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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

NATIONSTAR MORTGAGE LLC,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County, Chancery Division
)	
v.)	No. 10 CH 27709
)	
THOMAS QUICK a/k/a THOMAS G.)	Honorable
QUICK a/k/a TOM QUICK; LISA QUICK;)	Robert E. Senechalle,
Unknown Owners and Non-Record)	Judge Presiding.
Claimants,)	
)	
Defendants-Appellants.)	
)	

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice McBride and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err by granting summary judgment in favor of plaintiff where defendant failed to raise a genuine issue of material fact regarding plaintiff's status as legal holder of the note or its failure to respond to defendant's demand letters and discovery requests, nor was it error to grant summary judgment without allowing additional discovery as defendant was not entitled to further discovery.

¶ 2 Defendant Thomas Quick appeals *pro se* the circuit court's order granting summary judgment in favor of plaintiff, Nationstar Mortgage LLC ("Nationstar"), foreclosing on a residential property owned by defendant and his wife Lisa Quick. An order of default was entered against Lisa Quick.¹ On appeal, defendant alleges that genuine issues of material fact exist regarding whether plaintiff (1) sufficiently established its status as holder of the promissory note secured by the subject mortgage agreement and (2) failed to adequately respond in accordance with the Illinois Uniform Commercial Code (UCC) (810 ILCS 5/1-101 *et seq.* (West 2012)) to defendant's UCC demand letters and discovery requests. Defendant also contends that (3) the trial court erred by proceeding with plaintiff's summary judgment motion prior to the completion of the discovery process. For the following reasons, we affirm.

¶ 3 **BACKGROUND**

¶ 4 Thomas Quick executed a promissory note ("note") with Taylor, Bean & Whitaker Mortgage Corporation ("Taylor Bean"). The note was secured by a mortgage for residential property located at 10033 Menard Avenue in Oak Lawn, Illinois. The mortgage agreement was eventually assigned to Ocwen Loan Servicing ("Ocwen") in 2009, which filed the instant complaint on June 29, 2010, seeking judicial foreclosure of the mortgage agreement for nonpayment of the monthly installments due under the loan agreement. A copy of the mortgage agreement and note endorsed by Thomas Quick to Taylor Bean was attached to the complaint. During the pendency of this action, the mortgage was assigned from Ocwen to Nationstar, the current plaintiff in this matter.

¹ Although defense counsel entered an initial appearance on behalf of Thomas and Lisa Quick, as husband and wife and co-tenants, counsel eventually withdrew from the case. Thomas Quick appeared and represented himself *pro se*. Lisa Quick did not enter an appearance, nor does she otherwise appear in the record as present during the proceedings. She did not file a motion to vacate the default judgment against her, nor is it argued on appeal that she was defaulted against in error.

¶ 5 During the initial discovery process, defendant sent a request for admission of facts in which he set forth several assertions regarding Ocwen's possession of the original mortgage agreement and note, and the transfer of title in the mortgage. Ocwen's response generally asserted that it maintained possession and ownership of the mortgage and note. Ocwen then propounded its own request to admit on November 19, 2010, that requested defendant admit or deny, *inter alia*, the genuineness of the copies of the attached documents, including the mortgage agreement and the promissory note endorsed in blank by Taylor Bean. The mortgage assignment from Taylor Bean to Ocwen was also attached. Defendant's response, dated December 30, 2010, generally denied the allegations and was filed January 3, 2011.

¶ 6 In his subsequent answer to Ocwen's complaint, defendant raised several affirmative defenses including, in relevant part, that Ocwen failed to establish that it was the legal holder of the note and mortgage agreement and therefore did not have standing to file for foreclosure. Ocwen replied that it was not required to plead standing in a foreclosure complaint. It argued that standing is an affirmative defense which defendant bears the burden to plead and prove and asserted that defendant failed to meet this burden as he did not produce contradictory evidence to challenge Ocwen's status as legal holder of the note. Subsequently, on May 31, 2013, the mortgage agreement was assigned from Ocwen to Nationstar.

¶ 7 Thereafter, on November 13, 2014, Nationstar filed motions for summary judgment and entry of foreclosure and sale of the property. It also filed a motion to substitute the party plaintiff from Ocwen to Nationstar. Attached to these motions was, *inter alia*, a copy of the note signed by Thomas Quick and endorsed in blank by Taylor Bean and a copy of the mortgage assignment from Ocwen to Nationstar. In opposition to plaintiff's motions,

defendant argued that Nationstar's affidavits and documentation in support of its motion were generally inadmissible and were insufficient to prove its status as holder of the note or an agent thereof. Defendant did not attach a counteraffidavit or other documentation to support this contention.

¶ 8 After filing his response, defendant executed several additional discovery requests seeking Nationstar to admit or deny that it was entitled to enforce the note or that it had any knowledge of the entity or person who may be so entitled, and to produce documents related to the same. Defendant also sent several "demand letters" under the UCC essentially repeating his discovery requests. Nationstar did not respond and instead filed a motion to strike the additional discovery, arguing defendant's requests were duplicative of information that was previously supplied to him following earlier discovery requests from October 2010 and February 2011. Nationstar also argued that defendant was not entitled to additional discovery after it filed its motion for summary judgment because he failed to file an affidavit pursuant to Illinois Supreme Court Rule 191(b) (eff. Jan. 4, 2013) explaining the necessity for additional discovery to establish a defense in light of defendant's prior response to Nationstar's motion. On January 23, 2015, the court granted Nationstar's motion to strike and allowed defendant until February 27, 2015, to file the required affidavit. Defendant did not file a Rule 191(b) affidavit within the allotted time period.

¶ 9 At the initial hearing on Nationstar's motions, defendant challenged Nationstar's status as holder of the note. The court continued the matter to allow Nationstar to produce the original note. At a subsequent hearing, Nationstar tendered, in open court, the original promissory note signed by Thomas Quick and endorsed in blank by Taylor Bean. Over defendant's objections, on May 23, 2015, the court granted Nationstar's motion for summary judgment,

allowed Nationstar to substitute itself as party plaintiff, and entered a judicial order of foreclosure and sale on the property. A default judgment was also entered against Lisa Quick. The property was later auctioned and sold and its sale confirmed on September 18, 2015. Defendant appeals.

¶ 10

ANALYSIS

¶ 11

As an initial matter, we note that defendant's brief is seriously deficient and in violation of Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013). Although defendant discusses the competing legal theories regarding the operation of presumptions and burdens of proof, he fails to set forth well-reasoned legal arguments. A reviewing court, however, is "not a repository into which the appellant may foist the burden of argument and research." *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010). The fact that a party appears *pro se* does not relieve him from complying as nearly as possible with the rules of our court. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. Where a party's brief does not comply with these rules, or fails to articulate an organized and cohesive argument for the court to consider, this court has discretion to strike and dismiss the brief for failure to comply and dismiss the appeal. *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 18; see *Bank of Ravenswood v. Maiorella*, 104 Ill. App. 3d 1072, 1074-75 (1982). However, because the errors are simple and we have the benefit of an appellee's brief, we decline to dismiss defendant's appeal without considering its merits. *First Capital Mortgage Corp. v. Talandis, Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 12

A. Legal Holder of the Note

¶ 13

Defendant first contends that a genuine issue of material fact exists with regard to plaintiff's status as legal holder of the note secured by the subject mortgage. He argues that

possession of the note itself did not confer upon plaintiff a legal right to enforce the note and as such, the evidence only established that plaintiff was either "(a) in possession, but without the rights of a holder, or (b) in wrongful possession." He also asserts that plaintiff's insufficient responses to his discovery requests resulted in plaintiff's failure to establish its right to enforce the note under the UCC. Plaintiff responds that it had standing to institute the instant foreclosure action as it was entitled to enforce the note as its bearer. Plaintiff also asserts that defendant's untimely answer to its request to admit resulted in his admission of the facts contained therein and thus defendant is unable to challenge plaintiff's propriety as holder of the note on appeal.

¶ 14 When a party to suit files for summary judgment, the court must decide whether "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show 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." 735 ILCS 5/2-1005(c) (West 2012). If, after construing the evidence in the light most favorable to the nonmovant, no genuine issue as to any material fact exists and the moving party is entitled to judgment as a matter of law, summary judgment must be granted. *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 305 (2005). We review *de novo* the trial court's grant or denial of a summary judgment motion. *In re Estate of Hoover*, 155 Ill. 2d 402, 411 (1993).

¶ 15 Initially, we note that it is unclear from defendant's arguments if he is challenging the court's ruling on the basis that plaintiff lacked standing to file for foreclosure or whether he argues that plaintiff failed to prove an element of foreclosure by failing to prove its status as legal holder of the note. Plaintiff's brief interprets defendant's arguments on appeal as a challenge to its standing to bring the instant action. However, defendant's responsive brief

seems to reject this interpretation, arguing plaintiff conflates possession and standing with the right to enforce the note. Regardless, the matter turns on whether plaintiff sufficiently established its status as legal holder of the note as this question is equally dispositive under either theory.

¶ 16 According to the Illinois Mortgage Foreclosure Law (Foreclosure Law), an action for foreclosure of residential property may be commenced by either (1) the legal holder of an indebtedness secured by a mortgage; (2) any person designated or authorized to act on behalf of such holder; or (3) an agent or successor of a mortgagee. 735 ILCS 5/15-1503, 15-1504(a)(3)(N) (West 2012)); *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1, 7 (2010). Thus, a mortgage assignee has standing to institute a foreclosure action. See 735 ILCS 5/15-1208 (West 2012) ("mortgagee" includes any holder of indebtedness or a person authorized to act on behalf of a holder); *Bayview Loan Servicing, LLC v. Nelson*, 382 Ill. App. 3d 1184, 1188 (2008) (an assignment transfers all rights, title, and interest in the mortgage to the assignee). The mere attachment of the note to a complaint is *prima facie* evidence that plaintiff owns the note. *Rosestone Investments, LLC*, 2013 IL App (1st) 123422, ¶ 26. Production of the original note in open court, rather than reliance on the copy attached to the complaint, is not a required element of proof in a foreclosure action. *Parkway Bank and Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 32. Further, a "plaintiff is not required to allege facts establishing standing; rather, the burden rests with the defendant to plead and prove lack of standing" as an affirmative defense. *US Bank, National Ass'n v. Avdic*, 2014 IL App (1st) 121759l, ¶ 34; *Barnes*, 406 Ill. App. 3d at 6.

¶ 17 Under the UCC, a holder or nonholder in possession of a note who has the rights of the holder may enforce a note. See 810 ILCS 5/3-301 (West 2012). A negotiable instrument

(such as a note) may be transferred by the delivery of the instrument to another entity for the purpose of giving the transferee the right to enforce it. 810 ILCS 5/3-203(a) (West 2012). It is well-established that a note endorsed in blank becomes payable to whomever is the bearer and may be transferred by possession. 810 ILCS 5/3-205 (a), (b) (West 2012); see *Garner*, 2013 IL App (1st) 123422, ¶ 26; *Fairbanks v. Campbell*, 53 Ill. App. 216, 219 (1893). Thus, a person in possession of a note payable to the bearer is deemed the holder of the instrument and is entitled to maintain an action to enforce it. See 810 ILCS 5/3-201(b)(21)(A) (West 2012); *Ewen v. Templeton*, 148 Ill. App. 46, 53 (1909) ("The notes being endorsed in blank by the last endorser, plaintiff, into whose hands the note came, had legal title to maintain the suit.").

¶ 18 Here, Ocwen attached to the complaint a copy of the mortgage agreement and note specially endorsed to Taylor Bean, but did not attach the subsequent assignment or the note endorsed in blank. It was not required to do so, however, as possession is *prima facie* evidence of ownership. See *Garner*, 2013 IL App (1st) 123422, ¶ 26. Nonetheless, given that neither the mortgage agreement nor the note named Ocwen as mortgagee, defendant's affirmative defense challenging Ocwen's standing made a *prima facie* case contesting standing and shifted the burden back to Ocwen. *National Trust Co. v. Gilbert*, 2012 IL App (2d) 120164, ¶¶ 16-17. This burden was met by producing records that demonstrated the mortgage was assigned from the original lender (Taylor Bean) to Ocwen in 2009 and tendering a copy of the note endorsed in blank by Taylor Bean. Because the record establishes that Ocwen was the current holder of the note and assignee at the time the suit was filed, it had the right to enforce the note and standing to file for foreclosure. See 810 ILCS 5/3-201(b)(21)(A); *Nelson*, 382 Ill. App. 3d at 1188. Upon transfer of the mortgage,

Nationstar filed for summary judgment and produced records to establish the mortgage was assigned from Ocwen to Nationstar and later tendered the original note endorsed in blank in open court. As assignee of Ocwen, Ocwen's standing to institute the foreclosure action and right to enforce the note is attributed to plaintiff. See *Nelson*, 382 Ill. App. 3d at 1188 (an assignment transfers all rights, title, and interest in the mortgage to the assignee).

¶ 19 Defendant nonetheless challenges plaintiff's status as legal holder of the note despite its possession of the same. However, possession of a note endorsed in blank imparts certain legal rights upon the person or entity in possession of the instrument. Specifically, one who possesses such note is legally deemed the instrument's holder under both the UCC and Foreclosure Law. See 810 ILCS 5/3-201(b)(21)(A); *Nelson*, 382 Ill. App. 3d at 1188. As the holder, plaintiff was entitled to enforce the note, which included maintaining the instant foreclosure action. See 810 ILCS 5/3-301; 735 ILCS 5/15-1503. Simply stated, plaintiff's mere possession of the note established its right to enforce it under these circumstances. Defendant's assertion therefore directly contradicts the laws of our state and we see no reason why plaintiff's possession and production of the original note, in open court, was insufficient to establish its status as legal holder. Accordingly, there is no genuine issue of material fact regarding plaintiff's ability to enforce the note as its legal holder.

¶ 20 Given our determination that plaintiff sufficiently established its status as holder of the note endorsed in blank and thus, its right to enforce it, we need not address plaintiff's alternative contention that defendant is unable to challenge Nationstar's standing because his response to Ocwen's request to admit to the authenticity of the mortgage, subsequent assignment, and note endorsed in blank was untimely. See *Banks v. United Insurance Co. of America*, 28 Ill. App. 3d 60, 63 (1975); Ill. S. Ct. R. 216(c) (eff. Oct. 1, 2010). We note in

passing, however, that Ocwen did not assign the mortgage to Nationstar until several years after the alleged admission. Consequently, any admission was not dispositive as it relates to Nationstar's status as holder as it was not yet an assignee or presumably in possession of the note. Defendant could only admit that Ocwen possessed an authentic note, which is determinative of only Ocwen's status as holder.

¶ 21

B. Failure to Respond

¶ 22

Defendant next contends that plaintiff abandoned its right to enforce the note as it failed to meaningfully respond to his "demand letters" and discovery requests seeking proof of its right to enforce the note. He also alleges that plaintiff's failure to respond resulted in a presumption that the requested evidence regarding plaintiff's holder status would be unfavorable to it. *Tepper v. Campo*, 398 Ill. 496 (1948). Defendant thus asserts that a genuine issue of material fact exists regarding plaintiff's right to enforce the note as its holder because (1) plaintiff abandoned its status as mortgagee and, (2) by operation of the presumption that such evidence would have been unfavorable to plaintiff. Plaintiff responds that defendant offers no support for this contention and therefore fails to establish how "under this record, the trial court erred by granting summary judgment to Nationstar."

¶ 23

Illinois Supreme Court Rule 341(h)(7) requires that an appellant's brief must contain "the contentions of the appellant and reasons therefore, with citation of authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). If a point is not argued, it is forfeited. *Id.* The appellate court is entitled to well-reasoned argument including authority for such argument; "mere contention without argument or citation to authority do not merit consideration on appeal." *Vilardo v. Barrington Community School District 220*, 406 Ill. App. 3d 713, 720 (2010) (quoting *People v. Hood*, 210 Ill. App. 3d 743, 746 (1991)).

"Contentions supported by some argument but by absolutely no authority do not meet the requirements of Supreme Court Rule 341(h)(7)." *Hood*, 210 Ill. App. 3d at 746.

¶ 24 Defendant, in his appellate briefs, has failed to cite to any legal authority that supports his contention that Nationstar abandoned its right to enforce the note as its holder under the UCC by inadequately responding to discovery requests or demand letters or that such a failure legally affects a party's status as a holder in possession. Thus, this argument is forfeited and does not merit consideration on appeal. See *Hood*, 210 Ill. App. 3d at 746.

¶ 25 Defendant next argues, citing to section 5/3-305 of the UCC entitled "Defenses and claims in recoupment," that once a request is made for proof that the person demanding payment is entitled to enforce the note, "an inadequate response is enough to properly shift the burden." First, we note that this section of the UCC addresses an obligor's available defenses when a party asserts its right to enforce a negotiable instrument. See 810 ILCS 5/3-305 *et seq.* (West 2012). It does not speak to burdens of proof or what is required to establish a party's right to enforce an instrument. See *id.* Regardless, we see no reason to readdress defendant's argument in this context, as we have previously concluded that plaintiff met its burden to prove it was a holder in possession of the note and entitled to enforce it. See *supra* ¶ 17-19.

¶ 26 Defendant next argues, citing *Tepper v. Campo*, 398 Ill. 496, that a party's failure to produce evidence within its control that is not equally available to an adverse party results in a presumption that such evidence would be unfavorable. *Tepper*, 398 Ill. at 505. There is nothing in the record, however, to demonstrate that plaintiff withheld or failed to produce evidence in its possession, nor does defendant suggest what evidence, if any, plaintiff possessed but failed to provide. Defendant's demand letters were essentially equivalent to his

discovery requests and sought documentation that was already in his possession. The record therefore belies defendant's conclusion that Nationstar failed to meaningfully respond or produce evidence in its control such that this presumption would apply. Even so, we reiterate that there is sufficient evidence in the record – to which defendant had access – to establish plaintiff's right to enforce the note as a holder in possession thereof, such that any presumption opposing this status, if applicable, was overcome.

¶ 27 C. Discovery

¶ 28 Defendant's final contention is that the trial court erred by ruling on plaintiff's summary judgment motion prior to the completion of the discovery process. Plaintiff argues that defendant was not entitled to additional discovery once plaintiff filed its motion for summary judgment as defendant failed to file a timely Rule 191(b) affidavit explaining why additional discovery was necessary to prepare an adequate defense.

¶ 29 As plaintiff properly asserts, if a defendant opposing summary judgment requires additional discovery to adequately respond to the motion, he or she must file a Rule 191(b) affidavit explaining why additional discovery is necessary. *Giannoble v. P&M Heating & Air Conditioning, Inc.*, 223 Ill. App. 3d 1051, 1065-66 (1992). Generally, strict compliance with Rule 191(b) is required and the failure to file a Rule 191(b) affidavit results in waiver of the argument upon review that summary judgment should not have been granted without additional discovery. *Id.* However, there are certain circumstances under which strict compliance is not required as it "turns Rule 191(b) from a procedural safeguard for the nonmovant into a tactical weapon for the movant;" for example, such as "before a party knows the identity of witnesses who can provide material facts." *Jiotis v. Burr Ridge Park District*, 2014 IL App (2d) 121293, ¶ 29. When the nonmovant had ample time for discovery,

however, and does not attempt to request a continuance, "there is no reason why noncompliance with Rule 191(b) should be excused." *Id.* ¶ 28.

¶ 30 In the instant case, the mortgage was assigned from Ocwen to Nationstar at some point during the discovery process. Nationstar subsequently moved for summary judgment while simultaneously seeking to substitute the party plaintiff. Accordingly, we find it plausible for defendant to request additional discovery at this time seeking to establish Nationstar's interest in the mortgage agreement, thus providing a rationale to relax Rule 191(b)'s strict compliance requirement. In consideration of the foregoing, at the initial summary judgment hearing the trial court allowed defendant additional time to file the requisite affidavit despite his previous response to plaintiff's motion for summary judgment. Defendant, however, not only failed to file the requisite motion within the time period allotted, he also failed to request a continuance and argued that the affidavit was not necessary in order to respond. As a result, defendant is prohibited from arguing on appeal that the trial court erred by ruling on the motion without granting additional discovery. See *Giannoble*, 223 Ill. App. 3d at 1065-66 (failure to file a Rule 191(b) affidavit results in waiver of the argument upon review that summary judgment should not have been granted without additional discovery); *Jiotis*, 2014 IL App (2d) 121293, ¶ 29 (when the nonmovant had ample time for discovery and does not attempt to request a continuance, "there is no reason why noncompliance with Rule 191(b) should be excused.").

¶ 31 Despite defendant's failure, however, the court required plaintiff to tender the original copy of the blankly endorsed note in open court, which legally established its status as a holder in possession and gave it the right to enforce the note. Defendant has failed to argue or establish that other evidence, in addition to the production of the original note, was necessary

or available to refute plaintiff's holder status such that additional discovery was necessary or required to establish his defense. Defendant's claim is therefore also substantively without merit. The trial court did not err by ruling on plaintiff's motion for summary judgment prior to the completion of the discovery process as defendant was not entitled to additional discovery at this time.

¶ 32

CONCLUSION

¶ 33

In conclusion, the record affirmatively establishes plaintiff's status as legal holder of the promissory note secured by the subject mortgage agreement. Defendant has therefore failed to establish a genuine issue of material fact exists regarding plaintiff's status as legal holder of the note or that additional discovery was necessary prior to the trial court's consideration of plaintiff's motion for summary judgment. The trial court did not err by granting summary judgment in favor of plaintiff and entering an order of foreclosure and sale on the property.

¶ 34

For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 35

Affirmed.