

2016 IL App (1st) 150422-U
No. 1-15-0422
September 30, 2016

SECOND DIVISION

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

FIRST DISTRICT

CITIBANK, N.A., as Trustee for WaMu)	Appeal from the Circuit Court
2004-AR11)	Of Cook County.
)	
Plaintiff-Appellee,)	
)	No. 09 CH 48906
v.)	
)	The Honorable
MARYANN MIJAJLOVIC aka MARY ANN)	Darryl B. Simko,
MIJAJLOVIC, SEYMOUR KURTZ,)	Judge Presiding.
HARRIS N.A., and 630 NORTH STATE)	
PARKWAY CONDOMINIUM ASSOCIATION,)	
an Illinois not-for profit corporation,)	
)	
Defendants.)	
)	
(Maryann Mijajlovic and Seymour Kurtz,)	
Defendant-Appellants).)	

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Hyman and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit courts have subject matter jurisdiction, pursuant to Article VI Section 9 of the Illinois Constitution, over all justiciable matters. A mortgage foreclosure case is a justiciable matter over which a circuit court has subject matter jurisdiction. Therefore, the circuit court had the power to enter a judgment of foreclosure and approve the sale because an amendment to a plaintiff's name, which was a

correctable misnomer, relates back to the original complaint, and the amended name neither creates a new entity nor does it divest the circuit court of personal jurisdiction over the defendants when personal jurisdiction was acquired when the defendants, in an agreed order, submitted to the jurisdiction of the court.

¶ 2 On December 8, 2009, the plaintiff, Citibank, NA as Trustee for WAMU Mortgage Pass-Through Certificates Series 2004-AR11¹, filed a mortgage foreclosure action against Maryann Mijajlovic aka Mary Ann Mijajlovic, Seymour Kurtz, Harris N.A., and 630 North State Parkway Condominium Association, an Illinois not-for profit corporation, involving the property located at 630 North State Street, Unit 2701, Chicago, Illinois, because the defendants failed to make payments on their note and mortgage from August 1, 2009 to the present. On July 30, 2010, Maryann filed a motion to dismiss the complaint because Citibank failed to attach the assignment of the mortgage to the complaint. The circuit court dismissed the motion on September 10, 2010. On October 5, 2010, Maryann filed a motion for rehearing on the motion to dismiss. On January 17, 2013, the circuit court granted Maryann's motion for rehearing and allowed Citibank to file an amended complaint. On February 6, 2013, Citibank filed its amended complaint and a corrective assignment each updating Citibank's name from "Citibank, N.A., as Trustee for WaMu 2004-AR11" to "Citibank, NA as Trustee for WAMU Mortgage Pass-Through Certificates Series 2004-AR11."

¶ 3 On September 19, 2013, the circuit court entered the following orders: (1) an order of default against Maryann, Seymour, and 630 North State Parkway Condominium Association for their failure to answer or otherwise plead to Citibank's complaint; (2) an order granting Citibank's motion for summary judgment; (3) an order appointing the Judicial Sales

¹ The original complaint was filed Citibank, by N.A., as Trustee for WaMu 2004-AR11, but the plaintiff later amended the complaint to reflect the party's name as it appeared in the appended corrective assignment of mortgage.

Corporation as the selling officer; and (4) a judgment of foreclosure and sale on the property. On January 12, 2015, over the objections of Maryann and Seymour that Citibank did not have standing to bring the action and that as a result, the circuit court did not have subject matter jurisdiction, the circuit court entered an order confirming the sale. On February 10, 2015, Maryann and Seymour filed their notice of appeal seeking review of the January 12, 2015 order approving the sale and all related orders. In their appeal, Maryann and Seymour maintain that: (1) the circuit court did not have subject matter jurisdiction over the case; (2) when Citibank amended its complaint on February 6, 2013, it created a new entity and the circuit court did not have personal jurisdiction over Maryann and Seymour because Citibank, a new entity, did not effect service over Maryann and Seymour; and (3) because the circuit did not have subject matter jurisdiction or personal jurisdiction, every order entered after February 6, 2013 was void.

¶ 4 We find that circuit courts have subject matter jurisdiction, pursuant to Article VI Section 9 of the Illinois Constitution, over all justiciable matters. *In re Luis R.*, 239 Ill. 2d 295, 300 (2010); Ill. Const. 1970, art. VI, § 9. We also find that a mortgage foreclosure case is a justiciable matter over which a circuit court has subject matter jurisdiction. *Nationstar Mortgage, LLC v. Canale*, 2014 IL App (2d) 130676, ¶ 17. We further find that amending a party's name in a complaint is a correctable misnomer which relates back to the original complaint, and the amendment does not create a new entity or divest the circuit court of personal jurisdiction over the defendants when the defendants submitted to jurisdiction in an agreed order. *U.S. Bank National Association v. Luckett*, 2013 IL App (1st) 113678, ¶¶ 10,

21, 23, 27. Therefore, we hold the circuit court did not err when it entered the order approving the sale.

¶ 5

BACKGROUND

¶ 6

On December 8, 2009, Citibank² filed a mortgage foreclosure action against the defendants, involving the property located at 630 North State Street, Unit 2701, Chicago, Illinois (the property) because the defendants failed to make payments on their note and mortgage from August 1, 2009 to the present. In December 2009, special process server Jonathan R. Dixon, an employee of Stern Process & Investigation, LLC, attempted, five times to serve Maryann and Seymour with summons and a copy of the complaint at the property. On December 11, 2009, Dixon attempted to serve Seymour with summons and a copy of the complaint at his office at 180 North LaSalle Street, Suite 1925, Chicago, Illinois.

¶ 7

On December 9, 2009, special process server Keith R. Bockelmann, an employee of Stern Process & Investigation, LLC, served 630 North State Parkway Condominium Association with summons and a copy of the complaint on Claudia Dickman, the receptionist, at 750 Lake Cook Road.

¶ 8

After attempts to acquire jurisdiction by personal service on Maryann and Seymour, Citibank filed a motion for an alternate method of service on January 7, 2010, indicating Citibank's diligent effort to effect service on Maryann and Seymour and expressing its belief that Maryann and Seymour were evading service. On January 21, 2010, the circuit court entered an order granting Citibank's motion for an alternate method of service, allowing

²The mortgage document listed "Washington Mutual Bank, FA, as the lender, but on December 4, 2009, Washington Mutual assigned the mortgage to Citibank, N.A., as Trustee for WaMu 2004-AR11. Citibank later filed a corrective mortgage assignment executed on January 24, 2013 that transferred the mortgage to Citibank, NA as Trustee for WAMU Mortgage Pass-Through Certificates Series 2004-AR11.

Citibank to: (1) send an alias summons and a copy of the complaint to Maryann and Seymour by certified, overnight, and regular mail, and (2) post a copy of the alias summons and complaint on the property. The order required Maryann and Seymour to file their answer 30 days after the summons and complaint were mailed.

¶ 9 On February 1, 2010, Citibank filed an alias summons for Maryann and mailed a copy of the summons and complaint overnight via UPS. On February 2, 2010, special process server Dixon served Maryann with alternate service by posting a copy of the summons and complaint on the door of the property and mailing a copy by regular mail and by certified mail.

¶ 10 On February 5, 2010, Citibank filed an alias summons for Seymour. That same day, special process server Dixon served Seymour with alternate service by posting a copy of the summons and complaint on the property and mailing a copy by regular mail, by certified mail and overnight via UPS.

¶ 11 On February 11, 2010, Citibank filed a summons for Harris, N.A. On February 12, 2010, special process server Dixon served Harris, N.A. by leaving a copy of the summons and complaint with supervisor Doris Becton at 111 West Monroe Street, Chicago, Illinois. On March 19, 2010, the law firm of Ehrenberg & Egan, LLC filed an appearance on behalf of Harris, N.A. and filed an answer to Citibank's complaint.

¶ 12 On February 23, 2010, Norman Hanfling filed an appearance on behalf of Maryann and Seymour and filed a motion for an order quashing service on them. In the motion, Maryann and Seymour maintained that service was allegedly effected on them by posting a notice on their door because Seymour and Maryann were avoiding service. Seymour and Maryann

maintain that the only basis Citibank has for asserting that Seymour and Maryann were avoiding service was that they did not answer the door when the process server attempted service and that such allegations are not an adequate showing that Maryann and Seymour could not be served "by normal means."

¶ 13 On July 2, 2010, the circuit court entered the following agreed order: (1) service on Maryann and Seymour was quashed; (2) Seymour and Maryann submitted themselves to the jurisdiction of the court; and (3) Seymour and Maryann were given 28 days to answer or otherwise plead to Citibank's complaint.

¶ 14 On July 30, 2010, Maryann filed a motion to dismiss in which she maintained that in order to plead an assignment of a mortgage, a copy of the assignment must be attached to the complaint, and because Citibank failed to attach a copy of the assignment of the mortgage from Washington Mutual Bank to Citibank the complaint must be dismissed. On September 10, 2010, without counsel appearing for Maryann, the circuit court denied Maryann's motion to dismiss. The record does not contain a transcript, bystander's report or report of proceedings of the hearing.

¶ 15 On October 5, 2010, Maryann filed a motion for rehearing explaining that the absence of counsel on the September 10, 2010 hearing date was the result of a Jewish holiday falling on the same day. Maryann also maintained that the documents necessary for Citibank to file its case were not attached and never provided to Maryann. Maryann finally requested a rehearing on her motion to dismiss.

¶ 16 On January 17, 2013, the circuit court entered an order (1) granting Maryann's motion for rehearing; (2) granting Maryann's motion to dismiss; and (3) giving Citibank 28 days to file an amended complaint.

¶ 17 On February 6, 2013, Citibank, NA as Trustee for WAMU Mortgage Pass-Through Certificates Series 2004-AR11 filed an amended complaint for foreclosure. Attached to the amended complaint was the original note with a blank endorsement and a corrective assignment listing Citibank, NA as Trustee for WAMU Mortgage Pass-Through Certificates Series 2004-AR11 as the assignee. On July 15, 2013, Citibank filed a motion for summary judgment maintaining that because Harris, N.A. did not deny that Maryann defaulted on the mortgage and because Harris, N.A. did not deny that its interest in the property is junior to Citibank's interest, there is no genuine issue of material fact.

¶ 18 Citibank filed a motion for default order against Maryann, Seymour, Harris, N.A., and 630 North State Parkway Condominium Association on July 15, 2013. In the motion, Citibank maintained that (1) Maryann and Seymour submitted themselves to the jurisdiction of the court on July 2, 2010; (2) 630 North State Parkway Condominium Association was served on December 9, 2009; and (3) 60 days have passed since the date of service and none of the defendants have filed an appearance, answer, or other responsive pleading.

¶ 19 On July 15, 2013, Citibank also filed a motion for judgment of foreclosure and sale. That same day, Citibank filed an affidavit of the amounts due and owing of Jerry McCoy, Vice President of JPMorgan Chase Bank. On July 15, 2013, Citibank also filed an affidavit for judgment of its counsel, Danielle Patterson, as well as military affidavits which established

that neither Maryann nor Seymour were in the military. Citibank also filed a motion, on July 15, 2013, to appoint the Judicial Sales Corporation as the selling officer.

¶ 20 On September 16, 2013, Citibank filed a loss mitigation affidavit indicating the programs the mortgage was eligible for and indicating which steps were taken to evaluate whether the mortgage loan qualified for any of the programs. Citibank also filed an affidavit of contested attorney's fees on September 16, 2013.

¶ 21 On September 19, 2013, the circuit court entered the following orders: (1) an order defaulting Maryann, Seymour, and 630 North State Parkway Condominium Association for their failure to answer or otherwise plead to Citibank's complaint; (2) an order granting Citibank's motion for summary judgment against Harris, N.A.; (3) an order appointing the Judicial Sales Corporation as the selling officer; and (4) a judgment of foreclosure and sale on the property.

¶ 22 On October 18, 2013, Maryann and Seymour filed a motion to vacate the default order, the default judgment, the summary judgment order, and all other judgments and orders against them that were entered on September 19, 2013, and for an order granting them leave to file a response to Citibank's amended complaint. On November 26, 2013, the circuit court entered an order denying Maryann and Seymour's motion, and the record does not contain a transcript, bystander's report or report of proceedings of the hearing.

¶ 23 On November 7, 2013, the Judicial Sales Corporation filed a proof of mailing notice of sale to Maryann and Seymour's attorney, to Harris, N.A.'s counsel, and to 630 North State Parkway Condominium Association. The Judicial Sales Corporation filed an amended proof

of mailing notice of sale to the same parties, but also mailed a copy to Maryann at the property address, on November 18, 2013 and on December 4, 2013.

¶ 24 On December 26, 2013, Maryann and Seymour filed a notice of appeal seeking review of the November 26, 2013 order that denied Maryann and Seymour's motion to vacate.

¶ 25 On June 19, 2014, Citibank filed a motion for order approving the sale. On July 7, 2014, Maryann and Seymour filed an answer and objections to Citibank's motion for entry of an order approving the sale and a motion to dismiss the amended complaint and all related orders or judgments on the grounds that: (1) Citibank did not have standing to initiate the foreclosure action because it had no ownership or property interest in the property; and (2) because the circuit court did not have subject matter jurisdiction over the action, the subsequent orders are void.

¶ 26 On October 15, 2014, Citibank filed its combined reply in support of its motion for order approving the sale and its response to Maryann and Seymour's motion to dismiss the amended complaint. In its reply, Citibank raised two main arguments that Maryann and Seymour: (1) failed to assert a basis upon which to deny the confirmation of sale; and (2) have not and cannot demonstrate that Citibank lacks standing. Attached to the response was an affidavit of Curtis Pulsipher, the Senior Vice President of Loan Administration with Select Portfolio Servicing, Inc., who averred that according to his "review of the books and records of SPS, the document custodian for [Citibank] has held the original, endorsed note since prior to the date this mortgage foreclosure action was filed." Pulsipher further averred that the corrective assignment of the mortgage was recorded to correct the name of the assignee in the original assignment, not to substitute a new party as the assignee.

¶ 27 On December 19, 2014, Maryann and Seymour filed a response to Citibank's reply in support of its motion for order approving sale, entitled, "Defendants' Answer and Objections to Plaintiff's Motion for Confirmation of Sale and Other Relief Requested by Plaintiff and Defendants' Motion to Dismiss the Amended Complaint and All Orders and Judgments Based on or Related to it." In their response, Maryann and Seymour maintained: (1) that the original plaintiff (Citibank, N.A., as Trustee for WaMu 2004-AR11) never had standing to file the foreclosure; (2) that the original plaintiff never filed a complaint in this case and that a new entity "with a name similar to Plaintiff's" (Citibank, NA as Trustee for WAMU Mortgage Pass-Through Certificates Series 2004-AR11) filed an amended complaint; (3) that the new plaintiff did not have standing to commence the foreclosure action because the corrective assignment was executed on January 24, 2013 and the original complaint was filed on December 8, 2009; and (4) because the new plaintiff did not have standing, the circuit court did not and does not have subject matter jurisdiction.

¶ 28 On January 12, 2015, the circuit court overruled Maryann and Seymour's objections and entered an order confirming the sale. On February 10, 2015, Maryann and Seymour filed their notice of appeal seeking review of the January 12, 2015 order approving the sale and all related orders to Citibank's amended complaint and order approving sale.

¶ 29 ANALYSIS

¶ 30 The primary issue before this court is whether the circuit court erred in confirming the foreclosure sale. An order confirming the sale completes the sale of property. *Household Bank, FSB, v. Lewis*, 229 Ill. 2d 173, 181 (2008). Our supreme court has held that "[t]he provisions of section 15–1508 [of the Illinois Mortgage Foreclosure Law] have been

construed as conferring on circuit courts broad discretion in approving or disapproving judicial sales." *Lewis*, 229 Ill. 2d at 178. Therefore, we review a circuit court's order confirming a foreclosure sale for abuse of discretion. *Lewis*, 229 Ill. 2d at 178. The circuit court abuses its discretion when its decision is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same viewpoint. *CitiMortgage, Inc. v. Moran*, 2014 IL App (1st) 132430, ¶ 24.

¶ 31 Maryann and Seymour maintain in their brief that the circuit court erred in confirming the foreclosure sale because it did not have subject matter jurisdiction over the case or personal jurisdiction over the parties because Citibank, NA as Trustee for WAMU Mortgage Pass-Through Certificates Series 2004-AR11 (Citibank #2), was a separate party from Citibank, N.A., as Trustee for WaMu 2004-AR11 (Citibank #1), and therefore, the amended complaint filed by Citibank #2 did not confer jurisdiction on the circuit court over the defendants because the bank lacked standing and was a new party filing a new action. In addition, Maryann and Seymour maintain that as a result of the circuit court not having subject matter jurisdiction over the case or personal jurisdiction over the parties all orders entered after February 6, 2013 were void. We disagree.

¶ 32 We recognize that for a circuit court's judgment or order to be valid, the court must have both subject matter jurisdiction of the case and personal jurisdiction over the parties. *In re Marriage of Verdung*, 126 Ill. 2d 542, 547 (1989); *State Bank v. Thill*, 113 Ill. 2d 294, 308 (1986). Because Maryann and Seymour are challenging the validity of the circuit court's orders, we must first determine whether the circuit court had subject matter jurisdiction over this foreclosure case.

¶ 33 Subject Matter Jurisdiction

¶ 34 Subject matter jurisdiction is defined as a "court's power 'to hear and determine cases of the general class to which the proceeding in question belongs.' " *In re Luis R.*, 239 Ill. 2d at 300. Article VI Section 9 of the Illinois Constitution provides:

"Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office. Circuit Courts shall have such power to review administrative action as provided by law." Ill. Const. 1970, art. VI, § 9.

Therefore, except in administrative review actions, subject matter jurisdiction is conferred on a circuit court entirely by the Illinois Constitution. *In re Luis R.*, 239 Ill. 2d at 300; Ill. Const. 1970, art. VI, § 9.

¶ 35 The only requirement codified in the constitution for a circuit court to have subject matter jurisdiction over a case is for the case to involve a justiciable matter. Ill. Const. 1970, art. VI, § 9. It is well established that foreclosure actions involve justiciable matters and are within the general class of cases that the circuit court has the inherent power to hear and determine. *Canale*, 2014 IL App (2d) 130676, ¶ 17. The doctrine of standing is designed to preclude persons having no interest in a controversy from bringing suit. *In re Marriage of Rodriguez*, 131 Ill. 2d 273, 280 (1989). While the bank's standing is an element of justiciability (*People v. Greco*, 204 Ill. 2d 400, 409 (2003)), challenging the bank's standing does not preclude a valid suit from being litigated. *In re Marriage of Rodriguez*, 131 Ill. 2d at 280. Therefore, we find that the circuit court had subject matter jurisdiction over this foreclosure case.

¶ 36 Personal Jurisdiction

¶ 37 Next, we must determine whether the circuit court had personal jurisdiction over Maryann and Seymour. Personal jurisdiction may be acquired either by following the statutory procedures for service of process or by a party voluntarily submitting to the circuit court's jurisdiction. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 18; *In re Marriage of Verdung*, 126 Ill. 2d at 547.

¶ 38 In their brief, Maryann and Seymour maintain that the circuit court did not have personal jurisdiction over them because "no service of process, and specifically no summons [were] served on them."

¶ 39 While the record clearly reflects numerous attempts at proper service upon both Maryann and Seymour by Citibank on December 9, 2009 through December 14, 2009, the record also reflects that Maryann and Seymour submitted themselves to the jurisdiction of the circuit court in an agreed order on July 2, 2010. Therefore, the circuit court acquired jurisdiction on July 2, 2010 and the court's jurisdiction runs prospectively from that date. *Mitchell*, 2014 IL 116311, ¶ 43.

¶ 40 Despite the overwhelming evidence in the record which establishes that the circuit court had personal jurisdiction over Maryann and Seymour, their argument for lack of service is predicated on the fact that when Citibank submitted its amended complaint and corrective assignment, it did so under an amended name (Citibank, NA as Trustee for WAMU Mortgage Pass-Through Certificates Series 2004-AR11 and not Citibank, N.A., as Trustee for WaMu 2004-AR11), therefore, in the defendants' opinion, Citibank was required to effect service on Maryann and Seymour anew. We disagree.

¶ 41 Here, we note that Maryann and Seymour make the argument, for the first time on appeal, that Citibank under its amended name, was required to effect service on them. Generally, issues that are not raised in the circuit court are forfeited when raised for the first time on appeal. *In re Marriage of Minear*, 181 Ill. 2d 552, 564 (1998) (citing *In re Marriage of Rodriguez*, 131 Ill. 2d 273, 279 (1989)). However, forfeiture serves as an admonition to the parties rather than a limitation on the jurisdiction of this court. *Jackson v. Board of Election Commissioners of City of Chicago*, 2012 IL 111928, ¶ 33. Moreover, courts of review may choose to override considerations of waiver and forfeiture in order to achieve a just result and maintain a sound and uniform body of precedent. *Jackson*, 2012 IL 111928, ¶ 33.

¶ 42 Forfeiture aside, we will address Maryann and Seymour's arguments on their merits. The record reflects that Citibank, NA as Trustee for WAMU Mortgage Pass-Through Certificates Series 2004-AR11 and Citibank, N.A., as Trustee for WaMu 2004-AR11 are the same entity. Citibank received leave of the court to amend the original complaint and attach an assignment, which placed the mortgage in the hands of Citibank, on January 17, 2013. Specifically, the court stated:

**** Obviously, you don't have to attach the assignment, but if you have an assignment and you attach it, I don't think that the standing issue can be disputed successfully.

* * *

If there's an assignment that shows that it got into the hands of Citibank, I think that they can overcome the challenge.

[Defendants' Counsel]: *** And they're granted 28 days to amend.

THE COURT: To amend, yes."

¶ 43 Section 2-616 of the Code of Civil Procedure governs amendments to pleadings and provides in pertinent part:

"At any time before final judgment amendments may be allowed on just and reasonable terms, introducing any party who ought to have been joined as plaintiff or defendant, dismissing any party, changing the cause of action or defense or adding new causes of action or defenses, and in any matter, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought or the defendant to make a defense or assert a cross claim." 735 ILCS 5/2-616(a) (West 2008).

¶ 44 Section 2-616(b) of the Code establishes that the amended pleading relates back to the original pleading and provides:

"The cause of action *** set up in any amended pleading shall not be barred by lapse of time under any statute or contract prescribing or limiting the time within which an action may be brought or right asserted, if the time prescribed or limited had not expired when the original pleading was filed, and if it shall appear from the original and amended pleadings that the cause of action asserted *** in the amended pleading grew out of the same transaction or occurrence set up in the original pleading, even though the original pleading was defective in that it failed to allege *** the existence of some fact or some other matter *** and for the purpose of preserving the cause of action *** set

up in the amended pleading, and for that purpose only, an amendment to any pleading shall be held to relate back to the date of the filing of the original pleading so amended." 735 ILCS 5/2-616(b) (West 2008).

¶ 45 Section 2-401(b) of the Code prescribes the procedure for correcting party names and provides:

"Misnomer of a party is not a ground for dismissal but the name of any party may be corrected at any time, before or after judgment, on motion, upon any terms and proof that the court requires." 735 ILCS 5/2-401(b) (West 2008).

¶ 46 This court has recognized the importance of promoting efficient and prompt adjudication of disputes by allowing the correction of misnomers. Notably, this court held in *U.S. Bank National Association v. Luckett*, 2013 IL App (1st) 113678, ¶ 23, that although misnomers most often occur when plaintiffs misname defendants, sometimes plaintiffs misname themselves and "Illinois courts have consistently been reluctant to dismiss cases because of minor variations in a plaintiff's name, particularly where the defendant suffered no prejudice because of the error. By doing so, the courts have placed substance over form and promoted the efficient and prompt adjudication of disputes ***." In addition, the relation-back doctrine automatically applies in misnomer cases, so that the amended complaint would be considered filed upon the filing date of the original counterparts. *Luckett*, 2013 IL App (1st) 113678, ¶ 27.

¶ 47 We find that "Citibank, N.A., as Trustee for WaMu 2004-AR11," was amended to read "Citibank, NA as Trustee for WAMU Mortgage Pass-Through Certificates Series 2004-AR11" and that the amendment names the same party; and we also find that there is nothing

to suggest that amending the party's name is anything more than a correctable misnomer which is attributable to a scrivener's error. *Luckett*, 2013 IL App (1st) 113678, ¶ 21.

¶ 48 Next, we look to cases discussing the misnomer doctrine for guidance. See *Luckett*, 2013 IL App (1st) 113678, ¶ 21; In *Luckett*, the plaintiff, U.S. Bank National Association, as trustee for Credit Suisse First Boston HEAT 2005-5, misnamed itself as "Bank National Association, as trustee for Credit Suisse First Boston HEAT 2005-5" in its forcible entry and detainer complaint, leaving out the "U.S." before its name. *Luckett*, 2013 IL App (1st) 113678, ¶ 5. The circuit court entered an order of possession in favor of U.S. Bank. *Luckett*, 2013 IL App (1st) 113678, ¶ 6. U.S. Bank was later ordered to file a written motion to amend the complaint. *Luckett*, 2013 IL App (1st) 113678, ¶ 10. In its motion, U.S. Bank maintained that the failure to include "U.S." before its name was a misnomer that was created by a scrivener's error. *Luckett*, 2013 IL App (1st) 113678, ¶ 10. The circuit court granted the motion to amend and ordered that both the complaint and the order of possession be amended to add "U.S." before the plaintiff's name. *Luckett*, 2013 IL App (1st) 113678, ¶ 10. On appeal, this court affirmed the judgment of the circuit court and held that the case involved a correctible misnomer, that the circuit court did not err when it reached the same conclusion, and that the modification to U.S. Bank's name related back to the original complaint. *Luckett*, 2013 IL App (1st) 113678, ¶ 27. See also *Todd M. Musburger, Ltd v. Meier*, 394 Ill. App. 3d 781, 805-08 (2009) (where the court applied the misnomer rule when the plaintiff filed suit as "The Law Offices of Todd Q. Musburger, Ltd." instead of its official corporate name, "Todd W. Musburger, Ltd."); *Bristow v. Westmore Builders, Inc.*, 266 Ill. App. 3d 257, 260-62 (1994) (where the defendant argued that the complaint was a nullity because the named

corporate party plaintiff did not exist and the court rejected that argument and concluded it was a correctable misnomer.); *Calvert Distillers Co. v. Vesolowski*, 14 Ill. App. 3d 634, 636 (1973) (where the complaint listed the plaintiff's name as "House of Seagram, Inc." but the actual name was "Joseph E. Seagram and Sons, Inc." and the court found that this error was not enough reason to render the case a nullity).

¶ 49 In the present case, the original mortgage assignment was executed on December 4, 2009, and transferred the mortgage to Citibank, NA as Trustee for WaMu 2004-AR11. Here, unlike *Luckett*, Citibank was not required to file a written motion to amend because an order revealed that Citibank had already received leave of court, on January 17, 2013, to amend its complaint and submit the appropriate assignment. After the circuit court's order gave Citibank leave to amend its complaint, Citibank filed an amended complaint on February 6, 2013, and also filed a corrective assignment which was "recorded to correct the assignee" in the original assignment of the mortgage. Moreover, the affidavit of Mr. Pulsipher³ established that Citibank, NA as Trustee for WAMU Mortgage Pass-Through Certificates Series 2004-AR11 was in possession of the original blank endorsed note since prior to the original filing of the action and that the corrective assignment merely corrected the name of the actual assignee and was not intended to add a new party. The mere attachment of a note to the complaint is *prima facie* evidence that the plaintiff owns the note. *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 25. Further, a blank endorsement

³ This court will rely on the truth of Mr. Pulsipher's affidavit because there is nothing in the record to establish that Maryann and Seymour filed the averments in counteraffidavits or other evidentiary materials to controvert the allegations in the affidavit. *F.H. Paschen/S.N. Nielsen, Inc. v. Burnham Station, L.L.C.*, 372 Ill. App. 3d 89, 93 (2007).

of a note is payable to the bearer and production of such a note is proof the plaintiff has an interest in the mortgage. *Garner*, 2013 IL App (1st) 123422, ¶ 25. Therefore, it is clear that under either name, Citibank was an interested party in this case and possessed the note.

¶ 50 In addition, the record reflects that the corrective assignment did not create a new party to the litigation, but was merely recorded to correct a misnomer in the identity of the trust. The corrective assignment added five words "Mortgage Pass-Through Certificates Series" between the already existing characters "WaMu" and "2004-AR11." We find that the bank's name "Citibank, NA as Trustee" and "WaMu 2004-AR11," remaining consistent throughout the litigation (on the original complaint, the original assignment, the amended complaint, the corrective assignment and on other pleadings), and the words added to the bank's name establish that the name "Citibank, NA as Trustee for WaMu 2004-AR11" was a correctable misnomer for the name "Citibank, NA as Trustee for WAMU Mortgage Pass-Through Certificates Series 2004-AR11." Therefore, we find that "Citibank, NA as Trustee for WaMu 2004-AR11" was and is the same entity as "Citibank, NA as Trustee for WAMU Mortgage Pass-Through Certificates Series 2004-AR11," and that the amendment relates back to the original complaint. We further find that because "Citibank, NA as Trustee for WAMU Mortgage Pass-Through Certificates Series 2004-AR11" is the same entity as "Citibank, NA as Trustee for WaMu 2004-AR11," it was not required to effect service on Maryann and Seymour a second time, and that Maryann and Seymour's voluntary submission to the circuit court's jurisdiction on July 2, 2010 remains in effect. Accordingly, we find that the circuit court did have personal jurisdiction over Maryann and Seymour.

¶ 51 Here, because the circuit court had both subject matter jurisdiction over the case and personal jurisdiction over the parties, we hold that the circuit court did not abuse its discretion when it entered the January 12, 2015 order approving the sale. Finally, we hold that all orders subsequent to February 6, 2013 are valid and we affirm the decision of the circuit court.

¶ 52 CONCLUSION

¶ 53 The circuit court has subject matter jurisdiction over all justiciable matters pursuant to Article VI section 9 of the Illinois Constitution. *In re Luis R.*, 239 Ill. 2d at 300; Ill. Const. 1970, art. VI, § 9. This mortgage foreclosure case is a justiciable matter over which the circuit court had subject matter jurisdiction (*Canale*, 2014 IL App (2d) 130676, ¶ 17) and, while the bank's standing is an element of justiciability (*Greco*, 204 Ill. 2d at 409), challenging the bank's standing has no effect on the circuit court's ability to litigate a valid suit. *In re Marriage of Rodriguez*, 131 Ill. 2d at 280; *Ontiveros*, 2015 IL App (2d) 140145, ¶ 22. Moreover, an amendment to the bank's name neither creates a new entity nor does it divest the circuit court of personal jurisdiction over a defendant where the defendants submitted to the court's jurisdiction in an agreed order. *Luckett*, 2013 IL App (1st) 113678, ¶¶ 10, 21, 23, 27. Therefore, the circuit court did not err when it entered the order approving the sale.

¶ 54 Affirmed.