

2014 IL App (2d) 130574-U
No. 2-13-0574
Order filed June 26, 2014

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

ONE WEST BANK, FSB,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellee,)	
)	
v.)	No. 08-CH-4373
)	
ROBERT THOMAS a/k/a Robert C. Thomas,)	
)	
Defendant-Appellant,)	Honorable,
)	Robert G. Gibson,
(Daniel M. Dietz, <i>et al.</i> , Defendants).)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly found that the plaintiff had standing to prosecute its mortgage foreclosure action against the defendant.

¶ 2 The defendant, Robert Thomas, appeals from the orders of the circuit court of Du Page County approving the sale of his home in foreclosure, granting a deficiency judgment to the plaintiff, One West Bank, FSB (One West Bank), and denying his motion to vacate the order of judgment and the order confirming sale. On appeal, the defendant argues that One West Bank's

foreclosure action should have been dismissed because it did not have standing to seek foreclosure of his home. We affirm.

¶ 3 BACKGROUND

¶ 4 On July 31, 2007, IndyMac Bank FSB (IndyMac Bank) issued a mortgage to the defendant for property at 16W303 Shadow Creek Drive in Burr Ridge. The original amount of the indebtedness was \$565,600. The mortgagee was Mortgage Electronic Registration Systems, Inc., which was serving as nominee for IndyMac Bank.

¶ 5 On July 11, 2008, the Office of Thrift Supervision closed IndyMac Bank. On that same day, the FDIC transferred IndyMac Bank's assets to IndyMac Federal Bank FSB (IndyMac Federal).

¶ 6 On November 3, 2008, IndyMac Federal Bank FSB (IndyMac Federal) filed a complaint against the defendant, seeking to foreclose on a mortgage.

¶ 7 On March 19, 2009, the FDIC sold IndyMac Federal's assets to One West Bank.

¶ 8 On June 19, 2009, a default judgment was entered in IndyMac Federal's favor. On August 14, 2009, the trial court vacated the default judgment and granted the defendant 21 days to file an answer to the complaint.

¶ 9 On September 25, 2009, the defendant filed a motion to dismiss, arguing that IndyMac Federal did not have standing to pursue a complaint for foreclosure. The defendant noted that the mortgage document identified a different entity—IndyMac Bank—as the lender, not IndyMac Federal. Further, there was no assignment of the mortgage attached to the complaint.

¶ 10 On November 13, 2009, IndyMac Federal filed an amended complaint and attached a copy of the note and the assignment of the mortgage. The note bore an indorsement from IndyMac Bank into blank.

¶ 11 On June 18, 2010, IndyMac Federal moved for a default judgment, judgment for foreclosure and sale, and to substitute the plaintiff from IndyMac Federal to One West Bank. On October 22, 2010, the trial court granted the motion to substitute.

¶ 12 On December 10, 2010, One West Bank presented the original note in open court.

¶ 13 On December 16, 2011, One West Bank filed a motion for summary judgment and judgment for foreclosure and sale. On March 19, 2012, the trial court granted that motion.

¶ 14 On October 2, 2012, the property was sold at a judicial sale. On November 8, 2012, the trial court confirmed the judicial sale, and stayed possession of the property for 60 days.

¶ 15 On November 27, 2012, the defendant filed a response to the confirmation of sale and a motion to dismiss. Relying on *Deutsche Bank National Trust Co. v. Gilbert*, 2012 IL App (2d) 120164, the defendant argued that One West Bank did not have standing to seek foreclosure.

¶ 16 On February 13, 2013, the trial court granted One West Bank a deficiency judgment against the defendant.

¶ 17 On March 1, 2013, the trial court denied the defendant's motion to dismiss.

¶ 18 On March 15, 2013, the defendant filed a motion to vacate the judgment and order confirming sale. On May 1, 2013, the trial court denied that motion.

¶ 19 On May 31, 2013, the defendant filed a notice of appeal.

¶ 20 ANALYSIS

¶ 21 On appeal, the defendant argues that the trial court should have dismissed One West Bank's foreclosure action because it lacked standing to bring such an action.

¶ 22 In response, One West Bank argues that this court need not consider the defendant's argument because the defendant is not seeking review of the trial court's judgment for foreclosure and sale. One West Bank points out that in his notice of appeal the defendant

asserted that he was only appealing from the following orders: (1) the November 8, 2012, order confirming judicial sale; (2) the February 13, 2013 order granting the deficiency judgment; and (3) the May 1, 2013, denying his motion to vacate. One West Bank argues that because the defendant is not seeking review of the judgment for foreclosure and sale, this court lacks jurisdiction to review that order.

¶ 23 Pursuant to Supreme Court Rule 303(b)(2) (Ill. S. Ct. R. 303(b)(2) (eff. June 4, 2008)), when an appeal is taken from a specified judgment, the appellate court acquires no jurisdiction to review other judgments or parts of judgments that are not specified in or inferred from the notice of appeal. *Neiman v. Economy Preferred Insurance Co.*, 357 Ill. App. 3d 786, 790 (2005). The exception to this rule is when a nonspecified judgment can be said to have been a step in the procedural progression leading to the judgment specified in the notice of appeal. *Fitch v. McDermott, Will & Emory, LLP*, 401 Ill. App. 3d 1006, 1014 (2010). The purpose of the notice of appeal is to inform the prevailing party in the trial court that his opponent seeks review by a higher court. *Nussbaum v. Kennedy*, 267 Ill. App. 3d 325, 328 (1994). The notice should be considered as a whole and will be deemed sufficient to confer jurisdiction on an appellate court when it fairly and adequately sets out the judgment complained of and the relief sought, advising the successful litigant of the nature of the appeal. *Id.* Where the deficiency is one of form rather than substance, and the appellee is not prejudiced, the failure to comply strictly with the form of the notice is not fatal. *Fitch*, 401 Ill. App. 3d at 1014. This court liberally construes a notice of appeal absent prejudice to the litigants. *Alpha Gamma Rho Alumni v. People ex rel. Boylan*, 32 Ill. App. 3d 310, 313 (2001).

¶ 24 Although the defendant did not specify in his notice of appeal that he was appealing from the March 19, 2012, judgment for foreclosure and sale, it can be readily inferred that he was

seeking review of that order since he seeks review of the trial court's decision denying his motion to vacate the judgment for foreclosure and sale. We further note that the argument that the defendant raises on appeal—that One West Bank did not have standing to pursue its foreclosure action—is the same argument that he has been raising since 2009. Thus, the defendant's failure to specify that he was appealing from the trial court's March 19, 2012, judgment did not prejudice One West Bank.

¶ 25 We also find without merit One West Bank's argument that the issue raised by the defendant is barred by our supreme court's recent decision in *Wells Fargo Bank v. McCluskey*, 2013 IL 115469. In that case, the supreme court addressed what law was applicable when, after a judicial sale of property, a party sought to vacate an underlying default judgment. *Id.*, ¶ 1. Here, the defendant is not seeking to vacate a default judgment but rather a judgment for foreclosure that he actively contested. As the judgment ordering a mortgage foreclosure was not final and appealable until the trial court entered an order approving the sale and directing the distribution (*In re Marriage of Verdung*, 126 Ill. 2d 542, 555-56 (1989)), the defendant could not challenge the underlying foreclosure judgment until now. Accordingly, the defendant's argument that the plaintiff lacked standing to pursue its mortgage foreclosure action is properly before us.

¶ 26 Turning to the merits of the defendant's appeal, we now consider whether IndyMac Federal had standing at the time it filed its foreclosure action against the defendant. See *Gilbert*, 2012 IL App (2d) 120164, ¶ 15 (a party either has standing at the time the suit is brought or it does not). A foreclosure action may be brought by (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 5/15-1208 (West 2012); *Mortgage*

Electronic Registration Systems, Inc. v. Barnes, 406 Ill. App. 3d 1, 7 (2010). Here, IndyMac Bank provided a loan secured by the mortgage to the defendant. After the FDIC transferred IndyMac Bank's assets to IndyMac Federal, IndyMac Federal became the successor in interest to IndyMac Bank. See *Butera v. Attorneys' Title Guaranty Fund, Inc.*, 321 Ill. App. 3d 601, 605-06 (2001), citing *Historic Smithville Development Co. v. Chelsea Title & Guaranty Co.*, 184 N.J. Super. 282, 284 (1981) (explaining that if a corporation transfers all of its assets to another entity, the transferee is a successor in every sense of the word). Thus, IndyMac Federal had standing to bring a foreclosure action against the defendant. See *Barnes*, 406 Ill. App. 3d at 7.

¶ 27 Further, since IndyMac Federal sold all of its assets to One West Bank, One West Bank became IndyMac Federal's successor and therefore had standing to maintain the suit against the defendant. See *Butera*, 321 Ill. App. 3d at 605-06. One West Bank additionally established its standing when it presented the original note in open court. This showed that it had an interest in the mortgage. *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 26. A person who has interest in a controversy has standing to bring suit. *Gilbert*, 2012 IL App (2d) 120164, ¶ 15. We thus reject the defendant's standing claim.

¶ 28 In so ruling, we find the defendant's reliance on *Gilbert* to be misplaced. In *Gilbert*, the plaintiff bank filed a mortgage foreclosure action against the defendant before it had obtained an interest in the defendant's property. *Gilbert*, 2012 IL App (2d) 120164, ¶ 23. As such, the plaintiff lacked standing to prosecute the foreclosure action. *Id.* Here, as discussed above, IndyMac Federal had standing when it filed its action against the defendant. As IndyMac Federal had standing, its successor in interest, One West Bank, also had standing. Accordingly, *Gilbert* is not applicable to this case.

¶ 29

CONCLUSION

¶ 30 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 31 Affirmed