

Nos. 1-15-1385, 1-15-1386, 1-15-1387, 1-15-1388, 1-15-1389, 1-15-1390, 1-15-1391,  
1-15-1392, 1-15-1393, 1-15-1394, 1-15-1395, 1-15-1450

**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 JUDICIAL DISTRICT

---

URBAN PARTNERSHIP BANK,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
	)	12 CH 19531
v.	)	12 CH 19532
	)	12 CH 19533
EDWARD JAMES; EDWARD JAMES REAL	)	12 CH 19759
ESTATE CORPORATION,	)	12 CH 19760
	)	12 CH 19906
Defendants-Appellants	)	12 CH 19974
	)	12 CH 19976
	)	12 CH 20282
(City of Chicago, Chicago Community Bank,	)	12 CH 20285
Unknown Owners and Non-Record Claimants	)	12 CH 20286
	)	12 CH 21971
Defendants).	)	
	)	Honorable
	)	Michael T. Mullen,
	)	Judge Presiding.

---

JUSTICE CUNNINGHAM delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* In consolidated mortgage foreclosure actions, the trial court correctly granted the plaintiff-appellee's motions for summary judgment and entered corresponding foreclosure judgments, as the defendants failed to raise any genuine issue of material fact to support their affirmative defense that the plaintiff lacked standing.

Nos. 1-15-1385, 1-15-1386, 1-15-1387, 1-15-1388, 1-15-1389, 1-15-1390, 1-15-1391,  
1-15-1392, 1-15-1393, 1-15-1394, 1-15-1395, 1-15-1450

¶ 2 In these 12 consolidated mortgage foreclosure cases, the defendants, Edward James (James) and Edward James Real Estate Corporation (James Corporation), appeal from orders granting summary judgment in favor of the plaintiff, Urban Partnership Bank (UPB). The defendants argue that there was a genuine issue of material fact as to their affirmative defense that UPB lacked standing to enforce the underlying loan documents.

¶ 3 **BACKGROUND**

¶ 4 James is the named defendant in 11 of these 12 foreclosure actions, and James Corporation is the named defendant in action 12 CH 19760. The actions arise out of 12 promissory notes, executed from 2005 to 2008, evidencing loans made to the defendants by UPB's predecessor-in-interest, ShoreBank. Each of the notes was secured by a contemporaneous mortgage encumbering real property in Chicago. Thus, there was a total of 12 notes and mortgages.

¶ 5 The FDIC subsequently became the receiver of ShoreBank's assets, including the defendants' loans. In 2010, UPB and the FDIC executed a purchase agreement for ShoreBank's assets. Pursuant to the purchase agreement, the FDIC executed a "limited power of attorney" document designating certain UPB employees as FDIC's attorneys in fact, authorizing them to transfer ShoreBank's assets to UPB. One of those "attorneys in fact" subsequently executed various allonges transferring the defendants' notes and mortgages to UPB.

¶ 6 In May and June 2012, UPB commenced the 12 underlying actions by filing verified foreclosure complaints, each of which alleged a payment default under one of the 12 corresponding loans. Each of the complaints attached a copy of the related promissory note executed in favor of ShoreBank, as well as a copy of the corresponding mortgage. The notes and

Nos. 1-15-1385, 1-15-1386, 1-15-1387, 1-15-1388, 1-15-1389, 1-15-1390, 1-15-1391,  
1-15-1392, 1-15-1393, 1-15-1394, 1-15-1395, 1-15-1450

mortgages attached to the complaints did not contain any indorsements from ShoreBank to any other party. However, UPB alleged that it had become ShoreBank's successor-in-interest through allonges; the complaints attached documents that UPB alleged to be true and accurate copies of such allonges. Each attached allonge references the date and loan amount of the underlying note, and recites that the "FDIC hereby endorses and assigns the note to" UPB. Each allonge indicates that it was executed by an "attorney-in-fact" of the FDIC in May or June 2012. Based upon the allonges, UPB alleged that it was the rightful owner and holder of the notes and mortgages.

¶ 7 On February 13, 2013, James filed his verified answers and affirmative defenses in the 11 cases in which he was a defendant. In his answers, James did not dispute that he had entered into the ShoreBank loans, and he explicitly admitted that true and correct copies of the notes and mortgages were attached to UPB's complaints. However, his answers denied that he was required to repay such loans, as he claimed that ShoreBank had not provided him the specified loan amounts. Further, James' answers denied that UPB's complaints attached true and accurate copies of the allonges, that the FDIC had executed these allonges, or that, by virtue of the allonges, UPB was the rightful owner and holder of the notes and mortgages. Similarly, James Corporation's May 8, 2014 answer in case 12 CH 19760 admitted that the complaint attached accurate copies of the note and mortgage for its loan, but James Corporation denied that the allonge to UPB was authentic or that UPB was the holder of the note and mortgage.

¶ 8 In conjunction with their answers, the defendants asserted affirmative defenses, in which they claimed that UPB lacked standing because UPB was not the valid, legal holder of the corresponding notes when the actions were commenced. James Corporation's answer in case 12

Nos. 1-15-1385, 1-15-1386, 1-15-1387, 1-15-1388, 1-15-1389, 1-15-1390, 1-15-1391,  
1-15-1392, 1-15-1393, 1-15-1394, 1-15-1395, 1-15-1450

CH 19760 additionally asserted that UPB did not have standing when it commenced the action, alleging that UPB had recorded an assignment of the mortgage that was executed on November 12, 2012, over five months after the foreclosure action had been commenced.

¶ 9 UPB filed verified responses to the affirmative defenses in all 12 actions, in which UPB denied the defendants' claim that UPB lacked standing.

¶ 10 In March 2014, UPB filed motions for summary judgment in the 11 cases against James. UPB's motions were supported by affidavits of La'Shawn Hill, a loan operations manager for UPB. In each affidavit, Hill attested that she was familiar with the complaint and "incorporate[d] [it] in [to] this affidavit by express reference the Complaint and its exhibits." The affidavit attested that Hill had personally examined the business records related to each loan, and that the affidavit was based on her personal knowledge. In each affidavit, Hill stated that James had failed to make payments due under each loan, and stated the principal balance and interest that remained due.

¶ 11 Hill also attested that UPB acquired the servicing rights for each loan from the FDIC, as receiver for ShoreBank. In each affidavit, she averred that UPB's ownership of the note and mortgage was "evidenced by the Allonge" that was attached to the corresponding complaint, that each allonge "was executed by Maureen Bismark as power of attorney for the FDIC," and that "[t]he power of attorney granting Maureen Bismark authority to execute the Allonge on behalf of the FDIC is attached hereto."

¶ 12 Each of Hill's affidavits attached, as an exhibit, a copy of a document entitled "limited power of attorney" (the power of attorney). The power of attorney is notarized, dated July 11, 2011, and indicates that it was signed on behalf of the FDIC by Frank C. Montanez, as

Nos. 1-15-1385, 1-15-1386, 1-15-1387, 1-15-1388, 1-15-1389, 1-15-1390, 1-15-1391,  
1-15-1392, 1-15-1393, 1-15-1394, 1-15-1395, 1-15-1450

"Resolutions and Closing Manager," of the "Midwest Temporary Satellite Office." The power of attorney designates several employees of UPB, including Bismark, as "attorneys-in-fact," and authorizes them "To execute \*\*\* and deliver on behalf of the FDIC \*\*\* all instruments of transfer and conveyance \*\*\* as may be necessary or appropriate to evidence the sale and transfer of any asset of ShoreBank, including all loans formerly held by ShoreBank to Urban Partnership Bank."

¶ 13 James filed responses to UPB's motions for summary judgment in the 11 cases naming him as a defendant. James' responses did not dispute the authenticity of the notes or mortgages, but denied that the allonges attached to the complaints and referenced in Hill's affidavits were sufficient to establish that UPB had standing as the owner of the loans. James contended that "Illinois law requires that an allonge be 'affixed' to become a part of the Note and transfer ownership," citing section 3-204 of the Uniform Commercial Code (810 ILCS 5/3-204 (West 2012)), which concerns the indorsement of negotiable instruments. James asserted that his counsel had confirmed that each of the allonges relied upon in UPB's complaints "is not affixed to the note and therefore cannot be an allonge under Illinois law." Ten of James' responses to the motions for summary judgment included affidavits from the defendants' counsel, Richard Gilbaugh.<sup>1</sup> In those affidavits, Gilbaugh attested that, in connection with a discovery request, he had personally examined the original notes at UPB's counsel's office in July 2013, and saw that the allonges that had been attached to UPB's complaints were not affixed to the original notes.

---

<sup>1</sup> No affidavits from James' counsel were attached to the responses to the motions for summary judgment in cases 12 CH 19760 and 12 CH 20285.

Nos. 1-15-1385, 1-15-1386, 1-15-1387, 1-15-1388, 1-15-1389, 1-15-1390, 1-15-1391,  
1-15-1392, 1-15-1393, 1-15-1394, 1-15-1395, 1-15-1450

James argued that since the allonges were not affixed to the original notes, the allonges did not establish that UPB had standing as the holder of the notes.

¶ 14 Further, in eight of the cases against James, Gilbaugh's affidavits asserted that his inspection of the original notes revealed that, instead of the allonge attached to the complaint, "a different document entitled 'Receiver Allonge' was attached to the [original] Note." Gilbaugh averred that these "Receiver Allonges" differed from the allonges that had been attached to UPB's complaints, and that UPB had not previously submitted these "Receiver Allonges" through any pleading or motion. Like the allonges attached to UPB's complaints, the "Receiver Allonges" purported to transfer ownership of the underlying loans from the FDIC, as ShoreBank's receiver, to UPB. However, they reflected different execution dates, were signed by an "attorney in fact" other than Bismark, and contained other differences from the allonges that had been submitted with UPB's complaints.

¶ 15 On August 8, 2014, UPB filed its motion for summary judgment in case 12 CH 19760 against James Corporation. UPB's motion in that case was supported by an affidavit of William Hicks, an Operations Manager of UPB. Similar to the Hill affidavits submitted in support of summary judgment in the cases against James, Hicks attested that UPB's ownership of the note at issue in that case was evidenced by the allonge that had been attached to the complaint, and that the allonge was executed by Bismark as power of attorney for the FDIC. Hick's affidavit also attached a copy of the FDIC power of attorney that had been attached to Hill's affidavits.

¶ 16 In its September 11, 2014 response to the motion for summary judgment in case 12 CH 19760, James Corporation repeated the argument asserted in James' responses, that the allonge was ineffective to transfer ownership of the note because it was not "affixed" to the note. In

Nos. 1-15-1385, 1-15-1386, 1-15-1387, 1-15-1388, 1-15-1389, 1-15-1390, 1-15-1391,  
1-15-1392, 1-15-1393, 1-15-1394, 1-15-1395, 1-15-1450

addition, James Corporation argued that UPB lacked standing because the mortgage had not been assigned from FDIC to UPB until at least November 14, 2012, over five months after UPB had commenced its foreclosure action against James Corporation. In support, James Corporation's response attached a copy of a document entitled "Receiver, Assignment or Real Estate Mortgages, Deeds of Trust, Assignment of Leases and Rents and Other Loan Documents" purporting to assign the mortgage at issue from the FDIC to UPB; that document indicated that it was executed and effective as of November 14, 2012 and had been recorded on March 21, 2013. However, James Corporation's response to UPB's motion for summary judgment was not supported by any affidavit.

¶ 17 UPB filed replies in support of its motions for summary judgment in the 12 actions, in which it argued that "whether the Allonge is physically affixed to the Note" was irrelevant to the issue of UPB's standing, as it had attached the note, mortgage and allonge to the complaint. UPB also asserted that it was immaterial if certain of the loan files contained a "Receiver's Allonge" that was not identical to the allonges attached to the complaint. UPB argued that even if a non-identical "Receiver's Allonge" existed for certain notes, "the result is the same because that allonge, like the one attached to the Complaint, transfers ownership of the Note to" UPB. UPB otherwise urged that the defendants had failed to offer any evidence suggesting that anyone other than UPB currently owned the note.

¶ 18 On September 22, 2014, while the motions for summary judgment were pending, the court entered orders directing UPB to "produce the notes and allonges for inspection in open court" on October 21, 2014.

Nos. 1-15-1385, 1-15-1386, 1-15-1387, 1-15-1388, 1-15-1389, 1-15-1390, 1-15-1391,  
1-15-1392, 1-15-1393, 1-15-1394, 1-15-1395, 1-15-1450

¶ 19 The record reflects that on October 21, 2014, UPB presented in court a number of “Affidavit[s] of Lost Original Document[s]” (the lost document affidavits), each of which was executed by Gregory Paulus, as the "Director, Managed Assets" of UPB. In each affidavit, Paulus attested that the underlying note and mortgage “were endorsed, assigned and negotiated to [UPB] via an allonge.” He further attested that UPB had searched for the original allonges but had been unable to find them and believed they were lost, stolen or destroyed. The lost document affidavits further stated that no other party had asserted any interest in the notes and mortgages.

¶ 20 On October 21, 2014, the court entered orders permitting the defendants to respond to the lost document affidavits, and for UPB to file a reply. The court set a “Hearing on the Lost Document Affidavit[s]” to occur on November 19, 2014, and continued the summary judgment motions to that date.

¶ 21 On November 4, 2014, the defendants filed "sur-responses" to UPB's motions for summary judgment. They argued that the lost document affidavits must be stricken for violating the requirements of Supreme Court Rule 191(a) (eff. Jan. 4, 2013), as the lost document affidavits were not made on personal knowledge and contained legal conclusions. The defendants also argued that the lost document affidavits were deficient under section 3-309 of the Uniform Commercial Code, regarding "Enforcement of lost, destroyed, or stolen instrument[s]" (810 ILCS 5/3-309(a)(i) (West 2014)), because they did not specifically state that UPB had been in possession of the original allonges, or that UPB had been entitled to enforce them. Finally, the defendants' sur-responses argued that, pursuant to Rule 191, UPB could not rely on any separate "Receiver Allonge" to support summary judgment, since those allonges had not been introduced in the record by UPB through pleading or affidavit.



Nos. 1-15-1385, 1-15-1386, 1-15-1387, 1-15-1388, 1-15-1389, 1-15-1390, 1-15-1391,  
1-15-1392, 1-15-1393, 1-15-1394, 1-15-1395, 1-15-1450

¶ 22 UPB then filed sur-replies<sup>2</sup> in which UPB argued that the defendants' objections to the lost document affidavits were irrelevant. UPB asserted that those affidavits had not been offered in support of its motions for summary judgment, but rather in response to the court's order to produce the original loan documents for inspection. UPB further argued that regardless of whether the lost document affidavits complied with Rule 191, UPB had already made a *prima facie* showing of standing to enforce the notes, warranting summary judgment.

¶ 23 On November 19, 2014, the trial court granted UPB's motions for summary judgment in all 12 actions, and entered corresponding judgments of foreclosure and sale. Also on November 19, 2014, the court entered separate orders directing UPB, in each case, "to file a copy of the Note with the Receiver Allonge attached," and to "file a copy of the Lost Original Document Affidavit." On November 26, 2014, UPB filed copies of the notes and documents entitled "Receiver Allonge" purporting to assign the notes to UPB from the FDIC. Notably, whereas the allonge documents attached to the complaints reflected execution dates in May or June 2012, the "Receiver Allonge" documents filed by UPB are dated August 20, 2010. Also on November 26, 2014, UPB also filed copies of the lost document affidavits that it had previously presented in court on October 21, 2014.

¶ 24 UPB thereafter noticed judicial sales of the properties and filed motions to confirm those sales on February 6, 2015. On April 17, 2015, the court granted the motions to confirm, entering deficiency judgments against the defendants in each case.

¶ 25 The defendants filed timely notices of appeal in 11 of the matters. In case 12 CH 21971, James was granted leave to file a late notice of appeal, which was filed on June 9, 2015.

---

<sup>2</sup> Only two of UPB's sur-replies are included in the record on appeal.

Nos. 1-15-1385, 1-15-1386, 1-15-1387, 1-15-1388, 1-15-1389, 1-15-1390, 1-15-1391,  
1-15-1392, 1-15-1393, 1-15-1394, 1-15-1395, 1-15-1450

¶ 26 While these appeals were pending, UPB's counsel filed a motion seeking leave to withdraw. Our court granted that motion in an order dated March 22, 2016. In that order, we directed UPB to retain new counsel to represent it in these appeals, and that UPB's new counsel was to file its appearance within 21 days. However, no appearance was filed by any new counsel for UPB. On May 11, 2016, our court entered an order finding that UPB had failed to file a brief within the time prescribed by Supreme Court Rule 343(a) (eff. Sep. 1, 2006). Thus, we ordered that these appeals would be taken for consideration on the record and the appellants' brief only.

¶ 27 ANALYSIS

¶ 28 We first note that we have jurisdiction. “[A] judgment ordering the foreclosure of a mortgage is not final and appealable until the trial court enters an order approving the sale and directing the distribution” *JP Morgan Chase Bank v. Fankhauser*, 383 Ill. App. 3d 254, 260 (2008) (citing *In re Marriage of Verdung*, 126 Ill. 2d 542, 555-56 (1989)). In 11 of these 12 cases, the defendants filed timely notices of appeal, within 30 days of the April 17, 2015 final orders confirming the judicial sales. Ill. S. Ct. R. 303(a) (eff. Jan 1, 2015). We also have jurisdiction with respect to the remaining case, 12 CH 21971, as our court granted James leave to file a late notice of appeal in that case pursuant to Rule 303(d) (eff. Jan. 1, 2015).

¶ 29 Although the notices of appeal challenged additional orders made by the trial court,<sup>3</sup> the argument in the appellants’ brief is limited to the November 19, 2014 orders granting summary judgment in favor of UPB. Our standard of review is well settled. “Summary judgment is

---

<sup>3</sup> In addition to the orders granting summary judgment, the defendants' notices of appeal also sought reversal of the trial court’s orders appointing a receiver of the defendants' properties subject to the mortgages, and sought reversal of the trial court’s April 17, 2015 denial of the defendants’ motions to reconsider the judgment amounts in the judgments of foreclosure and sale. However, the defendants raise no arguments regarding those orders in their appellate brief, and thus have forfeited review of those issues.

Nos. 1-15-1385, 1-15-1386, 1-15-1387, 1-15-1388, 1-15-1389, 1-15-1390, 1-15-1391,  
1-15-1392, 1-15-1393, 1-15-1394, 1-15-1395, 1-15-1450

appropriate where the pleadings, affidavits, depositions, and admissions on file, when viewed in the light most favorable to the nonmoving party, demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” (Internal quotation marks omitted.) *US Bank National Association v. Avdic*, 2014 IL App (1st) 121759, ¶ 21. “The circuit court’s ruling on a motion for summary judgment is reviewed *de novo*.” *1010 Lakeshore Ass’n v. Deutsche Bank National Trust Co.*, 2014 IL App (1st) 130962, ¶ 8.

¶ 30 “If the party moving for summary judgment supplies facts which, if not contradicted, would entitle such party to a judgment as a matter of law, the opposing party cannot rely on his pleadings alone to raise issues of material fact. [Citation.] Thus, facts contained in an affidavit in support of a motion for summary judgment that are not contradicted by a counteraffidavit must be taken as true for purposes of the motion. [Citation.]” *CitiMortgage v. Sconyers*, 2014 IL App (1st) 130023, ¶ 9.

¶ 31 On appeal, the defendants argue that a genuine issue of fact remained with respect to their claim that UPB lacked standing to file these foreclosure actions. “Lack of standing to bring an action is an affirmative defense, and the burden on pleading and proving the defense is on the party asserting it.” *Bayview Loan Servicing, LLC v. Cornejo*, 2015 IL App (3d) 140412, ¶ 12. Thus, in order to avoid summary judgment, it was incumbent on the defendants to provide some evidence to demonstrate a genuine issue of material fact on the issue of standing. However, in light of the admissions in the defendants’ pleadings, combined with the uncontroverted assertions in UPB’s affidavits, we conclude that the defendants have failed to do so.

¶ 32 The defendants’ appellate brief sets forth three lines of argument to assert that they raised a question of fact as to UPB’s standing. First, they argue that an issue of fact was raised by the

Nos. 1-15-1385, 1-15-1386, 1-15-1387, 1-15-1388, 1-15-1389, 1-15-1390, 1-15-1391,  
1-15-1392, 1-15-1393, 1-15-1394, 1-15-1395, 1-15-1450

affidavits of their counsel, attesting that the allonges submitted with UPB's complaints were not affixed to the original notes; and that in certain cases a different "Receiver Allonge" document was attached to the notes. Second, the defendants assert that the trial court erred by relying on the lost document affidavits, in which UPB asserted that it could not find the original allonges. Third, the defendants argue that "the trial court erred in relying on the Receiver Allonge documents in granting summary judgment, as the documents have never been certified or supported by affidavit or otherwise" as required by Supreme Court Rule 191(a) (eff. Jan. 4, 2013). As we find that these arguments are without merit, we affirm the orders of the circuit court of Cook County.

¶ 33 First, our case law is clear that a *prima facie* showing of standing is established when the plaintiff attaches a copy of the note and mortgage to the complaint: "For over 25 years, the Foreclosure Law has been interpreted as *not* requiring plaintiffs' production of the original note, nor any specific document demonstrating that it owns the note or the right to foreclose on the mortgage other than a copy of the mortgage and note attached to the complaint." (Emphasis in original.) *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 26; *Bayview Loan Servicing*, 2015 IL App (3d) 140412, ¶ 13 ("The note attached to the original foreclosure complaint is *prima facie* evidence that JP Morgan Chase owned the note, even though it lacked the indorsement in blank.").<sup>4</sup>

---

<sup>4</sup> We note that, pursuant to Supreme Court Rule 113(b), plaintiffs in mortgage foreclosure actions are now required to attach to the complaint "a copy of the note, as it currently exists, including all indorsements and allonges." Ill. S. Ct. R. 113(a) (eff. May 1, 2013). However, that rule applies "only to those foreclosure actions filed on or after the effective date of May 1, 2013." Ill. S. Ct. R. 113(a) (eff. May 1, 2013). The cases at issue in these appeals were commenced in 2012. In any event, Rule 113 does not require the plaintiff to provide *original* notes or allonges, but indicates that copies will suffice.

Nos. 1-15-1385, 1-15-1386, 1-15-1387, 1-15-1388, 1-15-1389, 1-15-1390, 1-15-1391,  
1-15-1392, 1-15-1393, 1-15-1394, 1-15-1395, 1-15-1450

¶ 34 Moreover, the defendants' answers admitted that true and correct copies of the notes and mortgages were attached to the complaints. "The failure of a defendant to explicitly deny a specific allegation in the complaint will be considered a judicial admission and will dispense with the need of submitting proof on the issue." (Internal quotation marks omitted.) *Parkway Bank & Trust Co.*, 2013 IL App (1st) 130380, 37. Thus, UPB's standing was established by the pleadings alone.

¶ 35 Furthermore, UPB's motions for summary judgment were supported by sworn affidavits from Hill and Hicks, based on their personal knowledge, each of which explicitly incorporated "by express reference the Complaint and its exhibits," including the allonges. In those affidavits, Hill and Hicks attested that UPB's ownership of the underlying loans was evidenced by the allonges, which were executed by Bismark as power of attorney for the FDIC. Further, those affidavits attached the power of attorney in which the FDIC, as ShoreBank's receiver, authorized Bismark to execute documents conveying ShoreBank's loans to UPB. Notably, the defendants do not suggest that Hill or Hicks' affidavits did not comply with Supreme Court Rule 191(a), which governs affidavits used in connection with motions for summary judgment. *US Bank, National Association*, 2014 IL App (1st) 121759, ¶ 21 (citing Ill. S. Ct. R. 191(a) (eff. Jan. 4, 2013)). Thus, the Hill and Hicks affidavits were equivalent to testimonial evidence confirming that, through the allonges, the FDIC assigned the underlying loans to UPB. See *id.* ¶22 (explaining that a Rule 191(a) affidavit in support of summary judgment "is actually a substitute for testimony taken in open court").

¶ 36 In response to this evidentiary showing, it was the defendants' burden to support their affirmative defense of lack of standing by presenting some evidence to raise an issue of fact that

Nos. 1-15-1385, 1-15-1386, 1-15-1387, 1-15-1388, 1-15-1389, 1-15-1390, 1-15-1391,  
1-15-1392, 1-15-1393, 1-15-1394, 1-15-1395, 1-15-1450

UPB was *not* authorized to file suit to foreclose, either as the holder of the underlying notes or on behalf of the holder. *CitiMortgage, Inc.*, 2014 IL App (1st) 130023, ¶12 ("because it was defendants who raised an issue regarding the manner in which CitiMortgage acquired the note as a basis for challenging CitiMortgage's ability to enforce it, it was defendants' burden to present to the court, in response to CitiMortgage's motion for summary judgment, evidence that would raise a genuine issue of material fact that some other person or entity was the holder of the note."); *Bayview Loan Servicing, LLC*, 2015 IL App (3d) 140412, ¶ 13 ("Since the burden was on the [defendants] to prove that JPMorgan Chase lacked standing at the time the complaint was filed, they needed to present some evidence that the transfer did not occur before the complaint was filed.").

¶ 37 However, the defendants did not submit evidence, in the form of counteraffidavits or otherwise, contradicting Hill's and Hicks' sworn assertions that the allonges were duly executed and that, pursuant to the allonges, UPB was the holder of the loans. We recognize that in 10 of the 12 cases, the defendants submitted an affidavit from their attorney, Gilbaugh, in which he stated that the allonges attached to the complaint were not physically attached to the original notes when he inspected the loan file, and that in eight cases, there were additional "Receiver Allonge" documents which differed from the allonges that had been included with the complaints.<sup>5</sup> Notwithstanding these assertions by defense counsel, the defendants did not submit any sworn testimony to dispute that the FDIC did, in fact, transfer the underlying loans pursuant

---

<sup>5</sup> As noted by UPB's argument in the trial court, the defendants' counsel did not suggest that the "Receiver Allonges" had any *substantial* difference from the allonges that were attached to the complaints. That is, the defendants' counsel did not suggest that the "Receiver Allonges" purported to assign the loans to any party other than UPB.

Nos. 1-15-1385, 1-15-1386, 1-15-1387, 1-15-1388, 1-15-1389, 1-15-1390, 1-15-1391,  
1-15-1392, 1-15-1393, 1-15-1394, 1-15-1395, 1-15-1450

to the power of attorney attached to the Hill and Hicks affidavits and the allonges attached to the complaints. Nor did the defendants offer any evidence that any other entity besides UPB held the underlying notes at the time UPB's complaints were filed.<sup>6</sup>

¶ 38 Since the defendants failed to deny the assertions in the Hills and Hick's affidavits regarding the power of attorney and allonges, they must be taken as true for purposes of UPB's summary judgment motions. *1010 Lakeshore Ass'n*, 2014 IL App (1st) 130962, ¶ 19 ("[F]acts contained in an affidavit in support of a motion for summary judgment which are not contradicted by counteraffdavit are admitted and must be taken as true for purposes of the motion."); *US Bank, National Ass'n*, 2014 IL App (1st) 121759, ¶¶ 31-32 (bank entitled to summary judgment where bank employee's affidavit regarding loan default complied with Rule 191 "and there was no competing affidavit or evidence to contradict this evidence").

¶ 39 That is, for purposes of the motions, it was uncontroverted and established that (1) pursuant to a purchase agreement, the FDIC authorized Bismark to convey ShoreBank's loans to UPB; and (2) that Bismarck did, in fact execute the allonges that were submitted with the complaints, evidencing UPB's ownership of the underlying loans. Given the failure to submit any evidence to challenge these assertions, the arguments raised in the defendants' appellate brief do not raise a genuine issue of fact. We briefly address those arguments.

---

<sup>6</sup> We acknowledge that in case 12 CH 19760, James Corporation's response to UPB's motion for summary judgment asserted that UPB lacked standing because the mortgage had not been assigned to UPB until after the foreclosure action was filed. James Corporation's response attached a copy of a document which, it claimed, demonstrated that the assignment to UPB did not occur until after the complaint was filed. However that document was not attached to any affidavit and thus was not properly submitted in opposition to summary judgment pursuant to Rule 191. In any event, the defendants' appellate brief makes no argument based on that document to challenge summary judgment in case 12 CH 19760.

Nos. 1-15-1385, 1-15-1386, 1-15-1387, 1-15-1388, 1-15-1389, 1-15-1390, 1-15-1391,  
1-15-1392, 1-15-1393, 1-15-1394, 1-15-1395, 1-15-1450

¶ 40 First, as we have already noted, the assertions in the defendants' counsel's affidavits that the allonges were not physically attached or "affixed" to the original notes did not present a material question of fact as to standing, since the plaintiff in a foreclosure case need not be the owner or holder of the note, but may simply be acting on their behalf. 735 ILCS 5/15-1208 (West 2014); *OneWest Bank FSB v. Cielak*, 2016 IL App (3d) 150224, ¶ 30 (rejecting claim that a servicer did not have standing to file foreclosure lawsuit on behalf of its principal). Moreover, the defendants' counsel found the allonges in the same files as the corresponding notes. While it might be preferable to affix an allonge to its corresponding note, we find that the lack of a clip or staple is a hypertechnical oversight and insufficient to justify a finding that the plaintiff lacked standing. See, e.g., *Berg v. eHome Credit Corp.*, No. 08 C 05530, 2011 WL 761486 (N.D. Ill. Feb. 25 2011). This is particularly so in light of the unrefuted evidence demonstrating a clear trail of ownership from the original lender to the plaintiff.

¶ 41 Similarly, to the extent the defendants' appeal asserts deficiencies in the lost document affidavits (in which UPB asserted that it could not find the original allonges) it is clear that summary judgment was warranted even without such affidavits. In any event, regardless of any deficiencies in the lost document affidavits, the defendants failed to deny, in counteraffidavits, the sworn statements in Hill's and Hicks' affidavits that the FDIC had assigned the underlying loans to UPB. As those uncontroverted statements must be regarded as true, any alleged deficiencies with the lost document affidavits could not raise a genuine issue of material fact as to UPB's standing.

¶ 42 Similarly, the defendant's final argument on appeal—that the trial court "erred by relying on the Receiver Allonges in granting summary judgment because they were not supported by



Nos. 1-15-1385, 1-15-1386, 1-15-1387, 1-15-1388, 1-15-1389, 1-15-1390, 1-15-1391,  
1-15-1392, 1-15-1393, 1-15-1394, 1-15-1395, 1-15-1450

affidavit or verification"—is without merit. First, there is no indication that the trial court actually relied on the "Receiver Allonges" whatsoever in deciding to grant summary judgment. Notably, the court entered the summary judgment orders on November 19, 2014; on the same date, the court entered *separate* orders directing UPB, in each case, to "file a copy of the Note with the Receiver Allonge attached" by November 26, 2014. That is, summary judgment had already been granted before the Receiver Allonges were filed. In any event, as we have already explained, the defendants' pleadings, together with the uncontroverted assertions in the affidavits submitted by Hill and Hicks in support of UPB's motions, established UPB's standing to foreclose the underlying mortgages. As the defendants did not offer any evidence to raise a material issue of fact to support the affirmative defense of lack of standing, summary judgment was properly granted.

¶ 43 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 44 Affirmed.