

No. 1-13-4037

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DEUTSCHE BANK, NATIONAL TRUST AS)	Appeal from the
TRUSTEE,)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 11 CH 28887
)	
ELENA FEDOROVA, MERS, AMERICA'S)	
SERVICING CO., et al.,)	Honorable
)	Robert E. Senechalle,
Defendants-Appellants.)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

O R D E R

¶ 1 *Held:* Judgment of confirmation of sale affirmed over defendant's contention that plaintiff lacked standing to proceed with foreclosure and sale.

¶ 2 Defendant, Elena Fedorova, *pro se*, appeals the denial of her motions to vacate the default foreclosure judgment entered against her and in favor of plaintiff, Deutsche Bank

National Trust Company, as Trustee for GSAMP 2006-FMI, on unit 909 at 1360 North Sandburg

Terrace, in Chicago, and the confirmation of the sale of that property. She contests Deutsche Bank's status as plaintiff and its standing to bring the foreclosure action against her.

¶ 3 The common law record filed on appeal shows that on August 16, 2011, plaintiff filed a mortgage foreclosure action against defendant for the property in question based on her failure to pay the monthly installments. In its complaint, plaintiff noted that the mortgage was originally issued on January 31, 2006, that the original mortgagee was Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Fremont Investment and Loan (Fremont), and that the servicing company was America's Servicing Company. Plaintiff also alleged that it was the new mortgagee.

¶ 4 In support of its complaint, plaintiff attached a copy of the original mortgage document showing a mortgage in the amount of \$138,400. Plaintiff also attached an adjustable rate promissory note, which provided that the lender was Fremont, and endorsed by Michael Koch, Fremont vice president, to "pay to the order of ** without recourse." Thereafter, Fremont transferred the loan to plaintiff as indicated by the notation, "*** Deutsch Bank National Trust Company, as Trustee for Fremont Home Loan Trust 2006-1."

¶ 5 When defendant stopped making her mortgage payments, plaintiff filed a complaint for foreclosure against her on August 16, 2011. Efforts to serve defendant personally were unsuccessful, and she was eventually served by publication on January 24, 2012. On July 20, 2012, Plaintiff then filed a motion for a default judgment of foreclosure, alleging that no appearance, motion or answer had been filed by defendant. In support of its motion, plaintiff attached an affidavit from an agent of Wells Fargo Bank (Wells Fargo), which was the new servicing agent for plaintiff. This affidavit provided that the payment default had not been cured

since the filing of the complaint, and that plaintiff now owed \$231,859.44, which included interest and tax disbursements. Plaintiff also filed a motion to appoint a selling officer.

¶ 6 On August 10, 2012, the court entered a default judgment against defendant for failure to answer or otherwise plead. The court also appointed a selling officer, and on November 13, 2012, plaintiff purchased the property at public auction for \$99,875.

¶ 7 On December 4, 2012, plaintiff filed a motion for an order approving the report of sale, distribution and possession. Thereafter, defendant filed a *pro se* emergency petition to vacate the "void" default judgment based on mortgage fraud, service fraud, and lack of standing pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)).

Defendant signed this motion on December 28, 2012, and alleged that plaintiff was never named as a trustee or assignee of Fremont. Defendant further alleged that plaintiff and Wells Fargo "NEVER [sic.] had any documents to claim any rights" to her property.

¶ 8 On January 11, 2013, defendant filed a *pro se* request for debt validation and proof of service, alleging that defendant, as proof of the indebtedness, provided a note signed between defendant and Fremont on January 31, 2006. She asserted that this note does not provide any proof that plaintiff was part of the transaction, and that the note is clear proof that plaintiff had absolutely no rights to her property. She requested that plaintiff provide her with competent evidence that it has rights to foreclose on her property, and that she has a legal obligation to pay it. She also demanded that plaintiff provide her proof of its rights to foreclose on her note, that trust GSMP 2006-FM1 still exists, and that Fremont transferred its right to plaintiff as trustee or successor trustee. She also requested proof that service of the foreclosure complaint and sale was properly made.

¶ 9 On January 11, 2013, the court, with both parties present, and "after being fully advised in the premises," entered a written order denying defendant's motion to vacate the default judgment and order of sale. On January 25, 2013, defendant filed a verified answer to plaintiff's complaint, amended petition to vacate judgment pursuant to section 2-1401 of the Code, motion to dismiss foreclosure with prejudice, and request for sanctions. Defendant alleged that plaintiff failed to provide any evidence that it is the trustee of Trust GSAMP 2006-FM1, which never had any relation to the mortgage note she signed with Fremont, and was terminated in January 2007. Defendant maintained that in order to recover on a promissory note, plaintiff must prove that it is the owner or holder of the note in due course, that there was a proper chain of assignment, and that lien positions were properly perfected. In sum, defendant maintained that plaintiff had no standing in this matter.

¶ 10 On February 15, 2013, the court approved the report of sale and distribution, confirmed the sale, and ordered possession. On February 19, 2013, defendant filed a *pro se* motion pursuant to section 2-1401 of the Code, for reconsideration of her amended petition to vacate the default judgment as void due to fraud, and a motion to dismiss the foreclosure with prejudice as void. She maintained that plaintiff lacked standing, and that the trial court abused its discretion and failed to consider her status as a disabled veteran and her affirmative defenses, essentially repeating the allegations in her prior *pro se* motion. Additionally, she alleged that the court should refuse confirmation of the judicial sale based on lack of notice, unconscionable terms of sale, fraudulently conducted sale and justice otherwise not done. She maintained that plaintiff failed to provide her notice of the sale and never published it, and that it was unconscionable that her original mortgage for \$138,400 turned into \$237,637.62, and that there was a deficiency judgment in the sum of \$144,949.12.

¶ 11 On March 5, 2013, defendant filed a *pro se* memorandum in support of her motion for reconsideration, alleging that the court dismissed a prior complaint plaintiff filed against her for the same property, and that plaintiff failed again to provide any proof in support of its complaint other than the note executed between defendant and Fremont. She also claimed that the court ignored the doctrine of standing.

¶ 12 On April 12, 2013, plaintiff responded that defendant had failed to present any evidence as to why the sale should not be confirmed, and noted that it had mailed her notice of the sale. Plaintiff also noted that defendant presented no evidence of an unconscionable sale price, and that inadequacy of price alone is insufficient to invalidate a foreclosure sale. Plaintiff further alleged that there was no evidence of fraud, and that defendant's affirmative defenses must be raised prior to the entry of the foreclosure judgment, and since she did not raise them, they are forfeited.

¶ 13 On May 9, 2013, defendant filed a reply, alleging that the foreclosure was based on fraud and that plaintiff had no standing, and essentially repeating the allegations in her prior *pro se* motion. She also alleged that any assignment of assets, which did not belong to plaintiff or its trust, was fraudulent, blatant theft, and an extortion racket.

¶ 14 On December 4, 2013, the court denied defendant's motion to reconsider. In its written order, the court noted that plaintiff brought the original note, mortgage, and assignment of rents, which defendant inspected. We observe that the record filed on appeal includes a note signed by Fremont vice president, Michael Koch, and provides that it is to be paid to the order of [**] without recourse. Below this endorsement is a stamp with two asterisks, and next to those asterisks it provides: "Deutsch Bank National Trust Company, as Trustee for Fremont Home Loan Trust 2006-1."

¶ 15 The following day, defendant filed a *pro se* motion for rehearing due to foreclosure fraud, "robo-signing," and lack of standing. She again filed the motion pursuant to section 2-1401 of the Code, and alleged that plaintiff failed to provide the full chain of endorsement granting it standing to foreclose, and presented a forged robo-signed, and not timely filed, assignment.

¶ 16 On December 23, 2013, the court entered a written order in which it noted that on December 4, 2013, it held a hearing on defendant's motion to reconsider, and considered the record, the written submissions of the parties, and the oral arguments presented at the hearing. The court found that defendant failed to establish the existence of any factors under section 2-1203 of the Code (735 ILCS 5/2-1203 (West 2012)), which would permit the court to reconsider and reverse its decision. Plaintiff attached a copy of the endorsed blank note to its complaint which was *prima facie* evidence that plaintiff owned the note. The court thus found that plaintiff was the holder of the note, and had the right to enforce the mortgage. The court further found that successive post-judgment motions are not permitted, and that it was without jurisdiction to consider this second motion for reconsideration. The motion was, accordingly, stricken with prejudice.

¶ 17 Defendant appealed, and here contests the order entered by the circuit court on December 4, 2013. Plaintiff initially responds that defendant's appeal should be dismissed because she failed to comply with the Supreme Court Rules governing appeals.

¶ 18 We observe that defendant's *pro se* status does not relieve her of the burden of complying with the rules governing the format for appellate briefs (*Biggs v. Spader*, 411 Ill. 42, 44-46 (1951), *cert. denied*, 343 U.S. 956 (1952)), and that failure to do so may result in dismissal (*Bank of Ravenswood v. Maiorella*, 104 Ill. App. 3d 1072, 1074-75 (1982)). Defendant has failed to cite to the facts in the record or provide relevant legal authority in violation of Supreme Court Rule

341 (eff. July 1, 2008). She has also attached to her brief documents that are not included in the record, and thus cannot be considered by this court. *In re Parentage of Melton*, 321 Ill. App. 3d 823, 826 (2001). Although defendant cited to legal authority in her reply brief, she once again failed to cite to the record, and has attached documents not in the record. She also lists vague allegations of error, which do not satisfy the requirements of argument under Rule 341(h)(7). Notwithstanding these deficiencies, we will consider defendant's appeal as we have the benefit of the cogent brief filed by plaintiff, and can discern from the materials filed that defendant is contesting plaintiff's standing to bring the action against her and the propriety of the orders that followed. *Wilson v. Illinois Benedictine College*, 112 Ill. App. 3d 932, 936 (1983).

¶ 19 Until a motion to confirm the judicial sale is filed, defendant may seek to vacate the default judgment of foreclosure under the standards of section 2-1301 of the Code. *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶27. However, after a motion to confirm the judicial sale has been filed, a defendant seeking to set aside the 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) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1508(b)). *Wells Fargo Bank, N.A.*, 2013 IL 115469, ¶27.

¶ 20 Here, plaintiff moved to confirm the sale on December 4, 2012, and defendant presented a motion to vacate less than 30 days later pursuant to section 2-1401, contesting, *inter alia*, plaintiff's standing. Since section 2-1401 petition is a collateral attack against a judgment more than 30 days and within two years of its entry, defendant's filing less than 30 days after the circuit court entered its order was improper. *Babcock v. Wallace*, 2012 IL App (1st) 111090, ¶22.

¶ 21 The petition also cannot be treated as a section 2-1301 petition because after a judicial sale and motion to confirm the sale has been filed, defendant may only seek to set aside the

default judgment of foreclosure by filing a motion to vacate pursuant to section 15-1508(b).

Wells Fargo Bank, N.A., 2013 IL 115469, ¶¶18, 27. Defendant clearly did not label her motion as one pursuant to section 15-1508(b); however, the character of the pleading is that of such a motion, and, accordingly, we will review the dismissal of this motion based on the standards for that type of motion. See generally *Babcock*, 2012 IL App (1st) 111090, ¶24, citing *In re Haley D.*, 2011 IL 110886, ¶67 (petition incorrectly labeled as a 2-1401 petition reviewed as a 2-1203 (735 ILCS 5/2-1203) petition).

¶ 22 Section 15-1508(b) of the Foreclosure Law confers broad discretion on circuit courts to approve or disapprove judicial sales, and the court's exercise of that discretion will not be disturbed absent an abuse thereof. *Bank of America, N.A. v. Adeyiga*, 2014 IL App (1st) 131252, ¶116. Section 15-1508(b) of the Foreclosure Law requires that a sale shall be confirmed unless the court finds that: (i) notice of the sale was not given; (ii) the terms of the sale were unconscionable, (iii) the sale was conducted fraudulently or (iv) justice was otherwise not done. 735 ILCS 5/15-1508(b) (West 2010)).

¶ 23 In this case, defendant raised lack of standing as her meritorious defense which would only fall within subsection (iv) of section 15-1508(b). *Wells Fargo Bank, N.A.*, 2013 IL 115469, ¶26. However, once a motion to confirm the sale has been filed, a meritorious defense is insufficient under section 15-1508(b)(iv). *Wells Fargo Bank, N.A.*, 2013 IL 115469, ¶26. Rather, defendant must show that justice was not otherwise done because either the lender, through fraud or misrepresentation, prevented the borrower from raising her meritorious defenses to the complaint at an earlier time or the borrower has equitable defenses that reveal she otherwise was prevented from protecting her property interests. *Wells Fargo Bank, N.A.*, 2013 IL 115469, ¶26

¶ 24 Here, defendant asserts that plaintiff had no standing to pursue the foreclosure judgment and confirmation of sale. However, the record shows that plaintiff had already moved for the confirmation of sale when defendant filed her motion to vacate. Thus, defendant's assertion of the defense of lack of standing was untimely where plaintiff had already moved for confirmation of the judicial sale. *Wells Fargo Bank, N.A.*, 2013 IL 115469, ¶26, citing *Deutsche Bank National Trust Co. v. Snick*, 2011 IL App (3d) 100436, ¶9. In addition, defendant has not shown that she was prevented from raising the standing defense at an earlier time, or that she was prevented from protecting her interests through either fraud or misrepresentation. *Wells Fargo Bank, N.A.*, 2013 IL 115469, ¶26. Accordingly, we conclude that the circuit court did not abuse its discretion in denying defendant's motion.

¶ 25 In passing, we observe that defendant has also claimed that Wells Fargo Bank is the real party in this case and not plaintiff, and that plaintiff's appellate attorneys have contributed a significant amount of money to certain chancery court judges' and appellate and supreme court justices' election campaigns, and expects them to reciprocate and help them achieve desirable verdicts. These conclusory, unsupported assertions and allegations do not further her cause, and warrant no further comment.

¶ 26 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 27 Affirmed.