2016 IL App (2d) 160346-U
No. 2-16-0346
Order filed November 29, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE BANK OF NEW YORK MELLON, f/k/a The Bank of New York, as Trustee for The Certificateholders CWALT, Inc. Alternative Loan Trust 2005-74T1 Mortgage Pass-Through Certificates, Series 2005-74T1;	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 09-CH-2780
BRUNO CASTELLANO; LINDA CASTELLANO, a/k/a Linda K. Castellano; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; UNKNOWN HEIRS AND LEGATEES; and UNKNOWN OWNERS AND NONRECORD CLAIMANTS,	)	
Defendants	)	Honorable Mark Pheanis, David R. Akemann, and Mary Katherine Moran, Judges, Presiding.
(Bruno Castellano and Linda Castellano, a/k/a Linda K. Castellano, Defendants-Appellants.)	)	

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Schostok and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied defendants' motion for summary judgment and granted plaintiff's motion for summary judgment; there was no genuine issue of

material fact as to whether plaintiff had standing when it filed the mortgage foreclosure complaint.

¶ 2 The issue in this appeal is whether plaintiff—The Bank of New York Mellon, f/k/a The Bank of New York, as Trustee for the Certificateholders CWALT, Inc. Alternative Loan Trust 2005-74T1 Mortgage Pass-Through Certificates, Series 2005-74T1—had standing to sue when it filed a mortgage foreclosure complaint against defendants, Bruno and Linda Castellano. In 2011, the trial court denied defendants' motion for summary judgment, finding that there was a genuine issue of material fact as to whether plaintiff had standing. In 2015, the court granted summary judgment in favor of plaintiff on the issue and denied defendants' motion for reconsideration. Following the order confirming the judicial sale, defendants appealed. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The parties litigated the issue of standing in numerous motions over the course of five years, and their respective arguments evolved over time. To understand defendants' contentions on appeal, it is necessary to recount the history of the litigation in detail.

¶ 5 On August 11, 2009, plaintiff filed a mortgage foreclosure complaint relating to the residential property located at 42 W 092 Campton Hills Road in Elburn, Illinois. Plaintiff alleged that it was the owner and legal holder of the note, mortgage, and indebtedness. Attached to the complaint was a copy of a mortgage that was executed on October 21, 2005. Defendant Bruno was identified as the borrower on the mortgage. Mortgage Electronic Registration Systems, Inc. (MERS)—acting as the nominee of the lender, Unionbank—was identified as the mortgagee. Defendant Linda signed the mortgage solely to waive her homestead rights. Also attached to the complaint was a note dated October 21, 2005, in the principal amount of $460,165. Both defendants signed the note as borrowers, and the lender was Unionbank.

¶ 6 (A) Defendants' Motion to Dismiss

¶ 7 On May 13, 2010, defendants filed a motion to dismiss the complaint pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2010)). Noting that there were no assignments or indorsements attached to the complaint to indicate that plaintiff was a payee of the note, defendants argued that plaintiff lacked standing to bring the action.

¶ 8 In its response to the motion to dismiss, plaintiff argued that it had standing based on an assignment that it attached as an exhibit to its memorandum. That assignment was signed on February 3, 2010, by an agent of MERS, and it was recorded on February 8, 2010. In the assignment, MERS purported to sell, assign, and transfer to plaintiff its interests in the mortgage and note at issue.

¶ 9 Among their arguments in their reply in support of their motion to dismiss the complaint, defendants contended that the February 2010 assignment was invalid, because MERS, as nominee for Unionbank, had no interest to assign to plaintiff. In support of that contention, defendants attached as an exhibit to their memorandum an allonge to the October 21, 2005, note.[1] That allonge was signed by Julie Garner, a real estate closing supervisor for Unionbank, and was paid to the order of Countrywide Bank, N.A. (Unlike the copies of this allonge that would be attached as exhibits to some subsequent motions in this litigation, the copy of the allonge that was attached to defendants' reply did not include any additional indorsements.)

¶ 10 In its sur-reply in opposition to the motion to dismiss, plaintiff argued that public documents established that it was the trustee of an asset-backed trust into which defendants' loan

[1] An allonge is a "slip of paper sometimes attached to a negotiable instrument for the purpose of receiving further indorsements when the original paper is filled with indorsements." BLACK'S LAW DICTIONARY 83 (8th ed. 2004).

was transferred on November 30, 2005. Thus, according to plaintiff, defendants' arguments disputing the validity of the February 2010 assignment were misdirected, because that assignment "only confirmed that the subject loan was placed into the asset trust on November 30, 2005." Plaintiff relied on a prospectus dated October 25, 2005, and a Pooling and Servicing Agreement (PSA) dated November 1, 2005, portions of which were attached to the sur-reply. Plaintiff's counsel submitted an affidavit averring that he had located these documents by searching the Security and Exchange Commission's website. The prospectus and PSA established the following. Countrywide Home Loans, Inc. had intended to sell "30-year conventional fixed-rate mortgage loans secured by first liens on one-to-four-family residential properties" to the depositor, CWALT, Inc. The loans were to be placed in a trust, and plaintiff would serve as trustee. Plaintiff would hold the mortgages for the benefit of those who purchased certificates. Countrywide Home Loans Servicing LP was designated as the master servicer for the loans. The closing date for this transaction was to be November 30, 2005.

¶ 11 On August 20, 2010, the trial court, Judge Alan Cargerman presiding, denied defendants' motion to dismiss the complaint and granted them time to answer or otherwise plead. The record does not contain transcripts of this hearing or any other court proceedings.

¶ 12 (B) Defendants' Motion for Summary Judgment

¶ 13 Instead of answering the complaint, on October 26, 2010, defendants filed a motion for summary judgment, which they amended three days later. Defendants explained that they had issued discovery requests to plaintiff on August 27, 2010. In response to an interrogatory asking "Please state whether the original note has been indorsed and, if so, identify the party or parties who executed the endorsement and state whether the endorsement is specific or blank," plaintiff answered: "*See* Documents, including Note." Plaintiff submitted an identical response to an

interrogatory asking: "Please state whether any endorsements of the subject note are on the note itself or an allonge to the note." However, defendants emphasized in their motion, the copies of the loan documents that were attached to plaintiff's discovery responses did not reflect any indorsement to plaintiff. Therefore, according to defendants, plaintiff's discovery responses demonstrated that the note at issue was never indorsed either in blank or to plaintiff specifically.

¶ 14 In its response to defendants' motion for summary judgment, plaintiff documented that its counsel had procured the original note and mortgage and that defendants' counsel had been offered the chance to inspect those documents. Plaintiff asserted that it would present these original documents to the court at the forthcoming hearing on defendants' motion for summary judgment. Plaintiff argued that the court's earlier ruling on the motion to dismiss, in combination with the production of the original mortgage documents, "put to bed any question regarding the Plaintiffs [*sic*] status as holder of the subject note."

¶ 15 In their reply in support of their motion for summary judgment, defendants disagreed that the court's ruling on the motion to dismiss the complaint was dispositive of the issue of standing. Moreover, defendants argued, plaintiff's possession of the original note "means nothing without proper negotiation." Defendants again urged that plaintiff had admitted in its responses to discovery that it was not in possession of a properly negotiated instrument, and, therefore, that it was not the legal holder of the note.

¶ 16 On February 25, 2011, the court, Judge Mark Pheanis presiding, denied defendants' motion for summary judgment and granted them time to answer or otherwise plead.

¶ 17 (C) Plaintiff's Motion to Strike Affirmative Defenses

¶ 18 On March 25, 2011, defendants filed their answer to the complaint along with their affirmative defenses. In support of their affirmative defense of lack of standing, defendants

reiterated many of the points that they had argued previously. They also raised issues as to whether the method of transferring their loan to the asset-backed trust complied with the terms of the PSA. Defendants further advanced three additional affirmative defenses that are not relevant to this appeal.

¶ 19 On May 6, 2011, plaintiff filed a motion to dismiss the affirmative defenses pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2010)). Addressing defendants' contention that plaintiff did not possess a note that was indorsed in blank, plaintiff explained that, on February 21, 2011, it had amended its original discovery responses and produced copies of the original note indorsed in blank. Plaintiff represented that it had presented the original note and mortgage to the court at the February 25, 2011, hearing.

¶ 20 In its response to plaintiff's motion to dismiss the affirmative defense of lack of standing, defendants noted that, in response to their motion for summary judgment, plaintiff had produced a copy of the allonge containing two indorsements that were not present on the copy that had originally been tendered in discovery.[2] To that end, defendants attached as an exhibit to their memoranda a January 17, 2011, letter from plaintiff's counsel to defendants' counsel, purporting to enclose copies of the original mortgage documents. One of the documents accompanying that letter was the allonge making the note payable to Countrywide Bank, N.A., which has been discussed above. However, unlike the copies of the allonge that were attached to previous motions in this litigation, this copy contained two stamped indorsements, neither of which was

[2] The version of the allonge containing multiple indorsements had not actually been submitted as an exhibit with the briefing on defendants' previous motion for summary judgment. Instead, from the record, it appears that, at the February 25, 2011, hearing on that motion, plaintiff presented the allonge indorsed in blank in open court.

dated. Specifically, Laurie Meder, senior vice president of Countrywide Bank, N.A., indorsed the note to Countrywide Home Loans, Inc. In a separate indorsement on the allonge, David A. Spector, managing director of Countrywide Home Loans, Inc., indorsed the note in blank. According to defendants, at the hearing on their motion for summary judgment, the trial court had found that "Plaintiff's alleged possession of the newer Subject Note preserved the triable issue of material fact regarding Plaintiff's standing." However, defendants contended, neither the court's prior orders nor the plaintiff's mere possession of the note indorsed in blank resolved the issue of plaintiff's standing. Defendants emphasized that plaintiff had never explained why the copy of the allonge with the additional indorsements was not submitted with the complaint when it was filed. Nor had plaintiff ever identified when the indorsements were made, explained how it came into possession of the note, or demonstrated that the indorsements were authentic.

¶ 21 In its reply in support of its motion to dismiss the affirmative defenses, plaintiff contended that it had standing because it was in possession of the original note and mortgage along with a blank indorsement. Addressing the fact that it had initially produced in discovery a copy of the allonge that did not contain any indorsements, plaintiff stressed that it had subsequently amended its discovery responses. According to plaintiff, the copies of the note and mortgage that had been attached to the complaint "were copies made at or near loan origination and thus reflect the note in its form prior to any subsequent indorsement and prior to the mortgage loan being pooled in the subject asset-backed trust."

¶ 22 On August 12, 2011, the trial court, Judge Pheanis presiding, denied plaintiff's motion to dismiss the affirmative defense of lack of standing.

¶ 23 (D) Plaintiff's Motion for Summary Judgment

¶ 24 On November 29, 2011, plaintiff filed a motion for summary judgment. Following an

extended period of inactivity in the case, plaintiff withdrew the motion on August 22, 2014.

¶ 25 On November 26, 2014, plaintiff re-filed its motion for summary judgment, reiterating that it was in possession of the original mortgage documents indorsed in blank. Plaintiff also contended that it had standing because it was the trustee of the trust into which the subject loan had been pooled since 2005. Plaintiff reconstructed the timeline of relevant events as follows. The loan was originated on October 21, 2005, by MERS, as nominee and mortgagee on behalf of Unionbank. At that time, Unionbank executed an allonge making the note payable to Countrywide Bank, N.A. Subsequently, Countrywide Bank, N.A. indorsed the note to Countrywide Home Loans, Inc., which then indorsed the note in blank. Thereafter, on November 30, 2005, the loan was pooled into the asset-backed mortgage trust, of which plaintiff was the trustee. Thus, plaintiff submitted, it had been the legal holder of the loan since 2005.

¶ 26 To substantiate this timeline of events, plaintiff relied on a November 10, 2011, affidavit signed by Arturo Rodriguez, an employee of Bank of America, N.A. (BANA), successor by merger of BAC Home Loans Servicing, LP. Rodriguez averred the following. BANA is the present servicer for plaintiff, as trustee of the trust. As part of his job duties, Rodriguez routinely reviews loan files and other documents relating to mortgage loans held or serviced by BANA. Rodriguez previously worked for Countrywide Home Loans Servicing, LP, and his job title was "Operations Team Lead [*sic*]." He explained that BANA acquired Countrywide Home Loans Servicing, LP in 2008. As a result of that transaction, BANA took over ownership or service of many loans which Countrywide Home Loans Servicing, LP had held or serviced. This included loans pooled into asset-backed trusts. Rodriguez averred that plaintiff was the present legal holder of the loan at issue in this litigation, which he identified as loan number 105747347. That loan was originated on October 21, 2005, by MERS, acting as nominee and mortgagee on behalf

of Unionbank. After the loan was issued, it was pooled in an asset-backed trust on or before November 30, 2005, the closing date for the trust. Plaintiff was named as the trustee of that trust, and Countrywide Home Loans Servicing, LP was the original servicer.

¶ 27 Rodriguez averred that he confirmed by reviewing certain documents, which were attached to the affidavit, that the loan at issue had been pooled into the subject asset-backed trust on November 30, 2005. Specifically, he relied on portions of the PSA. He also relied on what he referred to as the "loan level listing" for the subject trust, which was an Excel spreadsheet containing information about the loans that were pooled into the trust as of the closing date. Rodriguez explained that BANA maintained the "loan level listing" in the normal course of business. Rodriguez attached this spreadsheet to his affidavit in redacted form so as to omit information about loans other than the one at issue. According to Rodriguez, the "loan level listing" contained information about the loan at issue, including its number (105747347), defendant Bruno's name as the borrower, the property address, the loan amount, the mortgage date, the loan maturity date, the funding date, a description of the property as a single-family home, and "other pertinent loan information." Therefore, according to Rodriguez, loan number 105747347 "was and is currently" part of the trust.

¶ 28 In their response to plaintiff's motion for summary judgment, defendants argued that there was a genuine issue of material fact as to plaintiff's standing. Among their arguments, defendants again emphasized that plaintiff had originally produced in discovery a copy of the allonge that did not contain any indorsements to the note. Defendants also pointed out that plaintiff had not identified, and the allonge that was attached to plaintiff's motion for summary judgment did not reflect, the dates of the two indorsements. Moreover, defendants asserted that plaintiff had the burden to show that the alteration to the note was made under circumstances

rendering it lawful. According to defendants, without authenticating the signatures on both the allonge and the February 2010 assignment of mortgage, plaintiff could not demonstrate that the instrument was actually negotiated. Furthermore, defendants argued that Rodriguez's affidavit was deficient, because the "loan level listing" was undated, heavily redacted, and devoid of context. Defendants insisted that this document did not prove when plaintiff gained possession of the note. Moreover, they contended, in violation of Illinois Supreme Court Rule 191 (eff. Jan. 4, 2013), the affidavit contained numerous legal conclusions.

¶ 29 Among its arguments in its reply in support of its motion for summary judgment, plaintiff insisted that the note had not been altered. Addressing defendants' objections to Rodriguez's affidavit, plaintiff observed that defendants had not actually challenged the facts asserted in that affidavit. Moreover, defendants' reliance on the February 2010 assignment was a red herring, because plaintiff established its standing by showing that the loan was pooled into the trust.

¶ 30 On March 20, 2015, the trial court, Judge David R. Akemann presiding, granted plaintiff's motion for summary judgment. Defendants filed a motion to reconsider the entry of summary judgment, which the court denied on July 29, 2015. On November 20, 2015, the court entered a judgment of foreclosure. Plaintiff was the highest bidder at the judicial sale, and the court, Judge Mary Katherine Moran presiding, confirmed the sale on April 11, 2016. Defendants timely appealed.

¶ 31 II. ANALYSIS

¶ 32 Defendants challenge five orders: (1) the February 25, 2011, order denying their motion for summary judgment; (2) the March 20, 2015, order granting summary judgment in favor of plaintiff; (3) the July 29, 2015, order denying their motion for reconsideration; (4) the November 20, 2015, judgment of foreclosure; and (5) the April 11, 2016, order confirming the judicial sale.

¶ 33 "To have standing, a party must have suffered an injury to a legally cognizable interest." *Bank of America N.A. v. Bassman FBT, L.L.C.*, 2012 IL App (2d) 110729, ¶ 13. Standing is assessed as of the time that the action is filed. *Bayview Loan Servicing, LLC v. Cornejo*, 2015 IL App (3d) 140412, ¶ 12. A plaintiff presents *prima facie* evidence that it is the owner of the note by attaching a copy of the note to the complaint. *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 24. Lack of standing is an affirmative defense, which the defendant has the burden to plead and prove. *The Bank of New York Mellon v. Rogers*, 2016 IL App (2d) 150712, ¶ 30.

¶ 34 In the present case, the issue of standing was resolved via summary judgment. Summary judgment is appropriate where "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 a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2014). We review rulings on summary judgment motions *de novo*. *CitiMortgage, Inc. v. Sconyers*, 2014 IL App (1st) 130023, ¶ 9.

¶ 35 We begin with the February 25, 2011, order denying defendants' motion for summary judgment. Although the parties do not raise the issue, it is not entirely clear that this order is subject to judicial review. We were unable to find any case where a party attempted to appeal the denial of its motion for summary judgment under circumstances where the final order in the case, entered several years later, was the grant of summary judgment in favor of the opposing party on the same issue. Nevertheless, case law indicates that an order denying summary judgment is interlocutory and ordinarily not appealable. *In re Estate of Funk*, 221 Ill. 2d 30, 85 (2006). One exception to this general rule is where the trial court disposes of the case via cross-motions for summary judgment, granting one motion while at the same time denying the other.

Funk, 221 Ill. 2d at 85. This exception does not apply in the present case, because plaintiff filed its motion for summary judgment more than 3 ½ years after defendants' motion for summary judgment was denied. Furthermore, where a court denies a motion for summary judgment and subsequently proceeds to finally resolve the case based on all the evidence presented, any error in the denial of summary judgment merges into the court's final judgment. *Funk*, 221 Ill. 2d 30, 85 (2006); see also *Skach v. Gee*, 137 Ill. App. 3d 216, 221 (1985) (order denying summary judgment was not reviewable where the matter subsequently proceeded to trial and the court granted one party's motion for a directed finding). Although most of the case law addressing merger involves situations where the matter ultimately proceeded to trial or an evidentiary hearing, a convincing argument might be made for extending the reasoning of those cases to the facts at bar.

¶ 36 However, assuming, as the parties do, that the February 25, 2011, order is properly before us, the trial court did not err in denying defendants' motion for summary judgment. Defendants contend that "the totality of [plaintiff's] filings prior to hearing on the Motion for Summary Judgment show no proofs and yield no reasonable inferences that [plaintiff] possessed the Note or that the Note was payable to it or in blank prior to August 11, 2009" (the date that the instant action was filed). Although defendants' reasoning is at times difficult to follow, they appear to raise the following points in support of their argument. They emphasize that plaintiff did not attach any indorsement to the complaint showing that the note was payable to anyone other than Unionbank, the original lender. Defendants also note that the copy of the allonge that plaintiff originally produced in discovery showed only that the note was negotiated to Countrywide Bank, N.A.—even though defendants had requested information about all indorsements to the note. Furthermore, defendants argue that the February 2010 assignment of mortgage (which had been

attached as an exhibit to plaintiff's response to defendants' motion to dismiss the complaint) "plainly contradicts the face of the Note," because the assignment was from MERS to plaintiff while the allonge made the note payable to Countrywide Bank, N.A. Moreover, in an apparent attempt to refute the possibility that the February 2010 assignment merely documented a transaction that had occurred prior to the time that plaintiff filed the complaint, defendants insist that the assignment proves only that the transaction "took place no later than February 03, 2010," which was after the complaint was filed. Defendants also contend that the documentation submitted by plaintiff was insufficient to show that their loan was actually deposited in the asset-backed trust in 2005.

¶ 37 Defendants, as appellants, have the burden to present a record of the proceedings below that is sufficiently complete to support a claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). We must resolve any doubts that arise from the incompleteness of the record against them. *Foutch*, 99 Ill. 2d at 392. Although defendants have not provided any reports of proceedings, it appears from numerous statements in the parties' various trial court memoranda that plaintiff presented the original mortgage documents, including the allonge to the note that was indorsed in blank, to the court during the hearing on defendants' motion for summary judgment. In their brief on appeal, defendants do not dispute this. Therefore, in accordance with *Foutch*, to the extent that there is any disagreement between the parties or ambiguity in the record as to this issue, we presume that plaintiff indeed presented the court with the original note indorsed in blank at the February 25, 2011, hearing.

¶ 38 A note that is indorsed in blank is payable to the bearer. *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 26; see also 810 ILCS 5/3–205(b) (West 2014). Plaintiff having presented the original note indorsed in blank to the trial court at the hearing, the court

properly denied defendants' motion for summary judgment. Additionally, although defendants complain that plaintiff did not attach copies of any indorsements to their complaint, in 2009, when this case was filed, there was no requirement to do so. See *Deutsche Bank National Trust Co. v. Iordanov*, 2016 IL App (1st) 152656, ¶ 45 (noting that the foreclosure plaintiff was only required to attach copies of the mortgage and note to its complaint); but see Ill. Sup. Ct. R. 113(a-b) (eff. May 1, 2013) (for foreclosure actions filed on or after May 1, 2013, the complaint must include "a copy of the note, as it currently exists, including all indorsements and allonges").

¶ 39 Furthermore, defendants are misguided in focusing on the copy of the allonge that did not contain the indorsement in blank. In doing so, they ignore plaintiff's subsequent discovery responses, in which they produced a copy of that same allonge that was indorsed in blank. Plaintiff even offered defendants' counsel the opportunity to inspect the original note. Defendants' arguments about the February 2010 assignment are unavailing for similar reasons. By the time defendants moved for summary judgment, plaintiff was no longer relying on that assignment as the source of its standing. Indeed, in one of the memoranda that defendants submitted to the trial court, they represented that plaintiff's counsel had acknowledged at the hearing on defendants' motion to dismiss the complaint that "the assignment probably should not have been filed or even drafted."

¶ 40 Defendants attempt to analogize the matter to *Deutsche Bank National Trust Co. v. Gilbert*, 2012 IL App (2d) 120164. In that case, on August 15, 2005, the defendant homeowner entered into a loan agreement with WMC Mortgage Corporation (WMC) and signed a mortgage in favor of MERS. *Gilbert*, 2012 IL App (2d) 120164, ¶ 3. On March 10, 2008, Deutsche Bank National Trust Company (Deutsche) filed a complaint for foreclosure, alleging that it was the current holder of the indebtedness and attaching copies of the note and mortgage. *Gilbert*, 2012

IL App (2d) 120164, ¶ 5. On August 25, 2008, MERS, acting as nominee for WMC, executed an assignment purporting to transfer all interests in the defendant's mortgage to Deutsche, in its capacity as trustee under a pooling and serving agreement dated November 1, 2005. *Gilbert*, 2012 IL App (2d) 120164, ¶ 6. On September 12, 2008, Deutsche amended its complaint and attached that assignment as an exhibit. *Gilbert*, 2012 IL App (2d) 120164, ¶ 6. As an affirmative defense, the defendant alleged that the assignment showed that Deutsche lacked standing, because it did not own the indebtedness in March 2008, when it filed the foreclosure action. *Gilbert*, 2012 IL App (2d) 120164, ¶ 6. The parties submitted cross-motions for summary judgment, and Deutsche argued that the assignment merely memorialized a transfer of interest that had occurred in 2005. *Gilbert*, 2012 IL App (2d) 120164, ¶ 7. In support of its position, Deutsche provided the affidavit of its employee, William Loch, who asserted, without explanation or supporting documentation, that MERS had assigned its interest to Deutsche on November 1, 2005. *Gilbert*, 2012 IL App (2d) 120164, ¶ 7. The trial court granted summary judgment in favor of Deutsche, and the defendant appealed. *Gilbert*, 2012 IL App (2d) 120164, ¶¶ 9-10.

¶ 41 This court reversed the trial court's judgment on the issue of standing. We found it significant that neither the note nor the mortgage that were attached as exhibits to the complaint identified Deutsche as the mortgagee. *Gilbert*, 2012 IL App (2d) 120164, ¶ 17. We also found it significant that the assignment that was attached to the amended complaint was dated August 25, 2008, which was after the foreclosure action had been filed. *Gilbert*, 2012 IL App (2d) 120164, ¶ 17. Under those circumstances, the defendant "made out a *prima facie* showing that Deutsche *** lacked standing, [and] the burden shifted to Deutsche *** to refute this evidence or demonstrate a question of fact." *Gilbert*, 2012 IL App (2d) 120164, ¶ 17. We then explained

that the assignment and the Loch affidavit "lack[e]d evidentiary value," because the assignment did not specify when Deutsche acquired its interest in the loan and Loch's averments were "unsupported by any foundation." *Gilbert*, 2012 IL App (2d) 120164, ¶¶ 18-19. Critically, Loch "did not state how he knew that the assignment took place on November 1, 2005, and he failed to attach any documents supporting his assertion." *Gilbert*, 2012 IL App (2d) 120164, ¶ 20. We held that the defendant was entitled to summary judgment, because Deutsche produced no competent evidence to rebut the *prima facie* showing that Deutsche lacked standing when it filed the action. *Gilbert*, 2012 IL App (2d) 120164, ¶ 21.

¶ 42 *Gilbert* does not support defendants' argument that the trial court erred in denying their motion for summary judgment. *Gilbert* establishes that a conclusory affidavit and an assignment that is dated after the filing of the complaint are insufficient to rebut a *prima facie* showing of lack of standing. However, as explained above, plaintiff in the present case offered for the court's inspection the original note and mortgage, including the allonge that was indorsed in blank. *Gilbert* did not involve a situation where the plaintiff bank possessed a note indorsed in blank.

¶ 43 Defendants next argue that the court erred in granting summary judgment in favor of plaintiff on March 20, 2015, because plaintiff produced no competent documentary or testimonial evidence to support its conclusion that it had standing before it filed the complaint. More specifically, defendants contend that the note indorsed in blank "had no probative evidentiary value" and that the "loan level listing" that was attached as an exhibit to plaintiff's motion for summary judgment did not provide a sufficient foundation for Rodriguez's conclusions. For the same reasons, defendants contend that the court erred in denying their motion for reconsideration, granting a judgment of foreclosure, and confirming the sheriff's sale.

¶ 44 Defendants emphasize that plaintiff originally produced in discovery copies of the mortgage documents that did not contain an indorsement in blank. Relying on *Ruwaldt v. W.C. McBride, Inc.*, 388 Ill. 285 (1944), defendants propose that plaintiff thus failed to meet its burden to show that the note was altered under circumstances rendering it lawful. Defendants do not actually discuss the facts of *Ruwaldt*, and that case bears no factual resemblance to the case at bar. *Ruwaldt* involved a situation where an oil and gas lease was altered materially and without notice to one of the parties who had previously signed the lease. *Ruwaldt*, 388 Ill. at 291. In the present case, there was no alteration of the terms of the note. To the contrary, the note that defendants signed explicitly states: "I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the 'Note Holder.' "

¶ 45 Defendants further contend that plaintiff never produced any documentation showing when the allonge was indorsed in blank. While it is true that the allonge itself did not state when the note was indorsed, as will be explained, the documents submitted by plaintiff, when considered collectively, lead to the inescapable conclusion that plaintiff became the holder of the note well before it filed the foreclosure complaint.

¶ 46 Defendants signed a note in favor of Unionbank on October 21, 2005. The copy of the allonge that plaintiff relied on in support of its motion for summary judgment reflected that the note was then paid to the order of Countrywide Bank, N.A. Garner, who signed the allonge on behalf of Unionbank, identified herself as a real estate closing supervisor, which strongly suggests that this first transfer occurred during the closing. The allonge then bears an indorsement from Countrywide Bank, N.A. to Countrywide Home Loans, Inc. and an indorsement in blank signed by Countrywide Home Loans, Inc.

¶ 47 Any doubt as to whether plaintiff became the holder of the note before it filed the foreclosure complaint is settled by looking to the PSA and Rodriguez's affidavit. Pursuant to the PSA, which was dated November 1, 2005, Countrywide Home Loans, Inc. agreed to transfer loans to an asset-backed trust. Plaintiff was the trustee of that trust, and the closing date was November 30, 2005. In his affidavit, Rodriguez averred that defendants' loan, which he identified as number 105747347, was included in the "loan level listing." Rodriguez explained that the "loan level listing," redacted portions of which were attached to his affidavit, is a document used in the normal course of business to track individual loans that are pooled into the trust.

¶ 48 Under these circumstances, the only conclusion that can reasonably be drawn is that plaintiff, in accordance with the terms of the PSA, became the holder of the note prior to the time it filed the foreclosure complaint. Defendants speculate that plaintiff may have instead acquired its interest in the note at some unspecified time after this litigation began. However, defendants did not file any counteraffidavits or present any other evidence to cast doubt on the timeline of events that plaintiff described. See *Parkway Bank & Trust Co.*, 2013 IL App (1st) 130380, ¶ 49 ("When a party moving for summary judgment files supporting affidavits containing well-pleaded facts, and the party opposing the motion files no counteraffidavits, the material facts set forth in the movant's affidavits stand as admitted."). Nor did defendants seek leave to depose Rodriguez or otherwise request additional discovery regarding the "loan level listing."

¶ 49 Finally, there is no merit to defendants' contention that Rodriguez's affidavit fails to comply with Illinois Supreme Court Rule 191. Rule 191(a) provides that affidavits submitted in support of summary judgment "shall be made on the personal knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counter-claim, 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." Defendants challenge Rodriguez's conclusion that (in defendants' words) "since the loan is listed in the loan level listing, it must be pooled into the Trust as part of the property of the Trust." Defendants particularly emphasize that the "loan level listing" "does not include a date of acquisition, a date of deposit, [or] the identity of the depositor." As explained above, the documents attached to plaintiff's motion for summary judgment, when considered collectively, clearly established that defendants' loan is part of the asset-backed trust and that plaintiff acquired its interest in the loan prior to filing the instant mortgage foreclosure action.

¶ 50 For all of these reasons, the trial court properly granted summary judgment in favor of plaintiff, denied defendants' motion for reconsideration, granted a judgment of foreclosure, and confirmed the judicial sale.

¶ 51 III. CONCLUSION

¶ 52 The judgment of the circuit court of Kane County is affirmed.

¶ 53 Affirmed.