2016 IL App (2d) 150256-U
No. 2-15-0256
Order filed March 29, 2016



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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| NATIONSTAR MORTGAGE, LLC,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>SALVATORE J. MORICI, a/k/a Savatore J. Morici, Jr. a/k/a Salvatore Morici; BONNIE L. MORICI a/k/a Bonnie Morici; Unknown Owners and Nonrecord Claimants<br><br>Defendants-Appellants<br><br>(Grande Park Community Association, Defendant). | ) | Appeal from the Circuit Court of Kendall County.<br><br>No. 12-CH-1404<br><br>Honorable Bradley Waller and John F. McAdams Judges, Presiding. |

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JUSTICE BURKE delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court did not err in granting lender summary judgment on mortgage foreclosure claim.

¶ 2 Ocwen Loan Servicing, LLC (Ocwen) filed a foreclosure action against defendants Salvatore J. Morici and Bonnie L. Morici, alleging that defendants failed to make their loan

payments. Defendant Grande Park Community Association filed an answer to the complaint but otherwise did not participate in the trial court proceedings and is not a party to this appeal.

¶ 3 After filing the foreclosure action, Ocwen transferred its interest to plaintiff, Nationstar Mortgage, LLC, who was subsequently substituted as party plaintiff. The trial court granted Nationstar summary judgment, entered an order confirming the sheriff's sale of the subject property, and entered a deficiency judgment against defendants.

¶ 4 Defendants appeal, arguing that (1) the trial court never obtained jurisdiction over them because service was defective; (2) any jurisdiction the court may have had over defendants was only *in rem* jurisdiction, which precludes an *in personam* deficiency judgment; and (3) the court erred in striking defendants' affirmative defense that Ocwen and Nationstar lacked standing to bring the action. We affirm.

¶ 5 I. BACKGROUND

¶ 6 As this is an appeal from the entry of summary judgment, we summarize the facts taken from the pleadings, depositions, and admissions on file, together with the affidavits. See 735 ILCS 5/2-1005(c) (West 2014). On November 27, 2012, Ocwen filed the foreclosure action against defendants, alleging that the Moricis were in default on a mortgage executed on December 4, 2006, regarding property at 12806 Grande Poplar Circle in Plainfield. The complaint identified the original mortgagee as Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for Taylor, Bean, Whitaker Mortgage Corporation (Taylor) as the lender. The note was endorsed in blank. Ocwen alleged that it brought suit as mortgagee under section 15-1208 of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1208 (West 2012).

¶ 7 A special process server was appointed to effect service. When the process server could not personally serve the Moricis, he filed affidavits describing his attempts to serve them at the address of the property. He made nine attempts to serve Salvatore between December 6, 2012, and December 22, 2012. He also made eight attempts to serve Bonnie between December 9, 2012, and December 22, 2012. The process server averred that, in each instance, it appeared that someone was present in the home but refused to answer the door.

¶ 8 On February 25, 2013, defense counsel was present and participated in a hearing at which Ocwen obtained leave to add the Village of Plainfield as an additional party defendant. Counsel did not file an appearance.

¶ 9 On March 6, 2013, Ocwen filed an affidavit in support of service by publication. Ocwen filed a due diligence affidavit regarding Ocwen's efforts to ascertain the Moricis' last known address, which was the address of the property. Publication service was effected.

¶ 10 On June 3, 2013, Ocwen moved for an order of default and summary judgment against defendants for their failure to answer the complaint. Defense counsel filed an appearance on June 10, 2013, and the trial court granted defendants 28 days to answer or otherwise plead. On April 15, 2013, defense counsel appeared again and advised the trial court that he objected to the service by publication.[1]

¶ 11 On July 8, 2013, defendants filed a motion to quash service and dismiss the complaint. Ocwen argued that the motion was time barred under section 15-1505.6 of the Foreclosure Law because more than 60 days had passed since defense counsel appeared at the April 15, 2013,

[1] There is no record of the April 15, 2013, hearing, but a transcript of subsequent hearing shows that defense counsel admitted appearing at the April 15, 2013, hearing and objecting to publication service at that time.

hearing. Defense counsel responded that the 60-day period had not yet run because it began when he filed his appearance on June 10, 2013. The trial court ultimately denied the motion to dismiss.

¶ 12 On October 29, 2013, defendants filed a second motion to dismiss, arguing that Ocwen lacked standing because it was not holder of the note and that Taylor was the mortgagee. The Moricis filed affidavits stating that Nationstar became a servicer of the note on May 16, 2013. The motion to dismiss did not allege defective service.

¶ 13 On November 14, 2013, Ocwen obtained leave to substitute Nationstar as the party plaintiff, and defendants withdrew their pending motion to dismiss. On December 20, 2013, defendants filed a third motion to dismiss arguing that Nationstar lacked standing because it was not the holder of the note and was not the mortgagee. The Moricis filed affidavits asserting that they did not owe Nationstar or Ocwen any money and that Nationstar was not the holder of the note. The motion did not allege defective service. On January 3, 2014, the trial court denied the motion to dismiss, noting defendants' prior agreement with Ocwen that Nationstar was the proper party plaintiff. The court concluded Nationstar, as the proper party plaintiff, would have the right to proceed with the foreclosure by virtue of being in possession of the note negotiated to Ocwen.

¶ 14 On February 28, 2014, defendants filed a fourth motion to dismiss, arguing that no valid lien was created because only Salvatore signed the note, the property was held in tenancy by the entirety, and the mortgage was signed by both Salvatore and Bonnie. The motion did not object to service by publication. The trial court denied the motion with prejudice and ordered defendants to file an answer.

¶ 15 On April 11, 2014, defendants filed an answer and an affirmative defense, which continued to challenge Nationstar's standing. The motion did not object to service by publication.

¶ 16 Nationstar moved to strike the affirmative defense under sections 2-615 and 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619, 2-619.1 (West 2014)). Nationstar pointed out that the note attached to the complaint was endorsed in blank and that Nationstar was proceeding with the action in its capacity as mortgagee. The motion also referred to the Moricis' affidavits in which they admitted Nationstar was the servicer of the loan. The trial court struck the affirmative defense without prejudice, but defendants did not file an amended affirmative defense.

¶ 17 On June 17, 2014, Nationstar moved for an order of default and summary judgment and attached an affidavit stating that Nationstar acquired the loan from Ocwen in May 2013. Defendants did not file a response to the motion. However, defendants argued orally that an allonge, a slip of paper affixed to a negotiable instrument, as a bill of exchange, for the purpose of receiving additional endorsements, was required to turn the note into bearer paper. The trial court disagreed and granted summary judgment and entered a judgment of foreclosure and sale on September 26, 2014.

¶ 18 On October 24, 2014, defendants filed a motion to reconsider, arguing that Nationstar had failed to rebut their affidavits in which they averred that they owed no money to Nationstar. Defendants also argued that Nationstar lacked standing because they did not file a chain of assignments. Defendants also challenged for the first time the signature on the endorsement. The trial court denied the motion on November 7, 2014.

¶ 19 The property was sold on January 5, 2015, resulting in a $363,748 deficiency. Nationstar filed an *in personam* deficiency judgment, but defendants did not file an objection. The court entered an order confirming the sale and an *in personam* deficiency judgment against Salvatore. Defendants filed two more motions to reconsider, which were denied. This timely appeal followed.

¶ 20 II. ANALYSIS

¶ 21 Defendants argue that (1) the trial court never obtained jurisdiction over them because service was defective; (2) any jurisdiction the court may have had over defendants was only *in rem* jurisdiction, which precludes an *in personam* deficiency judgment; and (3) the court erred in striking defendants' affirmative defense that Ocwen and Nationstar lacked standing to bring the action.

¶ 22 A. Plaintiff's Motion to Strike

¶ 23 Initially, we address plaintiff's argument that defendants' brief fails to comply with Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013). Rule 341(h)(6) requires the appellant to include a "Statement of Facts" outlining "the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013). Using numbered paragraphs set out like a complaint, defendants have violated this rule by omitting several facts necessary to gain an understanding of the trial court proceedings.

¶ 24 Rule 341(h)(7) also requires that the "Argument" section include "citation of the authorities and the pages of the record relied on" (Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013)), but the numbered paragraphs in defendants' argument section are a series of stilted assertions that make it difficult to discern defendants' contentions or the reasons therefore. Moreover, only

some of these assertions are supported by citation to relevant authority, and when they are, defendants offer little explanation of how the authority supports their positions. Defendants do not respond to these allegations, as they have not filed a reply brief.

¶ 25 The Illinois Supreme Court Rules are not suggestions; they have the force of law and must be complied with. *People v. Campbell*, 224 Ill. 2d 80, 87 (2006). Where a brief has failed to comply with the rules, we may strike portions of the brief or dismiss the appeal should the circumstances warrant. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 9. Nationstar asks us to strike defendants' brief and summarily dismiss the appeal, and ordinarily, defendants' violations would hinder our review to the point that dismissal of the appeal would be appropriate. However, in this case we elect to neither strike defendants' brief nor dismiss the appeal (*McMackin v. Weberpal Roofing, Inc.*, 2011 IL App (2d) 100461, ¶ 3), but we will disregard the noncompliant portions of defendants' brief. We also strongly admonish counsel to follow carefully the requirements of the supreme court rules in future submissions.

¶ 26 B. Personal Jurisdiction

¶ 27 Defendants advocate reversal of the summary judgment on the ground that defects in service deprived the trial court of personal jurisdiction over them. Nationstar responds that defendants' jurisdictional challenges are untimely, waived, and nonmeritorious. We need not reach the merits of defendants' objections because we agree with Nationstar that they are untimely and forfeited.

¶ 28 To enter a valid judgment, a court must have both jurisdiction over the subject matter and jurisdiction over the parties. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17. A judgment entered by a court without jurisdiction over the parties is void and may be challenged at any time, either directly or collaterally. We review *de novo* whether the circuit

court obtained personal jurisdiction. *BAC Home Loans Servicing*, 2014 IL 116311, ¶ 17. However, section 15-1505.6 of the Foreclosure Act requires a timely objection to personal jurisdiction and requires in relevant part as follows:

> "(a) In any residential foreclosure action, the deadline for filing a motion to dismiss the entire proceeding or to quash service of process that objects to the court's jurisdiction over the person, unless extended by the court for good cause shown, is 60 days after the earlier of these events: (i) the date that the moving party filed an appearance; or (ii) the date that the moving party participated in a hearing without filing an appearance." 735 ILCS 5/15-1505.6 (West 2014).

¶ 29 Nationstar argues that defendants participated in a February 25, 2013, hearing, thus, section 15-1505.6 required defendants to object to the trial court's jurisdiction within 60 days of that date. Nationstar concludes that defendants failed to meet this deadline because they did not timely object to the court's jurisdiction until, at the earliest, July 8, 2013.

¶ 30 We agree that defendants failed to timely file their objection to the court's jurisdiction as required under section 15-1505.6 of the Foreclosure Law. Defense counsel, who has represented defendants throughout the proceedings, including this appeal, filed an appearance on June 10, 2013. However, the record discloses that he also was present and participated in a hearing on February 25, 2013, when Ocwen obtained leave to add the Village of Plainfield as an additional party defendant. At that time, defense counsel told the court that he had no objection to the amendment and would be submitting a brief on other matters on behalf of defendants. Although he did not file an appearance, defense counsel's participation at the hearing on February 25, 2013, triggered the 60-day period. Defendants did not file their motion to dismiss alleging defective service until July 8, 2013, which was more than 60 days later. Defendants'

jurisdictional challenge was untimely because counsel participated in the February 25, 2013, hearing and failed to contest the court's jurisdiction within the 60 days required by section 15-1505.6 of the Foreclosure Law. See *Wells Fargo Bank, N.A. v. Sanders*, 2015 IL App (1st) 141272, ¶ 31; see also *U.S. Bank Trust, N.A. v. Colston*, 2015 IL App (5th) 140100, ¶ 23 ("challenges to personal jurisdiction three years after active participation in a case are precisely the type of motion practice section 15-1505.6 of the Code was enacted to prevent").

¶ 31 We further conclude that defendants waived their objection to service by publication because they submitted to the court's jurisdiction. Personal jurisdiction may be established either by service of process in accordance with statutory requirements or by a party's voluntary submission to the court's jurisdiction. *BAC Home Loans Servicing*, 2014 IL 116311, ¶ 18. A party may preserve an objection to personal jurisdiction by filing a motion to quash before filing any other pleading or motion other than a motion for extension of time to answer or otherwise appear. 735 ILCS 5/2-301(a) (West 2014). However, any error in the ruling against an objecting party is waived by that party's taking part in further proceedings unless the objection is on the ground that the party is not amenable to process issued by the trial court. 735 ILCS 5/2-301(c) (West 2014).

¶ 32 We agree with Nationstar that defendants voluntarily submitted to the trial court's jurisdiction by participating in further proceedings and objecting to matters other than a lack of personal jurisdiction after their motion to quash was denied. Defendants filed a series of motions to dismiss in which they challenged Ocwen's and Nationstar's standing. The motions did not argue that defendants were not amenable to process. When defendants eventually filed an answer to Nationstar's amended complaint, it included an affirmative defense in which they challenged Nationstar's standing. Defendants fully litigated the foreclosure action, thereby

submitting to the jurisdiction of the trial court. The trial court had personal jurisdiction over defendants to enter a judgment of foreclosure for Nationstar.

¶ 33 C. *In Rem* Jurisdiction

¶ 34 Defendants alternatively argue that entry of a deficiency judgment against Salvatore must be reversed because, even if the service by publication was proper, it only conferred *in rem* jurisdiction because defendants were not serve personally. Personal jurisdiction pertains to the authority of the court to litigate in reference to a particular defendant and to determine the rights and duties of that defendant. *Smith v. Hammel*, 2014 IL App (5th) 130227, ¶ 14. It is black letter law that the alternative to personal jurisdiction is *in rem* jurisdiction or *quasi in rem* jurisdiction, which involves the relationship between the defendant and the state with respect to specific property. *In rem* or *quasi in rem* proceedings do not require personal service of process. *Smith*, 2014 IL App (5th) 130227, ¶ 14.

¶ 35 As discussed, defendants did not timely contest personal jurisdiction and eventually submitted to the court's jurisdiction, so any defect in service would not deprive the court of jurisdiction over Salvatore, personally. Moreover, defendants have forfeited this argument because they raise it for the first time on appeal when they had ample opportunity to do so in the trial court. See *Marshall v. Burger King Corp*., 222 Ill. 2d 422, 430-31 (2006) (issues raised for the first time on appeal are forfeited). Defendants' forfeiture is compounded by their failure to develop their argument on appeal. A reviewing court is not simply a depository into which a party may dump the burden of argument and research. *People ex rel. Illinois Dept. of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56. A court of review is entitled to have the issues clearly defined and to be cited pertinent authority. A point not argued or supported by citation to relevant authority fails to satisfy the requirements of Rule 341(h)(7). *Vancura v. Katris*, 238 Ill.

2d 352, 370 (2010) ("Both argument and citation to relevant authority are required. An issue that is merely listed or included in a vague allegation of error is not 'argued' and will not satisfy the requirements of the rule"). We need not address the merits of defendants' argument regarding *in rem* jurisdiction because it is forfeited.

¶ 36 D. Standing

¶ 37 Finally, defendants argue that Nationstar lacked standing to pursue the foreclosure action, and therefore the trial court erred in (1) dismissing their motions to dismiss; (2) granting Nationstar's motion to strike the affirmative defense; and (3) granting Nationstar summary judgment. Like the *in rem* jurisdiction issue, the standing issue is forfeited.

¶ 38 "The doctrine of standing requires that a party, either in an individual or representative capacity, have a real interest in the action brought and in its outcome." *In re Estate of Wellman*, 174 Ill. 2d 335, 344 (1996). Lack of standing is an affirmative defense that can be forfeited if not timely raised in the trial court. *Glisson v. City of Marion*, 188 Ill. 2d 211, 220 (1999). To preserve the assertion of lack of standing in a foreclosure action, it must be raised in an affirmative defense or a cross-motion for summary judgment. *Aurora Bank FSB v. Perry*, 2015 IL App (3d) 130673, ¶¶18-20.

¶ 39 The record shows that defendants never obtained a ruling on their challenge to Nationstar's standing. Defendants raised their standing claim in two motions to dismiss and in their affirmative defense. Defendants withdrew their first motion on November 22, 2013, and the second motion was denied without prejudice on January 3, 2014. The affirmative defense was stricken without prejudice on June 6, 2014. Defendants did not file any further pleadings or motions challenging Nationstar's standing, and they never asked the trial court for a definitive ruling. In fact, after striking defendants' affirmative defense, the court expressly declined to

decide the standing issue, pending defendants' presentation of further evidence. Defendants never presented that evidence.

¶ 40 Defendants argued the standing issue at the hearing on Nationstar's summary judgment motion and in their motion to reconsider, but these attempts were insufficient to preserve the issue because a challenge to standing must be made in an answer or a cross-motion for summary judgment. See *Aurora Bank,* 2015 IL App (3d) 130673, ¶ 20. Defendants did not preserve the standing claim in the trial court, the issue is not properly before this court on appeal, and the claim is forfeited.

¶ 41 Even if defendants had preserved their standing claim, the record shows that Nationstar made a *prima facie* case of standing that was not rebutted by defendants. Defendants generally argue that Ocwen never claimed to be the holder of the note, which is required to establish standing in a foreclosure action. However, Ocwen attached the note to the complaint, and apparently presented the original note in open court, which was endorsed in blank by MERS, the original mortgagee. Sections 3-205(b) and 3-301 of the Foreclosure Law provides that such a holder of the note may enforce it. 735 ILCS 5/3-205(b), 3-301 (West 2014). Defendants' affidavits denying that they owed Ocwen or Nationstar any money did not rebut the *prima facie* showing that Nationstar was the holder of defendants' note endorsed in blank.

¶ 42 Finally, defendants mention in passing that the trial court should have required Nationstar to answer the discovery request that defendants filed before the summary judgment hearing. This claim is totally undeveloped and is forfeited, accordingly. See *Vancura,* 238 Ill. 2d at 370 (a point not argued or supported by citation to relevant authority fails to satisfy the requirements of Rule 341(h)(7)).

¶ 43 III. CONCLUSION

¶ 44 For the preceding reasons, the summary judgment entered for Nationstar by the circuit court of Kendall County is affirmed.

¶ 45 Affirmed.