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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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21 <sup>ST</sup> MORTGAGE CORPORATION,	)	Appeal from the Circuit Court
	)	of Cook County.
	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 2007 CH 24080
	)	
	)	Hon. Daniel P. Brennan
MARY ANGELA LENGERICH, A/K/A	)	Judge Presiding
M. ANGELA LENGERICH; UNKNOWN	)	
NON-RECORD CLAIMANTS,	)	
	)	
Defendants-Appellants.	)	

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JUSTICE SIMON delivered the judgment of the court.  
Presiding Justice Pierce and Justice Neville concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court did not err in granting a judgment of foreclosure in favor of the bank. Defendant failed to establish that the bank did not have standing to pursue the foreclosure action. The bank employee's summary judgment affidavit contained sufficient factual detail to satisfy Supreme Court Rule 191(a).

¶ 2 This case involves a residential mortgage foreclosure action instituted by Plaintiff-Appellee 21<sup>st</sup> Century Mortgage Corporation (“Bank”) against Defendant-Appellant Mary A. Lengerich (“Lengerich”). Lengerich argues on appeal that the circuit court erred in granting

summary judgment and a judgment of foreclosure in favor of the Bank. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On December 5, 2008, Lengerich obtained a mortgage for the property located at 612 S. Humphrey Avenue in Oak Park, Illinois. Lengerich failed to make payments on the mortgage on and after July 1, 2009. On December 14, 2009, predecessor-plaintiff, GMAC Mortgage, LLC filed a complaint to foreclose the mortgage. Subsequently, Lengerich completed a mortgage foreclosure mediation referral order, requesting the court to refer the matter to mediation pursuant to the Home Affordable Modification Program (HAMP) application. Both parties participated in two mediation sessions between March 24, 2011 and June 24, 2011 without an agreement being reached.

¶ 5 On September 12, 2011, the Bank moved for a judgment of foreclosure. At the hearing, the circuit court entered an order granting Lengerich 28 days to file a responsive pleading to the Bank's complaint noting that Lengerich was attempting to sell the property to pay the mortgage, as well as trying to sell the property via a short sale.

¶ 6 On March 6, 2014 Lengerich filed her answer to the complaint raising several affirmative defenses: (1) the Bank's alleged lack of standing, (2) the Bank's alleged failure to comply with Federal Housing Administration (FHA) requirements; (3) the Bank's alleged violation of the grace period notice statute, and (4) the Bank's alleged violation of Supreme Court Rule 113. The court granted the Bank's motion to strike these affirmative defenses on September 17, 2014. Lengerich re-alleged the same defenses on October 7, 2014, and added the claims of fraud and unclean hands. On April 30, 2015, the circuit court granted the Bank's motion to strike the defenses. Eventually, the Bank moved for summary judgment. On October 6, 2015, the circuit

court granted the Bank's motion for summary judgment and entered a judgment of foreclosure against Lengerich. This appeal followed.

¶ 7

#### ANALYSIS

¶ 8 On appeal, Lengerich argues that the court erred when it granted the Bank's motion for summary judgment because the record raised several issues of material fact. Specifically, Lengerich contends that: (1) the affidavit submitted by the Bank in support of its motion for summary judgment violated Illinois Supreme Court Rule 191(a), and (2) the Bank lacked standing to pursue the instant foreclosure action.

¶ 9 Summary judgment is proper when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005 (c) (West 2012). To survive a motion for summary judgment, the nonmoving party must present some evidentiary facts that would arguably entitle him to judgment. *Horwitz v. Holabird & Root*, 212 Ill. 2d 1, 8 (2004). Furthermore, "[d]enials in a defendant's answer do not create a material issue of genuine fact to prevent summary judgment." *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 49.

¶ 10 We review *de novo* the order granting the motion for summary judgment, and "the judgment may be affirmed based on any basis found in the record." *Weather-Tite, Inc. v. University of St. Francis*, 233 Ill. 2d 385, 389 (2009).

¶ 11 Lengerich first argues that the affidavit submitted by the Bank in support of its motion for summary judgment violated Illinois Supreme Court Rule 191(a). Illinois Supreme Court Rule 191(a) provides:

“Affidavits in support of and in opposition to a motion for summary judgment

under section 2-1005 of the Code of Civil Procedure [735 ILCS 5/2-1005], . . . shall be made on the personal knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counterclaim, or defense is based; shall have attached thereto sworn or certified copies of all documents upon which the affiant relies; shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto. If all of the facts to be shown are not within the personal knowledge of one person, two or more affidavits shall be used.”

Ill. Sup. Ct. R. 191(a) (eff. Jan. 4, 2013).

¶ 12 Lengerich fails to explain how the affidavit of Crissy Sanders violated the requirements of Illinois Supreme Court Rule 191(a). To the contrary, the affidavit signed by Sanders contained sufficient factual detail to satisfy the requirements of Rule 191(a). Specifically, her affidavit set forth averments regarding the fact that she was an employee of the Bank and that her duties included "reviewing and analyzing the business and loan records for loans that [the Bank] services." She further averred that the Bank maintained records and a file for each of its services which included "a loan payment history, computer generated records, and copies of origination documents." Sanders asserted that she reviewed and was familiar with the business record and the file for Lengerich's loan. The mortgage, note and the payments histories upon which she relied were attached to the affidavit.

¶ 13 After establishing this basis for her knowledge of the loan at issue, Sanders described the specific amounts owed by Lengerich under the note, including principal balance, accrued interest, late charges, and other expenses incurred by the Bank such as taxes and insurance costs, which totaled \$448,893.96 as of July 16, 2015. These statements clearly constituted facts based

on Sanders' personal knowledge, and not mere conclusions. Moreover, Sanders swore in her affidavit that the attached documents were "true and correct," that is, they were what they purported to be. The affidavit was also notarized. Therefore, since the affidavit was made on the personal knowledge of the Sanders, provided attached certified copies of the documents she relied upon, consisted of admissible facts, and affirmatively showed that Sanders would be able to testify competently as to their contents if called as a witness, we find no evidence that the affidavit failed to conform to the standards set forth by Rule 191(a).

¶ 14 Lengerich also argues that the record reflects an issue of material fact because the affidavits of "Curran" and "Sanders" contained contradicting statements as to whom the servicer and holder of the note was. We disagree. In relevant part, in her affidavit dated July 16, 2013, Rebecca Curran stated that several steps had been taken by the Bank to comply with the mitigation loss programs but the Bank eventually did not obtain all the documentation and information necessary to finalize the mitigation programs. Contrary to Lengerich's contention, Curran did not state who the holder or the servicer of the note was but simply asserted that she was employed as an authorized signer of Ocwen Loan Servicing, LLC, successor in interest to GMAC Mortgage, LLC and that she was authorized to act on behalf of the Bank. Accordingly, Curran's affidavit does not in any way contradict Sanders' affidavit when the affidavits were made at different times, contained different types of information and served different purposes: Sanders' affidavit was submitted by the Bank in support its motion for summary judgment while Curran's affidavit established the Bank's mitigation efforts.

¶ 15 Lengerich also contends that the Bank lacked standing to bring the foreclosure action. 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 Mortgage Foreclosure Law (735 ILCS 5/15-

1504(a) (West 2012)). *Standard Bank & Trust Co. v. Madonia*, 2011 IL App (1st) 103516, ¶ 20.

A foreclosure action may be pursued by "the legal holder of the indebtedness, a pledgee, an agent, or a trustee," and "[a] plaintiff can maintain a lawsuit although the beneficial ownership of the note is in another person." *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1, 7 (2010). A "mortgagee" is defined as "(i) the holder of an indebtedness or obligee of a non-monetary obligation secured by a mortgage or any person designated or authorized to act on behalf of such holder and (ii) any person claiming through a mortgagee as successor." 735 ILCS 5/15–1208 (West 2012).

¶ 16 Here, the record indicates that the Bank had standing to pursue the instant foreclosure action. The note provided that the original lender to Lengerich's loan was Forest Park National Bank & Trust. The mortgage provided that the note and the mortgage could "be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the 'Loan Servicer') that collects Periodic Payments due under the Note and this Security Instruction \* \* \*. The Bank is the holder of the note in blank and the record contains copies of the valid assignments of the mortgage from Forest Park National Bank & Trust to GMAC Mortgage, LLC, and from GMAC Mortgage, LLC to the Bank. GMAC Mortgage, LLC began the instant foreclosure action but since it subsequently assigned its interest to the Bank, the Bank was properly substituted as the plaintiff in the instant foreclosure action.

¶ 17 Based on the complaint and the attached note and mortgage, the Bank complied with section 15–1504(a) and set forth the required information. *Madonia*, 2011 IL App (1st) 103516, ¶ 20. The Bank established that, as the holder of the note and based on the assignment of the mortgage, it was also the holder of the mortgage. See *Federal National Mortgage Ass'n v. Kuipers*, 314 Ill. App. 3d 631, 635 (2000). As the legal holder of the indebtedness, the Bank was

therefore entitled to pursue the foreclosure action. *Barnes*, 406 Ill. App. 3d at 7; 735 ILCS 5/15–1208, 1504(a) (West 2012). Moreover, “[t]he mere fact that a copy of the note is attached to the complaint is itself *prima facie* evidence that the plaintiff owns the note.” *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 24. Based on this record, Lengerich failed to establish that the Bank lacked standing.

¶ 18 Furthermore, no record of proceedings or bystander's report was provided on appeal. It is the duty of the appellant to present this court with a sufficiently complete record of the trial court proceedings to support his claims of error. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319 (2003). "An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). Therefore, when the issue on appeal relates to the conduct of a hearing or proceeding, the absence of a transcript or other record of that proceeding means this court must presume the order entered by the circuit court was in conformity with the law and had a sufficient factual basis. *Rogers*, 204 Ill. 2d at 319. Here, in the absence of a record of proceedings or a bystander's report we cannot say the trial court erred in granting the Bank's motion for summary judgment.

¶ 19 CONCLUSION

¶ 20 Based on the foregoing, we affirm the circuit court's judgment.

¶ 21 Affirmed.