2015 IL App (2d) 140806-U
No. 2-14-0806
Order filed March 27, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

BANK OF AMERICA, N.A.,	)	Appeal from the Circuit Court
,	)	of Kendall County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11-CH-1057
	)	
CYNTHIA HUEY,	)	Honorable
	)	Bradley J. Waller,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: In this foreclosure case, defendant attempted to appeal the trial court's determination to grant summary judgment in plaintiff's favor. However, because the trial court's subsequent judgment of foreclosure contained a finding pursuant to Rule 304(a), and defendant did not file her notice of appeal within 30 days of that judgment, we dismissed for lack of jurisdiction.

¶ 2 In 2011, plaintiff, Bank of America, N.A., filed a complaint seeking to foreclose a mortgage against defendant, Cynthia Huey. Plaintiff alleged that it had assumed the mortgage via assignment and that defendant had not paid the monthly installments from June 2011 forward. Defendant answered the complaint and asserted the affirmative defenses that plaintiff

lacked standing to foreclose on the mortgage loan and that the assignment transferring the loan to plaintiff was invalid. The trial court granted summary judgment in plaintiff's favor and entered a subsequent judgment for foreclosure and sale that contained a finding pursuant to Rule 304(a) (eff. Feb., 26, 2010); and, thereafter, entered an order confirming the sale and order of possession. Defendant appeals, contending that the trial court erred by granting plaintiff summary judgment. We dismiss for lack of jurisdiction.

¶ 3 I. BACKGROUND

¶ 4 The pleadings, depositions, and affidavits on file reflect that, on December 18, 2006, defendant entered into a mortgage and promissory note with Market Street Mortgage Corporation. The mortgage and note pertained to a property located in Plano. On May 29, 2009, Market Street assigned the loan to BAC Home Loans Servicing, LP, formerly known as Countrywide Home Loans Servicing, L.P. Renee Hertzler, vice president of Mortgage Electronic Registration Systems, Inc., executed the assignment as nominee for Market Street. Keri Selman attested to the assignment, which was notarized by a notary public. On December 29, 2010, BAC and defendant entered into a mortgage modification agreement. Thereafter, plaintiff merged with BAC and obtained possession of defendant's promissory note.

¶ 5 On October 11, 2011, plaintiff filed its foreclosure complaint, alleging that defendant had not paid the monthly installments of the principal, taxes, interests, and insurance for June 1, 2011, forward. On September 10, 2012, defendant filed her answer. Defendant admitted that she was the mortgagor of the property, as modified. Defendant denied plaintiff's allegations that, starting in June 2011, she failed to make the monthly payments.

¶ 6 Defendant also raised two affirmative defenses. First, defendant asserted that plaintiff lacked standing. Specifically, defendant argued that plaintiff's "naked allegation that it is the

mortgagee and holder of the indebtedness is not sufficient to illustrate on its face that it has any interest in the [mortgage loan]." Defendant argued that "[BAC] was the true party in interest here; however [BAC] is not the [p]laintiff *** ." Second, defendant asserted that the May 15, 2009, assignment was improper. Defendant argued that Hertzler had, in other matters, admitted "to signing as many as 7,000-8,000 foreclosure documents a month" and that Selman "is a known robo-signer." Defendant argued that both signatories to the assignment "have been widely known and accused of robo-signing[,] thus undermining their integrity."

¶ 7 During discovery, defendant sought to depose a corporate representative from plaintiff. Plaintiff sought to quash the deposition on the basis that it concerned the loan's origination. Plaintiff argued that it was holding the original note, which it obtained through assignment, so a corporate representative would not have information on the loan's origination. Defendant countered that her second affirmative defense alleged improper assignment and that Hertzler should be deposed on the issue of whether she reviewed the assignment. The trial court denied plaintiff's motion to quash.

¶ 8 On March 15, 2013, plaintiff moved for summary judgment. Plaintiff argued that it had attached the mortgage and note to the complaint, and had produced an affidavit averring the amount that defendant currently owed. According to plaintiff, defendant had not produced any documentation or other proof to refute its claims. Plaintiff further argued that it had standing to bring the action. Plaintiff argued that it was in possession of the original note, which established standing and satisfied the burden of proof. On March 25, 2013, the trial court entered an order setting a hearing date on plaintiff's summary judgment motion for May 20, 2013.

¶ 9 On April 15, 2013, the parties appeared before the trial court on a status hearing. The trial court entered an order requiring plaintiff to "provide the last known address of Lallique

Bjustram" and continuing the case until June 17, 2013. On May 20, 2013, the parties appeared before the trial court on plaintiff's summary judgment motion. Defendant's counsel advised that he believed that the trial court had stricken the summary judgment hearing date in its April 15th order. The trial court continued the hearing on plaintiff's motion for summary judgment to June 17th. The trial court ordered plaintiff to provide defendant with Bjustram's last known address within 14 days and ordered defendant had 14 days therefrom to file her response to plaintiff's motion for summary judgment. The trial court clarified that defendant's time to respond was 14 days from the date plaintiff was required to produce Bjustram's address, not 14 days from any deposition. The trial court advised defendant:

> "From what you told me so far, I do not think that you need that deposition to respond to the [summary judgment] motion. You may need it for trial[,] but plenty of time [is left] if the motion for summary judgment is denied."

The trial court continued the hearing on plaintiff's summary judgment motion to July 8, 2013.

¶ 10 On June 13, 2013, defendant filed a motion seeking to compel discovery and for an extension of time to respond to plaintiff's motion for summary judgment. On July 8, 2013, the trial court granted plaintiff's summary judgment motion. The written order provided that, "upon oral argument," the trial court found that defendant's affirmative defenses were pleaded without sufficient supporting documentation, and therefore, those affirmative defenses did not raise a genuine issue of material fact so as to preclude summary judgment in plaintiff's favor. The trial court also denied defendant's motion to compel and for an extension of time. A report of proceedings for the July 8th hearing was not provided in the record on appeal.

¶ 11 On October 11, 2013, the trial court entered a judgment for foreclosure and sale. The judgment provided that it was "a final and appealable order and that there is no just cause for delaying the enforcement of this judgment or appeal therefrom."

¶ 12 On July 25, 2014, the trial court entered an order confirming the sale and order of possession. On August 20, 2014, defendant filed her notice of appeal.

¶ 13 II. ANALYSIS

¶ 14 Defendant's only contention on appeal is that the trial court erred in granting summary judgment in plaintiff's favor. Defendant notes that she was "in the midst of discovery" when the trial court ordered her to respond to plaintiff's motion. According to defendant, because discovery was ongoing, the trial court's grant of summary judgment was premature.

¶ 15 We begin by addressing our jurisdiction. Rule 304(a) (eff. Feb. 26, 2010), provides that, if multiple claims are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the claims if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal, or both. Illinois law is well settled that, absent a finding pursuant to Rule 304(a), a mortgage foreclosure judgment is not final and appealable until the court enters an order approving the sale and distribution. *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1, 4 (2010) (citing *In re Marriage of Verdung*, 126 Ill. 2d 542, 555 (1989)).

¶ 16 In this case, the trial court's mortgage foreclosure judgment provided that it was "a final and appealable order and that there is no just cause for delaying the enforcement of this judgment or appeal therefrom." That language constituted a proper finding pursuant to Rule 304(a). See *Burnham Management Co. v. Davis*, 302 Ill. App. 3d 263, 268-69 (1999) ("The required written finding under Rule 304(a) is sufficient to establish appellate jurisdiction only if it refers to either

enforceability or its immediate appealability or both *** "). Because defendant only seeks to challenge the trial court's entry of summary judgment in plaintiff's favor, and because the corresponding judgment of foreclosure and sale contained a Rule 304(a) finding, the summary judgment order and judgment of foreclosure became final and appealable on October 11, 2013. Defendant had 30 days from that date to file her notice of appeal. See *Goral v. Kulys*, 2014 IL App (1st) 133236, ¶ 25 ("A party appealing under Rule 304(a) must file a notice of appeal within 30 days of the entry of the trial court's finding that there is no just reason for delaying appeal").

¶ 17 III. CONCLUSION

¶ 18 For the reasons stated, we dismiss defendant's appeal for lack of jurisdiction.

¶ 19 Appeal dismissed.