2016 IL App (1st) 152439-U

FIFTH DIVISION
July 15, 2016

No. 1-15-2439

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

J.P. MORGAN CHASE BANK, N.A.	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CH 4946
	)	
SNEJANKA IORDANOVA,	)	Honorable
	)	Michael Tully Mullen,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Gordon and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Judgment and order confirming sale in a mortgage foreclosure action affirmed where defendant forfeited her challenge to plaintiff's standing by not raising the issue in the circuit court and, in any event, failed to rebut plaintiff's *prima facie* showing that it had standing to foreclose.

¶ 2 Defendant, Snejanka Iordanova, appeals from an order of the circuit court of Cook County approving the sale and distribution of her home. On appeal, defendant argues that plaintiff, J.P. Morgan Chase Bank, N.A. (Chase), did not have standing to foreclose the home because Chase was not the original mortgagee and failed to provide evidence that the original

mortgagee transferred the mortgage to Chase. Chase responds that defendant waived this argument by not raising it as an affirmative defense and that Chase provided *prima facie* evidence that it owned the note and was entitled to foreclose. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 On February 14, 2012, plaintiff filed a complaint to foreclose a mortgage originally issued to MidAmerica Bank, FSB and recorded on October 29, 2002. In its complaint, plaintiff alleged that it was bringing the foreclosure action as the "legal holder of the indebtedness secured by the mortgage." Plaintiff further alleged that the mortgagors and owners of the real estate were defendant and Plamen Iordanov who had been in default since March 2010 on payments due on the property located at 6338 North Leavitt Street, Unit 2S in Chicago. Plaintiff attached a copy of the mortgage and the note to its complaint. The note was endorsed in blank with the language "Pay to the order of Without recourse," making it payable to the bearer.

¶ 5 An affidavit of service from the sheriff's office of Cook County shows that on March 11, 2012, defendant was served by substitute service by leaving a copy of the complaint with a member of defendant's household at the subject address, but that Plamen was not served because he had moved. On April 9, 2012, Plamen filed a motion to vacate the service of process indicating that he was served at the wrong address. On April 27, 2012, plaintiff filed a motion for service by comparable method seeking an order allowing Chase to serve Plamen and defendant by posting a copy of the summons and complaint at the property on Leavitt Street, and mailing copies of the pleadings to that address by regular and certified mail. On May 9, 2012, the circuit

court entered an order striking plaintiff's motion, which indicated that plaintiff did not appear in court.[1]

¶ 6 On October 30, 2012, plaintiff filed another motion for service by comparable method, requesting the same service described in its motion from April 27. On November 16, 2012, defendant and Plamen filed an "Answer to Plaintiff's Motion by Comparable Method to Strike and Quash the Same," in which they contended that they had not been properly served. On November 19, 2012, the circuit court granted plaintiff's motion for service by comparable method.

¶ 7 On December 2, 2012, a special process server served defendant and Plamen Iordanov. On December 3, 2012, defendant and Plamen filed a motion to "Strike and Quash JP Morgan Chase Bank's Service of Process," in which they again contended that they had not been properly served. On February 4, 2013, an attorney entered an appearance on behalf of defendant. On May 13, 2013, the court denied the motion to quash, and on May 29, 2013, defendant's attorney filed a motion to withdraw as attorney. On June 12, 2013, the court granted the motion to withdraw.

¶ 8 On December 19, 2013, plaintiff filed a notice of motion for default and judgment of foreclosure and sale.[2] On January 8, 2014, the trial court entered a judgment of foreclosure and sale, an order appointing a selling officer, and an order of default finding that defendant and Plamen were "found to be in default and the complaint is confessed against" them. On May 22, 2015, plaintiff served defendant and Plamen with a Notice of Foreclosure sale, indicating that the sale of the subject property would take place at a foreclosure auction on June 25, 2015. The property was sold on that date and the details of the sale were recorded in the selling officer's report of sale and distribution.

[1] The report of proceedings from the circuit court is not included in the record filed on appeal.
[2] The actual motions referenced in the notice are not included in the record filed on appeal.

¶ 9 On July 7, 2015, plaintiff filed a motion for an order approving the report of sale and distribution and a motion for an order of possession. On July 22, 2015, the court entered an order approving the report of sale and distribution and an order of possession. Defendant filed a notice of appeal from that judgment on August 21, 2015.

¶ 10 II. Analysis

¶ 11 On appeal, defendant contends that Chase failed to demonstrate that it had standing to foreclose. Defendant maintains that Chase failed to provide evidence that showed a transfer of the note from the original lender or that Chase otherwise had standing to foreclose. Chase responds that defendant forfeited any argument regarding Chase's standing by failing to raise it before the trial court, and that defendant failed to establish that the trial court abused its discretion in entering the order approving the sale and distribution.

¶ 12 Section 15-1508(b) of the Illinois Mortgage Foreclosure Law (Mortgage Foreclosure Law) (735 ILCS 5/15-1508(b) (West 2012)), confers broad discretion on circuit courts to approve or disapprove judicial sales. We review the exercise of that discretion under an abuse of discretion standard. *Bank of America, N.A. v. Adeyiga*, 2014 IL App (1st) 131252, ¶ 116. Section 15-1508(b) of the Mortgage Foreclosure Law states that the court shall enter an order confirming the sale unless the court finds that: (i) notice of the sale was not given in accordance with section 15-1507(c) of the Mortgage Foreclosure Law, (ii) the terms of the sale were unconscionable, (iii) the sale was conducted fraudulently, or (iv) justice was otherwise not done. See 735 ILCS 5/15-1508(b) (West 2012).

¶ 13 Initially, we observe that there is no report of proceedings from the trial court included in the record filed on appeal. It was defendant's burden, as appellant, to provide a complete record on appeal, including a report of proceedings or an appropriate substitute, as required by Illinois

Supreme Court Rule 323 (Ill. S. Ct. R. 323 (eff. Dec. 13, 2005)). *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462 (1993). In the absence of such a record, we presume that any order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Any doubts which may arise from the incompleteness of the record will be resolved against the appellant. *Id.*

¶ 14 A. Forfeiture

¶ 15 Plaintiff contends that defendant has forfeited any argument regarding Chase's standing by failing to raise that issue as an affirmative defense or at any time during the circuit court proceedings. Generally, arguments not raised before the trial court are forfeited and cannot be raised for the first time on appeal. *Mabry v. Boler*, 2012 IL App (1st) 111464, ¶¶ 15, 24, citing *Village of Roselle v. Commonwealth Edison Co.*, 368 Ill. App. 3d 1097, 1109 (2006). The record on appeal suggests no reason to relax the rule in this case. In the trial court, defendant raised a number of challenges to the service of process, but never contested Chase's standing to foreclose. Accordingly, we find that defendant has forfeited this issue for review.

¶ 16 B. Chase's Standing to Foreclose

¶ 17 Notwithstanding any considerations of forfeiture, defendant failed to rebut Chase's *prima facie* case that it had standing to foreclose. Under the Mortgage Foreclosure Law, an action to foreclose may be brought by the mortgagee, an agent, the legal holder of the indebtedness, or a successor of the mortgagee. See 735 ILCS 5/15-1504(a)(3)(N) (West 2012); *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1, 7 (2010). To establish a *prima facie* case, the plaintiff in a mortgage foreclosure action must file a complaint that complies with the pleading requirements of section 15-1504(a) of the Mortgage Foreclosure Law and must attach a copy of the note and the mortgage to the complaint. See 735 ILCS 5/15–

1504(a), (b) (West 2012); *US Bank, Nat. Ass'n v. Avdic*, 2014 IL App (1st) 121759, ¶ 35. The mere fact that plaintiff attached a copy of the note to the complaint is *prima facie* evidence that the plaintiff owns the note. *Parkway Bank and Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 24. Although the plaintiff in a mortgage foreclosure action is not required to allege facts necessary to establish standing, the plaintiff must allege in the complaint, as a pleading requirement, the capacity in which the plaintiff brings the action to foreclose. See 735 ILCS 5/15–1504(a)(3)(N) (West 2012); *Barnes*, 406 Ill. App. 3d at 5. Once the plaintiff has established a *prima facie* case for foreclosure, the burden shifts to the defendant to prove any affirmative defenses that the defendant has raised, including the lack of standing. See *Farm Credit Bank of St. Louis v. Biethman*, 262 Ill. App. 3d 614, 622 (1994).

¶ 18 In this case, Chase filed a mortgage foreclosure complaint that complied with the pleading requirements of the Mortgage Foreclosure Law and attached a copy of the note and mortgage to the complaint. In its complaint, Chase alleged that it was bringing the mortgage foreclosure action as the "legal holder of the indebtedness secured by the mortgage." By filing a proper complaint with the appropriate documents attached,[3] Chase established a *prima facie* case for mortgage foreclosure (See 735 ILCS 5/15–1504(a), (b) (West 2012); *Korzen*, 2013 IL App (1st) 130380, ¶ 24; *Biethman*, 262 Ill. App. 3d at 622) and its complaint was legally and factually sufficient and included allegations relative to standing (*Barnes*, 406 Ill. App. 3d at 6). The burden then shifted to defendant to establish an affirmative defense—that Chase lacked standing to enforce the mortgage. See *Biethman*, 262 Ill. App. 3d at 622.

¶ 19 Here, defendant failed to file an answer to plaintiff's complaint and merely challenged the service of process throughout the proceedings. “The failure of a defendant to explicitly deny a

[3] While Illinois Supreme Court Rule 113(b) (eff. May 1, 2013) now requires plaintiffs to attach to the complaint the present copy of the note, as well as all endorsements and allonges, plaintiff here filed its complaint before this rule took effect.

specific allegation in the complaint will be considered a judicial admission and will dispense with the need of submitting proof on the issue." *Gowdy v. Richter*, 20 Ill. App. 3d 514, 520 (1974). Here, defendant failed to challenge Chase's *prima facie* case that it was bringing the complaint as the "legal holder of the indebtedness secured by the mortgage," and thus judicially admitted Chase's standing to foreclose by failing to challenge it in a responsive pleading. See *Korzen*, 2013 IL App (1st) 130380, ¶¶ 37-38.

¶ 20 Moreover, because defendant failed to provide this court with a transcript of the proceedings, it is reasonable to conclude that when the circuit court considered plaintiff's motions it reviewed the note and the mortgage in making its decision. *CitiMortgage, Inc. v. Moran*, 2014 IL App (1st) 132430, ¶ 41. Although, as defendant points out, Chase was not the original holder of the note, under the Uniform Commercial Code (UCC), a negotiable instrument may be transferred by delivery to another entity for the purpose of giving that entity the right to enforce the instrument. 810 ILCS 5/3-203(a) (West 2010). If a note is "[e]ndorsed in blank," it becomes payable to the bearer. 810 ILCS 5/3–205(b) (West 2010). A person in possession of a note payable to bearer is deemed the holder of the instrument, and is entitled to enforce the instrument. See 810 ILCS 5/3-201(b)(21)(A) (West 2010). The note attached to Chase's complaint in this case was made by the defendant and contained an endorsement in blank. As such, it was payable to the bearer, which was undisputedly Chase. This was sufficient to establish that Chase was the legal holder of the indebtedness secured by the mortgage under the Mortgage Foreclosure Law. 735 ILCS 5/15–1503 (West 2010); *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 26; *Barnes*, 406 Ill. App. 3d at 7. Defendant then failed to rebut Chase's *prima facie* case that it had standing and capacity to foreclose. Thus, we find that the trial court did not abuse its discretion in approving the judicial sale of the subject property.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 23 Affirmed.