

2016 IL App (2d) 150921-U
No. 2-15-0921
Order filed September 23, 2016

NOTICE: This order was filed under Supreme Court Rule 23(c)(1) 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

NATIONSTAR MORTGAGE, LLC, <i>et al.</i> ,)	Appeal from the Circuit Court
)	of Boone County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-CH-66
)	
JOHN C. HAULOTTE,)	Honorable
)	John H. Young,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant failed to establish that case was originally brought by a plaintiff that lacked standing or that current plaintiff was not a proper party; furthermore, defendant did not show that he was adversely affected by alleged discovery violations.

¶ 2 Defendant, John C. Haulotte, appeals a series of orders of the circuit court of Boone County entered during the pendency of a foreclosure action brought by plaintiff, Nationstar Mortgage, LLC. Defendant raises three arguments—albeit briefly—as to why the trial court should not have entered summary judgment in favor of plaintiff. First, he contends the original

plaintiff (Nationstar's predecessor in interest) lacked standing. Second, he complains that certain discovery requests he made were never answered. Third, he asserts that Nationstar is not actually a party to the case. We disagree and affirm.

¶ 3 We first turn to the question of standing. Plaintiff contends that defendant waived this issue by failing to assert it in a timely manner. It is true that lack of standing is an affirmative defense, which a defendant may waive by failing to timely raise it. *Greer v. Illinois Housing Authority*, 122 Ill. 2d 462, 508 (1988). Defendant contends he was hampered in raising it by plaintiff's failure to produce an assignment in response to his discovery request. The assignment, according to defendant, shows that at the time the case was initiated, the party that initiated the case—plaintiff's predecessor in interest BAC Home Loan Servicing, LP, f/k/a Countrywide Home Loans Servicing, LP—did not have standing to do so.

¶ 4 There are several problems with defendant's argument. First, the assignment from the original mortgagor to BAC Home Loan Servicing, LP, bears a stamp stating that it was filed with the Boone County Clerk & Recorder on May 9, 2011. Recorded documents are public record. See *US Bank National Ass'n v. Villasenor*, 2012 IL App (1st) 120061, ¶ 59. Hence, regardless of whether this document was produced through discovery, it was available to defendant and could have been obtained through the exercise of due diligence. *Cf. In re Application of Ward*, 311 Ill. App. 3d 314, 316-20 (2011) (holding that purchaser failed to make diligent inquiry into ownership interests in land where recorded plat stated part of a subdivision was held for the benefit of adjacent owners). Thus, defendant could have raised the standing issue as early as May 2011.

¶ 5 Additionally, defendant admitted that plaintiff had standing in his response to the complaint. Paragraph 3(j) of the complaint states, "Capacity in which Plaintiff brings this suit:

Plaintiff is the mortgagee and holder of the note.” Defendant responded that he “[c]an neither admit nor deny” the allegation. The failure to deny an allegation results in it being deemed admitted. *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 37. A defendant may avoid this result by submitting a lack-of-knowledge affidavit (*id.*); however, there is no indication that defendant did so here. Thus, defendant waived the standing issue not only by failing to raise it in a timely fashion but also by admitting that BAC Home Loan Servicing, LP, had standing.

¶ 6 A third problem with defendant’s argument is that the document that defendant states shows a lack of standing by BAC Home Loan Servicing, LP, simply does not do so. In fact, the assignment states that an agent of the original mortgagor (Countrywide Home Loans Inc.) assigned the mortgage to BAC Home Loan Servicing, LP, “prior to February 11, 2011” (the date the complaint was filed). Defendant points out that the document was not executed until April 29, 2011, and recorded on May 9, 2011. Defendant intimates that this was a *post hoc* act designed to improperly confer standing on BAC Home Loan Servicing, LP. Plaintiff contends that the document merely memorialized an earlier transfer. The trial court recognized plaintiff’s theory in its ruling on plaintiff’s motion to confirm the judicial sale. Defendant does not explain why this factual finding is contrary to the manifest weight of the evidence. Furthermore, given that, in certain circumstances, a note may constitute bearer paper (see *Aurora Bank FSB v. Perry*, 2015 IL App (3d) 130673, ¶ 25), it is not implausible that plaintiff could have proceeded in this manner (*i.e.*, delivering the note and formally confirming the transfer later).

¶ 7 In short, we reject defendant’s arguments regarding standing because he waived the issue on multiple bases and the document he claims shows a lack of standing simply does not do so.

¶ 8 Defendant also claims that Nationstar is not a proper party to this action. Plaintiff points to the following finding by the trial court:

“Nationstar clearly is the correct party plaintiff now. Its assignment was two years before the judgment. It was over a year from the judgment May 13th of 2014 until the one-line motion alleging no standing was filed on May 19th of 2015.”

Thus, the trial court explicitly ruled that Nationstar was the proper plaintiff. Defendant responds:

“Although Nationstar cites the record *** where the Court indicates they are now a proper party they do not, nor can they dispute that they were never granted party status.”

Defendant does not explain why the trial court’s explicit ruling that Nationstar is the proper plaintiff is insufficient, and he cites no legal authority that would support such a conclusion. As such, we find this argument wholly unpersuasive. Furthermore, as defendant provides no legal authority in support of this argument, he has forfeited it. *In re Marriage of Moorthy & Arjuna*, 2015 IL App (1st) 132077, ¶ 75.

¶ 9 Defendant also complains that plaintiff failed to comply with certain discovery requests. However, in his opening brief, defendant complains that he did not receive documents pertaining to the two issues we rejected above. He does not explain what additional documentation would have allowed him to prevail on those issues. Indeed, he received the assignment from the original mortgagor to BAC Home Loan Servicing, LP, belatedly, and was able to construct an argument based on it. Though we deemed the standing issue waived, we considered those assertions on the merits in the alternative and concluded that defendant’s argument was not well founded.

¶ 10 In his reply brief, defendant complains that he did not receive certain documents pertaining to “payment histories.” We note that in the hearing in which the sale was confirmed,

it was stated that plaintiff was not seeking an *in personam* judgment against defendant. Thus, any discrepancies in payment histories would affect the amount of a deficiency judgment, which would not prejudice defendant as the judgment did not lie against him personally. In sum, the alleged discovery violations defendant now complains of are not material to the outcome of this case. At best, they would constitute harmless error. *In re Kenneth F.*, 332 Ill. App. 3d 674, 680 (2002).

¶ 11 In light of the foregoing, the judgment of the circuit court of Boone County is affirmed.

¶ 12 Affirmed.