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FIRST DIVISION
January 21, 2014

No. 1-13-0543
2014 IL App (1st) 130543-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DEUTSCHE BANK TRUST COMPANY)	Appeal from the
AMERICAS,)	Circuit Court of
)	Cook County
Plaintiff-Appellee,)	
)	
v.)	No. 08 CH 07766
)	
OSBOURNE K. SIMS III,)	Honorable
)	Alfred M. Swanson,
Defendant-Appellant)	Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Hoffman and Cunningham concurred in the judgment.

ORDER

Held: Where defendant filed petition to vacate mortgage foreclosure judgment and sale under 735 ILCS 5/2-1401 (West 2010), petition was properly denied because Mortgage Foreclosure Law precludes use of section 2-1401 petitions to challenge judgments of foreclosure and subsequent sales.

¶ 1 Plaintiff Deutsche Bank Trust Company Americas won a judgment of foreclosure against defendant Osbourne Sims after defendant failed to appear and the circuit court entered an order of default against him. Defendant later appeared and sought to vacate the default, but he was unsuccessful. The property was then sold and the circuit court confirmed the sale. Defendant

did not appeal. Instead, about three months after the circuit court confirmed the sale, defendant filed a petition to vacate the judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)), in which he argued that plaintiff lacked standing to foreclose the mortgage because it did not own the underlying note. The circuit court summarily denied the petition, and defendant has now appealed that order.

¶ 2 We review denial of a section 2-1401 petition *de novo*. See *U.S. National Bank Association v. Prabhakaran*, 2013 IL App (1st) 111224, ¶ 23. Section 2-1401 is the “procedure by which final orders and judgments may be vacated or modified more than 30 days after their entry.” *Paul v. Gerald Adelman & Associates, Ltd.*, 223 Ill. 2d 85, 94 (2006). “Although a section 2–1401 petition is ordinarily used to bring facts to the attention of the trial court which, if known at the time of judgment, would have precluded its entry [citation], a section 2–1401 petition may also be used to challenge a purportedly defective judgment for legal reasons.” *Id.*

¶ 3 In *Prabhakaran*, however, we held that section 2-1401 petitions are not an available form of relief from judgment in mortgage foreclosure actions. See *Prabhakaran*, 2013 IL App (1st) 111224, ¶ 30. We noted that section 15-1509(c) of the Mortgage Foreclosure Law (735 ILCS 5/15-1509(c) (West 2010)) bars any challenge to a foreclosure judgment by any of the parties to the case once the circuit court confirms the sale of the property. See *id.* With this provision in mind, we held that the only method of reviewing the circuit court’s judgment in this context is via direct appeal. See *id.* ¶¶ 27-28. Because a section 2-1401 petition is a collateral action rather than a continuation of the underlying case, it is therefore barred by section 15-1509(c). See *id.* ¶ 30; *cf. Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1 (2010) (reaching the same conclusion regarding motions to vacate a default judgment under section 2-

1301(e) of the Code of Civil Procedure (735 ILCS 5/2-1301(e) (West 2010))); see also *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469 (adopting the analysis set forth in *Barnes*).

¶ 4 *Prabhakaran* is directly on point here. Defendant's only argument to the contrary is that lack of standing is a jurisdictional defect that renders the circuit court's judgment void and thus subject to challenge under section 2-1401. But in Illinois, lack of standing is an affirmative defense that must be pled and proven by the defendant during the original action, rather than a jurisdictional defect that can be raised at any time. See *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 253 (2010); *Barnes*, 406 Ill. App. 3d at 6-7.

¶ 5 Defendant raises a number of other arguments, but nearly all of them are frivolous and do not warrant discussion. The only argument that is at least plausible is that the judgment is void due to lack of personal jurisdiction. But while we have recognized an exception to *Prabhakaran*'s holding where a section 2-1401 petition alleges a jurisdictional defect such as lack of personal jurisdiction due to improper service (see *OneWest Bank, FSB v. Topor*, 2013 IL App (1st) 120010, ¶ 12 n.1; *MB Financial Bank, N.A. v. Ted & Paul, LLC*, 2013 IL App (1st) 122077, ¶ 17 n.3), that rationale does not apply here. The record is clear that when defendant initially appeared in the original action and contested the default, he never raised the issue of personal jurisdiction. Any personal-jurisdiction objection is therefore forfeit (see 735 ILCS 5/2-301 (West 2010) (requirements for objecting to personal jurisdiction)), so defendant cannot now assert lack of personal jurisdiction as a basis for vacating the judgment under section 2-1401. *Cf., e.g., Deutsche Bank National Trust Co. v. Hall-Pilate*, 2011 IL App (1st) 102632 (affirming denial of section 2-1401 petition where defendants participated in original action without objecting to personal jurisdiction).

No. 1-13-0543

¶ 6 Because section 2-1401 petitions cannot be used to challenge a mortgage foreclosure judgment and defendant has not identified any jurisdictional defects in the judgment, the circuit court was correct to deny defendant's petition.

¶ 7 Affirmed.