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2015 IL App (3d) 150069-U

Order filed December 31, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

NATIONSTAR MORTGAGE, LLC,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois.
	)	
v.	)	
	)	
ANTHONY DECORE, a/k/a Anthony B.	)	
Decore,	)	
	)	Appeal No. 3-15-0069
Defendant-Appellant	)	Circuit No. 13-CH-2078
	)	
(Mortgage Electronic Registration	)	
Systems, Inc., as Nominee for 1st	)	
Advantage Mortgage, LLC; Paul C.	)	
Decore; Harbor Springs Property Owners	)	
Association; City of Aurora; Unknown	)	
Owners; and Nonrecord Claimants,	)	The Honorable
	)	Thomas A. Thanas and Daniel Rippy,
Defendants).	)	Judges, presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Justices Lytton and O'Brien concurred in the judgment.

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**ORDER**

¶ 1 *Held:* In a mortgage foreclosure action, the trial court properly rejected defendant's claim that plaintiff lacked standing to enforce the mortgage and properly granted

summary judgment for plaintiff on the mortgage foreclosure complaint. The appellate court, therefore, affirmed the trial court's judgment.

¶ 2 Plaintiff, Nationstar Mortgage, Inc. (Bank), filed a complaint to foreclose mortgage against defendant, Anthony Decore, and others pursuant to section 15-1504(a) of the Illinois Mortgage Foreclosure Law (Mortgage Foreclosure Law) (735 ILCS 5/15-1504(a) (West 2012)). Defendant filed an affirmative defense, claiming that the Bank lacked standing to enforce the mortgage. The trial court implicitly rejected that claim and granted summary judgment for the Bank on the mortgage foreclosure complaint. Defendant appeals. We affirm the trial court's judgment.

¶ 3 **FACTS**

¶ 4 In June 2013, the Bank filed a complaint to foreclose a mortgage held on certain condominium property owned by defendant in Aurora, Will County, Illinois.<sup>1</sup> The complaint alleged that in August 2005, defendant had borrowed \$145,600 from 1st Advantage Mortgage, LLC; that the debt was secured by a mortgage on the condominium property; that defendant defaulted on the loan in February 2013; that defendant currently owed over \$129,000 in principal on the loan; and that the Bank, in its capacity as the holder of the mortgage and the note, was seeking to foreclose upon the condominium property.

¶ 5 A copy of the note, the mortgage, and an allonge to the note were attached to the complaint. The note was executed in August 2005 in the amount of \$145,600. It was signed by defendant as the borrower and listed 1st Advantage Mortgage, LLC, as the lender. The note indicated that the borrower's promises would be secured by a mortgage. At the bottom of the last page of the note, 1st Advantage specifically endorsed the note to Lehman Brothers Bank, FSB (LBB). The endorsement was signed by Pamela Kresch as the closing manager for 1st

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<sup>1</sup> Paul DeCore was also listed on the complaint as a current owner of the property.

Advantage. The mortgage was executed at the same time as the note, was signed by defendant as the borrower and mortgagor, and was duly recorded. In the mortgage, 1st Advantage was listed as the lender and Mortgage Electronic Registration Systems, Inc. (MERS), was listed as the nominee for 1st Advantage, its successors, and assigns. MERS was also listed as the mortgagee. The mortgage provided, among other things, that the note and mortgage could be sold one or more times without prior notice to defendant. On the allonge to the note, a series of endorsements appeared: 1st Advantage specifically endorsed the note to LBB, and that endorsement was signed by Pamela Kresch as the closing manager for 1st Advantage; LBB specifically endorsed the note to Lehman Brothers Holdings, Inc. (LBH), and that endorsement was signed by the vice president of LBB; and LBH executed a blank endorsement, which was signed by the senior vice president of LBH.

¶ 6 The Bank was unable to obtain personal service of the complaint on defendant. Service by publication was made on defendant in July 2013. In October 2013, while a motion for default judgment and for judgment of foreclosure and sale were pending, defendant appeared in court with his attorney and was granted a continuance to respond to the complaint.

¶ 7 The following month, defendant filed a motion to dismiss the mortgage foreclosure complaint. Among other things, defendant alleged in the motion that the Bank had failed to establish that it had standing to enforce the mortgage because: (1) the initial endorsement/transfer of the note and mortgage bore such evidence of alteration or forgery that it called into question the authenticity and validity of the endorsement in that the signatures of Pamela Kresch on the note and the allonge appeared to be substantially and visibly different to defendant's attorney, a non-expert; and (2) the Bank had failed to attach to the complaint, or supplement the record with, a copy of the recorded assignment of the mortgage. The Bank filed

a written response and opposed the motion to dismiss. Attached to the response was a copy of the recorded assignment showing that MERS, as nominee for 1st Advantage, assigned the mortgage to the Bank in May 2013 before the foreclosure complaint in this case was filed. The assignment was recorded in August 2013. After a hearing, the trial court ultimately denied defendant's motion to dismiss.

¶ 8 Defendant subsequently filed his answer and affirmative defenses and again claimed, among other things, that the Bank lacked standing to enforce the mortgage because the initial endorsement/transfer of the note was invalid as evidenced by the discrepancy in the signatures of Kresch.

¶ 9 In June 2014, the Bank filed a motion for summary judgment and an amended motion for entry of a judgment for foreclosure and sale. In support of its motion for summary judgment, the Bank attached the affidavit of Meldin Rhodes, an administrative secretary of the Bank, as to the amounts due and owing. The affidavit was signed in April 2014 by Rhodes and had been notarized. In the affidavit, Rhodes attested, among other things that: (1) Rhodes had reviewed and was familiar with the business records for the loans that the Bank serviced, including defendant's loan; (2) copies of the origination documents for each loan were contained in the Bank's files; (3) defendant failed to pay the amounts due and owing under the note and currently owed approximately \$129,000 in principal on the loan, in addition to interest and certain other amounts; and (4) true and accurate copies of the documents that Rhodes had reviewed in determining the amounts due and owing on the loan were attached to the affidavit. Attached to Rhodes's affidavit were copies of the complaint filed in this case, the mortgage, the note, the allonge, a report as to the payment history of the loan, and various worksheets and supporting documents showing how the amount due and owing on the loan was calculated. Defendant

opposed the motion for summary judgment and, in a written response, again asserted that the Bank lacked standing to enforce the mortgage. After a hearing, the trial court granted the Bank's motion for summary judgment and entered an order for foreclosure and sale of the property.

¶ 10 The property was sold at a public sale in December 2014 and was purchased by the Bank. Later that month, the trial court entered an order confirming the sale. Defendant subsequently appealed.

¶ 11 ANALYSIS

¶ 12 On appeal, defendant argues that the trial court erred in granting summary judgment for the Bank on the mortgage foreclosure complaint. Defendant asserts that summary judgment should not have been granted because a genuine issue of material fact existed as to whether the Bank had standing to enforce the mortgage in this case. According to defendant, that issue was created by the allegedly obvious discrepancy in the signatures of Kresch on the mortgage and the allonge, which called into question the validity of the initial endorsement/transfer of the note. Defendant asserts further that the note in this case should not have been given any presumption of authenticity or validity because of the discrepancy in the signatures. Defendant asks, therefore, that we reverse the trial court's order granting summary judgment for the Bank and that we remand this case for further proceedings.

¶ 13 The Bank argues that the trial court's grant of summary judgment was proper and should be upheld. The Bank asserts that the trial court correctly rejected defendant's claim of lack of standing because defendant presented no evidence to rebut the *prima facie* case for foreclosure that the Bank had established or to rebut the presumption of validity that attached to the signatures on the note and the allonge. According to the Bank, the unsworn assertions of defendant's attorney—that Kresch's signatures on the note and the allonge appeared to be

different—were insufficient to support a claim of forgery. The Bank also asserts that its standing to enforce the mortgage was further evidenced by its possession of the note and by the assignment, which showed that the mortgage had been assigned to the Bank before the foreclosure complaint in this case had been filed. For all of the reasons stated, the Bank asks that we affirm the trial court's grant of summary judgment.

¶ 14 The purpose of summary judgment is not to try a question of fact, but to determine if one exists. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). Summary judgment should be granted only where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and that the moving party is clearly entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012); *Adams*, 211 Ill. 2d at 43. Summary judgment should not be granted if the material facts are in dispute or if the material facts are not in dispute but reasonable persons might draw different inferences from the undisputed facts. *Adams*, 211 Ill. 2d at 43. Although summary judgment is to be encouraged as an expeditious manner of disposing of a lawsuit, it is a drastic measure and should be allowed only where the right of the moving party is clear and free from doubt. *Id.* In appeals from summary judgment rulings, the standard of review is *de novo*. *Id.*

¶ 15 The purpose of the doctrine of standing is to preclude persons who have no interest in a controversy from bringing suit and to ensure that issues are raised only by those parties that have a real interest in the outcome of the controversy. See *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999). A plaintiff is not required to allege facts to establish standing. *Id.* at 224. Rather, standing is an affirmative defense that must be plead and proven by the defendant. *Id.*

¶ 16 Under the Mortgage Foreclosure Law, an action to foreclose may be brought by the mortgagee (the holder of the indebtedness secured by the mortgage), an agent, or a successor of the mortgagee. See 735 ILCS 5/15-1504(a)(3)(N) (West 2012); *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1, 7 (2010). To establish a *prima facie* case, the plaintiff in a mortgage foreclosure action must file a complaint that complies with the pleading requirements of section 15-1504(a) of the Mortgage Foreclosure Law and must attach a copy of the note and the mortgage to the complaint. See 735 ILCS 5/15-1504(a), (b) (West 2012); Ill. S. Ct. R. 113(a), (b) (eff. May 1, 2013) (for all foreclosure actions filed on or after May 1, 2013, in addition to the documents listed in section 15-1504 of the Mortgage Foreclosure Law, a copy of the note, as it currently exists, including all endorsements and allonges, must also be attached to the mortgage foreclosure complaint at the time of filing); *Farm Credit Bank of St. Louis v. Bietham*, 262 Ill. App. 3d 614, 622 (1994) (in order to establish a *prima facie* case of foreclosure, the plaintiff is only required to introduce the deed of trust and promissory note). The mere fact that a copy of the note is attached to the complaint is *prima facie* evidence that the plaintiff owns the note. *Parkway Bank and Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 24. Although the plaintiff in a mortgage foreclosure action is not required to allege facts necessary to establish standing, the plaintiff must allege in the complaint, as a pleading requirement, the capacity in which the plaintiff brings the action to foreclose. See 735 ILCS 5/15-1504(a)(3)(N) (West 2012).

¶ 17 Once the plaintiff has established a *prima facie* case for foreclosure, the burden shifts to the defendant to prove any affirmative defenses that the defendant has raised, including the lack of standing. See *Bietham*, 262 Ill. App. 3d at 622. Denials in a defendant's answer are not sufficient to create a genuine issue of material fact as necessary to prevent a grant of summary

judgment for the plaintiff. *Korzen*, 2013 IL App (1st) 130380, ¶ 49. To the contrary, if the plaintiff moves for summary judgment and supplies facts which, if uncontradicted, would entitle the plaintiff to a judgment as a matter of law, the defendant cannot rely on its pleadings alone to raise a genuine issue of material fact. *Purtill v. Hess*, 111 Ill. 2d 229, 240-41 (1986).

¶ 18 In the present case, the Bank filed a mortgage foreclosure complaint that was in compliance with the pleading requirements of the Illinois Mortgage Foreclosure Law and attached a copy of the note, mortgage, and allonge to the complaint. By filing a proper complaint with the proper documents attached, the Bank established a *prima facie* case for mortgage foreclosure. See 735 ILCS 5/15-1504(a), (b) (West 2012); Ill. S. Ct. R. 113(a), (b) (eff. May 1, 2013); *Bietham*, 262 Ill. App. 3d at 622; *Korzen*, 2013 IL App (1st) 130380, ¶ 24. The burden then shifted to defendant to establish his affirmative defense—that the bank lacked standing to enforce the mortgage. See *Bietham*, 262 Ill. App. 3d at 622.

¶ 19 Defendant failed in that burden. Defendant presented no evidence whatsoever to support his claim of forgery or alteration and relied solely upon the unsupported allegation made by his attorney—that Kresch's signatures on the note and the allonge appeared to be different to a lay person and that the alleged discrepancy called into question the validity of the transfer. Defendant did not present the affidavit of a handwriting expert or of anyone else in an attempt to establish his assertion that the signatures had been forged or altered or to establish that there was at least a genuine issue of material fact as to the validity of the signatures. Without any evidence to support his assertion, defendant failed in his burden to establish a lack of standing. See *id.*; *Purtill*, 111 Ill. 2d at 240-41; *US Bank, National Ass'n v. Avdic*, 2014 IL App (1st) 121759, ¶ 32. The trial court, therefore, properly rejected defendant's claim of lack of standing and properly granted summary judgment for the Bank on its mortgage foreclosure complaint.

