2016 IL App (3d) 140755-U

Order filed February 11, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2016

NATIONSTAR MORTGAGE LLC,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	
	)	Appeal No. 3-14-0755
QUIRL J. CAGAMPANG a/k/a	)	Circuit No. 13-CH-1783
QUIRL JUN CALISURA CAGAMPANG,	)	
JACQUELINE CAGAMPANG, et al.,	)	Honorable Thomas A. Thanas and
	)	Honorable John Anderson,
Defendants-Appellants.	)	Judges, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice O'Brien and Justice Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err by granting plaintiff's motion to dismiss defendants' amended affirmative defense with prejudice and properly granted summary judgment in favor of plaintiff. Will County's administrative order did not violate defendants' equal protection or procedural due process rights.

¶ 2 In 2010, defendants Quirl and Jacqueline Cagampang and CitiMortgage, Inc. entered into a Home Affordable Modification Program Agreement (HAMP Agreement), which ratified

certain 2007 loan documents executed between ABN AMRO Mortgage Group, Inc. (ABN) and defendants. In 2013, plaintiff Nationstar Mortgage LLC (plaintiff), the holder of the mortgage and note, initiated foreclosure proceedings by filing a complaint to foreclose mortgage (foreclosure complaint) against defendants. The court granted plaintiff's request to strike or dismiss defendants' amended affirmative defense challenging plaintiff's standing and granted summary judgment in favor of plaintiff in the foreclosure action.

¶ 3 Defendants filed a timely notice of appeal challenging the dismissal of their amended affirmative defense and entry of the judgment of foreclosure based on standing and due process concerns.

¶ 4 BACKGROUND

¶ 5 On November 16, 2007, defendants secured a loan in the amount of $342,500 from ABN for their residence. Defendants signed a mortgage and promissory note in that amount for a residence located at 1555 Schumacher Drive, Bolingbrook, Illinois.

¶ 6 On May 11, 2010, defendants and CitiMortgage, as successor by merger to ABN, entered into a HAMP Agreement, which lowered the monthly payments due on the original mortgage loan. The HAMP Agreement included language that provided: "[T]he Loan Documents are composed of duly valid, binding agreements, enforceable in accordance with their terms and are hereby reaffirmed." This agreement also listed CitiMortgage as the "Lender" for this mortgage.

¶ 7 On May 6, 2013, plaintiff, as the mortgagee and holder of the note and mortgage, filed a foreclosure complaint against defendants for defaulting on the payment of their mortgage installments from January 1, 2013, to the date of filing. A copy of the original 2007 mortgage and note was attached to the complaint. The original note was endorsed in blank with the following language:

"PAY TO THE ORDER OF
_____
WITHOUT RECOURSE

CitiMortgage, Inc.
as successor in interest by merger
to ABN AMRO Mortgage Group, Inc.
___/s/_____
Margaret A. Bezy
Vice President"

¶ 8 Defendants did not file a timely answer to the foreclosure complaint filed on May 6, 2013. Consequently, on August 16, 2013, plaintiff filed a motion for default judgment and set the motion for a hearing. Defendants retained counsel and, on August 28, 2013, the court granted defendants an additional 28 days to file a responsive pleading.

¶ 9 On November 13, 2013, defendants filed their initial answer and affirmative defense to the foreclosure complaint originally filed on May 6, 2013. On November 27, 2013, plaintiff filed a combined motion to strike and dismiss defendants' affirmative defense.

¶ 10 On December 31, 2013, Chief Judge Richard Schoenstedt entered Administrative Order No. 13-41(a), which became effective on January 2, 2014. This Administrative Order announced that Judge Thomas A. Thanas would preside over all mortgage foreclosure cases. In addition, the Administrative Order designated a time slot for foreclosure matters involving the clients of certain law firms with a high volume of foreclosure cases. Codilis and Associates, plaintiff's law firm, was assigned a weekly time slot of Wednesdays at 9:00 a.m. for that firm's foreclosure proceedings.

¶ 11 On January 10, 2014, defendants filed an amended affirmative defense. Defendants' amended affirmative defense claimed CitiMortgage became the only surviving entity following a September 1, 2007, merger between ABN and CitiMortgage. Since ABN was no longer a valid entity in November 2007, the amended affirmative defense claimed ABN had no capacity to

enter into the original 2007 mortgage. Consequently, the amended affirmative defense asserted CitiMortgage did not have a valid interest to transfer the mortgage to plaintiff and plaintiff did not acquire any capacity and standing to foreclose on the mortgage in this case.

¶ 12 On January 30, 2014, plaintiff filed a combined motion to strike and dismiss defendants' amended affirmative defense (motion to strike and dismiss) pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2012)). Plaintiff's motion to strike and dismiss alleged that defendants entered into a HAMP Agreement with CitiMortgage on May 11, 2010, which was recorded with a copy of the original note that was endorsed in blank by CitiMortgage "as successor in interest by merger to ABN." The HAMP Agreement documents, along with a copy of the original mortgage and note, were attached to plaintiff's foreclosure complaint.

¶ 13 In its motion to strike and dismiss, plaintiff submitted that, under section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)), defendants' affirmative defense did not plead sufficient facts to support the amended affirmative defense for which the court could grant relief. Additionally, pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2012)), plaintiff's motion to strike and dismiss asserted that defendants reaffirmed the original mortgage and note as part of the HAMP Agreement between defendants and CitiMortgage in 2010. Further, defendants acknowledged, in 2010, that all terms and provisions of the original loan documents remained in full force and effect unless addressed and modified by the HAMP Agreement. On this basis, plaintiff asked the court to strike and dismiss defendants' amended affirmative defense with prejudice.

¶ 14 The notice to appear on plaintiff's motion to strike and dismiss was scheduled for March 5, 2014, at 9:00 a.m. Defense counsel did not appear at that hearing, but the record

indicates defendants may have appeared *pro se* and requested a continuance. The court set a briefing schedule and continued that hearing date to April 16, 2014, at 1:30 p.m.

¶ 15 Defense counsel filed a "Response to Plaintiff's Motion to Strike and Dismiss Defendants' Amended Affirmative Defense" on March 28, 2014, and plaintiff filed a reply in support of its motion on April 9, 2014. However, defense counsel was unable to attend the April 16, 2014, hearing due to a scheduling conflict. Defense counsel sent a non-attorney representative to inform the court of defense counsel's conflict. The parties agreed to continue the matter to April 23, 2014, at 1:30 p.m.

¶ 16 On April 23, 2014, defense counsel had another scheduling conflict and was unable to appear in court for the prescheduled hearing on plaintiff's motion to strike and dismiss. On April 23, 2014, Judge Thanas addressed plaintiff's motion to strike and dismiss defendants' amended affirmative defense without the presence of defense counsel. The court found the 2010 HAMP Agreement "validated or ratified any voidable problem that may have existed with the original mortgage." The court then granted plaintiff's motion to strike and dismiss defendants' amended affirmative defense with prejudice pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2012)).

¶ 17 Thereafter, on April 25, 2014, plaintiff filed "Plaintiff's Motion for Summary Judgment Pursuant to 735 ILCS 5/2-1005 or, in Alternative, for Judgment Pursuant to 735 ILCS 5/15-1506." 735 ILCS 5/2-1005 (West 2012); 735 ILCS 5/15-1506 (West 2012). Several documents were attached to this motion.

¶ 18 At the June 11, 2014, hearing, the court granted defendants' motion for substitution of judge. The chief circuit judge reassigned this case to Judge John Anderson for a status hearing on June 25, 2014. On July 17, 2014, Judge Anderson denied defendants' request for leave to file

a second amended affirmative defense and their motion to compel. The order provided, "No extensions absent exceptional circumstances" and set the hearing on plaintiff's motion for summary judgment for August 27, 2014, at 9:30 a.m.

¶ 19 On August 27, 2014, after reviewing the pleadings and hearing arguments by counsel, Judge Anderson granted plaintiff's motion for summary judgment. Judge Anderson entered a judgment of foreclosure against defendants. Defendants filed a timely notice of appeal.

¶ 20 ANALYSIS

¶ 21 On appeal, defendants assert that Judge Thanas erred when he dismissed their amended affirmative defense, filed on January 10, 2014. Further, defendants contend that Will County Administrative Order 13-41(a) violated defendants' due process rights.

¶ 22 Plaintiff submits that the trial court did not err when it granted plaintiff's motion to strike and dismiss defendants' amended affirmative defense. Additionally, plaintiff argues that defendants failed to establish that Administrative Order 13-41(a) gave rise to any violation of their procedural due process rights.

¶ 23 I. Dismissal of Defendants' Amended Affirmative Defense

¶ 24 In this case, the court dismissed defendants' amended affirmative defense pursuant to section 2-619 of the Code. 735 ILCS 5/2-619 (West 2012). "The purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proved issues of fact at the outset of litigation." *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003) (citing *Zedella v. Gibson*, 165 Ill. 2d 181, 185 (1995)). When ruling on a section 2-619 motion to dismiss, the court " 'must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party.' " *Id*. at 367-68 (quoting *In re Chicago Flood Litigation,* 176 Ill. 2d 179, 189 (1997)). We review a section 2-619 dismissal *de novo*. *Id.* at 368.

¶ 25 Plaintiff moved to strike and dismiss defendants' amended affirmative defense. The motion to strike and dismiss refuted defendants' claim that CitiMortgage did not have a valid interest to transfer to plaintiff and plaintiff lacked the capacity to file the foreclosure action itself. First, plaintiff asserted that defendants admitted the validity of their prior 2007 mortgage and note as part of the 2010 HAMP Agreement with CitiMortgage. Second, with respect to the assertion that plaintiff did not have standing, plaintiff supplied the court with the original 2007 mortgage and note, and the 2007 note was endorsed in blank by CitiMortgage.

¶ 26 At the onset, we address the validity of the 2007 documents. Here, the facts are undisputed that defendants approved the 2010 HAMP Agreement, listing CitiMortgage as the lender. These 2010 documents expressly state: "[T]he Loan Documents are composed of duly valid, binding agreements, enforceable in accordance with their terms and are hereby reaffirmed." We hold that in 2010 defendants ratified or reaffirmed the original 2007 loan documents, thereby waiving any defect in the original documents. See *23-25 Building Partnership v. Testa Produce, Inc*., 381 Ill. App. 3d 751, 757 (2008).

¶ 27 Next, we consider whether there is any merit to defendants' claim that plaintiff was not the proper party to initiate this foreclosure action. Recently, in *Bayview Loan Servicing, LLC v. Cornejo*, 2015 IL App (3d) 140412, this court addressed a similar issue. In *Bayview*, the defense raised an affirmative defense that JPMorgan Chase (Chase) did not have standing and could not file the foreclosure action because Chase was not the named mortgagee and the note contained an endorsement in blank. *Id.* at ¶ 11. This court determined that the note attached to the original foreclosure complaint by Chase is *prima facie* evidence that Chase owned the note, even though it was endorsed in blank. *Id.* at ¶ 13. This court recognized that defendants then bore the burden of showing that some party, other than Chase, was the rightful holder of the note. *Id.* at ¶¶ 13-

14. In the *Bayview* case, this court held defendants did not meet that burden and the trial court properly granted Chase's motion to strike the affirmative defense. *Id.* at ¶ 14.

¶ 28 Here, defendants' amended affirmative defense asserted plaintiff lacked the capacity and standing to bring the foreclosure action due to the invalid nature of the original mortgage and note. We conclude plaintiff successfully defeated defendants' challenge, regarding plaintiff's capacity or standing to initiate foreclosure proceedings, by presenting the original note to the court, endorsed in blank by CitiMortgage, along with the HAMP documents reaffirming the 2007 note and mortgage.

¶ 29 Based on our *de novo* review, we conclude that Judge Thanas did not commit error when he dismissed defendants' amended affirmative defense with prejudice.

¶ 30 II. Constitutionality of Administrative Order 13-41(a)

¶ 31 Next, defendants challenge the constitutionality of Administrative Order No. 13-41(a), which became effective on January 2, 2014, based on equal protection and due process violations. It is well established that statutes are presumed constitutional and a party challenging the constitutionality of a statute "has the burden of clearly establishing the constitutional violation." *Bernier v. Burris*, 113 Ill. 2d 219, 227 (1986). Further, when challenging the validity of a court rule, we use the same standards as applied to a constitutional challenge of a statute. *U.S. Bank, N.A. v. Dzis*, 2011 IL App (1st) 102812, ¶ 34 (citing *Yellow Cab Co. v. Jones*, 108 Ill. 2d 330, 338-39 (1985)). We review whether a defendant's procedural due process and equal protection rights were violated *de novo* because it involves a question of law. *Lyon v. Department of Children & Family Services*, 209 Ill. 2d 264, 271 (2004).

¶ 32 It is well established that, if a rule does not affect a fundamental right or target a suspect class, the challenged rule is presumed to be valid and will be sustained where the classification is

rationally related to a legitimate State interest. *Dzis*, at ¶ 34. The scheduling of court hearings is not a fundamental right and neither foreclosure defendants nor defense counsel are considered a suspect class. *Id.* at ¶¶ 30, 34. Since this administrative order does not involve a fundamental right or a suspect class of individuals, we must apply a rational basis test to determine its constitutionality.

¶ 33 Administrative Order 13-41(a) provides, in relevant part:

> "Mortgage Foreclosure cases will be heard by Circuit Judge Thomas A. Thanas (Annex 311) and scheduled as follows:
>
> All mortgage foreclosures brought by Pierce and Associates will be heard on Tuesdays at 1:30 p.m. All mortgage foreclosures brought by Codilis and Associates will be heard on Wednesdays at 9:00 a.m.
>
> * * *
>
> No other matters are to be scheduled or accepted for hearing at these times, except as set by the Court. Contested hearings and other matters will be specially set by the Court." Administrative Order 13-41(a), Par. (B) (eff. Jan. 2, 2014).[1]

¶ 34 The rational basis test " 'requires only that there be a reasonable relationship between the challenged legislation and a conceivable, and perhaps unarticulated, governmental interest.' " *Segers v. Industrial Commission*, 191 Ill. 2d 421, 436 (2000) (quoting *Cutinello v. Whitley*, 161 Ill. 2d 409, 420 (1994)). It is well established that the State has a legitimate interest in "judicial economy and effectiveness," which is served by court administrative practices that govern the

[1]Defendants concede that Supreme Court Rule 21 grants the chief judge of any circuit the authority to issue administrative rules or orders, including orders providing for assignment of judges, general or specialized divisions, and times and places of holding court. Ill. S. Ct. R. 21 (eff. Dec. 1, 2008).

work flow in courts sensibly and efficiently. *People v. Hattery*, 183 Ill. App. 3d 785, 804 (1989). In this case, we conclude the administrative order bears a reasonable relationship to the governmental interest of providing for the efficient administration of justice in court foreclosure proceedings. Based on our *de novo* review of the administrative order, we conclude that, under an equal protection argument, the order is constitutional.

¶ 35 Finally, we address defendants' issue regarding whether Administrative Order No. 13-41(a) violates their procedural due process rights. When considering defendants' due process claim, defendants must first establish that the State has interfered with one of their liberty or property interests. *Dzis*, at ¶ 30; *Segers*, 191 Ill. 2d at 434. As stated above, a litigant "has no liberty or property interest in any particular method of assigning judges to hear cases" or other such court administrative procedure. See *Dzis*, at ¶ 30. Since no liberty or property interests are involved, the administrative order does not violate defendants' due process rights.

¶ 36 CONCLUSION

¶ 37 For all of the reasons discussed above, we hold the trial court did not err by dismissing defendants' amended affirmative defense and that defendants' equal protection and due process rights were not violated by Will County's Administrative Order No. 13-41(a).

¶ 38 Affirmed.