2016 IL App (2d) 151225-U
No. 2-15-1225
Order filed October 3, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE BANK OF NEW YORK MELLON f/k/a THE BANK OF NEW YORK, as Trustee for the Certificateholders CWALT, Inc., Alternative Loan Trust 2006-29T1, Mortgage Pass-Through Certificates, Plaintiff-Appellee, v. BARRY A. ROBIN, ANNA MARIE ROBIN, JP MORGAN CHASE BANK, N.A., UNKNOWN OWNERS-TENANTS-OCCUPANTS and NONRECORD CLAIMANTS, Defendants (Barry A. Robin and Anna Marie Robin, Defendants-Appllants).	)	Appeal from the Circuit Court of Du Page County. No. 09-CH-2798 Honorable Robert G. Gibson, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The Bank presented *prima facie* evidence of its standing to maintain the foreclosure action, and defendants did not present evidence to demonstrate a genuine issue of material fact. Defendants' request for discovery was properly denied where it sought information irrelevant to the issues raised. The mortgage

loan was not void as a result of a licensing issue under the Residential Mortgage Licensing Act because a recent amendment clarified the law in that regard.

¶ 2 Plaintiff, the Bank of New York Mellon, first known as the Bank of New York, as Trustee for the certificateholders CWALT, Inc., Alternative Loan Trust 2006-29T, Mortgage Pass-Through Certificates (the Bank), filed a foreclosure action against defendants, Barry A. Robin and Anna Marie Robin, on a note and mortgage. The circuit court of Du Page County granted summary judgment in favor of the Bank and against defendants, and it ultimately confirmed the sale of defendants' property. Defendants appeal the grant of summary judgment, arguing that the trial court erred in determining that the Bank had standing to pursue this foreclosure action. Defendants also argue that the trial court abused its discretion in denying their motion to compel the Bank to provide answers and documents in response to their discovery requests. Defendants also challenge the trial court's denial of their combined motion to dismiss and to reconsider, arguing that plaintiff was not licensed as required under the Residential Mortgage License Act of 1987 (License Act) (205 ILCS 635/1-1 *et seq.* (West Supp. 2015)), as well as again arguing that the trial erroneously granted summary judgment in favor of the Bank. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On August 4, 2006, defendants obtained a loan from America's Wholesale Lender in the amount of $620,100 and secured by a mortgage on the subject property located in Naperville, Illinois. In February 2009, defendants defaulted on the loan, and, on July 17, 2009, the Bank initiated this foreclosure action. The Bank attached a copy of the mortgage and the note to its complaint. The note was purportedly signed by Barry Robin and was not otherwise endorsed.

¶ 5 On August 30, 2010, defendants filed a motion to dismiss instead of an answer. Defendants alleged that the Bank did not have standing to pursue the foreclosure action because

the note named America's Wholesale Lender as the lender, and there were no references to the Bank in either the note or the mortgage. In its response to defendants' motion to dismiss, the Bank attached an assignment of the mortgage from Mortgage Electronic Registration Systems, Inc. (MERS), acting solely as the nominee for America's Wholesale Lender to the Bank. Mary Kist executed the assignment and Renee Hertzler attested the execution. The instrument of assignment was not itself dated on its face; however, on July 1, 2009, the assignment was notarized by Chastity Terrell.

¶ 6 On November 19, 2010, the trial court granted defendants' motion to dismiss, stating that the Bank "is granted 14 days within which to file an amended complaint to attach an assignment." On November 29, 2010, the Bank filed its first amended complaint. This time, the Bank attached the mortgage and the unendorsed note as before, but it attached the July 1, 2009, assignment, which was the same as the assignment produced in its response to defendants' motion to dismiss the original complaint.

¶ 7 On January 3, 2011, defendants filed an answer to the amended complaint. Defendants also raised affirmative defenses challenging the Bank's standing and challenging the efficacy of the assignment. In addition, defendants attached a report from Forensic Professionals Group, USA, Inc. (FPG), which concluded that the Bank had not been assigned the note or the loan. The Bank denied the allegations of the affirmative defenses.

¶ 8 On April 8, 2011, defendants filed a discovery request for production of documents. The matter was continued from time to time over the next nearly four years. On January 29, 2015, the Bank filed its responses to defendants' interrogatories and document-production requests. In its response, the Bank produced the endorsed note, the mortgage, the assignment of mortgage, the payment history for the loan, and various notices given to defendants including the notice of

the Bank's intent to accelerate the loan and the grace-period notice. The Bank also objected to most of defendants' interrogatories and production requests as vague, unduly burdensome, irrelevant, and not likely to lead to relevant information.

¶ 9 On April 8, 2015, the Bank filed a motion for summary judgment against defendants. Attached to the motion were affidavits demonstrating the amount of money alleged to be due. Additionally, the Bank attached another copy of the note, this time endorsed in blank.

¶ 10 On May 7, 2015, defendants filed a motion to compel, requesting that the trial court order the Bank to provide complete answers to their already propounded discovery requests. Defendants argued that they were simply seeking information about the chain of title to the loan, which they believed would indicate that the Bank did not, at the time it filed the foreclosure action, actually own or possess any interest in the note or mortgage. Defendants attached the Bank's January 29, 2015, responses to the interrogatories and document-production requests.

¶ 11 On May 15, 2015, defendants' motion to compel was heard and argued. The trial court first noted that defendants were not contesting the fact of default on the loan or the amount due under the loan. The trial court then read into the record the original endorsed-in-blank note provided by the Bank. Specifically, the trial court emphasized that the note contained Barry Robin's original signature and was endorsed in blank by Countrywide Home Loans, Inc., doing business as America's Wholesale Lender. The trial court concluded that the endorsement in blank rendered the note bearer paper and that the Bank was the bearer. The trial court further noted that the Bank produced the assignment of the loan and the assignment predated the filing of the foreclosure action. The court reasoned that documents produced by the Bank were those necessary to rebut defendants' affirmative defense of standing; the other interrogatories and document requests seeking information as to how the Bank came into possession of the note and

mortgage were irrelevant. The trial court denied defendants' motion to compel.

¶ 12 On June 5, 2015, defendants filed their response to the Bank's motion for summary judgment. Defendants attached an affidavit of John O'Brien, the registrar of deeds for a county in Massachusetts, in which O'Brien averred that Mary Kist and Renee Hertzler were known robosigners. Defendants also argued that the endorsement on the note, which was signed by Michele Sjolander, was invalid. Defendants argued that Sjolander's signature was made via a stamp, and that Sjolander's signature had been affixed to the endorsement without Sjolander's presence or consent. To support this argument, defendants excerpted colloquies from a deposition Sjolander purportedly gave in an unrelated case that had originated in Mississippi. According to the excerpts included by defendant, the deponent had been a director for Countrywide with supervisory responsibilities over 50 employees in the Countrywide mortgage department. When Countrywide merged with Bank of America, the deponent remained with the new entity. Her responsibilities included the preservation of documents from the previous entities and vault security. "Reconstruct" was the entity that scanned the documents the deponent was preserving and also managed the vaults the security for which the deponent was responsible. The deponent averred that Reconstruct possessed Sjolander's power of attorney for endorsing notes, but she did not know which Reconstruct employee exercised that power. The deponent averred that she could not enter the Reconstruct facilities unless she was conducting an audit, and even then, she had to be accompanied by personnel from Reconstruct. We note that neither a copy of the deposition nor copies of the pages of the deposition from which the excerpts were taken were included in the record.

¶ 13 On June 15, 2015, defendants filed a motion for summary judgment. Defendants argued that the Bank lacked standing to maintain the foreclosure action, and they attached the same

documents that were submitted along with defendants' response to the Bank's motion for summary judgment. On June 22, 2015, the trial court entered and continued defendants' motion for summary judgment pending the resolution of the Bank's motion for summary judgment.

¶ 14 On July 10, 2015, the Bank's motion for summary judgment advanced to a hearing. Following argument, the trial court granted the Bank's motion for summary judgment and entered judgment against defendants. The trial court stated:

> "The default was alleged [to be] February 1, 2009. The original lender was [MERS] as nominee for America's Wholesale Lender.
>
> The Case was brought by [the Bank]. Mortgage passed through certificates. The original complainant [*sic*], an unendorsed note, didn't have any assignment attached. In response to a motion to dismiss filed by [defendants], [the Bank] attached an assignment that was dated July 1, 2009, was recorded July 17, 2009. Case was filed July 17, 2009.
>
> I did grant the motion to dismiss for the purpose of attaching that assignment to an amended complaint. Although it's not pertinent particularly for the record, the assignment was actually recorded earlier in the day on July 17, 2009, from the time that the complaint was filed, but in any event the assignment is dated July 1, 2009. The case was brought July 17.
>
> And the assignment purportedly assigns the note and the mortgage and the monies due [and] were to become due thereon. Thereafter the defendants filed a pleading that included a what was called an Audit Stage I report dated April 22, 2010, from a Richard M. Kahn, senior qualifying forensic loan audit expert. And there's been continued litigation arguing that, various arguments, [the Bank] doesn't have standing, that this is a *Gilbert* [(*Deutsche Bank National Trust v. Gilbert*, 2012 IL App (2d) 120164)] situation,

and just to paraphrase.

[The] Court notes here that the mortgage expressly provides for [MERS] to serve as nominee. The definition Section C page 2 of the mortgage states in pertinent part MERS is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for lender, and lender successor[s] and assigns. MERS is the mortgagee under this security agreement.

Then Section D, the lender is defined as America's Wholesale Lender. And then on page 3 and page 4 it states borrower understands and agrees that MERS holds only legal title to the interest granted by borrower in the security instrument. But if necessary to comply with law or custom, MERS (parenthesis is nominee for lender and lender successor and assigns) close parens, has the right colon to exercise and/or—left out a word in my handwritten so I am going to have to pull that up again. I can pull it up from the court file, but the original has purportedly been tendered. So going back to after colon: To exercise any or all of those interests including but not limited to the right to foreclose and sell the property and to take any action required of lender including but not limited to releasing and canceling the security agreement, security instrument, excuse me.

Plaintiff did not attach the endorsed note to its original complaint, nor the assignment. So at that point in time the exhibits to the complaint contradicted the allegations of the complaint, and the motion to dismiss the original complaint was granted without prejudice. And [the Bank] was given 14 days to amend to attach the assignment, and that was done. As previously stated the assignment pre-dates the filing of the complaint, which is different than the *Gilbert* situation.

On April 17, 2015, a briefing schedule was set. [The Bank] produced the original

note endorsed in blank, making it bearer paper. [The Bank] is the bearer. The affidavit of amounts due and owing reflects that Bayview Loan Servicing, Inc., on behalf of [the Bank] has possession of the original note. The same documents that were produced on that date are here in court today.

The affidavit of Rosalind Carroll, document coordinator of Bayview, reflects defendants defaulted February 1, 2009. The loan history is attached to the affidavit. Defendants filed a 44-page response to the motion without leave of court to exceed the 10-page limit. Defendants' contention that [the Bank's] failure to attach the endorsed note to its complaint, and amended complaint, is problematic and would defeat [the Bank's] motion here.

That contention is incorrect. Supreme Court Rule 113's requirement that the note in its existing form be attached to the complaint only applies to cases filed May 1, 2013, or later. This case was filed July 17, 2009. And the amended complaint was filed November 24, 2010. This is not a *Gilbert* situation, as *Gilbert* involved both an unendorsed note and an assignment dated after the complaint was filed. Here the assignment pre-dates the complaint and [the Bank] has produced the original note endorsed in blank. Defendant [*sic*] does not contest the default from February 1, 2009, or the amounts due. Defendants do not claim that some other entity is attempting to foreclose the mortgage or collect on this note, although the default occurred more than six years ago. Defendants' arguments are unavailing. Consequently the Court finds there's no issue of material fact. [The Bank] is entitled to judgment as a matter of law and summary judgment shall enter."

¶ 15 Also on July 10, 2015, the trial court entered judgments of default against JPMorgan

Chase Bank (the second mortgagee) and the unknown owners, tenants, and nonrecord claimants (none of whom are parties to this appeal). The trial court also entered a judgment of foreclosure and sale and specifically ordered that defendants' right of redemption would expire on October 12, 2015. Finally, the trial court denied as moot defendants' motion for summary judgment.

¶ 16 On August 10, 2015, defendants filed a motion to dismiss the amended complaint for foreclosure and for reconsideration of the July 10, 2015, order granting summary judgment in favor of the Bank. Defendants segregated their argument into two parts: the argument supporting their motion to dismiss dealt with the effect of the fact that the Bank was not licensed under the License Act; the argument supporting their motion for reconsideration reiterated their contentions regarding the Bank's standing to pursue the foreclosure action. The trial court denied defendants' motion. The trial court noted first that the License Act had been recently amended to expressly state that a failure to comply with its licensing requirements would not invalidate the mortgage. The trial court also declined to disturb its ruling on the Bank's motion for summary judgment, maintaining that the Bank's possession of the original note endorsed in blank was sufficient to confer standing.

¶ 17 The matter progressed to the October 15, 2015, judicial sale at which the Bank was the high bidder. The Bank then moved to approve the sale, and defendants objected, arguing that they had submitted an application for a loan modification, which should have precluded the trial court's approval of the sale. On December 15, 2015, the trial court rejected defendants' argument and approved the sale. Defendants timely appeal.

¶ 18 II. ANALYSIS

¶ 19 On appeal, defendants argue that the trial court erred in granting summary judgment because genuine issues of material fact regarding the assignment, when and how the Bank came

into possession of the note, and the endorsement of the note sufficient to preclude summary judgment. Defendants also argue that the trial court abused its discretion in denying their motion to compel. Last, defendants argue that the trial court erred in denying their motion to dismiss and to reconsider. We consider each issue in turn.

¶ 20 A. The Bank's Standing and the Grant of Summary Judgment

¶ 21 Defendants first contend on appeal that the trial court erred in granting summary judgment in favor of the Bank. Summary judgment is properly granted when the pleadings, depositions, admissions, and affidavits, when viewed in the light most favorable to the nonmoving party, show that there is no issue of genuine material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014); *Tailwind Havayollari v. AAR Aircraft Services, Inc.*, 2016 IL App (2d) 150940, ¶ 16. We review *de novo* the trial court's judgment granting a motion for summary judgment. *Id.*

¶ 22 Defendants assert that there were questions regarding the authenticity of the note, the endorsement on the note, and the timing of the assignment and when the Bank obtained the note. According to defendants, these questions should preclude summary judgment because the Bank failed to demonstrate that it had the endorsed note before the commencement of the foreclosure action, that the endorsement was authentic, that the assignment was accomplished before the initiation of the foreclosure action. Defendants conclude that, as a result, the Bank failed to rebut their claim that it lacked standing to pursue the foreclosure action. We disagree.

¶ 23 Defendants essentially argue that the Bank fabricated the assignment and endorsement on the note. Defendants do not, however, provide admissible evidence from which these inferences of fabrication may be drawn. To be sure, defendants did not simply raise bare allegations and conclusions about the Bank's purported shenanigans, but they provided documents purporting to

support their claims. However, defendants' report from FPG is neither an affidavit nor a report generated by an individual who may testify at a trial and who has attested to the report and its findings in an affidavit. Thus, while the FPG report may suggest that there may be problems with the documentation of the loan, it does not circumvent the evidentiary requirements for consideration in a motion for summary judgment. Likewise, even though the Massachusetts registrar believes that Kist and Hertzler are robosigners, there is no evidence that, *in this case*, their signatures were improper. Similarly, the deposition excerpts purportedly from Sjolander might suggest that she did not execute the endorsement of the note; however, again, excerpts from a deposition from an unrelated case with unknown issues, possibly taken out of context, do not necessarily satisfy the requirements for consideration in a motion for summary judgment. In short, defendants have produced no *competent evidence* to support their assertions. Notwithstanding our doubts about the evidentiary value of the material purporting to support defendants' contentions, we need not address them further, because defendants appear simply to misconceive the issue of the Bank's standing.

¶ 24 As an initial matter, a plaintiff is not required to allege facts that establish its standing to maintain the action. *US Bank, National Ass'n v. Avdic*, 2014 IL App (1st) 121759, ¶ 34. Instead, lack of standing is an affirmative defense and the defendant bears the burden of pleading and proving the plaintiff's lack of standing. *Bayview Loan Servicing, LLC v. Cornejo*, 2015 IL App (3d) 140412, ¶ 12; *Avdic*, 2014 IL App (1st) 121759, ¶ 34. Thus, here, defendants were required to both raise the Bank's lack of standing as an affirmative defense, which they did, and to bear the burden of proving their allegations. In the posture of this case, that means defendants were required to demonstrate that there existed a genuine issue of material fact regarding the Bank's

standing, based upon evidence that would be admissible at a trial. Ill. S. Ct. R. 191 (eff. Jan. 4, 2013).

¶ 25 For our purposes, in a foreclosure action, it is abundantly well settled that the attachment of the note to the complaint is *prima facie* evidence that the plaintiff owns the note and has standing to pursue an action on that note. *Cornejo*, 2015 IL App (3d) 140412, ¶ 12; *HSBC Bank USA, National Ass'n v. Rowe*, 2015 IL App (3d) 140553, ¶ 21. This central principle is not squarely addressed or distinguished by defendants. By failing to controvert the Bank's *prima facie* evidence that it owned the note, defendants cannot maintain their claim that the Bank did not have standing.

¶ 26 To better understand the Bank's *prima facie* evidence, we note that, under section 3-104 of the Uniform Commercial Code (Code) (810 ILCS 5/3-104 (West 2014)), a note is a negotiable instrument. A negotiable instrument is an unconditional promise to pay a fixed amount of money, and it is payable to the bearer or to order at the time it is issued or first comes into possession of a holder. 810 ILCS 5/3-104(a)(1) (West 2014). If a note is endorsed in blank, it becomes payable to the bearer and may be negotiated by transfer of possession alone until it is specially endorsed. 810 ILCS 5/3-205(b) (West 2014). (A special endorsement identifies the person to whom the note will be payable. 810 ILCS 5/3-205(a) (West 2014).) Because the Bank attached the note to the original and amended complaints for foreclosure, it established *prima facie* evidence that it owned the note and was the bearer of the note. *Cornejo*, 2015 IL App (3d) 140412, ¶ 13; *Rowe*, 2015 IL App (3d) 140553, ¶ 22. Further, for purposes of the summary judgment, the Bank produced in open court the original note endorsed in blank and an assignment of the mortgage that predated the initial filing of the foreclosure action. Accordingly,

the Bank at least made a *prima facie* showing that it had standing to pursue the foreclosure action.

¶ 27 Defendants argue that the Bank was required to establish that it was the assignee of the mortgage and the note. Again, this argument misunderstands the significance of attaching a copy of the note to the complaint: attaching the note to the complaint is *prima facie* evidence that the plaintiff owned the note. *Cornejo,* 2015 IL App (3d) 140412, ¶ 13. Here, the Bank attached the note to both the original and amended complaints thus providing *prima facie* evidence that it owned the note, even though the note lacked the endorsement in blank. At this point, defendants needed to provide some evidence that the Bank lacked standing, such as evidence that the note had not been transferred before the initiation of the foreclosure action, in order to show the existence of a genuine issue of material fact regarding the Bank's standing.

¶ 28 Defendants argue that the affidavits of the Massachusetts registrar must be taken as true. However, the registrar averred that he was "aware that Renee Hertzler is an alleged robo or surrogate signer," and that he was "aware that Mary Kist is an alleged robo or surrogate signer." These averments are purportedly based on the report of a person apparently retained by the registrar to provide a list of alleged robosigners. However, the report does not appear in the record, and the registrar's recitation of passages from the report is hearsay to which no exception obviously applies. Accordingly, the hearsay statements would not be admissible. Ill. S. Ct. R. 191 (eff. Jan. 4, 2013) (an affidavit filed in support of a motion for summary judgment must include facts admissible in evidence). Moreover, the "fact" that the registrar is "aware" that Hertzler and Kist are alleged robosigners does not mean that their signatures on the assignment in this case were robosigned, or even that they are, in fact, robosigners. To make the leap from an allegation (supporting documentation for which is apparently lacking in the record on appeal)

to the conclusion that Hertzler's and Kist's signatures were robosigned in this case is speculative, at best.

¶ 29 Further, the assignment of the mortgage is largely immaterial to the issue of standing. Defendants assert that a faulty assignment of the mortgage defeats standing. This is incorrect. In Illinois, it has long been held that an assignment of a note carries with it an equitable assignment of the mortgage by which it was secured. *Federal National Mortgage Ass'n v. Kuipers*, 314 Ill. App. 3d 631, 635 (2000). The actual import of the assignment to the issue of standing is the date of the assignment: the assignment is dated July 1, 2009, which is before the Bank instituted this foreclosure action on July 17, 2009. Thus, whether the mortgage assignment was deficient in some way, the transfer of the note to the Bank (which was evidenced by the Bank's possession of the note and its attachment to the complaint and amended complaint) carried with it an equitable assignment of the mortgage to the Bank as well. *Id.* (This is another way of saying that the attachment of the note to the complaint is *prima facie* evidence of the holder's standing to foreclose on the note.)

¶ 30 Defendants argue that neither Hertzler nor Kist described how they had personal knowledge that an assignment of the note and mortgage occurred. Defendants contend that the Bank treated the assignment like it was an affidavit, and an affidavit must be made on the affiant's personal knowledge. Ill. S. Ct. R. 191 (eff. Jan. 4, 2013). We disagree. The Bank attached the assignment because it is a legal instrument. Its execution imbues it with all the significance needed, and the Bank was not relying upon it as a stand-in for affidavits from Hertzler and Kist.

¶ 31 Defendants argue that the Bank's actions in producing the note and the assignment raise questions about whether the Bank actually possessed the note before it instituted the foreclosure

action. Defendants question the fact that defendant attached copies of the note that were not endorsed to the complaint and to the amended complaint, but waited until April 2015 to produce the note endorsed in blank. According to defendants, this suggests that the Bank was effectively attempting to defraud the court by fabricating evidence of standing. We disagree.

¶ 32 The issue is foreclosed by *Rowe* and *Cornejo*. In *Rowe*, the plaintiff attached a copy of a note to the complaint that was not endorsed and, later, attached a copy of the same note endorsed in blank to a motion to strike the defendants' affirmative defense of lack of standing. *Rowe*, 2015 IL App. (3d) 140553, ¶¶ 4-6. The court held that, while the nonidentical copies of the note might have raised a question as to the point in time the note attached to the complaint was copied, that question did not affect the issue of the ownership of the note or the plaintiff's standing to foreclose on it. *Id.* ¶ 22. The court reasoned that, notwithstanding the defendants' contention, the differing second copy of the note did not raise any issue of who held title to the note. *Id.* Likewise, here, there is no question that the Bank owned the note and the differences between the copies of the note attached to the complaint and the amended complaint and the copy of the note attached to the motion for summary judgment are immaterial to the issue of ownership and standing.

¶ 33 In *Cornejo*, the defendants raised the issue of differences between copies of the note and the timing of the production of the differing copies in an attempt to challenge the plaintiff's standing to foreclose. *Cornejo*, 2015 IL App (3d) 140412, ¶ 14. The court noted that, in that case (as we note is true in this case), the plaintiff was not required to attach a copy of the note as it currently exists to the complaint, and there was no other evidence to show that the endorsement on the note was not authentic. *Id.* Likewise here. This matter was filed before the Supreme Court Rules were changed (Ill. S. Ct. R. 113(b) (eff. May 1, 2013) (requiring that the

plaintiff attach to the complaint the note as it currently exists along with its endorsements and allonges); *Cornejo*, 2015 IL App (3d) 140412, ¶ 14), and the timing contention raised by defendants is insufficient to demonstrate a material issue of fact regarding the Bank's standing.

¶ 34 Defendants argue that there was a genuine issue of material fact regarding the execution of the endorsement on the note. Defendants contend that they excerpted a deposition given by Sjolander which confirms their contention that the endorsement was a forgery. Defendants reason that the deponent admitted that she had a rubber stamp of her name fabricated and that the custodian of the collateral used the rubber stamp to complete endorsements on the notes being held as collateral. Defendants thus conclude that the deponent confirmed their claim that the endorsed note bore obvious signs of forgery and called into question when the note had been endorsed.

¶ 35 Our review of the record shows that defendants do not appear to have included an actual copy of the deposition they excerpt in the record. Additionally, the excerpts used by defendants of the deposition they purport to be Sjolander's suggest that defendants were mistaken about the identity of the deponent, or else they may have inadvertently commingled excerpts from an unknown and unidentified deposition with the excerpts from the purported Sjolander deposition. Specifically, defendants quote the following passages:

> "Q. This Michele Sjolander, is she in the same office as you?
>
> A. She's part of Recontrust, yes.
>
> ***
>
> Q. *** who would you contact about collateral at Recontrust? I mean, a name, if you know it?
>
> A. Michele Sjolander.

Q. She is your contact at Recontrust, and that was true in 2007 we're talking about?

A. Yes."

The deponent is referring to Sjolander in the third person and represents that Sjolander is her contact at the entity that holds the collateral. Based on these excerpts, which defendants only typed into their response to the Bank's motion for summary judgment, and of which they did not include copies of the actual deposition transcript for the trial court's or our review, we cannot say that they represent the actual deposition of Sjolander. Because defendants contend that Sjolander's statements support their contention, if we cannot be sure that the excerpts are even from Sjolander, we cannot say that they support defendants' contentions. Finally, we note that the excerpts apparently reference only a 2007-timeframe. The note and mortgage at issue in this case were assigned to the Bank in 2009, far outside of the timeframe discussed in the purported excerpts of Sjolander's deposition, and this is problematic because there is no evidence demonstrating whether the same practices were even in effect in 2009. Accordingly, even if we could accept the excerpts at face value, they do not demonstrate that there is an issue regarding the endorsement of the note. The fact that the excerpts do not appear on their face to be as defendants represent means that they possess virtually no evidentiary value.

¶ 36 In our view, defendants have not produced any evidence that can legitimately challenge the *prima facie* evidence that the Bank had standing to foreclose in this cause. Accordingly, there is no genuine issue about the Bank's standing in the record, and the trial court correctly granted summary judgment in favor of the Bank on that issue. Further, defendants only contest the Bank's standing in this appeal. Accordingly, any other grounds they may have raised below have been forfeited on appeal. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). As a result, we affirm

the trial court's judgment in granting summary judgment in favor of the Bank and against defendants.

¶ 37 B. Defendants' Motion to Compel

¶ 38 Defendants next contend that the trial court erred in denying their motion to compel compliance with outstanding discovery requests. We review the trial court's conduct of discovery for an abuse of discretion. *CitiMortgage v. Lewis*, 2014 IL App (1st) 131272, ¶ 42. A trial court abuses its discretion only when no reasonable person would take the view adopted by the trial court. *CitiMortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶ 81.

¶ 39 On January 29, 2015, nearly four years after they were promulgated, the Bank answered defendants' discovery requests. In its responses, the Bank objected to virtually all of defendants' requests, and it produced the note, the mortgage, and the assignment in response. Defendants maintained that they were seeking answers and documents relating to the manner in which the Bank came to possess the note, mortgage, and assignment. Defendants attempted to informally resolve the discovery dispute by a letter reiterating their requests and rationale. Ill. S. Ct. R. 201(k) (eff. July 1, 2014). Unable to come to an agreement with the Bank, on May 7, 2015, defendants filed a motion to compel, arguing that the discovery sought related to whether the Bank had standing, the efficacy of the assignment, and the efficacy of the endorsement on the note.

¶ 40 On May 15, 2015, the trial court denied defendants' motion to compel. The trial court reasoned:

> "Mr. Robin has raised a standing issue. And standing, there's quite a bit of case law in Illinois relative to standing.
>
> ***

> [The Bank] has tendered a promissory note dated August 4, 2006, secured by [the subject property]. It's for $620,100, America's Wholesale Lender is the lender, six and a quarter interest rate. It's a two-page document.
>
> First page purports to have the original initial[s] of Barry A. Robin, second page purports to have the original signature of Barry A. Robin, notes endorsed in blank by Countrywide Home Loans, Inc., a New York corporation doing business as America [*sic*] Wholesale Lender. As a note endorsed in blank[, it is] bearer paper. [The Bank] is the bearer.
>
> [The Bank] also has an assignment that predates the filing of the complaint that was also assigned to the party plaintiff.
>
> [The Bank has] produced the documents that are necessary to rebut any affirmative defense of standing. How plaintiff obtained the note, what the consideration was, whether there were intermediaries between the original lender and the current lender, whether the assignment contesting these issues under Illinois law is—it's been done, the documents have been provided.
>
> [The Bank] is the bearer of a note endorsed in blank. They have an assignment that predates the filing of the complaint, and on this record, the—the motion to compel compliance [with outstanding] discovery to get into the back story of how [the Bank] came to have standing in the case is denied."

¶ 41 Defendants argue that their discovery requests were specifically concerned with the Bank's standing. In particular, defendants asserted that they were seeking the original mortgage and note for inspection and copying, "a complete chain of indorsements from the originator to the current holder," all of the assignments of the note from its origination to the current date, all

allonges showing a transfer of the note, any "lost note affidavit" given for the note, any document transferring or selling the note or the mortgage since their originations, any document showing the consideration paid by the Bank for the note or mortgage, and any letters of direction to MERS authorizing an assignment or transfer of the note or the mortgage. Defendants also sought documents pertaining to the closing of the loan, like the application, settlement documents and checks, truth-in-lending forms, and the like; defendants asserted that such documents were relevant to the legitimacy of the underlying debt. Defendants conclude that the trial court erred when it denied the motion to compel, thereby precluding their reasonable investigation into the issue of standing and other details of the loan.

¶ 42 In support, defendants cite *U.S. Bank, N.A. v. Kosterman*, 2015 IL App (1st) 133627, ¶ 15, for the proposition that discovery requests seeking the chain of ownership, the series of endorsements, and untangling the interactions of the different banking and servicing entities and trusts is usually something the foreclosure defendant is entitled to explore. While *Kosterman* did hold that the defendants in that case were entitled to explore their affirmative defenses (*id.*), its unique factual circumstances serve to distinguish it.

¶ 43 First, the trial court struck the defendants' affirmative defense of lack of standing holding that lack of standing was not an affirmative defense. *Id.* ¶ 9. The *Kosterman* court held that the trial court had erred because it had held at least six times in the two years preceding its decision that lack of standing was an affirmative defense that must be raised in the defendant's answer or else it would be forfeited. *Id.* ¶ 10.

¶ 44 Next, the plaintiff filed a motion for summary judgment, purporting to rely on certain records it held, even though it had not attached any of the documents on which it relied in the affidavit supporting its motion for summary judgment. *Id.* ¶ 12. The defendants attached

affidavits to their response to the motion for summary judgment asserting that they were unable to respond to the motion for summary judgment without being able to review the records on which the plaintiff relied. *Id.* The plaintiff then provided a loan transaction history, but the summary record had not been certified by the affiant who provided the affidavit in support of the plaintiff's motion for summary judgment. *Id.* ¶ 13. Moreover, the affiant averred that she relied on "data compilations, electronically imaged documents, and others" (internal quotation marks omitted), but the loan transaction history apparently did not correspond to the affiant's averment. *Id.* The defendants then attempted to depose the affiant. *Id.* The plaintiff moved to strike the defendants' outstanding discovery requests and to strike the deposition of the affiant. *Id.* ¶ 14. The trial court agreed with the plaintiff that, because the affirmative defense of lack of standing had been previously stricken, and because the defendants' discovery requests were aimed at securing information about the previously stricken defenses, the discovery was unnecessary. *Id.*

¶ 45 The *Kosterman* court held that the trial court's ruling on discovery was an abuse of discretion because the defendants "never even had an opportunity to explore their defenses." *Id.* ¶ 15. The court further held that the error was compounded because the records on which the plaintiff's affiant relied were never made available to the defendants, and the defendants were precluded from deposing "the only person offering testimony against them." *Id.* ¶ 17. The court concluded that, without the records or the ability to conduct a deposition of the plaintiff's affiant, the defendants had no meaningful chance to challenge the plaintiff's contentions. *Id.*

¶ 46 Here, in contrast to *Kosterman*, defendants were allowed to proceed with their affirmative defense of lack of standing. However, the Bank in this case produced the note, the mortgage, and the assignment. It is unclear that the *Kosterman* defendants even had that much to examine. Further, the *Kosterman* defendants were precluded from proceeding on their affirmative defense

of lack of standing, which poisoned the subsequent proceedings. Here, the Bank produced all of the documents in its possession relating to the issue of standing.

¶ 47 Moreover, the endorsement on the note was from Countrywide Home Loans, doing business as the America's Wholesale Lender, which appears to be the originator of the loan and mortgage. Thus, on the face of the documents produced, the originator executed an endorsement in blank of the note and the mortgage was assigned to the Bank, and the assignment predated the initiation of the foreclosure action. Thus, the Bank's production in response to defendants' discovery requests appears to be responsive on the issue of standing. Accordingly, based on the significant factual differences between *Kosterman* and this case, we determine that *Kosterman* is distinguishable and provides little guidance beyond a general requirement that the defendant in a foreclosure action is allowed to present and explore an affirmative defense of lack of standing.

¶ 48 Here, defendants had that chance to present their affirmative defenses. The Bank presented all of the documents in its possession, and those documents established *prima facie* evidence that the Bank had standing to prosecute the foreclosure. Defendants did not present evidence challenging the *prima facie* demonstration of standing. Further, defendants did not indicate an inability to respond to the Bank's motion for summary judgment; rather, defendants continued to maintain that the outstanding discovery was seeking information related to the Bank's standing. Thus, unlike *Kosterman*, defendants here were allowed to raise and present their affirmative defense.

¶ 49 Instead of *Kosterman*, this case seems more like *Rowe*. In *Rowe*, the defendants challenged the plaintiff's standing based on the fact that plaintiff had produced two versions of the note containing different markings. *Rowe*, 2015 IL App (3d) 140553, ¶ 20. One version was signed by a defendant and stamped "true and correct;" the other version was not marked with the

"true and correct" stamp, but was endorsed in blank on the final page. *Id.* The court held that, while the nonidentical copies of the note perhaps raised questions about when the versions were copied, any questions raised were "immaterial" to the issue of standing. *Id.* ¶ 22. We believe the same logic obtains in this case. The Bank produced two copies of the note: the copy attached to the original and amended complaints bore defendant Robin's signature, but no endorsement. The copy produced in open court in support of the Bank's motion for summary judgment was identical, but it also added the endorsement in blank. Any questions raised by the nonidentical copies of the note are "immaterial" to the issue of the Bank's standing. *Id.*

¶ 50 Defendants sought, in their motion to compel, information about the Bank's standing, which was provided by the Bank, as well as information outlining how the note and mortgage was transferred to the Bank. The note appears to have been endorsed by the originator, and the assignment was from MERS as nominee of the originator. The outstanding discovery appears to have been likely only to provide information about "the back story of how [the Bank] came to have standing in [this] case," and is therefore not relevant to the issue of standing raised by defendants. Where requested discovery is not relevant or necessary to the resolution of the issues before the court, the court does not abuse its discretion in precluding the discovery or denying a motion to compel. *Pederson v. Mi-Jack Products, Inc.*, 389 Ill. App. 3d 33, 42 (2009). Accordingly, we hold that the trial court did not abuse its discretion in denying defendants' motion to compel.

¶ 51 C. Motion to Dismiss or to Reconsider

¶ 52 Defendants argue that the trial court erred in rejecting its argument that, because the Bank was not licensed pursuant to the License Act, the Bank's purchase of the loan was void as against public policy. In support, defendants rely on *First Mortgage Co., LLC v. Dina*, 2014 IL App

(2d) 130567, ¶ 21 which held that a mortgage made by an entity that was not licensed under the License Act was void as against public policy.

¶ 53 *Dina* relied on section 1-3(a) of the License Act, which prohibits an entity, with exceptions not relevant here, from "brokering, funding, originating, servicing or purchasing" residential mortgage loans without first obtaining a license pursuant to the License Act. 205 ILCS 635/1-3(a) (West 2014). Based on the fact that the mortgage loan originator was not licensed pursuant to the Act, and the plaintiff was unable to establish that the mortgage loan originator was exempt from the licensing requirement, *Dina* determined that the mortgage was void because of the strong public policy rationale favoring the unenforceability of a mortgage originated in violation of the License Act. *Dina*, 2014 IL App (2d) 130567, ¶¶ 18-23.

¶ 54 In 2015, the General Assembly passed Public Act 88-113 (eff. July 23, 2015), which amended the License Act in specific response to *Dina*. Notably, section 1-3(e) of the License Act was amended to reflect the General Assembly's understanding of the existing law and to repudiate the result in *Dina*:

> "A mortgage loan brokered, funded, originated, serviced, or purchased by a party who is not licensed under the Section shall not be held to be invalid solely on the basis of a violation of this Section. The changes made to this Section by this amendatory Act of the 99th General Assembly are declarative of existing law." 205 ILCS 635/1-3(e) (West Supp. 2015).

¶ 55 In light of this amendment to the License Act, we hold that *Dina*'s holding has been repudiated: a mortgage loan will not be deemed void because the lender or purchaser of the loan is not licensed in accord with the License Act. See *In re Jordan*, 543 B.R. 878, 885-87 (C.D. Ill. 2016) (holding that the amendment of the License Act precludes holding that a mortgage loan is

void due to a violation of the License Act). Because the Bank's failure to obtain a license pursuant to the License Act does not render the mortgage void, we reject defendants' contention regarding the trial court's purported error in denying their motion to dismiss.

¶ 56 Defendants also argue that the trial court erred in denying their motion to reconsider the grant of summary judgment in favor of the Bank. Defendants offer no argument, apart from their arguments on the merits of the standing issue which we resolved above, to support their contention of error. Accordingly, in light of our resolution of the standing issue above, we reject defendants' contention regarding their motion to reconsider.

¶ 57 III. CONCLUSION

¶ 58 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 59 Affirmed.