 Plaintiff, Bank of America, N.A., filed a complaint to foreclose mortgage against defendant, Rita L. Stigall. Defendant, *pro se*, filed an answer. Subsequently, plaintiff moved for summary judgment and judgment of foreclosure and sale. Defendant, through counsel, then moved for leave to withdraw her *pro se* answer and file an amended answer, and she filed a

response to plaintiff's summary judgment motion. The trial court denied defendant's motion to withdraw and amend and granted plaintiff summary judgment. The court subsequently denied defendant's motion for rehearing and reconsideration. A judicial sale occurred, and the trial court confirmed the judicial sale. Defendant appeals, seeking review of the order denying her leave to withdraw her *pro se* answer and file an amended answer and the court's order granting plaintiff summary judgment. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 17, 2012, plaintiff filed a complaint to foreclose mortgage against defendant. The mortgage, dated August 10, 2005, encumbered a property in Downers Grove. The note reflected an original indebtedness of $190,800 and a $172,658.43 balance due. The original lender was Home Loan Center, Inc., d/b/a Lending Tree Loans. Several purported stamped endorsements appear on the note. The first states that it is paid to the order of "Countrywide Document Custody Services, A Division of Treasury Bank, N.A." without recourse "Home Loan Center Inc. DBA Lendingtree Loans" and is purported to be signed by "Mimi Jones ASST. SECRETARY." The second stamp reads: "PAY TO THE ORDER OF COUNTRYWIDE HOME LOANS INC. WITHOUT RECOURSE COUNTRYWIDE DOCUMENT CUSTODY SERVICES, A DIVISION OF TREASURY BANK, NA BY." This language is followed by a signature line containing a signature, and, under the signature, the purported signer is identified as "LAURIE MEDER VICE PRESIDENT." A third stamp contains similar language and contains initials on a signature line purporting to be signed by "David A. Spector Managing Director."

¶ 5 On October 16, 2012, defendant, *pro se*, filed an answer, arguing that she should not have to pay additional insurance for being in a flood zone. She did not deny that she defaulted on the loan.

¶ 6 On February 4, 2013, plaintiff moved for summary judgment (or, alternatively, entry of of a judgment of foreclosure), arguing that an attached affidavit established that defendant was in default and setting forth the amounts due on the account. The trial court, on the same day, set a briefing schedule (defendant was given until March 6, 2013, to file a response to plaintiff's motion) and set an April 15, 2013, hearing date.

¶ 7 On March 4, 2013, two days before her response to the summary judgment motion was due, defendant, through counsel, filed a response to plaintiff's motion, along with a motion for leave to withdraw her *pro se* answer and file an amended answer or responsive pleading. In her motion for leave to withdraw her answer, defendant argued that her right to defend the instant matter would be severely compromised if she was not granted leave to withdraw her answer and supplant it with either a motion to dismiss or an amended answer and affirmative defenses. Defendant identified three issues: (1) the note contained no endorsements from the original lender, and the two purported endorsements on the note did not reference the original lender; (2) issues with the purported Meder endorsement from Countrywide Document Custody Services to Countrywide Home Loans, Inc. (which later merged into Bank of America); and (3) issues with the purported Spector endorsement. As to the first issue, defendant argued that the copy of the note attached to plaintiff's complaint lacked an endorsement from the original lender and declared that there were only two endorsements on the note. Second, defendant argued that the Meder endorsement was invalid because, according to a deposition in a separate federal lawsuit, Michelle Sjolander testified that her endorsement stamp and Meder's stamp were used by other

persons. (Defendant attached a January 25, 2012, deposition from that lawsuit.) Sjolander stated that, unlike herself, Meder worked for Recontrust, plaintiff's custodian. Sjolander further stated that she signed (as an officer of Countrywide Home Loans, Inc.) a power of attorney to Recontrust to endorse and assign notes on her behalf. As to her third argument, defendant argued that the Spector endorsement appeared to be fraudulent in that it lacked the complete spelling of all of the characters of his name and because the signature was not consistent with other Spector signatures that she had collected.

¶ 8 In the federal lawsuit, Sjolander further testified that the endorsements were affixed to the note by rubber stamp and that her executive endorsement stamp, as well as Meder's, had been used by other persons unknown to them within the company for affixing their endorsements to notes. Unless an audit was being conducted, she testified, she did not observe the endorsements being placed on a note. Further, without being accompanied by processing facility officials, she did not have a security level that allowed her to enter the premises to observe the endorsement stamping process.

¶ 9 In her response to plaintiff's summary judgment motion, defendant again raised the same arguments and further argued that plaintiff's prove-up summary judgment affidavit did not comply with Illinois Supreme Court Rule 191 (eff. Jan. 4, 2013) in that it did not set forth facts within the affiant's personal knowledge.

¶ 10 Plaintiff, in its reply, argued first that defendant's arguments were forfeited for failure to raise them in her initial answer. It also argued that no factual matters precluded summary judgment, where defendant did not provide factual support for her assertions that Meder's and Spector's signatures were unauthorized forgeries. Plaintiff noted that there is no requirement

that an endorser personally sign an instrument and that defendant lacked standing to challenge it because she is not a party to it or an intended beneficiary.

¶ 11 On October 7, 2013, the trial court denied defendant's motion for leave to withdraw her *pro se* answer and to file an amended answer.

¶ 12 Defendant, on November 5, 2013, moved to reconsider, arguing that the court's order substantially prejudiced her by precluding her from raising her defenses and further arguing that plaintiff would not be prejudiced if defendant's motions were allowed because it could file a motion to strike. On November 22, 2013, the trial court denied defendant's motion and further noted in its order that plaintiff had presented the original note in open court.

¶ 13 In a December 2, 2013, order, the trial court substituted Green Tree Servicing LLC as party plaintiff. (After it filed its complaint, plaintiff had transferred the servicing rights of the loan to Green Tree.) Also on that date, the trial court granted plaintiff summary judgment and further entered a judgment of foreclosure and sale in plaintiff's favor and against defendant. The court approved and confirmed the sale on April 8, 2013. Defendant appeals.

¶ 14 II. ANALYSIS

¶ 15 A. Denial of Motion to Withdraw Answer and Amend

¶ 16 Defendant argues first that the trial court abused its discretion in denying her motion to withdraw her *pro se* answer and to file an amended answer. She asserts that her motion was timely and articulated her affirmative defense of standing. We reject defendant's argument.

¶ 17 The right to amend pleadings is not absolute or unlimited, and the trial court's decision to grant or deny that right will not be disturbed absent an abuse of discretion. *Resolution Trust Corp. v. Holtzman*, 248 Ill. App. 3d 105, 110 (1993). "In determining whether the court's

discretion has been abused, the central concern is whether the court's decision furthers the ends of justice." *Shaifer v. Folino*, 272 Ill. App. 3d 709, 720 (1995).

¶ 18 Section 2-616(a) of the Code of Civil Procedure states:

> "Amendments. (a) At any time before final judgment amendments may be allowed on just and reasonable terms, introducing any party who ought to have been joined as plaintiff or defendant, dismissing any party, changing the cause of action or defense or adding new causes of action or defenses, and in any matter, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought or the defendant to make a defense or assert a cross claim." 735 ILCS 5/2-616(a) (West 2012).

¶ 19 In determining whether to allow an amendment to the pleadings, the trial court considers the following factors: (1) whether the proposed amendment would cure a defect in the pleadings; (2) whether the proposed amendment would prejudice or surprise other parties; (3) whether the proposed amendment is timely; and (4) whether there were previous opportunities to amend the pleading. See, *e.g.*, *Krum v. Chicago National League Ball Club, Inc.*, 365 Ill. App. 3d 785, 790 (2006). Furthermore, courts consider whether an amendment concerns matters known to the pleader at the time the original pleading was filed and whether good reason for not filing earlier is offered by the pleader. *Healy v. Bearco Management, Inc.*, 216 Ill. App. 3d 945, 960 (1991).

¶ 20 Defendant maintains that all factors weigh in her favor. First, she notes that the amended pleading would have cured defects in her *pro se* answer by amending her general denial to include the affirmative defense of standing, which spoke directly to the validity of the note's negotiation and endorsements. Second, defendant argues that the potential prejudice or

surprise here was minimal because, although she had not previously articulated her standing defense, she presented her affirmative defense "in its entirety within this motion for leave to amend." Third, she contends that her motion was timely because she filed it before the summary judgment hearing. Finally, defendant argues that she "had been given no previous opportunity to amend her *pro se* answer."

¶ 21 In applying the various factors to this case, we conclude that the trial court did not abuse its discretion in denying defendant leave to withdraw and amend her answer. She does not assert a valid (or, indeed, any) reason for why she could not have presented this defense earlier in the litigation. Plaintiff would clearly have been prejudiced (*e.g.*, having incurred fees and costs related to its summary judgment motion) by allowing amendment because defendant brought her motion five months after her *pro se* answer, one month after plaintiff filed its summary judgment motion, after the trial court had set the briefing schedule, and two days before the deadline the court set for her to file a response to plaintiff's motion. Her claim that there was no surprise here is also not well-taken, where, as even defendant notes in another context, she did not raise her defense (including a deposition from another case) at an earlier time in the proceedings. See *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 508 (1988) (lack of standing is an affirmative defense that will be forfeited if not timely raised in the trial court). Perhaps most critically, defendant's amended pleading would not have cured her initial pleading because the affirmative defense, as explained more fully below, lacked merit.

¶ 22 In summary, the trial court did not abuse its discretion in denying defendant's motion for leave to withdraw her *pro se* answer and file an amended answer.[1]

[1] Although she does not raise the issue on appeal, we further note that, the trial court did

¶ 23 B. Granting of Summary Judgment

¶ 24 Defendant argues next that the trial court erred in granting plaintiff summary judgment because standing was a material factual issue, where the endorsement on the note did not transfer to plaintiff the legal right to enforce the mortgage and note. Specifically, she contends that Sjolander's deposition testimony reflected that the validity of Meder's signature was a material factual issue. Thus, defendant argues, the purported transfer from Countrywide Document Processing Services to Countrywide Home Loans, Inc., fails and prevents the purported blank endorsement from Countrywide Home Loans, Inc., (executed by Spector) from having legal effect because the entity would not have had the legal right to transfer the note. For the following reasons, we conclude that, even if the trial court had granted defendant leave to amend her pleadings to raise her standing defense, summary judgment was properly granted.

¶ 25 Summary judgment is appropriate where the pleadings, depositions, admissions on file, and affidavits demonstrate that there exist no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012)). In reviewing a motion for summary judgment, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the moving party to determine whether a genuine issue of material fact exists. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). A genuine issue of fact exists where the material relevant facts in the case are disputed, or where

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not err in denying defendant's motion to reconsider, as defendant merely reasserted earlier arguments. See *In re Marriage of Heinrich*, 2014 IL App (2d) 121333, ¶ 55 (purpose of motion to reconsider is to bring to trial court's attention newly discovered evidence that was not available at time of hearing, changes in the law, or errors in the trial court's application of existing law to the facts at hand).

reasonable persons could draw different inferences and conclusions from undisputed facts. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). Because summary judgment is a drastic means to resolve a controversy, it should only be granted where the moving party's right to it is clear and free from doubt. *Id.* We review *de novo* a trial court's decision granting a motion for summary judgment. *Id.*

¶ 26 Pursuant to Illinois law, a mortgagee may foreclose its interest in real property upon "either the debt's maturity or a default of a condition in the instrument." *Heritage Pullman Bank v. American National Bank & Trust Co. of Chicago*, 164 Ill. App. 3d 680, 685 (1987). A mortgagee establishes a *prima facie* case for foreclosure with the introduction of the mortgage and note (as plaintiff did here), after which the burden of proof shifts to the mortgagor to prove any applicable affirmative defense. *Farm Credit Bank of St. Louis v. Biethman*, 262 Ill. App. 3d 614, 622 (1994); *Rago v. Cosmopolitan National Bank*, 89 Ill. App. 2d 12, 19 (1967).

¶ 27 When a plaintiff lacks standing in a foreclosure action, the trial court's entry of summary judgment and orders of foreclosure and sale are improper as a matter of law. *Bayview Loan Servicing, L.L.C. v. Nelson*, 382 Ill. App. 3d 1184, 1188 (2008). "The doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing suit" and "assures that issues are raised only by those parties with a real interest in the outcome of the controversy." *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999). "[S]tanding requires some injury in fact to a legally cognizable interest * * *." *Id.* Our supreme court has stated that the "lack of standing in a civil case is an affirmative defense, which will be forfeited if not raised in a timely fashion in the trial court." *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 508 (1988). As an affirmative defense, the lack of standing is the defendant's burden to plead and prove. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252-53

(2010). The issue of standing presents a question of law and is also subject to *de novo* review. *Malec v. City of Belleville*, 384 Ill. App. 3d 465, 468 (2008).

¶ 28 Defendant maintains that Sjolander's deposition raised material factual issues concerning the validity Meder's signature on the notes, which, she asserts, were unauthorized and placed on the note without Meder's knowledge and by persons unknown to her.[2] Sjolander, upon whose deposition testimony defendant relies for its references to Meder, did not, defendant asserts, have unfettered access to the building during the time her signature was placed upon the note and could not have authorized it; thus, her signature is unauthorized and constitutes a fraudulent alteration of the instrument.

¶ 29 We reject defendant's argument. Even if she had been allowed to raise her affirmative defense, her claim would have failed because Sjolander's testimony does not address how *Meder* endorsed the notes or reflect in any way that *Meder's* endorsement was unauthorized. The sparse references to Meder during Sjolander's deposition provide no support for defendant's claims. Sjolander testified that, with respect to her *own* stamp, she gave Recontrust a power of attorney to endorse notes in her name, but she offered no such testimony concerning Meder's endorsements. In fact, she testified that Meder actually worked for Reconstrust. Sjolander also addressed the fact that she did not personally observe the endorsements made with *her* stamp and *her* general lack of access to Recontrust offices. Her testimony, therefore, did not offer insight into how Meder's endorsement came to be on the note in this case. Further, it offers no support for her claim that other persons were using Meder's stamp to endorse notes.

[2] Defendant additionally argues that Sjolander's signature/endorsement appears on the note. This assertion is incorrect.

¶ 30 Having found no support for defendant's claim that the Sjolander deposition raised a material factual issue concerning Meder's endorsement, we turn next to her claim that plaintiff did not successfully rebut the invalidity of Spector's signature. We find this claim forfeited because defendant raises this argument in a cursory fashion and without supporting authority. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); see also *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010) (reviewing court is not a repository into which an appellant may dump the burden of argument and research, and the failure to clearly define issues and support them with authority results in forfeiture of the argument). In any event, the claim is meritless because, contrary to defendant's assertion, the lack of a full Spector signature did not create a material factual issue concerning the validity of his signature. The Uniform Commercial Code does not require full signatures. See, *e.g.*, 810 ILCS 5/3-401(b) (West 2012) (in statutes addressing liability of parties under negotiable instruments, providing that signature may be made by "device or machine" and "by the use of any name *** or by a word, mark, or symbol").

¶ 31 In summary, the trial court did not err in granting plaintiff summary judgment, where, even if considered, defendant's affirmative defense lacked merit.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, the judgment of the circuit court of Du Page County is affirmed.

¶ 34 Affirmed.