

No. 1-11-0933

**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).

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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NGN, LLC, a Delaware Limited Liability Company, as	)	Appeal from the Circuit Court
successor in interest to Broadway Bank, an Illinois	)	of Cook County
corporation,	)	
	)	
Plaintiff-Appellee,	)	
	)	07 CH 2362
v.	)	
	)	
SOPHIA MEIMAROGLOU,	)	
	)	Honorable
Defendant-Appellant.	)	David B. Atkins,
	)	Judge Presiding.

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PRESIDING JUSTICE McBRIDE delivered the judgment of the court.  
Justices Howse and Taylor concurred in the judgment.

ORDER

¶ 1 HELD: The trial court did not err in denying defendant's 2-1401 petition because the court had subject matter jurisdiction and defendant forfeited her challenge of NGN's standing.

¶ 2 Plaintiff, NGN, LLC, filed a mortgage foreclosure complaint in January 2007, against defendant, Sophia Meimaroglou. An agreed order of summary judgment in favor of NGN and against defendant as to liability only was entered in May 2008 and the trial court subsequently entered a judgment of foreclosure and sale in July 2008. In October 2010, defendant filed a

1-11-0933

motion to vacate the order of foreclosure and sale pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)), which the trial court denied.

¶ 3 Defendant appeals, arguing that the trial court lacked subject matter jurisdiction because there was no justiciable matter before the court and that NGN lacked standing to file the action.

¶ 4 In January 2007, NGN filed its complaint to foreclose mortgage against defendant. The complaint alleged that on July 27, 2001, defendant, as mortgagor, executed a mortgage in the amount of \$2.4 million to Broadway Bank, as mortgagee, for the property commonly known as 7450-56 N. Greenview (Greenview property) in Chicago, Illinois. Defendant also executed an assignment of rents for the Greenview property to Broadway Bank. Both documents were filed in July 2001 and corrected in January 2003. NGN stated that it was the successor in interest to Broadway Bank for the mortgage on the Greenview property pursuant to a December 2006 assignment of mortgage and rents. The complaint alleged that defendant had not made payments on her mortgage since September 2006. NGN requested a judgment of foreclosure and sale.

¶ 5 NGN attached several documents as exhibits to its complaint, including copies of defendant's mortgage, the assignment of rents, the note, and the assignment of mortgage and assignment of rents. The assignment stated that Broadway Bank

"for and in consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration in hand paid, does hereby GRANT, BARGAIN, SELL, ASSIGN, TRANSFER AND CONVEY to NGN, LLC, \*\*\* any and all right, title or interest in and to the following described Real Estate situated in Cook

1-11-0933

County, Illinois, by virtue of that certain Mortgage and Assignment of Rents dated July 27, 2001, \*\*\* to secure a Note in the principal sum of \$2,400,000.00, to wit: \*\*\* Commonly known as: 7450-56 N. Greenview, Chicago, Illinois 60626."

¶ 6 In February 2008, NGN filed a motion for summary judgment of foreclosure and sale. NGN attached several documents to its motion as exhibits, including an affidavit from Gloria Sgueros, an authorized agent of Broadway Bank and senior loan officer. She stated in her affidavit that Broadway Bank transferred the ownership rights to the promissory note and mortgage to NGN on December 29, 2006. Sgueros also stated that defendant had not made any payment on the loan since October 2006 and the loan was placed in default.

¶ 7 In March 2008, defendant filed her answer and affirmative defenses to NGN's complaint. In her answers, defendant admitted to the terms of the mortgage and Broadway Bank's assignment to NGN. The only allegation relating to the mortgage that defendant denied was the statement as to default, which stated that she had not made monthly payments since September 2006 and the total amount due was \$3,168,473.63, as of December 29, 2006. Defendant asserted three affirmative defenses: (1) the prepayment penalty charge was unenforceable and excessive; (2) any damages sought by NGN relating to a prepayment penalty were unlawful under Illinois law; and (3) Broadway Bank, "Plaintiff's assignor," engaged in predatory lending practices and defendant was allowed to rescind the loan.

¶ 8 In May 2008, the court entered an agreed order of summary judgment. The order stated that "Summary Judgment is hereby entered against Sophia Meimaroglou and in favor of NGN,

1-11-0933

LLC. as to liability, only, under the Promissory Note dated July 31, 2001." The court did not enter a foreclosure judgment at that time. In June 2008, the trial court entered a judgment of foreclosure and sale. An amended judgment of foreclosure and sale was entered in July 2008. The amended judgment stated that allegations of fact in the claim of foreclosure were properly verified by sworn affidavit and found to be true and correct as alleged, no further evidence of these facts was required.

¶ 9 In July 2008, NGN filed a notice of sale and in January 2010, filed a motion to approve sale. In February 2010, NGN filed a motion to vacate sale. In its motion, NGN stated that in July 2008, defendant filed a voluntary petition for Chapter 11 bankruptcy. In December 2009, NGN was granted relief from the automatic stay in defendant's bankruptcy case. The sale for the subject Greenview property was held in January 2010 and NGN was the successful bidder. After the sale, NGN learned that the bankruptcy court order granting relief stated that lenders shall not try to obtain or schedule a hearing prior to February 1, 2010. NGN sought to vacate the sale to resolve any ambiguity as to whether the January 2010 sale was a hearing in violation of the bankruptcy order. The trial court granted the motion and vacated the sale.

¶ 10 On March 16, 2010, defendant filed an emergency motion to postpone or cancel the foreclosure sale. In her motion, defendant stated that NGN had scheduled a public auction of the Greenview property for March 17, 2010. Defendant asserted that she was the owner of the property and the judgment of foreclosure was "void for lack of subject matter jurisdiction because the plaintiff did not have standing to bring this action at the time that the complaint for foreclosure was filed on January 24, 2007." Defendant also filed a motion to vacate the

1-11-0933

judgment of foreclosure. Defendant argued NGN failed to establish an assignment of the promissory note from Broadway Bank. Defendant noted that NGN attached an assignment of the mortgage interest, but did not include any exhibit showing an assignment of the note. According to defendant, NGN was not the alleged legal holder of the indebtedness and lacked standing to file the foreclosure action. The trial court denied defendant's motion to stay the sale, but continued the motion to vacate the judgment of foreclosure. NGN subsequently filed a motion to approve the sale of the Greenview property.

¶ 11 In May 2010, after a hearing, the trial court denied defendant's motion to vacate the judgment of foreclosure. At the hearing, NGN submitted an agreement to assign note and loan documents executed on December 29, 2006, between Broadway Bank and NGN. NGN also presented a handwritten memo written on the bank of the promissory note, stating "This note is payable to, per the agreement, dated December 29, 2006, NGN LLC. Assigned this 29th day of December 2006." This memo has one signature, but did not state whose signature it was. The trial court noted that defendant admitted that NGN was the successor in interest to Broadway Bank in her answer to the complaint and did not challenge standing until 2010. The court found that NGN had produced "sufficient proof of the note having been endorsed." The court also pointed out that "there was no reason for him necessarily to produce certain documents until now." Defendant's attorney asked to file a supplemental motion based on these new documents, but was given leave to file a motion to reconsider. Counsel also asked for an ink analysis expert to determine when the new assignment documents were endorsed, but the trial court denied this request.

1-11-0933

¶ 12 Defendant filed a motion to reconsider the trial court's May 3, 2010, denial of her motion to vacate judgment. Defendant asserted that the note and agreement to assign note and loan documents were not credible and should not be admitted into the record without an evidentiary hearing and authentication by an expert. Defendant maintained that there was no valid assignment of the note from Broadway Bank to NGN and NGN lacked standing to file its complaint. In her motion, defendant made multiple arguments concerning the involvement of Giannoulis Enterprises and Broadway Bank in this case involving NGN and in a separate foreclosure proceeding on another property owned by defendant brought by WFN, LLC. Defendant alleged that the assignment was illegal if either Giannoulis Enterprises or Broadway Bank owned NGN and there was no evidence of consideration paid by NGN. In its response, NGN contended that defendant's motion to reconsider raised the same arguments related to NGN's lack of standing without alleging new facts, new law or the trial court's misapplication of existing law. NGN further stated that defendant's arguments have no legal or factual support and defendant's "far fetched conspiracy theories are likewise irrelevant and illogical." In July 2010, the trial court entered an order approving the sale of the Greenview property. The motion to reconsider was denied.

¶ 13 In October 2010, defendant filed a petition to vacate the order of judgment of foreclosure pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)). In her petition, defendant raised the same allegations that NGN lacked standing to file the foreclosure complaint and the trial court did not have subject matter jurisdiction to decide NGN's claim because there was no justiciable matter.

1-11-0933

¶ 14 Defendant included an affidavit from Candice DeYoung with her petition. DeYoung stated that Broadway Bank was closed on April 23, 2010 by the banking division of the Illinois Department of Financial and Professional Regulation and the Federal Deposit Insurance Corporation (FDIC) was appointed receiver of Broadway Bank. The FDIC entered into an agreement with MB Financial Bank, N.A. (MB Financial), and turned over possession of Broadway Bank's offices, records and files to MB Financial. DeYoung was an employee of MB Financial. Pursuant to a Freedom of Information Act request, MB Financial was asked to inspect Broadway Bank's records to determine if the records contained an agreement to assign note and loan, a note endorsement or other document evidencing an endorsement from Broadway Bank to NGN. DeYoung reviewed Broadway Bank's records and did not find any documents evidencing the assignment of the note and mortgage on the Greenview property from Broadway Bank to NGN. MB Financial was also asked to inspect wire transfer receipts and bank deposits received by Broadway Bank from December 2006 and April 2010 to determine if it received \$3,065,000 from NGN as consideration for the assignment of the note and mortgage of the Greenview property. DeYoung stated that she inspected the wire transfer receipts for those periods and found that Broadway Bank did not receive \$3,065,000 or any other amount from December 1, 2006, until its closure from NGN.

¶ 15 In January 2011, NGN filed its response to defendant's 2-1401 petition. NGN argued that defendant was not entitled to relief because she failed to act with due diligence in presenting this defense or claim to the trial court and has no meritorious defense because Broadway Bank was not required to keep these documents, the trial court correctly held that defendant forfeited her

1-11-0933

challenge to standing, and defendant was estopped from raising this claim. In February 2011, defendant filed her reply to NGN's response. In her reply, defendant raised allegations of fraudulent misrepresentation and contended that NGN was a subsidiary of Giannoulas Enterprises and that NGN and Giannoulas Enterprises knew when the complaint was filed that NGN was not the successor in interest to Broadway Bank on the Greenview property mortgage. Defendant further alleged that NGN did not pay any consideration to Broadway Bank for an assignment of the mortgage. Defendant attached a supplemental affidavit from DeYoung. In the supplemental affidavit, DeYoung stated that she searched all Broadway Bank wire transfer receipts from December 1, 2006, until April 2007, for any wire transfer receipts from any entity in the amount of \$3,065,000, or an amount close to that dollar amount. DeYoung did not find any receipts in or near that dollar amount. She also did not find any receipts from any entity that were shown on Broadway Bank's records to be for NGN or regarding defendant's loan.

¶ 16 In February 2011, the trial court conducted a hearing on defendant's 2-1401 petition. Following arguments from both sides, the trial court denied the petition, finding that defendant forfeited her challenge to NGN's standing.

¶ 17 This appeal followed.

¶ 18 On appeal, defendant argues that the trial court erred in denying her 2-1401 petition because the trial court lacked subject matter jurisdiction since the complaint did not include an assignment of the note from Broadway Bank to NGN and NGN had no interest in defendant's loan for the Greenview property. NGN maintains that the trial court properly denied defendant's petition because the petition raises issues previously adjudicated in favor of NGN, defendant

1-11-0933

failed to timely appeal the trial court's final judgment, and defendant failed to act diligently to present her 2-1401 claims.

¶ 19 Generally, a section 2-1401 petition must be brought within two years of the final judgment and show the existence of a meritorious defense to the original action and must show due diligence in bringing the petition. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002); see also 735 ILCS 5/2-1401(b), (c) (West 2010). "Consistent with the strong judicial policy favoring finality of judgments, our courts have held that a section 2-1401 petition is not to be used as a device to relitigate issues already decided or to put in issue matters which have previously been or could have been adjudicated." *Hirsch v. Optima, Inc.*, 397 Ill. App. 3d 102, 111 (2009) (quoting *In re Marriage of Halas*, 173 Ill. App. 3d 218, 223 (1988)).

¶ 20 However, the supreme court in *Sarkissian* held that pursuant to paragraph (f) of section 2-1401, the general rules for filing a section 2-1401 petition do not apply to petitions challenging a judgment on voidness grounds. *Sarkissian*, 201 Ill. 2d at 104. "Petitions brought on voidness grounds need not be brought within the two-year time limitation. Further, the allegation that the judgment or order is void substitutes for and negates the need to allege a meritorious defense and due diligence." *Sarkissian*, 201 Ill. 2d at 104. "[A] judgment, order or decree entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular order involved, is void, and may be attacked at any time or in any court, either directly or collaterally." *Sarkissian*, 201 Ill. 2d at 103 (quoting *Barnard v. Michael*, 392 Ill. 130, 135 (1945)). Here, defendant contends that the trial court lacked subject matter jurisdiction and the judgment of foreclosure was void. "Review of a judgment on a section 2-

1-11-0933

1401 petition that is requesting relief based on the allegation that the judgment is void, shall be *de novo*." *Protein Partners, LLP v. Lincoln Provision, Inc.*, 407 Ill. App. 3d 709, 716 (2010) (citing *People v. Vincent*, 226 Ill. 2d 1, 18 (2007)).

¶ 21 "It is essential to the validity of a judgment that the court have both jurisdiction of the subject matter of the litigation and jurisdiction over the parties." *C.T.A.S.S. & U. Federal Credit Union v. Johnson*, 383 Ill. App. 3d 909, 910 (2008) (quoting *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986)). The issue of subject matter jurisdiction cannot be forfeited and may be raised at any time. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 333-34 (2002). "Simply stated, 'subject matter jurisdiction' refers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs." *Belleville Toyota*, 199 Ill. 2d at 334. "With the exception of the circuit court's power to review administrative action, which is conferred by statute, a circuit court's subject matter jurisdiction is conferred entirely by our state constitution." *Belleville Toyota*, 199 Ill. 2d at 334; see also Ill. Const. 1970, art. VI, §9. In order to invoke the trial court's subject matter jurisdiction, the plaintiff's complaint must present a "justiciable matter." *Belleville Toyota*, 199 Ill. 2d at 334. "Generally, a 'justiciable matter' is a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Belleville Toyota*, 199 Ill. 2d at 335.

¶ 22 In contrast, "[t]he 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*

1-11-0933

*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).

¶ 23 "Under Illinois law, lack of standing is an affirmative defense, which is the defendant's burden to plead and prove." *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252-53 (2010) (citing *Wexler v. Wirtz Corp.*, 211 Ill. 2d 18, 22-23 (2004); *In re Estate of Schlenker*, 209 Ill. 2d 456, 461 (2004); *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 494 (1988)). Unlike subject matter jurisdiction, a lack of standing will be forfeited if not raised in a timely manner. *Lebron*, 237 Ill. 2d at 253. "The essence of the standing inquiry is not the subject matter *per se*, but whether a litigant, either in an individual or representative capacity, is entitled to have the court decide the merits of a particular dispute or issue." *In re County Treasurer and Ex Officio County Collector of Cook County*, 333 Ill. App. 3d 355, 359 (2002); see *In re Estate of Wellman*, 174 Ill. 2d 335, 345 (1996). The Illinois Supreme Court has stated that issues of standing "do not implicate our subject matter jurisdiction." *Lebron*, 237 Ill. 2d at 252.

¶ 24 Here, defendant contends that the trial court lacked subject matter jurisdiction because NGN had no interest in defendant's loan such that the parties had no adverse legal interests and no definite and concrete controversy was presented to the court. In support, defendant asserts it was "clear and obvious" that NGN had no interest in the loan because the note attached to complaint named Broadway Bank and the assignment of the mortgage to NGN did not assign the note. Further, defendant argues that her 2-1401 petition and the affidavits from DeYoung make

1-11-0933

it clear that NGN did not own her loan because no consideration was paid.

¶ 25 NGN's foreclosure complaint complied with the requirements of section 15-1504(a) of the Illinois Mortgage Foreclosure Law (Foreclosure Law). 735 ILCS 5/15–1504(a) (West 2006). The complaint alleged that NGN was the successor in interest to Broadway Bank, the original holder of indebtedness, and attached a copy of the note and mortgage and the assignment of the mortgage. This complaint presented a justiciable matter because NGN set forth a definite controversy (mortgage foreclosure) touching upon the legal relations of parties having adverse legal interests (NGN as the holder of the debt and defendant as the mortgagor in default). Moreover, when defendant raised this challenge in the trial court, NGN presented an agreement to assign the note and a copy of the note with a handwritten assignment to NGN. The record also contained an affidavit from a senior loan officer of Broadway Bank stating that Broadway Bank assigned its interest in defendant's loan to NGN on December 29, 2006. All of these documents together show that a definite controversy existed that related to parties with adverse legal interests. To the extent that defendant asserts that NGN had no interest in defendant's loan, defendant has challenged NGN's standing to file the action, not subject matter jurisdiction. See *Barnes*, 406 Ill. App. 3d at 6.

¶ 26 In *Barnes*, the plaintiff, Mortgage Electronic Registration System, Inc. (MERS), filed a complaint to foreclose a mortgage against defendant pursuant to the Foreclosure Law (735 ILCS 5/15-1504(a) (West 2008)). In its complaint, MERS alleged that it was the holder of defendant's debt and attached a copy of the mortgage and note. The mortgage stated that MERS was the nominee of the lender and that it was the mortgagee holding a legal title to the interest, but had

1-11-0933

the right to foreclose and sell the property. The defendant did not respond to the complaint and the trial court entered a default judgment and a judgment of foreclosure. Prior to the foreclosure sale, the defendant appeared and filed an emergency motion to delay the sale, which the trial court granted. The property later sold at auction. When MERS filed a motion for the trial court to approve the sale, the defendant filed a motion to vacate the foreclosure judgment and sale as void because MERS had no interest in the debt and failed to attach any document to the complaint to show that the promissory note had been transferred to MERS for value. The trial court denied the defendant's motion. *Barnes*, 406 Ill. App. 3d at 2-4.

¶ 27 On appeal, the defendant argued that the trial court should have vacated the foreclosure judgment because the court lacked subject matter jurisdiction. She contended that MERS was not the true owner of the promissory note and MERS did not purchase the note from the real party in interest. "According to defendant, no adverse interest existed between the parties here, MERS did not suffer any injury in fact, and, as a result, MERS lacked standing to prosecute this mortgage foreclosure lawsuit. Defendant concludes that MERS's lack of standing based on the lack of any injury in fact meant that true subject matter jurisdiction was not conferred on the circuit court." *Barnes*, 406 Ill. App. 3d at 5. The reviewing court summarized the defendant's argument as "the circuit court lacked jurisdiction because MERS failed to plead proof of standing." *Barnes*, 406 Ill. App. 3d at 6.

¶ 28 The court held that "[a] foreclosure complaint is deemed sufficient if it contains the statements and requests called for by the form set forth in section 15-1504(a) of the Foreclosure Law (735 ILCS 5/15-1504(a) (West 2008))." *Barnes*, 406 Ill. App. 3d at 6. The court found that

1-11-0933

"MERS complied with that form, pled that it was the mortgagee and legal holder of the indebtedness, and attached a copy of the note and mortgage to its complaint. MERS's complaint was legally and factually sufficient and included allegations relative to standing." *Barnes*, 406 Ill. App. 3d at 6.

¶ 29 In her standing argument, the defendant in *Barnes* argued that MERS's statement in the complaint that it was the holder of the indebtedness was contradicted by the promissory note and MERS failed to attach any documents showing that it purchased the note for value. The defendant asserted that standing was jurisdictional and could be raised at any time. The reviewing court disagreed, citing the rule in Illinois that standing is an affirmative defense that must be raised or it is waived. The court concluded that the defendant forfeited her standing issue by failing to timely raise the issue. The defendant was "properly served with the complaint but failed to answer it, was defaulted, thereafter participated in the proceedings by successfully petitioning the court for a continuation of the sale, and subsequently attempted to raise the standing issue after the foreclosure and sale and in response to MERS's motion to confirm the sale." *Barnes*, 406 Ill. App. 3d at 6-7.

¶ 30 The *Barnes* court further held that the defendant's default admitted the allegations in the complaint that MERS was the holder of the indebtedness. *Barnes*, 406 Ill. App. 3d at 7. Forfeiture aside, the court observed that "Illinois does not require that a foreclosure be filed by the owner of the note and mortgage." *Barnes*, 406 Ill. App. 3d at 7 (citing *Stalzer v. Blue*, 312 Ill. App. 563 (1942); *Replogle v. Scott*, 299 Ill. App. 270 (1939); *Bourke v. Hefter*, 202 Ill. 321 (1903)). The court also noted that mortgage listed MERS as mortgagee, giving MERS the

1-11-0933

authority to file the foreclosure action. *Barnes*, 406 Ill. App. 3d at 7.

¶ 31 The Third District in *Deutsche Bank National Trust Co. v. Snick*, 2011 IL App (3d) 100436, followed the reasoning in *Barnes*. In *Snick*, Deutsche Bank filed a foreclosure complaint against the defendant, alleging that it was the legal holder of the indebtedness or the servicing agent of the indebtedness. Deutsche Bank attached a copy of the mortgage and note to the complaint listing the defendant as the borrower and another entity as the lender. A default judgment of foreclosure and sale was entered against the defendant. She subsequently filed multiple motions to stay the sale of the property. After the property was sold, Deutsche Bank filed a motion to approve the sale. In response to this motion, the defendant challenged the bank's standing for the first time. The trial court found the issue of standing was not timely raised and approved the sale. The defendant filed a motion to vacate the sale, but the motion was denied. *Snick*, at ¶3-5.

¶ 32 On appeal, the defendant asserted that she timely raised the issue of standing and the trial court erred in approving the sale. The reviewing court held that the defendant forfeited her standing claim by failing to raise it in a timely manner, while participating and accepting the benefit of the court proceedings. *Snick*, at ¶9. The court, citing *Barnes*, observed that the defendant admitted the allegations in her default and the complaint complied with the Foreclosure Law. *Snick*, at ¶9 (citing *Barnes*, 406 Ill. App. 3d at 7). The *Snick* court found that the defendant "participated in the court proceedings by filing several motions to stay the sale of the subject property. At no time did Snick raise the issue of standing until her objection to the Bank's motion for an order approving the sale of the property, which was almost three years after

1-11-0933

the entry of the judgment of foreclosure." *Snick*, at ¶9.

¶ 33 Recently, the Sixth Division of this court also considered this issue. In *Nationwide Advantage Mortgage Co. v. Ortiz*, 2012 IL App (1st) 112755, Nationwide Advantage Mortgage Co. (Nationwide) filed a complaint to foreclose the defendant's mortgage. Nationwide alleged in the complaint that it was the legal holder of the indebtedness. The defendant appeared *pro se* and filed an answer. Nationwide subsequently filed a motion for summary judgment, which the trial court granted after the defendant failed to file a response. *Ortiz*, at ¶¶6-7. After the trial court scheduled the judicial sale of the property, the defendant, now represented by counsel, filed a motion to stay the sale, which the trial court granted. After the stay ended, the property was sold and Nationwide filed a motion to approve the sale. The defendant, with new counsel, filed a motion to withdraw his answer and a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)), arguing lack of standing based on the claim that Nationwide was not assigned the mortgage and note until after the foreclosure complaint was filed. *Ortiz*, at ¶¶7-8. The trial court initially granted the defendant's motion to dismiss, but within 30 days of the dismissal, the decision in *Barnes* was issued. Nationwide filed a motion to reconsider, relying on *Barnes*, and the trial court granted the motion and vacated its dismissal order. The court subsequently confirmed the sale. *Ortiz*, at ¶¶9-10.

¶ 34 The defendant on appeal attempted to distinguish *Barnes* from the facts of his case for several reasons and the reviewing court analyzed *Barnes* in light of these reasons. First, the defendant asserted that *Barnes* was not well-established law, but the reviewing court held that "[t]he fact that the recent decision in *Barnes* is not yet well-established law is not a compelling

1-11-0933

reason to ignore it." *Ortiz*, at ¶28. Next, the defendant contended that *Barnes* was limited to its facts, as the defendant had filed a motion to dismiss while in *Barnes*, the defendant filed a motion to vacate judgment. The court was not persuaded, finding that the different motions were not significant because "[b]oth cases involve mortgage foreclosure claims where the defendant attempted to raise a question as to the plaintiff's standing to bring the action after a foreclosure judgment had already been entered. Thus, the result should be the same." *Ortiz*, at ¶29. Third, the defendant argued that the discussion in *Barnes* involving standing was *obiter dicta* and not binding authority. The court disagreed and found that the court in *Barnes* "made an explicit finding about the timing and the ability of a defendant to raise a standing issue, which was essential to the outcome of the dispute and effectively became a holding of the case." *Ortiz*, at ¶30.

¶ 35 The defendant also asserted that a court may deviate from precedent where public policy demands or prejudice to public interest will occur. *Ortiz*, at ¶31. The court reasoned "[a]lthough it is in the public interest to prevent lenders from filing foreclosure actions before the note has been assigned to them (Cook Co. Cir. Ct. Mortgage Foreclosure Courtroom Procedures, Particular Motions II(B)(2) (eff. Apr. 1, 2011)), it is also in the public interest to prevent defendants in mortgage foreclosure actions, who have consistently defaulted on their mortgage payments, from raising a standing defense so late in the case in an attempt to further evade their financial commitments." *Ortiz*, at ¶32. Finally, the defendant argued that the equitable power of the chancery courts should have resulted in the denial of Nationwide's motion to reconsider because the application of *Barnes* to this case would cause great injustice. *Ortiz*, at ¶33. The

1-11-0933

*Ortiz* court found that it was not unfair for the defendant's inability to raise standing after evading his mortgage payments for several months. "Although there are concerns about the documentation practices of the lending industry, it is for the legislature to cure these evils. It is this court's role to follow the law as made and provided, and to follow precedent under *stare decisis*, and in this case, *Barnes* is controlling." *Ortiz*, at ¶34.

¶ 36 In the instant case, defendant has forfeited her standing argument. As in *Barnes*, defendant participated in the proceedings before raising a challenge to NGN's standing. The facts of this case present a more compelling case for forfeiture than the facts in *Barnes*. Unlike the defendant in *Barnes*, defendant in this case did not admit the allegations of the complaint by default. Rather, defendant specifically filed an answer and admitted that NGN was the holder of the mortgage and note. "As a general rule, a statement of fact that has been admitted in a pleading is a judicial admission and is binding on the party making it." *Knauerhaze v. Nelson*, 361 Ill. App. 3d 538, 557 (2005). Further, defendant entered into an agreed order of summary judgment in favor of NGN and against defendant under the promissory note and a judgment of foreclosure and sale was subsequently ordered. It was not until nearly two years after the entry of this agreed order and judgment of foreclosure that defendant raised a challenge as to NGN's standing. Defendant filed an emergency motion the day before the scheduled judicial sale and challenged NGN's standing in a motion to vacate the foreclosure judgment. Under *Barnes*, defendant's standing challenge was not timely made and was forfeited. *Barnes*, 406 Ill. App. 3d at 6-7; see also *Snick*, at ¶9; *Ortiz*, at ¶26 ("The holding in *Barnes* instructed us to find that because defendant did not raise the standing issue until after the foreclosure judgment was

1-11-0933

entered, he effectively forfeited that defense").

¶ 37 Because defendant has forfeited her claim that NGN lacked standing and we have determined that the trial court had subject matter jurisdiction, the trial court properly denied her 2-1401 petition.

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

¶ 39 Affirmed.