FIFTH DIVISION
June 30, 2015

No. 1-14-1878

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DEUTSCHE BANK NATIONAL TRUST COMPANY SOLELY AS TRUSTEE FOR HARBOR VIEW MORTGAGE LOAN TRUST MORTGAGE LOAN PASS-THROUGH CERTIFICATES, SERIES 2006-14	)	Appeal from the Circuit Court Cook County.
Plaintiff-Appellee,	)	
v.	)	No. 10 CH 4211
LEILANI I. SULIT and PATRICIO I. SULIT,	)	
Defendants-Appellants.	)	
(Wiczer & Associates, LLC, Unknown Owners and Nonrecord claiminants,	)	Honorable Darryl B. Simko,
Defendants).	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Palmer and Justice Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in (1) allowing motions to be filed by a nonparty when the orders were entered in the name of a party; (2) allowing the substitution of Deutsche Bank as party plaintiff; (3) approving the judicial sale where the notice of sale was sent to defendants' attorney of record; and (4) denying defendants' motion to vacate the judgment of foreclosure and sale where defendants failed to sufficiently raise a meritorious defense.

¶ 2 Plaintiff, Deutsche Bank National Trust Company (Deutsche Bank)[1], filed a mortgage foreclosure complaint in February 2010, against defendants, Leilani Sulit and Patricio Sulit. In October 2013, the trial court granted summary judgment, and a judgment for foreclosure and sale was entered in plaintiff's favor. In January 2014, a judicial sale was held and plaintiff filed a motion to confirm the sale in February 2014. In May 2014, after briefing by the parties, the trial court granted plaintiff's motion to confirm the sale.

¶ 3 Defendants appeal, arguing that the trial court erred in (1) granting judgment in favor of plaintiff when the judgment motions were filed by a nonparty; (2) confirming the sale because the notice of sale was not provided to defendants; (3) substituting Deutsche Bank as the plaintiff; and (4) denying defendants' motion to vacate.

¶ 4 In February 2010, plaintiff as predecessor GMAC Mortgage, LLC, filed a complaint to foreclose mortgage against defendants. The complaint alleged that on October 17, 2006, defendants, as mortgagors, executed a mortgage in the amount of $424,000, for the property located at 3415 North Odell Avenue in Chicago, Illinois (Sulit mortgage). The original mortgagee was listed as BankUnited, FSB. The complaint stated that defendant had not made the monthly payments since October 1, 2009.

¶ 5 In May 2010, plaintiff filed a motion for default judgment and judgment of foreclosure and sale, which the trial court granted on August 10, 2010. On the same date, Leilani filed for Chapter 13 bankruptcy, which was dismissed on September 2, 2010. The record indicates that Leilani filed for bankruptcy again in December 2010, which was dismissed in January 2011, and then in March 2011, which was dismissed in April 2011.

[1] Although the current named plaintiff on appeal is Deutsche Bank, defendants originally entered into a mortgage with BankUnited FSB. In November 2006, BankUnited assigned its interest in the mortgage to GMAC Mortgage, LLC, who filed the original complaint in February 2010. For the purposes of this appeal, we will refer to plaintiff as the collective holder of the mortgage as detailed further in this order.

¶ 6 In September 2010, plaintiff filed a motion to set aside the judgment order entered on August 10, 2010, based on Leilani's bankruptcy proceedings, which the trial court granted in October 2010. Also in October 2010, plaintiff again filed a motion for default judgment and judgment of foreclosure and sale. In November 2010, Patricio filed an appearance *pro se*, but the appearance appeared to indicate that Patricio would be representing Leilani *pro se*. Plaintiff filed another motion for default judgment and judgment of foreclosure and sale in August 2011.

¶ 7 In August 2011, plaintiff filed a copy of the recorded deed in which BankUnited FSB transferred its interest in the Sulit mortgage to GMAC Mortgage, LLC. The trial court entered a default order and judgment for foreclosure and sale in August 2011. In September 2011, defendants, through counsel, filed a motion to vacate the default judgment entered in August 2011, which the trial court granted in October 2011. In October 2011, defendant filed a motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2010)), arguing that plaintiff as GMAC Mortgage, LLC, did not have standing to file a complaint as mortgagee. Plaintiff sought an extension of time to respond, noting that Patricio filed for bankruptcy in September 2011, and the automatic stay remained in effect at that time. The bankruptcy case was dismissed in November 2011. A briefing schedule on defendants' motion to dismiss was set in December 2011, and included the notation that "defendants' attorney having viewed the original note in open court." In January 2012, defendants' motion to dismiss was withdrawn, and defendants were given leave to answer the complaint.

¶ 8 In April 2012, plaintiff filed a motion for default judgment and judgment of foreclosure and sale. Also in April 2012, plaintiff as GMAC Mortgage, LLC, filed an assignment of mortgage to Deutsche Bank. Defendants filed their answer and affirmative defenses to the

complaint. In August 2012, plaintiff filed a motion to strike defendants' affirmative defenses, which the trial court granted with prejudice in October 2012.

¶ 9 In May 2013, plaintiff as GMAC filed a motion to substitute party plaintiff. The motion stated that in November 2012, the United States Bankruptcy Court in the Southern District of New York entered an order approving the sale of certain assets of GMAC to Ocwen Loan Servicing, LLC (Ocwen), including GMAC's interest in the loan at issue in this action. On the same date, plaintiff as Ocwen filed a motion for default judgment and judgment of foreclosure and sale as well as a motion for summary judgment. The motions were continued to August 2013.

¶ 10 In July 2013, defendants filed a *pro se* motion to dismiss, alleging that the signatures on the mortgage are not those of defendants, and asked the trial court to dismiss due to lack of subject matter jurisdiction and fraud. In August 2013, the trial court denied defendants' motion to dismiss and set a briefing schedule on plaintiff's motion for summary judgment. The order included the following statement, "Defendant Leilani Sulit present in court representing that she intends to represent herself in this matter. Plaintiff's counsel advising that Defendants' counsel requested a briefing schedule on Plaintiff's summary judgment motion." In September 2013, defendants filed a *pro se* response to the summary judgment motion and a motion to reopen proof based on their assertion that they did not sign the mortgage document.

¶ 11 In October 2013, the trial court granted plaintiff's motion for summary judgment. Also in October 2013, the trial court granted plaintiff's motion to substitute Deutsche Bank as the named plaintiff in the action. The court also entered a judgment of foreclosure and sale as to the property. In December 2013, plaintiff sent a notice of sale to defendants, via their attorney of record.

¶ 12 In January 2014, an attorney filed an additional appearance on behalf of defendants. Defendants, by new counsel, filed a motion to vacate the judgment of foreclosure and sale. In February 2014, plaintiff filed a motion for order approving report of sale and distribution. The motion stated that the judicial sale occurred on January 23, 2014, and plaintiff was the highest bidder in the amount of $241,000. The motion also included certificates of publication that the notice of the sale was published in the Chicago Daily Law Bulletin on December 17, 24, and 31, 2013, as well as published in Chicago's Northwest Side Press on December 25, 2013, and January 1 and 8, 2014. In February 2014, the trial court denied defendants' motion to vacate the judgment without prejudice. The court set a briefing schedule on plaintiff's motion for an order approving sale.

¶ 13 In April 2014, defendants filed a motion for reconsideration of the October 2013 order granting summary judgment and judgment of foreclosure and sale. In May 2014, the trial court entered an order approving the report of sale and distribution, confirming sale, and order of possession.

¶ 14 This appeal followed.

¶ 15 On appeal, defendants argue that the trial court erred in (1) granting judgment in favor of plaintiff when the judgment motions were filed by Ocwen, a nonparty; (2) granting confirmation of the judicial sale because the notice of sale was not provided to defendants; (3) granting the motion substituting Deutsche Bank as party plaintiff; and (4) denying defendants' motion to vacate.

¶ 16 Defendants first contend that the trial court erred in granting summary judgment in favor of plaintiff and entering the judgment of foreclosure and sale because the motions were filed in Ocwen's name. Summary judgment is appropriate where the pleadings, depositions, and

admissions on file, together with any affidavits and exhibits, when viewed in the light most favorable to the nonmoving party, indicate that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010). We review cases involving summary judgment *de novo*. *Ragan v. Columbia Mutual Insurance Co.*, 183 Ill. 2d 342, 349 (1998).

¶ 17 Defendants fail to observe that at the same time the judgment motions were filed, Ocwen moved to substitute as the named plaintiff. The record is unclear if the motion to substitute was ruled upon or withdrawn. Defendants, as the appellants, bear the burden of providing a sufficiently complete record to support his claim or claims of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Moreover, any doubt arising from the incompleteness of the record will be resolved against the appellants. *Foutch*, 99 Ill. 2d at 392. Defendants maintain that Ocwen lacked standing to file the motions.

¶ 18 " 'The doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing suit,' and 'assures that issues are raised only by those parties with a real interest in the outcome of the controversy.' " *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1, 6 (2010) (quoting *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999)). " '[S]tanding requires some injury in fact to a legally cognizable interest ***.' " *Barnes*, 406 Ill. App. 3d at 6 (quoting *Glisson*, 188 Ill. 2d at 221).

¶ 19 "Illinois does not require that a foreclosure be filed by the owner of the note and mortgage." *Barnes*, 406 Ill. App. 3d at 7. "A plaintiff can maintain a lawsuit although the beneficial ownership of the note is in another person." *Id.* "Moreover, section 15-1504(a)(3)(N)

of the Foreclosure Law indicates that the legal holder of the indebtedness, a pledgee, an agent, or a trustee may file the case." *Id.* (citing 735 ILCS 5/15-1504(a)(3)(N) (West 2008)).

¶ 20 Here, plaintiff GMAC filed a motion to substitute Ocwen as the party plaintiff at the same time the judgment motions were filed with Ocwen as the party plaintiff. The motion stated that Ocwen, as the result of a bankruptcy proceeding, was the holder of GMAC's interest in defendants' mortgage. An affidavit of indebtedness was attached to both the motion for summary judgment and the motion for judgment of foreclosure and sale. The affidavit was prepared by Albert Gruber, a default specialist of Ocwen, "successor in interest to GMAC Mortgage, LLC (GMACM)." Gruber stated that "[a]ccording to the Records, Ocwen, as successor in interest to GMACM, is the holder of the promissory note and mortgage at issue in this proceeding." Gruber further said that as of April 22, 2013, the total principal, interest and expenses on the note and mortgage was $510,096.21.

¶ 21 Defendants have not offered any evidence to contradict this statement. The resolution of the motion, whether it was granted, denied or withdrawn, is not included in the record. We must presume that the trial court properly considered Ocwen's position as the successor in interest to GMAC and as the holder of the mortgage at the time the summary judgment motion was filed and later granted.

¶ 22 We further point out that on October 21, 2013, the trial court entered an order substituting Deutsche Bank as the named party plaintiff at the same time it granted summary judgment and entered an order for judgment of foreclosure and sale. Defendant has offered no argument that Deutsche Bank was not the proper party at the time summary judgment was granted. Defendants also failed to submit a report of proceedings, a bystander's report or an agreed statement of facts as required by Supreme Court Rule 323. Ill. S. Ct. R. 323 (eff. Dec. 13, 2005). As previously

observed, we will presume the trial court acted in conformity with the law and any doubt is resolved against defendants as the appellants. See *Foutch*, 99 Ill. 2d at 392. Thus, we do not know the circumstances surrounding the change in substitution motions from Ocwen to Deutsche Bank. The record shows that at the time the judgment motions were filed, Ocwen was the successor in interest to GMAC and moved to be substituted as the named plaintiff. At the time the motions were granted, plaintiff had moved to substitute Deutsche Bank as the named plaintiff. Defendants have failed to show how either entity lacked an interest in the mortgage and note such that standing was lacking and that there was any error by the trial court. Accordingly, the trial court did not err in granting summary judgment.

¶ 23 Next, defendants assert that the trial court erred when it allowed Deutsche Bank to substitute as party plaintiff because no notice was provided to defendants and the motion was untimely filed. According to defendants, plaintiff failed to comply with the Cook County Circuit Court Rule 2.1 requirements for notice. Cook Co. Cir. Ct. R. 2.1 (Aug. 21, 2000).

¶ 24 Cook County Circuit Court Rule 2.1 provides for written notice of the hearing of all motions to all parties who have appeared and not found in default. Cook Co. Cir. Ct. R. 2.1(a). The notice shall include title and number of the action, the judge before whom, the time and date when, and the place where the motion will be presented. Cook Co. Cir. Ct. R. 2.1(b). If notice is by mail, it shall be deposited with the post office "on or before the fifth (5th) court day preceding the hearing of the motion." Cook Co. Cir. Ct. R. 2.1(c).

¶ 25 Here, defendants contend that they never received notice and even if notice was given, it was not timely under Rule 2.1(c). Defendants assert that "absolutely nothing" in the record shows that the notice was given of this motion. However, we observe that the only copies of the motion to substitute party plaintiff in the record are as exhibits to other motions or responses.

These copies do not include a notice of filing, but the motion to substitute party plaintiff does not appear in the record when originally filed. As discussed, it is defendants' burden as the appellants to provide a complete record and any doubt arising from the incompleteness of the record will be resolved against the appellants. *Foutch*, 99 Ill. 2d at 392. We cannot presume that plaintiff failed to properly give notice when the initial filing of the motion does not appear in the record.

¶ 26 Defendants also argue that even if notice was given, it was untimely because the notice was only four court days preceding the motion instead of the required five. We disagree. The motion was marked filed on October 15, 2013, which fell on a Tuesday. The motion was granted on Monday, October 21, 2013, which was the fifth court day preceding the filing on the 15th. The rule provides for notice on or before the fifth court day preceding the hearing, which was given here. The filing date of October 15 begins the count of court days, and October 21 was the fifth court day after that date. The motion for substitution was properly presented at a hearing.

¶ 27 Further, even if the notice of the motion was improper, defendants have failed to allege any prejudice. The "failure to serve a nonmoving party with notice renders a subsequent order based on that motion voidable rather than void." *In re Rehabilitation of American Mutual Reinsurance Co.*, 238 Ill. App. 3d 1, 11 (1992). "The determining factor is not the absence of notice but whether there was any harm or prejudice to the nonmoving party." *Id.* Defendants make allegations that plaintiff failed to assert Deutsche Bank's interest in the case, but do not argue that the lack of notice prejudiced their ability to contest the substitution or how the substitution would harm them. Further, we point out that the note at issue was indorsed in blank, which means that "an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed." 810 ILCS 5/3-205(b) (West 2012). Therefore, the

note was transferrable by possession and no other interest or notice was required. Defendants have not shown any evidence that Deutsche Bank was not the holder of the note at the time of the substitution. We find no error in the trial court's granting of the motion for substitution of party plaintiff.

¶ 28 Defendants next assert that the trial court abused its discretion in confirming the judicial sale because notice of sale was not properly provided to defendants because the notice of sale was improperly sent to their attorney of record rather than to defendants personally as they had stated that they wished to appear *pro se*. Though defendants have framed this argument as two issues in their brief, the argument remains the same in both instances.

¶ 29 Under the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1101 *et seq.* (West 2010)), "after a judicial sale and a motion to confirm the sale has been filed, the court's discretion to vacate the sale is governed by the mandatory provisions of section 15-1508(b)." *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 18. Section 15-1508(b) of the Foreclosure Law confers broad discretion on trial courts in approving or disapproving judicial sales, and a trial court's decision will not be disturbed absent an abuse of discretion. *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008).

¶ 30 Section 15-1508(b) of the Foreclosure Law provides:

> "Upon motion and notice in accordance with court rules applicable to motions generally, which motion shall not be made prior to sale, the court shall conduct a hearing to confirm the sale. Unless the court finds that (i) a notice required in accordance with subsection (c) of Section 15-1507 [735 ILCS 5/15-1507(c) (West 2012)] was not given, (ii) the terms of sale were unconscionable, (iii) the sale

> was conducted fraudulently, or (iv) justice was otherwise not done, the court shall then enter an order confirming the sale." 735 ILCS 5/15-1508(b) (West 2012).

¶ 31 Here, defendants assert that the sale should not have been confirmed under subsection (b)(i) because the notice of sale was not properly given to them.

¶ 32 Section 15-1507(c)(3) of the Foreclosure Law provides that the party who gives notice of the public sale shall give notice to parties in the action who have not been found in default for failure to plead "in the manner provided in the applicable rules of court for service of papers other than process and complaint." 735 ILCS 5/15-1507(c)(3) (West 2012). Supreme Court Rule 11(a) dictates that if a party is represented by an attorney of record, "service shall be made upon the attorney." Ill. S. Ct. R. 11(a) (eff. Dec.29, 2009). The notice of sale indicates that notice was sent to defendants' attorney of record on December 23, 2013, and the sale was scheduled for January 23, 2014. The basis of defendants' argument is that they were no longer represented by this attorney at that time and notice should have been sent to them directly.

¶ 33 Under Supreme Court Rule 13(c)(2), "[a]n attorney may not withdraw his appearance for a party without leave of court and notice to all parties of record." Ill. S. Ct. R. 13(c)(2) (eff. July 1, 2013). Defendants' attorney filed an appearance on October 17, 2011, but no motion to withdraw with leave of court was filed. Instead, defendants assert that they "reverted" to representing themselves *pro se* based on their own statements in court regarding their attorney's failure to communicate. Defendants have failed to cite any authority to support this contention and that an attorney of record can be considered withdrawn on the basis of a statement of the represented party in court. Supreme Court Rule 341(h)(7) requires an appellant to include in its brief an "[a]rgument, which shall contain the contentions of the appellant and the reasons

therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). It is well settled that a contention that is supported by some argument but does not cite any authority does not satisfy the requirements of Supreme Court Rule 341(h)(7), and bare contentions that fail to cite any authority do not merit consideration on appeal. *Wasleff v. Dever*, 194 Ill. App. 3d 147, 155-56 (1990). Defendants have failed to establish that notice of the sale to their attorney of record was improper when their attorney never withdrew from the case. Accordingly, the trial court did not abuse its discretion in confirming the sale.

¶ 34 Finally, defendants argue that the trial court abused its discretion when it denied their motion to vacate the judgment of foreclosure and sale. Specifically, defendants contend that the summary judgment and judgment of foreclosure and sale orders should be vacated because (1) they were denied due process due to the lack of a court hearing on the judgment motions; (2) the rulings were invalid because the motions were filed by nonparty Ocwen; and (3) they presented a meritorious defense based upon new information that was previously unavailable to them. Specifically, they claim that they were denied a loan modification due to a prepayment penalty clause in their loan, but they never agreed to this clause and the loan documents with the clause were not signed by them.

¶ 35 We review the question of whether a court properly denied a motion to vacate for an abuse of discretion. *BAC Home Loans Servicing, LP v. Popa*, 2015 IL App (1st) 142053, ¶ 18. "In our review, we determine whether the trial court's decision to deny a motion to vacate 'was a fair and just result, which did not deny [the moving party] substantial justice.' " *Deutsche Bank National v. Burtley*, 371 Ill. App. 3d 1, 5 (2006) (quoting *Mann v. Upjohn*, 324 Ill. App. 3d 367, 377(2001)).

¶ 36 Defendants assert that the trial court failed to reasonably consider their motion to vacate to their detriment. Defendants base their argument on this issue solely on the existence of a meritorious defense. Accordingly, we will not consider any other basis presented in the trial court.

¶ 37 Defendants argue that they have a meritorious defense because they provided "detailed information" with their motion "associated with newly discovered information related to the Loan and an attempted modification of the Loan." According to defendants, they were denied a loan modification because of a prepayment penalty clause, but they never agreed to this clause. "Additional Loan documents were provided to [defendants] in 2013, documents that were never previously presented to [defendants], causing [defendants] to investigate the Loan documents, including the new documents." Defendants never state in their brief that the new meritorious defense is an allegation that the loan documents were forged, but defendants raised this argument in the trial court. Here, defendants have not specifically alleged a forgery, nor have they cited any case law purporting to support an affirmative defense of forgery.

¶ 38 As previously stated, Supreme Court Rule 341(h)(7) requires an appellant to include in its brief an "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). It is well settled that a contention that is supported by some argument but does not cite any authority does not satisfy the requirements of Supreme Court Rule 341(h)(7), and bare contentions that fail to cite any authority do not merit consideration on appeal. *Wasleff*, 194 Ill. App. 3d at 155-56. Defendants have cited no authority to support any allegation of forgery. Moreover, defendants have not specifically raised forgery as a meritorious defense in their brief. Rather, defendants have made confusing claims about detailed

information that was previously unavailable to them regarding their loan as a meritorious defense. Further, they fail to detail what this new information is in their brief and what legal authority supports their claim. Accordingly, we consider this argument forfeited for failure to present any serious argument regarding the basis of the purported meritorious defense and any authority upon which the argument is based. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

¶ 39 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 40 Affirmed.