2016 IL App (1st) 143771-U

FIFTH DIVISION
JUNE 24, 2016

No. 1-14-3771



IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| WELLS FARGO BANK, N.A., | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | |
| | ) | |
| WILHEMENIA T. MUHAMMAD; RONALD MUHAMMAD; CITY OF CHICAGO, UNITED STATES OF AMERICA, GMAC, LLC, LVNV FUNDING, LLC, UNKNOWN OWNERS AND NON-RECORD CLAIMANTS | ) | No. 12 CH 21767 |
| | ) | Honorable |
| | ) | Robert E. Senechalle, |
| Defendants-Appellants. | ) | Judge Presiding. |

JUSTICE BURKE delivered the judgment of the court.
Justices Gordon and Lampkin concurred in the judgment.

**ORDER**

¶ 1 *Held*: Judgment and order confirming sale in mortgage foreclosure action affirmed where the trial court did not abuse its discretion in denying defendants' motion to vacate the default judgment and defendants failed to rebut plaintiff's showing that it had standing and capacity to foreclose.

¶ 2 Defendants, Wilhelmenia and Ronald Muhammad, appeal from orders of the circuit court of Cook County denying their motion to vacate a summary judgment in a mortgage foreclosure action and confirming the judicial sale of their home. In their motion to vacate, defendants argued that plaintiff, Wells Fargo Bank, N.A. (Wells Fargo) did not have standing to foreclose their home because they were not the mortgagee. In their motion to reconsider, defendants repeated the arguments made in their motion to vacate and contended that the court erred in entering a default judgment against Wilhelmenia. On appeal, defendants argue that Wells Fargo did not have the capacity to foreclose and that the default judgment against Wilhelmenia was improper because she filed an answer. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 On June 13, 2012, plaintiff filed a complaint to foreclose a mortgage originally issued by Mortgage Electronic Registration Systems (MERS), as nominee for Provident Funding Group, and recorded on June 7, 2006. In its complaint, plaintiff alleged that it was the mortgagee under 735 ILCS 5/15-1208 and that defendants had been in default since February 1, 2012, on payments on the property located at 4345 South Vincennes Avenue in Chicago. Plaintiff attached a copy of the mortgage and the note to its complaint. The note showed that it was initially given to Provident Funding Group, but was subsequently specially endorsed to Provident Funding Associates, L.P. Provident Funding Associates then endorsed the note to Wells Fargo. Wells Fargo then endorsed the note in blank, making the note payable to the bearer.

¶ 5 On July 13, 2012, defendants filed an "Answer to complaint and motion to dismiss." In this pleading, defendants asserted that the alleged debt was "charged off" in June 2012 and referred to an exhibit, but no exhibit was attached. Defendants also asserted that opposing

counsel and Wells Fargo were conducting a fraud upon the court. The pleading was signed by both Wilhelmenia and Ronald. On August 14, 2012, Ronald filed an appearance.

¶ 6 On September 27, 2012, Wells Fargo filed a motion for default and judgment of foreclosure and sale. Wells Fargo asserted that Wilhelmenia should be found in default. Ronald appeared and answered on August 14, 2012, but Wilhelmenia did not appear or answer. That same day, Wells Fargo filed a motion for summary judgment against Ronald. Wells Fargo contended that there was no genuine issue of material fact because Ronald failed to respond to the arguments made in the complaint and failed to support his allegations with supporting documentation. Wells Fargo also attached an affidavit in which the affiant stated that Wells Fargo was the holder of the note and showing the amount owed. On November 28, 2012, the court held a hearing on plaintiff's motions, during which Ronald was present and "participated."[1]

¶ 7 On January 30, 2013, the trial court entered an order granting plaintiff's motions for default against Wilhelmenia and summary judgment against Ronald. The trial court also entered a judgment of foreclosure and sale on the same day. The notice of sale, which was served on defendants, indicated that the subject property would be sold on May 2, 2013.

¶ 8 On April 26, 2013, defendants filed an "Emergency motion to cancel sale, vacate final judgment, dismiss complaint and request for leave to file counter complaint." In their pleading, defendants argued that Wells Fargo did not have standing to file the complaint because defendants did not "execute a mortgage to Wells Fargo." Defendants contended that Freddie Mac was the current holder of the note and that plaintiff had not presented any evidence to show that it had been transferred to Wells Fargo. The pleading was signed only by Ronald. Defendants attached an affidavit, which both defendants signed, to their emergency motion in which both

[1] The report of proceedings from the trial court is not included in the record filed on appeal.

defendants alleged that their property had been wrongfully foreclosed. Defendants also attached several exhibits to their motion, including a printout from Freddie Mac's website which showed that Freddie Mac was the "owner" of the mortgage at the subject property, which it acquired on July 13, 2006. Defendants attached a document titled "corporate assignment of mortgage," which showed that on April 13, 2012, MERS assigned the mortgage at the subject property to Wells Fargo. In their affidavit, defendants contended that this assignment was invalid because MERS possessed no right to initiate the foreclosure because Provident Funding Group, Inc. no longer owned the note after it was transferred to Freddie Mac on July 13, 2006.

¶ 9 On May 1, 2013, the trial court denied defendants' emergency motion. The order shows that the trial court reviewed defendants' exhibits and considered their contents in issuing its ruling. On November 6, 2013, plaintiffs served defendants with a notice of sale which indicated that their property would be sold at a judicial sale on December 5, 2013. On December 18, 2013, Wells Fargo filed a motion to confirm the judicial sale. Two certificates of publication were submitted with the motion, one in the Chicago Daily Law Bulletin and the other in the Hyde Park Herald. Defendants filed an "objection to motion for order approving sale and distribution." In their pleading, defendants contended that the certificates of publication did not specify whether the notices of sale were published in the papers' legal notice sections, as required by section 15-1507(c)(2)(i) of the Illinois Mortgage Foreclosure Law (Mortgage Foreclosure Law). 735 ILCS 15-1507(c)(2)(i) (West 2012). In reply, Wells Fargo asserted that defendants failed to establish that the notices did not comply with section 15-1507 and did not demonstrate good cause for setting the sale aside.

¶ 10 On May 28, 2014, the trial court granted plaintiff's motion for an order approving the judicial sale. The court found that all the notices required by section 5/15-1507(c) were properly

given and that the sale was fairly and properly made. On June 24, 2014, defendants filed a motion to reconsider the entry of judgment of foreclosure and the order approving sale. In their motion, defendants argued for the first time that Wilhelmenia should not have been defaulted because she appeared and filed an answer on July 13, 2012, before the entry of the default. Defendants further contended that there was a material fact as to whether Wells Fargo had capacity to bring the complaint and that Wells Fargo failed to show that the notices of sale were properly published.

¶ 11 In its response to defendants' motion to reconsider, plaintiff asserted that the motions to reconsider the entry of the default judgment and the order of foreclosure and sale were untimely because the orders were entered on January 30, 2013, and defendants did not file the motion to reconsider those judgments until June 24, 2014, more than 30 days after their entry. Nevertheless, plaintiff argued that the order of default was proper because Wilhelmenia never filed an appearance and the "answer" filed by defendants could not be properly considered a responsive pleading because it did not respond to any of the allegations in plaintiff's complaint.

¶ 12 Plaintiff further contended that defendants waived their arguments regarding Wells Fargo's standing or capacity to bring the suit because they did not raise it as an affirmative defense. Moreover, plaintiff contended that it made a *prima facie* showing of its standing by attaching a copy of the note to the complaint, which defendants had failed to rebut. Finally, plaintiff asserted that the foreclosure sale was properly approved. On October 22, 2014, the trial court denied defendants' motion to reconsider. This appeal follows.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendants contend that the trial court erred in entering an order of default against Wilhelmenia where she filed an answer. Defendants also contend that Wells Fargo lacked

the capacity to bring the action because it did not establish that it held the note at the time the action was initiated.[2] Plaintiff responds that it affirmatively proved that it had the capacity to foreclose and that the defendants waived any argument regarding Wells Fargo's standing or capacity to foreclose by not raising it before the entry of the judgment. Plaintiffs also assert that the entry of the default judgment against Wilhelmenia was proper because the July 13, 2012, pleading did not respond to plaintiff's complaint and that defendants waived any argument regarding the default by not raising it until their motion to reconsider.

¶ 15 Section 15-1508(b) of the Mortgage Foreclosure Law (735 ILCS 5/15-1508(b) (West 2012)), confers broad discretion on circuit courts to approve or disapprove judicial sales. We review the exercise of that discretion under an abuse of discretion standard. *Bank of America, N.A. v. Adeyiga*, 2014 IL App (1st) 131252, ¶ 116. Section 15-1508(b) of the Mortgage Foreclosure Law states that the court shall enter an order confirming the sale unless the court finds that: (i) notice of the sale was not given in accordance with section 15-1507(c) of the Mortgage Foreclosure Law, (ii) the terms of the sale were unconscionable, (iii) the sale was conducted fraudulently, or (iv) justice was otherwise not done. See 735 ILCS 5/15-1508(b) (West 2012).

¶ 16 Initially, we observe that there is no report of proceedings from the trial court included in the record filed on appeal. It was defendants' burden, as appellants, to provide a complete record on appeal, including a report of proceedings or an appropriate substitute, as required by Illinois Supreme Court Rule 323 (Ill. S. Ct. R. 323 (eff. Dec. 13, 2005)). *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462 (1993). In the absence of such a record, we presume that any order entered by the trial court was in conformity with the law and had a sufficient factual basis.

[2] Defendants also contend in their opening brief that Wells Fargo failed to properly publish the notice of the sale. In their reply brief, however, defendants indicate that they no longer wished to raise this issue after considering plaintiff's contentions in its brief and examining the record.

*Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Any doubts which may arise from the incompleteness of the record will be resolved against the appellant. *Id.*

¶ 17 A. Order of Default

¶ 18 Defendants first contend that the order of default was improper and must be vacated because Wilhelmenia filed an answer to the complaint. Defendants maintain that although Wilhelmenia did not file an appearance, her signature on the answer was sufficient such that the entry of the default was improper. Initially, defendants raised this argument regarding the default judgment for the first time in their motion to reconsider the judgment after the court entered the order approving the judicial sale and more than a year after the trial court entered the order of default.

¶ 19 The "purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the court's previous application of existing law." *Pence v. Northeast Illinois Regional Commuter R.R. Corp.*, 398 Ill. App. 3d 13, 16 (2010). There are a number of decisions holding that arguments raised for the first time in a motion to reconsider are deemed forfeited. See, *e.g.*, *American Chartered Bank v. USMDS, Inc.*, 2013 IL App (3d) 120397, ¶ 13 ("Issues cannot be raised for the first time in the trial court in a motion to reconsider and issues raised for the first time in a motion to reconsider cannot be raised on appeal."); see also *Sewickley, LLC v. Chicago Title Land Trust Co.*, 2012 IL App (1st) 112977, ¶¶ 35-37. Still, there is also authority for the proposition that a circuit court has discretion to consider a new issue raised for the first time in a motion to reconsider, but only when a party has a reasonable explanation for why it did not raise the issue earlier in the proceedings. *In re Marriage of Epting*, 2012 IL App (1st) 113727, ¶ 41; *Delgatto v. Brandon Associates, Ltd.*, 131 Ill. 2d 183,

195 (1989). Here, defendants have not provided a reasonable explanation for why they did not raise this issue earlier in the proceeding. Accordingly, they have waived this argument for review.

¶ 20 Nonetheless, our supreme court recently addressed the issue of challenging the merits of an underlying judgment of foreclosure after the trial court's approval and confirmation of the sale in *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469. In *McCluskey,* our supreme court held that "up until a motion to confirm the judicial sale is filed, a borrower may seek to vacate a default judgment of foreclosure under the standards set forth in section 2–1301(e) [(735 ILCS 5/2–1301(e) (West 2012))]."*McCluskey*, 2013 IL 115469, ¶ 27. "However, after a motion to confirm the judicial sale has been filed, a borrower seeking to set aside a default judgment of foreclosure may only do so by filing objections to the confirmation of the sale under the provisions of section 15–1508(b) [of the Mortgage Foreclosure Law (735 ILCS 5/15–1508(b) (West 2012))]."*McCluskey*, 2013 IL 115469, ¶ 27.

¶ 21 Here, plaintiff filed its motion to confirm the judicial sale on December 18, 2013. Defendants filed their motion to reconsider and raised the issue of the default judgment for the first time on June 24, 2014. Accordingly, under *McCluskey,* defendants could seek to set aside the default judgment of foreclosure only by filing the objections recognized by section 15-1508(b) of the Mortgage Foreclosure Law. We therefore address whether there is a basis to deny confirmation of the sale under that section.

¶ 22 It is clear from the plain language of that section, and the holding in *McCluskey*, that the trial court is required to confirm the sale upon a hearing unless it finds one of the four enumerated grounds for denial exists. Accordingly, a party seeking to avoid confirmation of the sale has the burden of showing why the circumstances of the case fall within section 15-1508(b).

*McCluskey*, 2013 IL 115469, ¶ 27. Here, defendants did not offer the trial court any evidence demonstrating that plaintiff failed to give requisite notice of the sale under section 15-1507, that the terms of the sale were unconscionable, or that the sale was conducted fraudulently. See 735 ILCS 5/15-1508(b)(i)-(iii) (West 2012). Instead, defendants, in their reply brief, raise arguments regarding Wilhelmenia's right to due process and to respond to Well Fargo's complaint. We therefore consider defendants' argument within the framework of section 15–1508(b)(iv) only, which requires a showing that "justice was not otherwise done." See 735 ILCS 5/15–1508(b)(iv) (West 2012).

¶ 23 Our supreme court has explained that once a motion to confirm has been filed, a borrower seeking relief from a default judgment and sale pursuant to section 15–1508(b)(iv) must demonstrate "either the lender, through fraud or misrepresentation, prevented the borrower from raising his meritorious defenses to the complaint at an earlier time in the proceedings, or the borrower has equitable defenses that reveal he was otherwise prevented from protecting his property interests." *McCluskey*, 2013 IL 115469, ¶ 26. Here, nothing in the record shows that Wilhelmenia was prevented from raising the issue of an improper default at an earlier time in the proceedings. The record shows that Ronald, and later counsel, appeared on behalf of defendants throughout the proceedings, but defendants failed to address Wilhelmenia's default until after the judicial sale had been confirmed and more than a year after the order of default. Wilhelmenia does not argue that "justice was not otherwise done," and there is no indication in the record that she could meet her burden under that section as our supreme court described it in *McCluskey*. Accordingly, the trial court did not abuse its discretion in entering the default judgment against Wilhelmenia.

¶ 24 Defendants contend, however, that *McCluskey* is inapplicable because "no discretion existed for the trial court" in this case. Defendants maintain that "*McCluskey* is limited to cases where a proper default judgment was entered and the defendant seeks vacatur of the judgment as a matter of discretion of the court." Defendants assert that the trial court was not asked to use its discretion to vacate the default, but was instead required to vacate the default as a matter of law because Wilhelmenia timely participated in the proceedings. We find defendants' narrow reading of *McCluskey* unpersuasive.

¶ 25 In *McCluskey*, the supreme court stated that:

> "To allow the borrower to utilize the standards of a section 2-1301(e) motion to both set aside the judicial sale and also unravel the underlying foreclosure judgment—after being given ample statutory opportunity to respond to the allegations of the complaint, and after being fully informed of the court processes—would indeed be inconsistent with the need to establish stability in the judicial sale process. *** Furthermore, it would allow the borrower to circumvent the time limitations for redemption and reinstatement and essentially allow for a revival of those provisions that is otherwise explicitly precluded by the Foreclosure Law." *McCluskey*, 2013 IL 115469, ¶ 25.

The court concluded that "the more liberal standards applicable to a motion to vacate a default judgment under section 2-1301(e) are inconsistent with the more restrictive sale confirmation procedures set forth in section 15-1508(b) of the [Mortgage] Foreclosure Law." *Id.* Thus, the supreme court's language makes it clear that after a motion to confirm the judicial sale has been filed, a borrower seeking to set aside a default judgment of foreclosure may do so only by filing objections to the confirmation of the sale under the provisions of section 15-1508(b). *Id*. ¶ 27.

Because we find that *McCluskey* limits the manner in which a borrower may challenge a default judgment in mortgage foreclosure actions, we find defendants' reliance on *Dils v. City of Chicago*, 62 Ill. App. 3d 474 (1978) and *In re Haley D.*, 2011 IL 110886 unpersuasive.

Nevertheless, even under the standards for vacating a default under section 2-1301(e), we find that the trial court did not err in denying defendants' motion. The record shows that despite being properly served, as well as having notice of the default, notice of the judgment of foreclosure, and notice of the sale, defendants waited more than a year after the default judgment and more than six months after the filing of the motion to confirm the sale to raise the pleading defenses for the first time. Moreover, Ronald and defendants' attorney actively participated in the proceedings, filing an "objection to motion for order approving sale and distribution," which mentioned only the notices of the sale, but not the default judgment. Accordingly, we cannot say that the circuit court erred in denying defendants' motion for reconsideration. *McCluskey*, 2013 IL 115469, ¶ 31. Because we find that defendant's contentions were inadequate pursuant to *McCluskey* or were otherwise waived, we need not determine whether the pleading signed by both defendants constituted an answer.

¶ 26 B. Wells Fargo's Standing and Capacity to Foreclose

¶ 27 We next address defendants' contention that there is a genuine issue as to whether Wells Fargo had capacity to bring the foreclosure action. Defendants go to great lengths in their brief before this court to distinguish "capacity" to foreclose from "standing." Defendants assert that because capacity, at contrast with standing, is an element of the foreclosure action under the Mortgage Foreclosure Law, Wells Fargo was required to plead and prove its capacity to foreclose before the trial court, which it failed to do.[3]

[3] We note that, in their motion to vacate, defendants frame this issue as one of standing only. Defendants did not

¶ 28 Under the Mortgage Foreclosure Law, an action to foreclose may be brought by the mortgagee, an agent, the legal holder of the indebtedness, 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). *US Bank, Nat. Ass'n v. Avdic*, 2014 IL App (1st) 121759, ¶ 35. The mere fact that plaintiff attached a copy of the note 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); *Barnes*, 406 Ill. App. 3d at 5. 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 *Farm Credit Bank of St. Louis v. Biethman*, 262 Ill. App. 3d 614, 622 (1994).

¶ 29 In this case, Wells Fargo filed a mortgage foreclosure complaint that complied with the pleading requirements of the Mortgage Foreclosure Law and attached a copy of the note and mortgage to the complaint. By filing a proper complaint with the appropriate documents

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frame the issue as one of Wells Fargo's "capacity" until their motion for reconsideration. As discussed above regarding the order of default, it would be improper for defendants to make this argument for the first time in their motion for reconsideration. *American Chartered Bank*, 2013 IL App (3d) 120397, ¶ 13. In their brief before this court, defendants attribute the conflation of the two terms in the trial court to defendants *pro se* status when they filed the motion to vacate the judgment. Because we find that defendants' argument fails notwithstanding any consideration of waiver, we will address the merits of defendants' contention.

attached,[4] Wells Fargo established a *prima facie* case for mortgage foreclosure (See 735 ILCS 5/15–1504(a), (b) (West 2012); *Korzen*, 2013 IL App (1st) 130380, ¶ 24; *Biethman*, 262 Ill. App. 3d at 622) and its complaint was legally and factually sufficient and included allegations relative to standing (*Barnes*, 406 Ill. App. 3d at 6). The burden then shifted to defendants to establish their affirmative defense—that Wells Fargo lacked standing or capacity to enforce the mortgage. See *Biethman*, 262 Ill. App. 3d at 622.

¶ 30 In this case, defendants waited until after the trial court entered the orders of default and summary judgment and after the judgment of foreclosure to raise the issue of standing, and did not challenge Wells Fargo's standing or capacity in the pleading defendants contend constituted their answer to plaintiff's complaint. A proper answer to a complaint must contain an explicit admission or an explicit denial of each allegation in the complaint. 735 ILCS 5/2–610(a) (West 2010). An allegation not explicitly denied is admitted unless: (1) the allegation is about damages, (2) the party states that it lacks knowledge of the matter sufficient to form a belief and supports this statement with an affidavit, or (3) the party has not had the chance to deny the allegation. 735 ILCS 5/2–610(b) (West 2010). "The failure of a defendant to explicitly deny a specific allegation in the complaint will be considered a judicial admission and will dispense with the need of submitting proof on the issue." *Gowdy v. Richter*, 20 Ill. App. 3d 514, 520 (1974). Here, Wells Fargo asserted in its complaint that it was bringing this action as the mortgagee, a contention that defendants failed to deny in their responsive pleading. Thus, defendants judicially admitted Wells Fargo's capacity and standing to foreclose by failing to challenge it in a responsive pleading. See *Korzen*, 2013 IL App (1st) 130380, ¶¶ 37-38.

[4] While Illinois Supreme Court Rule 113(b) (eff. May 1, 2013) now requires plaintiffs to attach to the complaint the present copy of the note, as well as all endorsements and allonges, plaintiff here filed its complaint before this rule took effect.

¶ 31 Furthermore, defendants failed to rebut Wells Fargo's *prima facie* case that it had standing and capacity to foreclose in their motion to vacate where they raised the issue of Wells Fargo's standing for the first time. The only evidence defendants presented in that motion to rebut Wells Fargo's *prima facie* case was a printout from the Freddie Mac website which showed that Freddie Mac was the owner of the mortgage at the subject property, which it acquired on July 18, 2006. The trial court evidently found, however, that this evidence was insufficient to rebut Wells Fargo's *prima facie* case. When the trial court held hearings on defendants' motion to vacate, it is reasonable to conclude that the trial court reviewed the note and the mortgage and defendant's exhibits in making its decision. *CitiMortgage, Inc. v. Moran*, 2014 IL App (1st) 132430, ¶ 41. Because defendants failed to provide this court with a transcript of the proceedings, we presume that the trial court acted in conformity with the law. *Id.*

¶ 32 The printout merely showed that Freddie Mac had an interest in the loan, not that Freddie Mac had the sole capacity to foreclose. Moreover, Freddie Mac's interest, if any, in the mortgage, does not preclude Wells Fargo's capacity to foreclose because Illinois law allows servicers and agents to be foreclosure plaintiffs on behalf of the actual mortgage holder. *Deutsche Bank National Trust Co. v. Gilbert*, 2012 IL App (2d) 120164, ¶ 15. Although, as defendants point out, Wells Fargo was not the original holder of the note, under the Uniform Commercial Code (UCC), a negotiable instrument may be transferred by delivery to another entity for the purpose of giving that entity the right to enforce the instrument. 810 ILCS 5/3-203(a) (West 2010). If a note is "[e]ndorsed in blank," it becomes payable to the bearer. 810 ILCS 5/3–205(b) (West 2010). A person in possession of a note payable to bearer is deemed the holder of the instrument, and is entitled to enforce the instrument. See 810 ILCS 5/3-201(b)(21)(A) (West 2010).

¶ 33 The note attached to Wells Fargo's complaint in this case was made by the defendant and contained an indorsement in blank to Wells Fargo. As such, it was payable to the bearer, which was undisputedly Wells Fargo. This was sufficient to establish that Wells Fargo was the legal holder of the indebtedness secured by the mortgage under the Mortgage Foreclosure Law. 735 ILCS 5/15–1503 (West 2010); *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 26; *Barnes*, 406 Ill. App. 3d at 7. Wells Fargo also provided an affidavit in which the affiant stated that Wells Fargo is the holder of the note. *Aurora Bank FSB v. Perry*, 2015 IL App (3d) 130673, ¶ 26. "It is therefore doubtful that plaintiff chose at random a homeowner against whom to file a foreclosure action. Rather, plaintiff filed the complaint in this case because, as the complaint, note, [and] affidavit" show, it had an interest in the property. *Garner*, 2013 IL App (1st) 123422, ¶ 26. Defendants then failed to rebut Wells Fargo's *prima facie* case that it had standing and capacity to foreclose. Thus, we find that the trial court did not abuse its discretion in approving the judicial sale of the subject property.

¶ 34 III. Conclusion

¶ 35 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 36 Affirmed.