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2016 IL App (3d) 140917-U

Order filed May 2, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

CITIGROUP GLOBAL MARKETS REALTY,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
)	Will County, Illinois,
Plaintiff-Appellee,)	
)	
v.)	Appeal No. 3-14-0917
)	Circuit No. 08-CH-865
)	
EVELEIGH E. WILLIAMS and BERNARD GOODALL,)	
)	Honorable
)	Richard J. Siegel and Thomas A. Thanas,
Defendants-Appellants.)	Judges, Presiding.

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

ORDER

- ¶ 1 *Held:* The trial court did not err by granting summary judgment in favor of plaintiff and denying defendants' request to forego entering an order confirming the sale.
- ¶ 2 The circuit court granted Citigroup Global Markets Realty's (plaintiff's) motion for summary judgment and entered a judgment for foreclosure and sale against Eveleigh E. Williams and Bernard Goodall (collectively "defendants") on April 28, 2008. On September 2, 2014, the court entered an order approving the sale conducted on May 29, 2014, over defendants' objection

and denied defendants' 2014 request to vacate the 2008 judgment of forfeiture based on lack of standing.

¶ 3 On October 28, 2014, the court denied defendants' motion to reconsider those rulings. We affirm.

¶ 4 **BACKGROUND**

¶ 5 On January 18, 2007, defendants, as husband and wife, secured a loan in the amount of \$378,944 from Fremont Investment & Loan (Fremont) for their residence located at 3649 South State Street, Crete, Illinois. The parties entered into an adjustable rate mortgage, which was recorded on January 30, 2007, with the Will County Recorder of Deeds.

¶ 6 On February 19, 2008, plaintiff filed a complaint to foreclose on the mortgage, alleging defendants defaulted on their mortgage payments as required by the terms of their January 2007 mortgage agreement. As part of the complaint, plaintiff attached a copy of the mortgage in the amount of \$378,944, signed by both defendants, listing Fremont as the lender and Mortgage Electronic Registration Systems, Inc. (MERS) as its nominee.

¶ 7 On March 24, 2008, defendants filed a *pro se* general appearance and a handwritten answer, signed only by Eveleigh E. Williams, stating: "The defendants state as above, Eveleigh Williams and Bernard Goodall, are in the process of reinstating this loan with Wilshire Corp."

¶ 8 On April 21, 2008, plaintiff filed a motion for default and motion for judgment for foreclosure and sale. On April 28, 2008, plaintiff filed an additional motion for summary judgment based on the pleadings. After receiving proper notice, defendants failed to appear on April 28, 2008. Consequently, the court entered the following orders: order of summary judgment, order of default, and judgment of foreclosure and sale in favor of plaintiff.

¶ 9 On November 19, 2009, plaintiff filed a notice of sale informing defendants that the sale of the property would occur on December 9, 2009. On December 3, 2009, defendants filed a *pro se*, handwritten motion, which stated the defendants were “[I]n the process of a loan modification with the organization of NACA - Neighborhood Assistance Corp of America.” The court stayed the sheriff’s sale of defendants’ property until February 3, 2010, and set a status hearing for February 2, 2010. On February 2, 2010, the court entered an order stating, “Plaintiff allowed to proceed to sale on 2-3-10.” However, the record indicates the sheriff’s sale did not occur on February 3, 2010.

¶ 10 On August 25, 2011, attorney Matthew R. Wildermuth filed a general appearance on behalf of defendant Williams. Wildermuth withdrew as counsel on December 18, 2012. During this time period, the impending sheriff’s sale was scheduled to take place on January 4, 2012, August 29, 2012, and November 14, 2012, but did not take place on any of those dates.

¶ 11 The sheriff’s sale was conducted on May 29, 2014, after proper notice to all parties. On August 20, 2014, plaintiff filed a motion for an order approving report of the sale conducted on May 29, 2014. On August 25, 2014, defendants filed a *pro se* motion requesting the court to deny the confirmation of sale on the grounds that plaintiff did not establish “true ownership of the notes” before plaintiff initiated the foreclosure action in 2008.

¶ 12 On September 2, 2014, Attorney William P. Drew III filed a general appearance on behalf of defendants. On that same date, the court entered an order approving foreclosure report of sale and distribution and order for possession and deed. The court also rejected defendants’ previously filed *pro se* motion to deny confirmation of sale, reasoning that “standing is not a proper defense to raise at this stage pursuant to 1508(b).”

¶ 13 After the denial of defendants’ motion to reconsider, entered on October 28, 2014, defendants filed a timely notice of appeal.

¶ 14 ANALYSIS

¶ 15 On appeal, defendants request this court to review two rulings by the trial court. First, defendants appeal the trial court’s April 28, 2008, order granting summary judgment in plaintiff’s favor resulting in the judgment of foreclosure. Second, defendants challenge the trial court’s September 2, 2014, order confirming the sheriff’s sale that took place on May 29, 2014.

¶ 16 In response, plaintiff submits the trial court properly entered an order allowing summary judgment in 2008 and later approving the sheriff’s sale in 2014. We first address defendants’ contention that the trial court erroneously granted plaintiff’s motion for summary judgment on April 28, 2008.

¶ 17 I. Summary Judgment

¶ 18 The case law provides that “Summary judgment is proper where, when viewed in the light most favorable to the nonmoving party, the pleadings, depositions, admissions, and affidavits on file reveal that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *PNC Bank, National Ass’n v. Krier*, 2015 IL App (3d) 140639, ¶ 28. One purpose of pleading is to develop the issues to be determined. *Roth v. Roth*, 45 Ill. 2d 19, 23 (1970). Where well-pleaded allegations set forth by the plaintiff in a complaint are not denied, they may stand as admitted, and thus may be considered as evidence. *Id.* This court reviews the trial court’s decision granting summary judgment based on a *de novo* standard of review. *Continental Casualty Co. v. McDowell and Colantoni, Ltd.*, 282 Ill. App. 3d 236, 241 (1996).

¶ 19 In this case, plaintiff’s foreclosure complaint complied with the requirements of section 15-1504(a) of the Illinois Mortgage Foreclosure law. 735 ILCS 5/15-1504(a) (West 2008). In the complaint, plaintiff alleged they were the legal holder, agent, or nominee of the legal holder of the indebtedness and of the mortgage given as security on the debt. Plaintiff further alleged the mortgagors were in default. Therefore, plaintiff was entitled to a judgment of foreclosure and sale. Attached to plaintiff’s complaint was a copy of the mortgage in the amount of \$378,944, signed by both defendants.

¶ 20 A plaintiff is not required to allege facts to establish standing; instead, defendant has the burden of pleading and proving plaintiff’s lack of standing. *Alpha School Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 745 (2009). Importantly, defendants’ answer states: “The defendants state as above, Eveleigh Williams and Bernard Goodall, are in the process of reinstating this loan with Wilshire Corp.” We note that defendants did not appear in court on April 28, 2008, in spite of receiving notice of the court proceedings scheduled for that date.

¶ 21 Clearly, defendants’ answer to the complaint did not address the standing issue and otherwise admitted the well-pleaded allegations of plaintiff’s complaint, including the allegation that plaintiff held legal title to the property. We conclude defendants’ failure to assert lack of standing in their answer forfeited the issue for purposes of summary judgment in 2008. Moreover, for purposes of this appeal, we also find the procedural history of this case supports the view that standing has been forfeited and cannot be raised for the first time six years after the judgment of foreclosure. *See Deutsche Bank National Trust Co. v. Snick*, 2011 IL App (3d) 100436. Therefore, we conclude plaintiff was entitled to judgment as a matter of law on their foreclosure complaint and affirm the trial court’s ruling allowing summary judgment in favor of plaintiff.

¶ 22

II. Motion to Deny Confirmation of Sheriff's Sale

¶ 23

Next, we consider defendants' argument that the trial court erroneously approved the report concerning the sheriff's sale over defendants' objection. Section 15-1508(b) allows defendants to contest the sheriff's sale on the following four grounds: "(i) a notice required in accordance with subsection (c) of Section 15-1507 (citation omitted) was not given, (ii) the terms of sale were unconscionable, (iii) the sale was conducted fraudulently or (iv) that justice was otherwise not done." *Id.* at ¶ 10; *See also* 735 ILCS 5/15-1508(b) (West 2014). Our supreme court has held, "after a motion to confirm the judicial sale has been filed, a borrower seeking to set aside a default judgment of foreclosure may only do so by filing objections to the confirmation of the sale under the provisions of section 15-1508(b)." *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 27; 735 ILCS 5/15-1508(b) (West 2014). Thus, as in the case at bar, after completion of a judicial sale and the filing of a motion to confirm said sale, the trial court has discretion to vacate the judgment of foreclosure only upon section 15-1508(b) grounds. *McCluskey*, 2013 IL 115469 at ¶¶ 18, 27.

¶ 24

We review a trial court's decision denying or allowing a motion to vacate a judicial sale for an abuse of discretion. *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178-79 (2008). "A trial court abuses its discretion only when its ruling is " "arbitrary, fanciful or unreasonable" ' or "where no reasonable man would take the view adopted by the trial court." ' ' *People v. Santos*, 211 Ill. 2d 395, 401 (2004) (quoting *People v. Donoho*, 204 Ill. 2d 159, 182 (2003)).

¶ 25

A borrower may not successfully obtain an order vacating a foreclosure sale by raising a defense to the underlying foreclosure complaint that the borrower neglected to timely assert before the entry of the judgment of foreclosure. *McCluskey*, 2013 IL 115469, ¶ 26. For example, this court has held it was insufficient and far too late to assert the affirmative defense of

standing, after the sale of property was completed and plaintiff had filed a motion for an order approving the terms of the sale of the property. *Snick*, 2011 IL App (3d) 100436, ¶ 9. In order to be successful on a motion to deny confirmation of sale at this point in the proceedings, defendants must show “that justice was not otherwise done because either the lender, through fraud or misrepresentation, prevented the borrower from raising his meritorious defenses to the complaint at an earlier time in the proceedings, or the borrower has equitable defenses that reveal he was otherwise prevented from protecting his property interests.” *McCluskey*, 2013 IL 115469, ¶ 26.

¶ 26 Our review of the record in this case reveals defendants did not challenge the judicial sale on the grounds that the lender, through fraud or misrepresentation, prevented the borrower from asserting a timely attack on the lender’s standing to foreclose, and therefore failed to allege any actionable section 15-1508(b) grounds upon which the judicial sale could be vacated. Guided by the rationale set forth in *McCluskey*, and our recent decision in *Krier*, we conclude the trial court did not abuse its discretion when it denied defendants’ motion to deny confirmation of sale.

¶ 27 CONCLUSION

¶ 28 For the foregoing reasons, the judgments of the circuit court of Will County granting summary judgment to the plaintiffs and denying defendants’ motion to deny confirmation of sale are affirmed.

¶ 29 Affirmed.