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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

BANK OF AMERICA, N.A.,)	Appeal from the Circuit Court
)	of Lake County.
Plaintiff-Appellee,)	
)	
v.)	No. 09-CH-4078
)	
ROBERT F. GRADY, MARY T. GRADY,)	
JP MORGAN CHASE BANK N.A.,)	
UNKOWN OWNERS, and NON-RECORD)	
CLAIMANTS,)	
)	
Defendants)	
)	Honorable
(Robert F. Grady and Mary T. Grady,)	Luis A. Berrones,
Defendants-Appellants).)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in granting Bank of America’s motion to reconsider the trial court’s previous grant of defendants’ section 2-1401 petition, in which defendants had sought to vacate an order of summary judgment and a judgment of foreclosure. The trial court also acted within its discretion in denying defendant Robert Grady leave to file a third-party complaint and a counterclaim. Therefore, we affirmed.

¶ 2 This residential mortgage foreclosure action comes before us for the second time on appeal. In earlier proceedings, the trial court granted summary judgment for plaintiff, Bank of America, N.A. (BOA), and entered a judgment of foreclosure against defendants, Robert and Mary Grady. It subsequently entered an order approving the property's sale. This court affirmed the trial court's ruling. *Bank of America, N.A. v. Grady*, 2015 IL App (2d) 140490-U. However, about two months later, BOA filed a motion in this court seeking to vacate our order and remand for further proceedings. BOA stated that contrary to the evidence it submitted and its prior representations, the mortgage assignment had not also conveyed the note. We denied BOA's motion as untimely, after which defendants filed a petition under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)) in the trial court seeking to vacate the grant of summary judgment and the judgment of foreclosure.

¶ 3 The trial court initially granted defendants' section 2-1401 petition. BOA filed a motion to reconsider, citing, among other things, section 15-1509(c) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1509(c) (West 2016)). The trial court granted BOA's motion to reconsider and reversed its prior grant of defendants' section 2-1401 petition. The trial court also denied Robert's motions seeking leave to file a third-party complaint and a counterclaim. It is from these rulings that defendants now appeal. They argue that: (1) the Foreclosure Law does not apply because BOA was not the true possessor of the note and mortgage on their home; (2) BOA was not entitled to have the trial court's ruling reconsidered because BOA did not provide a reasonable explanation for not previously citing section 15-1509(c); (3) BOA is not entitled to the application of section 15-1509(c) because it misrepresented and concealed pertinent facts during the foreclosure proceedings; and (4) the trial

court improperly denied Robert's motion for leave to file a third-party complaint and a counterclaim. We affirm.

¶ 4

I. BACKGROUND

¶ 5 On September 21, 2009, BAC Home Loans Servicing LP (BAC) filed a complaint against defendants to foreclose the mortgage on their home at 3259 Middlesax Drive in Long Grove. BAC alleged that the mortgage was dated October 30, 2002, and that defendants had ceased payments in February 2009. BAC alleged that it was the legal holder of the mortgage and note, which it attached to the complaint. These documents identified E*Trade Mortgage Corporation (E*Trade) as the lender. The mortgage additionally identified Mortgage Electronic Registration Systems, Inc., (MERS) as the nominee for the lender and the mortgagee under the instrument.

¶ 6 Defendants proceeded *pro se* for the majority of the litigation in the trial court. On April 8, 2010, they filed an answer to the complaint in which they neither admitted nor denied that BAC was the legal holder of the mortgage and note.

¶ 7 BAC filed a motion for summary judgment on August 3, 2010, alleging that defendants' answer had failed to raise a genuine issue of material fact. BAC attached an affidavit stating that the mortgage and note were transferred from MERS, as nominee for E*Trade, to BAC. Attached to the affidavit was an assignment of mortgage, which also stated that MERS, as E*Trade's nominee, had assigned the mortgage to BAC. The assignment further stated that the mortgage was being assigned "[t]ogether with all rights and interest in the same and premises therein described and the note or obligation thereby secured." (Emphasis omitted.) The assignment was recorded on September 22, 2009.

¶ 8 In defendants' response to BAC's motion for summary judgment, they argued, *inter alia*, that BAC's exhibits did not establish that BAC was the legal holder of the mortgage and note.

¶ 9 On July 24, 2012, the trial court granted BAC's motion to substitute BOA as the plaintiff based on a merger. It also granted summary judgment for BOA and entered a corresponding judgment of foreclosure against defendants.

¶ 10 On August 21, 2012, defendants filed a notice of appeal, which this court dismissed as premature on November 5, 2012. Defendants thereafter filed two motions to reconsider, which the trial court denied. A foreclosure sale took place on February 27, 2014. On May 15, 2014, the trial court entered an order approving the sale, and defendants appealed. On June 24, 2014, while the appeal was pending, a sheriff executed a deed conveying title to the property to the Federal National Mortgage Association (Fannie Mae).

¶ 11 On appeal, defendants argued that the trial court erred in granting summary judgment for BOA because there was a genuine issue of material fact as to the bank's right to foreclose the mortgage. *Grady*, 2015 IL App (2d) 140490-U, ¶ 25. They argued that, among other things, there was no evidence establishing that MERS had the authority to convey the note from E*Trade to BAC. *Id.* ¶ 28. They argued that the note and mortgage instead established only that MERS was the mortgagee, as the nominee of E*Trade, and not the note's holder. *Id.*

¶ 12 In resolving the appeal, we first examined BOA's assertion that defendants had forfeited their ability to challenge BAC's standing. *Id.* ¶ 28. However, we then concluded that even if defendants had preserved this issue, there was no genuine issue of material fact regarding BAC's standing to warrant denying summary judgment. *Id.* ¶ 38. On the question of whether BAC presented *prima facie* proof that it was the note's holder, we stated:

“As to whether the assignment sufficiently indicated that the note was assigned, we answer this question in the affirmative, as the assignment specifically stated that the mortgage was being assigned “with all rights and interest in the same and premises therein described *and the note* or obligation thereby secured.” (Emphasis added.). To be effective, an assignment only needs to assign or transfer the whole or part of something that is described with sufficient particularity to make it identifiable. [Citation.] Moreover, an assignment does not have to have a particular form, but rather, any document evidencing the assignor’s intent to vest ownership of the interest in the assignee is sufficient to effect an assignment. [Citation.] Here, the assignment clearly indicates that it is assigning both the note and mortgage to BAC.

Defendants additionally argue that there was no evidence to establish that MERS had the authority to convey the note from E*Trade to BAC, as MERS was the mortgagee and E*Trade’s nominee, and not the holder of the note. The defendants in *Adeyiga* raised this exact same argument; *i.e.* that MERS could not assign the debt instrument from the original lender because MERS never received title to the promissory note. *Adeyiga*, 2014 IL App (1st) 131252, ¶ 72. The appellate court reasoned that because the bank had an affidavit from a bank officer who stated that it held the promissory note, and a copy of the assignment from MERS to the bank which was signed and notarized before the lawsuit, the burden then shifted to the defendants to prove that the bank did not have standing, which they failed to do. [Citation.] The same analysis applies here.” *Id.* ¶¶ 45-46.

We concluded that in light of BAC’s evidence of standing, defendants did not meet their burden of showing that there was a genuine issue of material fact on this issue, and thus the trial court

did not err in granting summary judgment for BOA. *Id.* ¶ 47. Our decision was filed on March 20, 2015, and the mandate for the case issued on May 15, 2015.

¶ 13 A few days later, on May 18, 2015, BOA filed a motion in this court requesting that we vacate our order, strike its appellee’s brief, and remand the matter to the trial court for further proceedings. It stated that in its brief, it had relied on the mortgage assignment to show that the underlying note was also conveyed. However:

“[u]pon further review, and upon clarification of MERS’s role within the mortgage lending industry and its role as mortgagee of the Mortgage solely as nominee for the original lender, its successors and assigns, [BOA] believe[d] that relying on MERS’s Assignment of the Mortgage for its assertion that the Note was also conveyed may be incorrect as a matter of law and a factual misunderstanding.”

BOA stated that MERS held the mortgage as mortgagee solely as nominee for the original lenders, its successors, and assigns. BOA stated that MERS did not hold any interest in the note and therefore had no authority to assign the note, despite the language contained in the mortgage assignment. According to BOA, its counsel did not prepare the assignment or introduce it into the record, but “[d]uring” the proceedings, counsel “realized that the MERS Assignment’s language regarding transfer of the Note was inaccurate and any reliance on the language was potentially misleading.”

¶ 14 On July 10, 2015, while BOA’s motion remained unresolved, Fannie Mae executed a deed conveying title to the property to an individual third-party purchaser. On August 24, 2015, this court struck BOA’s motion as untimely and remanded the cause to the trial court.

¶ 15 On November 2, 2015, defendants filed a section 2-1401 petition in the trial court seeking to vacate the July 24, 2012, grant of summary judgment and judgment of foreclosure. They

argued as follows. They had consistently maintained that BOA had failed to present sufficient evidence that it was the actual holder of the note, as the note attached to the complaint identified E*Trade as the lender and bore no endorsement or other indicia of the transfer of the holder's rights. In response, BOA had relied solely on an alleged mortgage assignment as evidence that the note was assigned from MERS to BAC. As a result, both the trial and appellate courts expressly relied on the mortgage assignment as an evidentiary basis for establishing that BAC was the note's holder. However, BOA's motion to vacate admitted that MERS did not hold any interest in the note and thus had no authority to assign the note. Thus, the underlying factual basis for granting summary judgment and foreclosing on the property was completely undermined by BOA's own representations in its May 2015 filing.

¶ 16 Defendants also argued that BOA's conduct could violate the terms of the consent judgment in *U.S. v. Bank of America Corp.*, No. 12-0361 (D.C. April 4, 2012). The consent judgment required BOA to, among other things, ensure that factual assertions made in pleadings and affidavits were accurate and complete and supported by competent and reliable evidence. For pending foreclosure cases, it was also to re-file affidavits or sworn statements if they were not based on the affiant's review and personal knowledge.

¶ 17 On January 12, 2016, BOA filed a response in opposition to defendants' section 2-1401 petition. BOA argued that defendants' petition was time-barred because it was filed more than two years after the July 24, 2012, judgment that they sought to vacate. BOA further argued that the petition was barred by *res judicata* because we had affirmed the judgment of foreclosure and the period for rehearing or further appeal had expired.

¶ 18 On January 20, 2016, the trial court granted defendants' section 2-1401 petition and vacated the order of summary judgment and judgment of foreclosure and sale entered on July 24, 2012, and the order approving the sale entered on May 15, 2014.

¶ 19 On May 26, 2016, Robert filed a motion for leave to file a counterclaim against BOA alleging slander of title and violations of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 2016)) and the Fair Debt Collections Practices Act (15 U.S.C. § 1692 *et seq.* (2012)). The same day, Robert filed a motion for leave to file a third-party complaint against the home's subsequent purchaser, among others, seeking to quiet title.¹

¶ 20 On June 2, 2016, BOA filed a pleading labeled as a section 2-1401 petition to vacate the January 20, 2016, order, or alternatively, a motion to reconsider or dismiss that order. It argued that the judgment of foreclosure and sale and order approving the sale were not void and were affirmed by a higher court, and therefore were not subject to attack by defendants pursuant to section 2-1401. It alternatively argued that because a sheriff's deed was recorded on July 10, 2014, and a deed to an innocent third party was recorded on August 10, 2015, section 15-1509(c) of Foreclosure Law (735 ILCS 5/15-1509(c) (West 2016)) barred defendants from seeking relief from any order or judgment entered in the foreclosure.

¶ 21 In their response, defendants argued, among other things, that the trial court should not consider the impact of section 15-1509(c) because BOA was raising that legal theory for the first time in its motion to reconsider. Defendants further argued that the vacated orders were void because BAC did not have standing to foreclose on their home.

¹ In it unclear why these pleadings were solely in Robert's name.

¶ 22 In its reply in support of its motion, BOA argued that the counsel representing it in conjunction with defendants' motion to vacate² did not raise a section 15-1509(c) argument because he had not been made aware of the transfer of title to an innocent third party, which was also not reflected in the record. BOA further asserted that it never admitted that it lacked standing and/or that it was the not the legal holder of the note, but rather just that the assignment of mortgage did not convey the note.

¶ 23 On August 18, 2016, the trial court granted BOA's motion to reconsider, and it vacated its January 20, 2016, order. It further denied as moot defendants' motion to file a counterclaim and third-party complaint. Defendants timely appealed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, defendants argue that the trial court erred in granting BOA's motion to reconsider and denying their motions to file counterclaims and a third-party complaint. We first address the applicable standards relating to motions to reconsider. A motion to reconsider is meant to bring to the trial court's attention newly-discovered evidence, changes in the law, or errors in the trial court's application of existing law. *TCF National Bank v. Richards*, 2016 IL App (1st) 152083, ¶ 41. A party should not be raising a new legal theory or factual argument in a motion to reconsider because litigants should present their argument and evidence in the first instance, as opposed to frantically gathering evidentiary material only after losing the motion. See *Jones v. Live Nation Entertainment, Inc.*, 2016 IL App (1st) 152923, ¶ 29. Thus, legal theories and factual arguments not previously made are forfeited. *Id.* That being said, the trial court has the discretion to allow a party to raise a new matter in a motion to reconsider, though it

² BOA was being represented by two different law firms.

should not be permitted without a reasonable explanation of why it was not raised during the original hearing. *Id.*

¶ 26 In general, the decision of whether to grant or deny a motion to reconsider is within the trial court's sound discretion and will not be disturbed absent an abuse of that discretion. *TCF National Bank*, 2016 IL App (1st) 152083, ¶ 41. A trial court abuses its discretion if its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would adopt the trial court's view. *Id.* However, if a motion to reconsider questions the trial court's previous application of existing law, we review *de novo* the trial court's determination of legal issues. *Id.* Still, a motion to reconsider based on the submission of new matters is reviewed under an abuse-of-discretion standard. See *Jones*, 2016 IL App (1st) 152923, ¶ 29; *Daniels v. Corrigan*, 382 Ill. App. 3d 66, 71 (2008).

¶ 27 Defendants first argue that the Foreclosure Law does not apply because BAC had to have an interest in their home when it filed the complaint, but BOA subsequently admitted that it was not the legal holder of their indebtedness when the complaint was filed. Defendants' argument is not persuasive, as the Foreclosure Law applies to foreclosure actions, even if it is subsequently determined that the plaintiff lacked standing. Moreover, although BOA subsequently admitted that the MERS assignment's language indicating transference of the note was inaccurate, BOA never conceded that BAC lacked standing when it filed suit, and there has been no judicial determination to that effect. Indeed, this court also never adjudicated the question of whether defendants forfeited their ability to challenge BAC's standing. See *Grady*, 2015 IL App (2d) 140490-U, ¶ 38.

¶ 28 Defendants next argue that the trial court erred in allowing BOA to present new arguments and legal theories in its motion to reconsider. Defendants point out that BOA needed

to provide a reasonable explanation for its failure to do so earlier in the proceedings. See *Jones*, 2016 IL App (1st) 152923, ¶ 29. Defendants argue that BOA did not provide a reasonable basis, as nothing changed factually or legally between January 20, 2016, when the trial court vacated the judgment of foreclosure, and June 2, 2016, when BOA filed its motion to reconsider. Defendants note that BOA filed the motion to reconsider only after they sought to file a counterclaim against it. Defendants argue that the failure of BOA's counsel to not properly investigate the home's ownership is not a reasonable explanation for not previously presenting section 15-1509(c) as a defense, nor should it matter which of BOA's co-counsel were tasked with drafting the initial response.

¶ 29 Our review of whether the trial court abused its discretion in allowing BOA to present new facts/a new legal theory in its motion to reconsider is hampered by defendants' failure to provide a report of proceedings or certified bystander's report for the relevant hearing. Without such a transcript, we cannot examine the trial court's rationale. Defendants, as the appellants, have the burden to file a sufficiently complete record of the proceedings in the trial court to support a claim of error. *Keefe v. Allied Home Mortgage Corp.*, 2016 IL App (5th) 150360, ¶ 27. Any doubts that arise from the record's incompleteness will be resolved against the appellant, and we must presume that the trial court's order conformed to the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Accordingly, we must presume that the trial court had a legitimate basis for allowing BOA to present a new argument. Even otherwise, we would be hard-pressed to conclude that the trial court abused its discretion, for as we subsequently discuss, the new facts and law show the trial court's ruling directly contradicts section 15-1509(c), which protects the finality of foreclosure judgments once a title has been conveyed by deed. *Cf. Harris Bank, N.A., v. Harris*, 2015 IL App (1st) 133017, ¶ 47

(the trial court dismissed the defendant's section 2-1401 petition based on lack of diligence, but the appellate court determined that dismissal was also "independently warranted" due to section 15-1509(c)).

¶ 30 Defendants brought their petition to vacate pursuant to section 2-1401. Section 2-1401 allows for relief from final orders and judgments more than 30 days but less than two years after their entry. 735 ILCS 5/2-1401 (West 2014). Under section 2-1401, a party may challenge a final judgment by bringing to the trial court's attention issues of fact outside the record which, if known when the judgment was entered, would have affected the judgment. *In re Marriage of Morreale*, 351 Ill. App. 3d 238, 241 (2004). In general, to obtain relief under section 2-1401, a party must set forth specific factual allegations showing (1) the existence of a meritorious defense or claim; (2) due diligence in presenting the defense or claim in the original action; and (3) due diligence in filing the section 2-1401 petition. *BMO Harris Bank National Ass'n v. LaRosa*, 2017 IL App (1st) 161159, ¶ 13. Where the petition presents a fact-dependent challenge to the final judgment or order, we apply an abuse-of-discretion standard. *Id.* ¶ 15. However, we review the ruling on the petition *de novo* where, as here, the case presents solely a legal question, *i.e.* whether the petition is barred by section 15-1509(c). See *id.*

¶ 31 Section 15-1509(c) of the Foreclosure Law states: "Any vesting of title *** by deed pursuant to subsection (b) of Section 15-1509, unless otherwise specified in the judgment of foreclosure, shall be an entire bar of (i) all claims of parties to the foreclosure." 735 ILCS 5/15-1509(c) (West 2016). Appellate court precedent provides that section 15-1509's language clearly bars "all claims" of the parties to the foreclosure once the title by deed has been vested. *LaRosa*, 2017 IL App (1st) 161159, ¶ 19. Here, deeds conveying title to the property were executed twice following the confirmation of the sale, first on June 24, 2014, to Fannie Mae, and

then on July 10, 2015, from Fannie Mae to an individual third-party purchaser. Defendants did not file their section 2-1401 petition until many months later, on November 2, 2015. Put simply, section 2-1401 cannot be used to circumvent section 15-1509(c) once the sale of the property has been confirmed and the title has vested. *U.S. Bank National Ass'n v. Prabhakaran*, 2013 IL App (1st) 111224, ¶ 30; see also *Deutsche Bank National Trust Co. v. Brewer*, 2012 IL App (1st) 111213, ¶ 14 (“[u]nder section 15–1509, the party aggrieved by an erroneous judgment and a sale pursuant to that judgment cannot challenge the sale”).

¶ 32 That being said, there are a couple of exceptions to the bar presented by section 15-1509(c). The first is if the party seeks relief only in the form of claiming an interest in the sale’s proceeds under section 2-1301(g) of the Code (735 ILCS 5/2-1301(g) (West 2016)), which is not pertinent here. 735 ILCS 5/15-1509(c) (West 2016). Another exception exists if the judgment was entered without personal or subject matter jurisdiction. *Brewer*, 2012 IL App (1st) 111213, ¶ 15. Defendants do not claim that the trial court lacked personal jurisdiction over them. They do assert that BOA lacked standing, and they equate this to the trial court lacking subject matter jurisdiction in the case. However, standing is an affirmative defense that can be forfeited if the defendant fails to timely raise it, whereas a lack of subject matter jurisdiction cannot be forfeited. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252-53 (2010). That is, issues of standing do not implicate a court’s subject matter jurisdiction. *Id.* at 253-54. Accordingly, none of the exceptions prohibiting section 15-1509(c)’s application are present here.

¶ 33 Defendants further argue that section 15-1509(c) should not be applied because BOA has, throughout the proceedings, misrepresented pertinent facts concerning the assignment and concealed its violations of the consent judgment. Defendants assert that BOA’s wrongful actions have prevented the trial court from properly reviewing the foreclosure. Defendants maintain that

section 15-1509(c) “cannot possibly be interpreted to allow a bank to foreclose on a house it has no economic interest in and then transfer ownership to a third party to avoid the undoing of its fraudulent foreclosure.” Defendants argue that by granting BOA’s motion to reconsider, the trial court has now ratified BOA’s repeated violations of the consent judgment and its concealment of those violations.

¶ 34 We understand defendants’ indignation with the manner in which this case has proceeded and the barriers they repeatedly find themselves facing in trying to obtain redress for BOA admittedly relying on improper documentation as evidence that it held the note. However, even allegations of fraudulent conduct by a bank in a section 2-1401 petition cannot overcome the bar presented by section 15-1509(c). See *Harris*, 2015 IL App (1st) 133017, ¶¶ 36, 48. Accordingly, we cannot say that the trial court abused its discretion in granting BOA’s motion to reconsider and vacating its January 20, 2016, order. Based on our resolution of this issue, we do not address BOA’s alternative arguments that the trial court did not err in granting the motion to reconsider, because defendants’ section 2-1401 petition was time-barred and/or barred by *res judicata*.

¶ 35 We do additionally note that, to the extent defendants sought to regain their property, such relief was prohibited by section 2-1401(e). That section provides:

“Unless lack of jurisdiction affirmatively appears from the record proper, the vacation or modification of an order or judgment pursuant to the provisions of this Section does not affect the right, title or interest in or to any real or personal property of any person, not a party to the original action, acquired for value after the entry of the order or judgment but before the filing of the petition, nor affect any right of any person not a party to the original action under any certificate of sale issued before the filing of

the petition, pursuant to a sale based on the order or judgment.” 735 ILCS 5/2-1401(e) (West 2014).

Section 2-1401(e) “embodies the public policy respecting third-party purchases of property and protecting them from the effects of an order setting aside a judgment affecting title to property.” *U.S. Bank National Ass’n v. Rahman*, 2016 IL App (2d) 150040, ¶ 26. It protects “*bona fide* purchasers for value.” *Id.* ¶ 41. As stated, the house was sold to an individual third-party on July 10, 2015, months before defendants filed their section 2-1401 petition. Defendants have also failed to raise a legitimate challenge to jurisdiction. Therefore, under section 2-1401(e), defendants would not have been able to regain any rights in the subject property or otherwise affect the disposition of the property. See *Harris*, 2015 IL App (1st) 133017 ¶ 49.

¶ 36 We next address defendant’s argument that the trial court erred in denying Robert’s (1) motion for leave to file a third-party complaint against the ultimate purchaser of the property and (2) motion for leave to file a counterclaim. Whether to grant leave to file a third-party complaint is within the trial court’s discretion. *Harshman v. DePhillips*, 218 Ill. 2d 482, 503 (2006). A trial court’s decision on whether to grant leave to file a counterclaim is likewise reviewed for an abuse of discretion. *Dallas v. Cips*, 402 Ill. App. 3d 307, 311 (2010).

¶ 37 The trial court’s order states that it denied Robert’s requests as “moot.” Defendants point out that our supreme court has stated that third-party actions are favored, and trial courts should liberally grant leave to file them. *Ramsey v. Morrison*, 175 Ill. 2d 218, 235 (1997). Defendants argue that through the third-party complaint, they sought to investigate via discovery whether the home’s ultimate purchaser had any connection to the foreclosure and whether he was truly a *bona fide* purchaser.

¶ 38 We conclude that the trial court did not abuse its discretion in denying Robert leave to file a third-party complaint, as section 15-1509(c) bars “all claims” (735 ILCS 5/15-1509 (West 2016)) challenging the property’s sale. See *Brewer*, 2012 IL App (1st) 111213, ¶ 14. Moreover, section 2-1401(e) protects the buyer’s interest in the property, and defendants’ third-party complaint amounts to nothing more than a fishing expedition in the hopes of obtaining evidence that the buyer was not a *bona fide* purchaser.

¶ 39 Regarding Robert’s request to file a counterclaim, defendants point out that, at any time before the final judgment, pleadings may be liberally amended to assert counterclaims. 735 ILCS 5/2-616 (West 2016); *Scentura Creations, Inc. v. Long*, 325 Ill. App. 3d 62, 73 (2001). Defendants assert that when they filed their answer to the foreclosure complaint, they were unaware of the extent to which BOA had misrepresented and concealed the true nature of the assignment. They argue that Robert’s motion for leave to file a counterclaim was based on BOA’s admissions from its May 18, 2015, motion to strike and its failure to adhere to the consent judgment. Defendants argue that the underlying purpose of the consent judgment was to protect parties like them, but the trial court prevented BOA from being held responsible for its violations.

¶ 40 As defendants recognize, pleadings may be liberally amended at any time “before final judgment.” 735 ILCS 5/2-616 (West 2016). The trial court’s grant of BOA’s motion to reconsider had the effect of reinstating the final judgment, so the rule allowing liberal amendments no longer applied. See *Illinois Founders Insurance Co. v. Williams*, 2015 IL App (1st) 122481, ¶ 57. Secondly, Robert’s request for leave to file a counterclaim was expressly premised on the trial court’s vacation of the judgment of foreclosure and related orders, so it was logical for the trial court to consider the motion “moot” after it reversed its prior ruling. Last,

section 15-1509(c) bars “all claims of the parties to the foreclosure” (735 ILCS 5/15-1509 (West 2016)) after title to the property has been transferred, and the plain meaning of this language could include Robert’s proposed counterclaim. See *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶ 25 (in construing a statute, our primary objective is to ascertain and give effect to the legislature’s intent, which is best indicated by the statute’s plain language). For all of these reasons, the trial court acted within its discretion in denying Robert’s motion for leave to file a counterclaim.

¶ 41 We recognize that prohibiting a counterclaim against BOA seems unfair, as BOA obtained the foreclosure judgment based on faulty evidence, even after a consent judgment under which it should have reviewed such filings. BOA later admitted that it had not provided proper proof of the note’s transfer, but this admission came too late to reopen the issue of standing. Therefore, is it understandable that defendants claim that they are unjustly left without a remedy. However, section 15-1509(c) and 2-1401(e) represent other important policy goals of preserving the finality of foreclosure judgments after the property has been transferred to an innocent third-party purchaser. Insofar as that defendants believe that the law should offer stronger protections to homeowners, such change must come through the legislature, rather than the courts.

¶ 42

III. CONCLUSION

¶ 43 For the reasons stated, we affirm the judgment of the Lake County circuit court.

¶ 44 Affirmed.