2016 IL App (3d) 140662-U

Order filed October 11, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

FEDERAL NATIONAL MORTGAGE ASSOCIATION, a corporation,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois.
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-14-0662 Circuit No. 12 CH 97
JODY D. KIMBRELL,	)	
Defendant-Appellant,	)	The Honorable Michael P. McCuskey, Judge, Presiding.
and	)	
KIMBRELL REALTY/JETH CT LLC, an Illinois limited liability co.; ANNA F. ISAACS; JASON CLAYTON; MICHAEL D. KIMBRELL; STATE BANK OF SPEER; UNKNOWN OWNERS and NON-RECORD CLAIMANTS,	)	
Defendants.	)	

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: Appeal was moot where the property that was the subject of the appeal was sold while the appeal was pending to a third party who was not a party or nominee of a party, and where the appellant had not perfected a stay of the trial court's foreclosure judgment within the time for filing a notice of appeal.

¶ 2 The plaintiff, Federal National Mortgage Association (Fannie Mae) filed a complaint to foreclose the mortgage on a property held by the defendants Kimbrell Realty/Jeth Ct. LLC (KR), Jody D. Kimbrell (Jody), Michael D. Kimbrell (Michael), and Anna F. Isaacs (Anna). The trial court granted summary judgment in the plaintiff's favor, entered a Judgment of Foreclosure and Sale, and imposed sanctions against Jody. Jody appealed the trial court's grant of summary judgment.

¶ 3 FACTS

¶ 4 On August 1, 2008, KR obtained a loan in the amount of $2,264,000 from the Royal Bank of Canada (RBC). KR's indebtedness was evidenced by a Note and secured by a mortgage. The Note required KR to pay monthly installments of principal and interest and barred KR from transferring any portion of the mortgaged property or any interest in the mortgaged property.

¶ 5 On February 7, 2012, Fannie Mae filed a verified complaint for foreclosure and other relief against KR, Jody, Michael, Anna, and Jason Clayton. The complaint alleged that the mortgage and Note were in default because: (1) KR had failed to make payments required under the Note; and (2) KR had transferred a portion of the mortgaged property to Jody, Michael, and Anna via quit claim deed, in violation of the Note's terms. Jody, Michael, and Anna were named individually as defendants in Count 1 (the mortgage foreclosure count) due to their alleged possessory interest in a portion of the mortgaged property that was transferred to them by KR. In addition, Jody, Anna, and Jason Clayton were named individually as defendants in other counts of the complaint based upon the allegation that they had personally guaranteed the loan. Fannie Mae also alleged that, on August 1, 2008 (the same day that RBC issued the loan to KR), RBC

assigned all interest in the mortgage and Note to Fannie Mae.[1] Accordingly, Fannie Mae alleged that, as a result of KR's default, Fannie Mae had the right to foreclose on the mortgage and to obtain an order directing the sale of the mortgaged property to satisfy the indebtedness it was owed.

¶ 6 On March 7, 2012, KR filed an Answer to Fannie Mae's Complaint. In its Answer, KR admitted that: (1) RBC assigned all interest in the mortgage and Note to Fannie Mae on August 1, 2008; (2) Jody, Michael, and Anna were "owners of record" of a portion of the mortgaged property "pursuant to an unauthorized transfer via a Quit Claim Deed recorded August 12, 2010 as Peoria County Recorder of Deeds Document No. 2010-019647"; (3) the mortgage and Note executed by KR in favor of RBC (which was subsequently assigned to Fannie Mae) were "valid"; and (4) KR "failed to pay monthly obligations and other monies due under the Note, Mortgage, and Loan Documents for the months of November 2011, December 2011, January 2012 and February 2012." However, KR denied that the August 12, 2010 transfer of property was "a transfer of the collateral of the Plaintiff," and denied that the mortgage and Note were in default due to the property transfer or due to KR's failure to make payments required under the Note. KR asserted that "the payment default was due to Plaintiff's statement that no further payments would be accepted," and denied that Fannie Mae had the right to foreclose on the

[1] Fannie Mae attached copies of the original Note and mortgage to its complaint, as well as the August 1, 2008 assignment transferring the mortgage from RBC to Fannie Mae. It did not attach an allonge transferring the Note from RBC to Fannie Mae. However, Fannie Mae produced such an allonge in discovery and later presented the allonge in open court during the summary judgment hearing. A copy of the allonge is included in the record on appeal.

mortgage and to obtain and order directing the sale of the property. KR asserted no affirmative defenses in its initial Answer.

¶ 7 On August 27, 2013, KR filed an Amended Answer to Fannie Mae's Complaint. In its Amended Answer, KR asserted that it lacked sufficient information to admit or deny Fannie Mae's allegation that RBC assigned all interest in the loan documents to Fannie Mae on August 1, 2008, and therefore denied that allegation. As it had in its initial Answer, Fannie Mae admitted that a portion of the mortgaged property was transferred via quit claim deed and recorded on August 12, 2010. However, in its Amended Answer, KR denied Fannie Mae's allegation that that this transfer was "unauthorized." KR again admitted that the mortgage and the Note were "valid." It also admitted that Exhibit C to Fannie Mae's complaint was "a copy of the Assignment of Mortgage executed by RBC for the benefit of Fannie Mae." However, KR asserted that it lacked sufficient information either to admit or deny Fannie Mae's allegation that RBC, as assignor, had "executed an assignment" of the mortgage to Fannie Mae, as assignee, and therefore denied the allegation. KR did not deny Fannie Mae's allegations that KR had: (1) failed to make monthly payments due under the Note from November 2011 through February 2012; (2) transferred a portion of the property to Jody, Michael and Anna via quit claim deed recorded on August 12, 2010; and (3) caused the property to become encumbered by two mortgages held by State Bank of Speer recorded on August 21, 2009, and March 23, 2010. However, as it had in its initial Answer, KR denied that the August 12, 2010 property transfer was "a transfer of the collateral of Plaintiff" and asserted that "the payment default was due to Plaintiff's statement that no further payments would be accepted."

¶ 8 Moreover, for the first time, KR asserted several affirmative defenses in its Amended Answer. Specifically, KR alleged that: (1) Fannie Mae's claim was barred by its failure to

mitigate damages because it refused to allow KR to cure the existing defaults or repay the Note in full; (2) Fannie Mae's claim was "barred by lack of good faith and fair dealing" because the prepayment premium sought by Fannie Mae was excessive and "constituted a penalty rather than bona fide liquidated damages," and because Fannie Mae had "refused to accept payments when properly offered by the borrower that would have reduced the amount of interest accruing on the loan"; and (3) Fannie Mae's claim was "barred by unconscionability" because Fannie Mae was seeking "excessive" damages by "charging default interest combined with a prepayment penalty," which amounted to "double charging for the same injury." KR did not assert any affirmative defenses challenging Fannie Mae's standing to file its foreclosure claim.

¶ 9 On August 28, 2012, Jody, Anna, and Jason filed their Answer to Fannie Mae's complaint, which admitted that the August 12, 2010 property transfer took place but denied all of Fannie Mae's allegations of default by KR. Jody, Anna, and Jason admitted that Exhibit C to Fannie Mae's complaint was "a copy of the Assignment of Mortgage executed by RBC for the benefit of Fannie Mae." However, they asserted that they lacked sufficient information either to admit or deny Fannie Mae's allegation that RBC, as assignor, had "executed an assignment" of the mortgage to Fannie Mae, as assignee, and therefore denied the allegation. Jody, Anna, and Jason also denied that they had personally guaranteed the loan.[2] They asserted several affirmative defenses, including the defense that Fannie Mae's claims against them were barred by section 5/2-606 of the Code because they were founded upon a written instrument (specifically, the alleged assignment by RBC to Fannie Mae) which was not attached to Fannie Mae's verified

[2] Fannie Mae subsequently dismissed the counts of its complaint that were based on any alleged personal guarantees executed by Jody, Anna, or Jason. However, Fannie Mae's foreclosure claim against KR, Jody, Michael, and Anna remained.

complaint. However, Jody, Anna, and Jason did not assert any affirmative defenses challenging Fannie Mae's standing to foreclose on the loan.

¶ 10 On May 29, 2014, Fannie Mae filed a motion for summary judgement on Count 1 of its complaint (the foreclosure count). In support of its motion, Fannie Mae attached the affidavit of Carol King, a Senior Asset Manager at Fannie Mae. In her affidavit, King swore that the mortgage and Note were executed on August 1, 2008 between RBC and KR, and that RBC assigned the mortgage and Note to Fannie Mae that same day through a written assignment. King attested that a true and correct copy of the assignment was attached as Exhibit C to her affidavit. King further averred that KR had defaulted the mortgage and Note by failing to pay monthly installments beginning on or about November 1, 2011 and by transferring a portion of the property to Jody, Michael, and Anna via a quit claim deed recorded on August 12, 2010. Fannie Mae also attached to its summary judgment motion the affidavit of Twilla Revelle, the Director of Special Asset management at Wells Fargo Bank, the servicer of the loan. In her affidavit, Revelle listed the alleged required monthly payments that KR had failed to make, and attested to the total amount due and owing to Fannie Mae under the note and mortgage.

¶ 11 Jody, Anna, and KR each filed a separate response in opposition to Fannie Mae's motion for summary judgment. None of these defendants filed any affidavits to counter the affidavits filed in support of Fannie Mae's motion. In her *pro se* response and cross-motion for summary judgment, Jody argued that Fannie Mae was not entitled to foreclose on the property because, *inter alia*, Fannie Mae had failed to establish that it was the assignee of the Note at the time it filed the foreclosure action. Jody argued that Note attached to the complaint did not indicate that it had been assigned or transferred to Fannie Mae, and that an allonge purporting to effect such a transfer was never affixed to the original Note and was not produced to Jody and KR until June

2014, more than two years after Fannie Mae filed its complaint. Jody also challenged the purported assignment of the mortgage from RBC to Fannie Mae. Specifically, Jody argued that the purported assignment contained an incorrect FEIN number, was not notarized, and was signed before the closing date of the mortgage and the execution of the Note. In its separate response, KR also argued that Fannie Mae had failed to establish a valid assignment of the Note and that a genuine issue of material fact existed as to whether Fannie Mae was the owner and "rightful holder" of the Note with authority to foreclose.

¶ 12 In its reply in support of summary judgment, Fannie Mae argued that King's affidavit asserted that Fannie Mae owned both the mortgage and the Note and that the defendants had failed to present any counteraffidavits or other evidence suggesting that King's assertion was untrue. Moreover, Fannie Mae maintained that it had standing to bring the foreclosure action because it was in possession of both the original Note and an allonge paid to the order of Fannie Mae, which validly transferred the Note to Fannie Mae. Fannie Mae noted that the defendants had not contested the validity of these documents. For example, the defendants had produced no evidence suggesting that the signatures contained on the Note and the allonge were not genuine.

¶ 13 On August 4, 2014, the trial court granted Fannie Mae's motion for summary judgment and entered a judgement of foreclosure and sale. The trial court found that Fannie Mae had proven that it owned the loan documents, that a default occurred, and that Fannie Mae was entitled to foreclose. The trial court also granted the court-appointed receiver's motion for sanctions against Jody pursuant to Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. July 1, 2013)) and ordered Jody not to file any further pleadings in the instant foreclosure case or any other lawsuits against the parties without prior leave of court.

¶ 14 Jody, Anna, and KR each filed separate motions to reconsider, which the trial court denied. Jody also filed an emergency motion to stay the enforcement of the trial court's judgment pending appeal. The trial court denied Jody's motion to stay because it found that Jody had failed to satisfy the requirements for obtaining a stay under section 2-1305 of the Code (735 ILCS 5/2-1305 (West 2014) or Illinois Supreme Court Rule 305 (Ill. S. Ct. R. 305 (eff. July 1, 2004). Thereafter, a sheriff's sale was conducted and the portion of the property subject to the foreclosure judgment was sold to Fannie Mae, which was the highest bidder. The trial court entered an order confirming the sale on October 6, 2014.

¶ 15 Jody filed her notice of appeal in this court on August 28, 2014 (the same day she filed her emergency motion to stay in the trial court). On October 1, 2014, Jody filed an emergency motion to stay the trial court's foreclosure judgment pending appeal in our appellate court. We denied the motion. On July 29, 2015, Jody filed an emergency motion to "stay the sale" of the property for the duration of the appeal. That motion was also denied.

¶ 16 ANALYSIS

¶ 17 As a threshold matter, Fannie Mae has filed a motion to dismiss the instant appeal as moot. Fannie Mae contends that, while the appeal in this case was pending, the mortgaged property at issue in this appeal was sold to a third party. An appeal is moot when it involves no actual controversy or the reviewing court cannot grant the complaining party effectual relief. *Barnard v. Michael*, 392 Ill. 130, 133-34 (1945). If the property which is the subject of an appeal is sold to a third party who is not a party to the litigation or a nominee for a party to the litigation, the appeal is moot unless the appellant previously obtained a stay of the trial court's judgment within the time allowed for filing a notice of appeal. *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 527-28, 532-33 (2001); see also *Town of Libertyville v. Moran*, 179 Ill. App. 3d 800,

886 (1989). A reviewing court ordinarily will not decide a moot issue. *People ex rel. Sklodowski v. State*, 162 Ill. 2d 117, 130 (1994) ("a basic tenet of justiciability holds that '[r]eviewing courts will not decide moot or abstract questions or render advisory opinions. Courts of review ordinarily will not consider issues where they are not essential to the disposition of the cause or where the result will not be affected regardless of how the issues are decided.' ") (quoting *Barth v. Reagan*, 139 Ill. 2d 399, 419 (1990)).

¶ 18 Moreover, Supreme Court Rule 305(k) protects third-party purchasers of property from appellate reversals or modifications of judgments regarding the property, absent a stay of judgment pending the appeal. *Steinbrecher*, 197 Ill. 2d at 523. Supreme Court Rule 305(k) provides:

> "If a stay is not perfected within the time for filing the notice of appeal, or within any extension of time granted under subparagraph (c) of this rule, the reversal or modification of the judgment does not affect the right, title, or interest of any person who is not a party to the action in or to any real or personal property that is acquired after the judgment becomes final and before the judgment is stayed; nor shall the reversal or modification affect any right of any person who is not a party to the action under or by virtue of any certificate of sale issued pursuant to a sale based on the judgment and before the judgment is stayed. This paragraph applies even if the appellant is a minor or a person under legal disability or under duress at the time the judgment becomes final." Ill. S. Ct. R. 305(k) (eff. July 1, 2004).

Thus, Rule 305(k) requires: (1) the property passed pursuant to a final judgment; (2) the right, title and interest of the property passed to a person or entity who is not part of the proceeding;

and (3) the litigating party failed to perfect a stay of judgment within the time allowed for filing a notice of appeal. *Steinbrecher*, 197 Ill. 2d at 523–24.

¶ 19 Each of these elements has been satisfied in this case. First, the title to the property at issue passed to Fannie Mae pursuant to a final judgment when the trial court issued an order confirming the sale on October 6, 2014. *Margaretten & Co., Inc. v. Martinez*, 193 Ill. App. 3d 223 (1990) (holding that an order approving the sale of foreclosed property is a final judgment).

¶ 20 Second, Fannie Mae has established that the right, title and interest of the property has passed to an entity that was not part of the foreclosure proceeding. In support of its motion to dismiss this appeal, Fannie Mae submitted the affidavit of attorney Jeffrey Krumpe, in which Krumpe swore that: (1) after obtaining the property through the judicial sale, Fannie Mae assigned its interest in the Certificate of Sale to BV Sun Grove, LLC, which took title to the property; (2) the property was subsequently sold to Jeth Court Homes LLC;[3] and (3) Jeth Court Homes LLC "is not a party to this litigation nor *** a nominee of any party to this litigation." Jody did not contest any of these facts in her opposition to Fannie Mae's motion to dismiss. Nor did Jody submit a counteraffidavit contradicting Krumpe's sworn statements. Thus, we must take Krumpe's averments as true. *Barber–Colman Co. v. A & K Midwest Insulation Co.*, 236 Ill. App. 3d 1065, 1078 (1992) ("When facts alleged in an affidavit are not contradicted, those facts are taken as true.")

¶ 21 Third, Jody failed to obtain a stay of judgment within the time allowed for filing a notice of appeal, as required by Rule 305. Ill. S. Ct. R. 305(j), (k) (eff. July 1, 2004). Although Jody filed motions to stay the trial court's judgment in both the trial court and in our appellate court, her motions were denied by both courts. Moreover, Jody did not file her first motion to stay in

[3] Fannie Mae attached to its Motion a copy of the Quitclaim Deed effectuating the sale.

the appellate court until after she filed her notice of appeal, approximately four weeks after the deadline for appealing the trial court's foreclosure judgment expired.

¶ 22 Accordingly, the instant appeal is moot, and the relief sought by Jody is barred by Rule 305(k). We therefore grant Fannie Mae's motion to dismiss the appeal.

¶ 23 However, for the sake of completeness, we note that if we were to address the merits of Jody's appeal, we would affirm the trial court's grant of summary judgment and its foreclosure judgment in favor of Fannie Mae. Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2–1005(c) (West 2010). A motion for summary judgment does not ask the court to try a question of fact, but to determine if a question of material fact exists that would preclude the entry of judgment as a matter of law. *Land v. Board of Education of City of Chicago*, 202 Ill. 2d 414, 432 (2002). Thus, although the nonmoving party is not required to prove his case in response to a motion for summary judgment, "he must present a factual basis that would arguably entitle him to judgment." *Id.*; see also *Allegro Services, Ltd. v. Metropolitan Pier & Exposition Authority*, 172 Ill. 2d 243, 256 (1996). If the party moving for summary judgment supplies facts that, if not contradicted, would warrant judgment in its favor as a matter of law, the opponent cannot rest on his pleadings to create a genuine issue of material fact. *Harrison v. Hardin County Community Unit School Dist. No. 1*, 197 Ill. 2d 466, 470 (2001). We review a trial court's grant of summary judgment *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 24 Under section 15–1504 of the Foreclosure Law, a mortgagee may bring an action to foreclose upon a mortgage. 735 ILCS 5/15–1504 (West 2012). Section 15–1208 of the

Foreclosure Law defines a "mortgagee" as: "(i) the holder of an indebtedness or obligee of a non-monetary obligation secured by a mortgage or any person designated or authorized to act on behalf of such holder and (ii) any person claiming through a mortgagee as successor." 735 ILCS 5/15–1208 (West 2012). In its verified complaint, Fannie Mae asserted that it brought the foreclosure action as the "legal owner and holder" of the Note and mortgage. Fannie Mae attached a copy of the original Note and mortgage to its verified complaint. That established a *prima facie* case of foreclosure under section 15-1504 of the Foreclosure Law, shifting the burden to the defendant to prove any affirmative defenses. *Bank of America, N.A. v. Adeyiga*, 2014 IL App (1st) 131252, ¶¶ 67-68; see also *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 24 ("The mere fact that a copy of the note is attached to the complaint is itself *prima facie* evidence that the plaintiff owns the note."). Neither Jody nor KR asserted any affirmative defenses challenging Fannie Mae's standing to foreclose. In addition, Fannie Mae subsequently produced an allonge paid to the order of Fannie Mae. Neither Jody nor KR presented any evidence suggesting that the Note or the allonge were not genuine.

¶ 25 Moreover, in support of its motion for summary judgment, Fannie Mae presented the affidavit of Carol King, who swore that RBC (the original mortgagee) had assigned both the Note and the mortgage to Fannie Mae. Neither Jody nor KR presented any counteraffidavits contradicting King's statements. Once the Bank filed its motion for summary judgment with its supporting affidavits, the burden shifted to the defendants to prove that there was no genuine issue of material fact. *Adeyiga*, 2014 IL App (1st) 131252, ¶ 69. The mere suggestion that a genuine issue of material fact exists, without supporting documentation does not create an issue of material fact precluding summary judgment. *In re Marriage of Palacios*, 275 Ill.App.3d 561, 568 (1995). "Where facts contained in an affidavit in support of a motion for summary judgment

are not contradicted by counteraffidavit, such facts are admitted and must be taken as true." *Prather v. Decatur Memorial Hospital*, 95 Ill. App. 3d 470, 472 (1981). Accordingly, summary judgment in Fannie Mae's favor was proper.

¶ 26 Each of the arguments that Jody raises on appeal fail. First, relying upon our appellate court's ruling in *First Mortgage Co. v. Dina*, 2014 IL App (2d) 130567, Jody argues that the mortgage issued by RBC was "invalid" and "void" under the Illinois Residential Mortgage License Act of 1987 (RMLA) (205 ILCS 635/1–3(a) (West 2012) because RBC is not licensed to originate mortgages in Illinois. We disagree. As an initial matter, Jody has raised this argument for the first time on appeal. Accordingly, the argument is forfeited. See *K & K Iron Works, Inc. v. Marc Realty, LLC*, 2014 IL App (1st) 133688, ¶ 25 ("[A]rguments not raised before the circuit court are forfeited and cannot be raised for the first time on appeal."). Nevertheless, even if we chose to address the argument, we would reject it. Jody has presented no evidence supporting her claim that RBC is not licensed to originate mortgages in Illinois. She does not claim to have conducted as a search of the database of licenses issued by the governing regulatory agency. Nor has she provided any affidavits or other evidence establishing that RBC lacks the required license and is not exempt from Illinois' licensing requirements. Jody's mere suggestion that RBC might have lacked a required license is not sufficient to create a genuine issue of material fact. See, *e.g.*, *Judge-Zeit v. General Parking Corp.*, 376 Ill. App. 3d 573, 584 (2007) ("Mere speculation is not enough to create a genuine issue of material fact sufficient to survive a motion for summary judgment.").

¶ 27 Regardless, Jody's licensing argument is also legally unsupportable because *Dina* is no longer good law. On July 23, 2015 (approximately 16 months after *Dina* was decided), the legislature amended section 1-3 of the RMLA to provide that:

> "A mortgage loan brokered, funded, originated, serviced, or purchased by a party who is not licensed under this Section shall not be held to be invalid solely on the basis of a violation under 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); 2015 Ill. Legis. Serv. P.A. 99–113 (H.B. 2814).

This amendment appears to have been prompted by a legislative intent to abrogate *Dina*'s holding that a mortgage made by an unlicensed lender is void against public policy. *In re Jordan*, 543 B.R. 878, 883 (C.D. Ill. 2016). Moreover, the amendment explicitly states that it is intended to clarify existing law, not to change the law. 205 ILCS 635/1–3(e); 2015 Ill. Legis. Serv. P.A. 99–113 (H.B. 2814). The amendment's language is consistent with the RMLA's preexisting provisions. Prior to the amendment, the RMLA did not provide for any private remedies for violations of its licensing requirements, such as a private right of action or the right of a mortgagor to avoid mortgages obtained by unlicensed lenders.[4] Thus, as the 2015 amendment makes clear, there is not (and never has been) a right to avoid a mortgage that violates the RMLA. Accordingly, even if Jody had raised her licensing argument in the trial court and presented evidence suggesting that RBC lacked a required license when it initiated the mortgage, Jody's argument would fail as a matter of law.

¶ 28 Jody also argues that Fannie Mae failed to demonstrate that it has the capacity to foreclose because the allonge purportedly evidencing the transfer of the Note to Fannie Mae was not attached to the foreclosure complaint. Jody is mistaken. On May 1, 2013, Illinois Supreme Court Rule 113(b) was amended to provide that "a copy of the note, as it currently exists,

[4] The remedies expressly provided by the RMLA included injunctive relief and fines payable to the State. *Jordan*, 543 B.R. at 886.

including all indorsements and allonges, shall be attached to the mortgage foreclosure complaint at the time of filing." Ill. S. Ct. R. 113(b) (eff. May 1, 2013). However, foreclosure complaints filed prior to May 1, 2013, like the complaint in this case, are not subject to this requirement. *Korzen*, 2013 IL App (1st) 130380, ¶ 26 n.4; see also *Bayview Loan Servicing, LLC v. Cornejo*, 2015 IL App (3d) 140412, ¶ 14; *HSBC Bank USA, National Association v. Rowe*, 2015 IL App (3d) 140553, ¶ 22 n.1. Thus, as noted above, Fannie Mae created a *prima facie* case of indebtedness by attaching merely by attaching a copy of the Note as it existed originally, not as it currently exists (with any subsequent allonges or indorsements). The burden then shifted to Jody and the other defendants to prove affirmative defenses (*Adeyiga*, 2014 IL App (1st) 131252, ¶¶ 67-68; *Korzen*, 2013 IL App (1st) 130380, ¶ 24), which they failed to do. Nor did any of the defendants present any counteraffidavits contradicting King's summary judgment affidavit, which asserted that Fannie Mae was the owner and holder of the Note.

¶ 29 We have considered Jody's remaining arguments, and we find them not to be dispositive.

¶ 30 Fannie Mae asks us to sanction Jody for filing a frivolous appeal pursuant to Illinois Supreme Court Rule 375 (Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994). Although we are cognizant of the trial court's finding that Jody has a history of filing frivolous pleadings, we find that at least one of the arguments she raised on appeal (her licensing argument pursuant to *Dina*), while insufficiently developed, had some basis in existing law at the time the appeal was filed. Accordingly, we decline to impose sanctions under Rule 375.

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, we dismiss the appeal.

¶ 33 Appeal dismissed.