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2016 IL App (3d) 150819-U

Order filed July 25, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

PNC BANK, NATIONAL ASSOCIATION,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois.
)	
v.)	Appeal No. 3-15-0819
)	Circuit No. 14-CH-2156
OLA Y. LADIPO AND BRENDA LADIPO,)	
)	The Honorable
Defendants-Appellants.)	John C. Anderson,
)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* Where plaintiff attaches a copy of the original mortgage and a copy of the note endorsed in blank to the original complaint, public record notes its merger history with the original mortgagee, and defendant secures a subsequent loan modification directly from plaintiff, the trial court did not err in granting plaintiff's section 2-619.1 motion to dismiss defendant's affirmative defense of lack of standing, its motion for summary judgment, and its motion for foreclosure and sale.

¶ 2 This case involves a foreclosure action brought by plaintiff, PNC Bank, National Association (PNC) against defendants, Ola Y. Ladipo and Brenda Ladipo (Ladipos). The Ladipos answered the complaint. However, the trial court dismissed with prejudice their sole affirmative defense of lack of standing. It subsequently awarded summary judgment and entry of judgment of foreclosure to PNC. On appeal, the Ladipos argue the trial court abused its discretion when it dismissed their affirmative defenses with prejudice and subsequently granted PNC's motions for summary judgment and foreclosure because they sufficiently argued genuine issues of material facts as to whether PNC had standing. We affirm.

¶ 3 **FACTS**

¶ 4 On October 24, 2003, the Ladipos entered into a mortgage contract with and executed a promissory note for \$230,000 made payable to MidAmerica Bank, FSB for the purchase of their personal residence. The contract and the promissory note were secured by the property.

¶ 5 In 2008, MidAmerica Bank, FSB merged with National City Bank. National City Bank merged in 2009 with PNC. These mergers were in the public record.

¶ 6 Five years later, in 2014, PNC filed a complaint for foreclosure against the Ladipos. It attached to the complaint a copy of the original mortgage, a copy of a subsequent loan modification agreement between PNC and the Ladipos, and a copy of the note endorsed in blank.

¶ 7 The Ladipos filed an answer on April 9, 2015, and raised the affirmative defense of lack of standing. They stated specifically that PNC did not sufficiently allege its capacity to sue and that the lack of a date on the blank endorsed note "raised questions as to when the interest in the subject mortgage loan was transferred."

¶ 8 PNC filed a motion to strike and a motion to dismiss the affirmative defense under section 2-619.1 of the Illinois Code of Civil Procedure (Code). (735 ILCS 5/2-619.1 (West

2014)) It asserted that it possessed the original note and that the previous mergers leading to its possession of the note were not only public record but also information it had provided to the Ladipos during discovery. It further claimed that it sufficiently pled its capacity to sue and that the Ladipos failed to demonstrate that PNC lacked standing. In support of its motion, it attached letters from the Office of the Comptroller of Currency reporting the merger history. The Ladipos did not respond to this motion.

¶ 9 On July 15 the trial court struck the Ladipos's affirmative defense with prejudice. It entered an order reflecting the dismissal of the defense and stated that the original note was provided by PNC in open court.

¶ 10 On July 22 PNC moved for summary judgment and entry of judgment of foreclosure and sale. On August 7 the Ladipos filed a motion to compel interrogatories asserting that many of the responses provided by PNC were improper. They did not file a response to PNC's motions. The trial court denied the Ladipos's motion to compel on September 9.

¶ 11 On November 4 the trial court granted PNC's motion for summary judgment and judgment for foreclosure and sale.

¶ 12 The Ladipos timely appealed.

¶ 13 ANALYSIS

¶ 14 Here on appeal the Ladipos argue that the trial court erred in granting PNC's combined motions to strike and dismiss their affirmative defense. They assert that they raised serious questions about the circumstances surrounding PNC's standing to bring the suit. They claim that those questions created a material issue of fact precluding the dismissal and the subsequent grant of summary judgment and judgment of foreclosure and sale in favor of PNC.

¶ 15 PNC counters that it did establish standing to bring the suit by attaching a copy of the note endorsed in blank to the complaint, producing the original note in open court, and showing that its interest in the loan occurred via two mergers, which are of public record and evidence of which was provided to the Ladipos during discovery. It further asserts that the Ladipos's argument that it is a "stranger to the mortgage" is without merit because the Ladipos signed a loan modification agreement *with PNC* regarding the note and mortgage. It argues, therefore, the trial court did not err in granting its combined motion to strike and motion to dismiss the Ladipos's affirmative defense of lack of standing under section 2-619.1 of the Code or err in subsequently granting its motions for summary judgment and judgment of foreclosure and sale.

¶ 16 A section 2-619.1 motion to dismiss allows a party to file as a single motion both a section 2-615 motion to dismiss based on a party's substantially insufficient pleadings and a section 2-619 motion to dismiss based on certain defects or defenses. *Carr v. Koch*, 2011 IL App (4th) 110117, ¶ 25. We review *de novo* the trial court's grant of a section 2-619.1 motion. *Id.* A trial court's subsequent grant of a motion for summary judgment is also reviewed *de novo*. *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 93 (2010).

¶ 17 A party is not required to allege facts in support of its standing or to prove standing in its pleadings. *In re Estate of Levi Schlenker*, 209 Ill. 2d 456, 461 (2004). Under the Illinois Mortgage Foreclosure Law, the plaintiff is only required to submit a copy of the mortgage and note with the complaint evidencing a *prima facie* showing of the right to foreclose on the mortgage. 735 ILCS 5/15-1101 et seq. (West 2010). After a *prima facie* showing of standing is made, it is up to the opposing party to rebut that showing with admissible evidence. *Deutsche Bank National Trust Company v. Gilbert*, 2012 IL App (2d) 120164, ¶ 3.

¶ 18 Additionally, possession of a note would be sufficient to demonstrate standing. See *Silverman v. McCormick*, 189 Ill. 394, 396 (1901) (noting that the holder of a note has the right to foreclose in case of default); see also *HSBC Bank USA, N.A. v. Rowe*, 2015 IL App (3d) 140553, ¶ 21 (noting that possession of bearer paper sufficiently demonstrates standing and is "sufficient to entitle the plaintiff to a decree of foreclosure"). Even a note containing a blank endorsement would be sufficient because when endorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specifically endorsed. 810 ILCS 5/3-205(b) (West 2010). The attachment of a copy of the note to a foreclosure complaint is *prima facie* evidence that the plaintiff possesses the note. *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 24 (citing *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 24); *Spiller v. Riva*, 278 Ill. App. 334 (1935) (“[P]ossession of a promissory note whether it be by the payee or an endorsee, is *prima facie* evidence of ownership, even if endorsed in blank.”)

¶ 19 PNC filed its foreclosure action against the Ladipos and attached a copy of the original mortgage and the note which is endorsed in blank. It also presented the original note in open court. Thus it made a sufficient *prima facie* showing of standing which the Ladipos failed to rebut.

¶ 20 The Ladipos's assertions that the note is still insufficient because the endorsement is not dated and that PNC's ultimate possession of the mortgage is questionable are without merit. The Uniform Commercial Code does not require a date for an endorsement to be valid. See 810 ILCS 5/3-204, 3-205 (West 2014) (requiring only the endorsement for the instrument's negotiation). Thus the note is valid and enforceable. Additionally, the record includes documentation, which PNC had attached to its combined motions, noting the history of the bank mergers from

MidAmerica to National to PNC. Moreover, the record reflects that the Ladipos actively acknowledged PNC's valid possession of the mortgage and note by executing the loan modification agreement with PNC.

¶ 21 Further, the case on which the Ladipos rely, *U.S. Bank, N.A. v. Kosterman*, 2015 IL App (1st) 133627, is clearly distinguishable. In that case, the court found that the trial court erred in dismissing the defendant's affirmative defenses because the trial court erroneously found as a matter of law that lack of standing was not an affirmative defense, the plaintiff did not present to the trial court the arguments raised on appeal in support of its standing, the chain of ownership of the mortgage and note in that case was convoluted, and ultimately the defendant was procedurally denied the opportunity to effectively rebut the plaintiff's *prima facie* showing of standing. *Id.*, ¶¶ 10, 15. Here, the trial court made no erroneous finding of law regarding the affirmative defense and the arguments presented by PNC evincing its right to bring the suit were presented to the trial court. Additionally, the chain of ownership is clear in this case as noted by the official documents in the record and the fact that the Ladipos knew to consult PNC for the modification of the loan agreement. Lastly, the Ladipos were given the opportunity to effectively rebut PNC's *prima facie* showing of standing, unlike *Kosterman*, and presented no evidence of any issues raised in discovery or depositions. Although their notice of appeal listed the trial court's order denying their request for interrogatories, the Ladipos failed to include any argument in their briefs regarding those orders. Their contention against it is therefore waived. Supreme Court Rule 341(e) (7), (“Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.”)

¶ 22 Thus, the Ladipos simply failed to effectively allege and prove that PNC lacked standing and the trial court did not err in striking and dismissing their affirmative defense. Nor did it err in

subsequently granting summary judgment and the foreclosure and sale of the property in favor of PNC and the Ladipos presented no other argument to the contrary.

¶ 23

CONCLUSION

¶ 24

For the forgoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 25

Affirmed.