SIXTH DIVISION
Order filed: February 3, 2017

No. 1-16-0430

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WELLS FARGO BANK, N.A.,	)	Appeal from the
	)	Circuit Court of
Plaintiff and Counterdefendant-Appellee,	)	Cook County
	)	
v.	)	No. 10 CH 05617
	)	
SHARON MUHAMMAD; ROBIE L. LIGHTHALL; UNKNOWN OWNERS and NONRECORD CLAIMANTS,	)	
	)	
Defendants,	)	Honorable
	)	Mathias Delort and
(Sharon Muhammad, Defendant and Counterplaintiff-Appellant).	)	Michael F. Otto,
	)	Judges, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* We find no error in the circuit court's orders: denying the defendant's motion to dismiss this foreclosure action by reason of the original plaintiff's lack of standing; denying the defendant's motion to reconsider that order; granting the plaintiff's motion for summary judgment and entering a judgment of foreclosure and sale; and confirming the foreclosure sale.

¶ 2 The defendant, Sharon Muhammad, appeals from an order of the circuit court confirming a judicial sale of the property commonly known as 11033 South Mackinaw Avenue, Chicago,

Illinois (the Property) and the underlying orders denying her motion to dismiss the complaint for foreclosure; denying her motion to reconsider the denial of her motion to dismiss; and granting the motion of the plaintiff, Wells Fargo Bank, N.A. (Wells Fargo), for summary judgment and entering a judgment of foreclosure and sale. For the reasons which follow, we affirm.

¶ 3 On December 10, 2007, the defendant executed a note in the principal sum of $332,500 (the Note) payable to American Mortgage Network, Inc. d/b/a Amnet Mortgage (AMNET). The Note was secured by a mortgage on the Property executed by the defendant in which Mortgage Electronic Registration Systems, Inc (MERS) is designated as the mortgagee in its capacity as nominee for AMNET (the Mortgage). On February 9, 2010, Chase Home Finance, LLC (Chase), filed a complaint in the circuit court of Cook County to foreclose on the Mortgage, alleging that the defendant was in default in the payment of principal and interest owed on the Note. Attached to the complaint is a copy of the Note along with an endorsement in blank executed by AMNET, and a copy of the Mortgage. On February 17, 2010, the defendant was served by substitute service with a copy of the summons and complaint and was subsequently served by publication.

¶ 4 On February 9, 2011, MERS, as nominee for AMNET, executed an assignment of the Mortgage to Chase. On that same day, Chase assigned its interest in the Mortgage to Federal National Mortgage Association (FNMA). On May 25, 2011, Chase filed a motion to substitute FNMA as the plaintiff in this action, which was granted by the circuit court on June 28, 2011.

¶ 5 On September 27, 2011, FNMA filed a motion seeking an order of default against the defendant for failure to appear or plead to the complaint. On October 12, 2011, the defendant filed her *pro se* appearance and a section 2-619(a)(2) (735 ILCS 5/2-619(a)(2) (West 2010)) motion to dismiss the complaint, alleging, *inter alia*, that Chase had no interest in either the Note

or Mortgage when it filed its complaint and, therefore, lacked standing to bring the instant action. Thereafter, FMNA withdrew its motion for default, and the circuit court entered a briefing schedule on the defendant's motion to dismiss.

¶ 6 On December 12, 2011, the circuit court entered an order denying the defendant's motion to dismiss. Following the denial of her motion, the defendant retained counsel who filed an appearance on January 10, 2012, and on January 25, 2012, filed a motion to reconsider the denial of the defendant's motion to dismiss. The defendant's motion to reconsider was denied, and she was granted time to answer the complaint.

¶ 7 On March 14, 2012, the defendant filed her answer, affirmative defenses and counterclaims. In her answer, the defendant admitted the allegations in the complaint relating to the terms of the Mortgage. However, she denied being in default and denied the amount of principal and interest claimed to be owed. She also denied that Chase brought the action in its capacity as mortgagee. The defendant's five affirmative defenses are labeled as follows: "Affirmative Defense I—Failure to Accelerate and Provide Notice of Acceleration;" "Affirmative Defense II—Failure to Provide HUD Counseling Notice;" "Affirmative Defense III—Violation of Section 1502.5 of the Illinois Mortgage Foreclosure Law;" "Affirmative Defense IV—Wrongful Foreclosure;" and "Affirmative Defense V—Lack of Standing." The defendant's counterclaim sets forth actions against Chase and/or FNMA for declaratory judgment in count I, breach of contract in count II, promissory estoppel in count III, breach of the covenant of good faith and fair dealing in count IV, violations of the Illinois Consumer Fraud and Deceptive Business Practices Act in count V, violations of the Real Estate Settlement and Procedures Act in count VI, violations of the Fair Debt Collection Practices Act in count VII, and violations of the Fair Credit Reporting Act in count VIII. There is an additional section of

the defendant's counterclaim which is also labeled as count IV that bears the heading of "Equity Abhors a Forfeiture."

¶ 8 On July 26, 2012, FNMA assigned the Mortgage to Wells Fargo. Thereafter, the circuit court granted FNMA's motion to substitute Wells Fargo as the party plaintiff. On September 11, 2012, Well Fargo filed its answer to the defendant's affirmative defenses and counterclaims, denying the material factual assertions contained therein and also its affirmative defenses to the defendant's counterclaims.

¶ 9 On September 23, 2012, Wells Fargo filed a motion for summary judgment supported by the affidavits of Thomas E. Reardon, a vice president of JP Morgan Chase Bank, N.A.; and the affidavit of Andrea Kruse, Wells Fargo's vice president for loan documentation. On December 30, 2014, the defendant responded to the summary judgment motion. Attached to her response are copies of various orders and pleadings filed in the case and copies of the February 9, 2011, assignments. The record contains a copy of an undated and unsigned affidavit which is also attached to the defendant's response.

¶ 10 On February 25, 2015, Wells Fargo filed a motion for the entry of a judgment for foreclosure and sale of the Property. On March 4, 2015, the circuit court granted Wells Fargo's motion for summary judgment and entered a judgment for foreclosure and sale.

¶ 11 Pursuant to the circuit court's judgment of March 4, 2015, the Property was sold at a judicial sale on August 6, 2015. On September 21, 2015, Wells Fargo filed a motion to approve the report of sale and distribution and for confirmation of the sale. The defendant filed her response to the motion again asserting her standing arguments. On January 12, 2016, the circuit court entered an order granting Wells Fargo's motion, and this appeal followed.

¶ 12 For her first assignment of error, the plaintiff argues that the circuit court erred in denying her section 2-619(a)(2) motion, contending that Chase lacked standing to file the instant action. We disagree.

¶ 13 By filing a section 2-619 motion for involuntary dismissal, the defendant fixed the standards to be applied. A section 2-619 motion admits all well-pleaded facts alleged in the complaint and all reasonable inferences to be drawn therefrom. *Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8. The complaint and supporting documents must be interpreted in the light most favorable to the plaintiff. *Id*. Our review of an order granting or denying a section 2-619 motion is *de novo*. *Id*.

¶ 14 In her section 2-619 motion, the defendant argued that Chase lacked standing to file the instant action, asserting that the Note attached to Chase's complaint "has never been endorsed" and that AMNET, not Chase, was the owner of the Note and Mortgage on the date that this action was filed. The defendant also asserted that Chase lacked the capacity to assign the Mortgage and Note to FNMA and that Chase failed to respond to requests for validation of her debt as required by the Fair Debt Collection Practices Act (15 U.S.C. § 1692(g) (2006)). The motion referenced, and attached copies of, the February 9, 2011, assignment from MERS, as nominee for AMNET, to Chase and the assignment from Chase to FNMA of the same date (collectively referred to as "the assignments"). The motion was not supported by affidavit.

¶ 15 On appeal, the defendant asserts that it was not until February 9, 2011, that AMNET assigned "the Loan" to Chase. As a consequence, she concludes that Chase filed the underlying action eight months before it had an interest in "the Loan" and, therefore, lacked standing to commence the action.

¶ 16 As a preliminary matter, we note that, although the defendant's section 2-619 motion asserted both lack of standing and a failure to comply with the Fair Debt Collection Practices Act, the defendant's brief on appeal only contains arguments addressed to the issue of standing. There are no arguments addressed to her claim that Chase failed to comply with the Fair Debt Collection Practices Act. As a consequence, any claim of error in denying the defendant's motion to dismiss based upon the Fair Debt Collection Practices Act has been forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); *Meyers v. Kissner*, 149 Ill. 2d 1, 8 (1992). We, therefore, address only the propriety of the circuit court's denial of the defendant's motion to dismiss based upon Chase's alleged lack of standing.

¶ 17 In its complaint for foreclosure filed on February 9, 2011, Chase alleged that it brought suit as "the Mortgagee under 735 ILCS 5/15-1208." The statement is one of fact which must be accepted as true for purposes of ruling on a section 2-619 motion and is sufficient to establish Chase's standing to bring the action. *Wells Fargo Bank, N.A. v. Mundie*, 2016 IL App (1st) 152931, ¶¶ 11-13. Nevertheless, the defendant argues that the assignments of February 9, 2011, establish that Chase was not the holder of the Note when it commenced this action. We find no merit in the argument.

¶ 18 Attached to the original complaint is a copy of the Note along with an assignment in blank executed by AMNET. Although the defendant asserted in her motion to dismiss that the Note "has never been endorsed," she provided no evidentiary material to support the assertion other than the assignments. However, a close examination of the assignments reflects that they do not purport to assign the Note; rather, both instruments state that it is the Mortgage which was being assigned.

¶ 19 As Wells Fargo correctly argues, the assignment of a note in blank renders the note a bearer instrument (810 ILCS 5/3-205(b) (West 2010)), and constitutes an equitable assignment to the holder of the mortgage securing the note (*Federal National Mortgage Association v. Kuipers*, 314 Ill. App. 3d 631, 635 (2000)). The written assignments of the Mortgage on February 9, 2011, do not establish that Chase was not the holder of the Note on the date of the filing of the instant action, nor do they raise a genuine question of fact on the issue of Chase's status as the equitable assignee of the Mortgage. Chase's physical possession of the Note and the attachment of a copy thereof to its complaint along with an endorsement in blank executed by AMNET, the named payee, is *prima facie* evidence that Chase was the holder of the note on the date that it filed the instant action (*Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 24), and were sufficient to confer standing upon Chase to foreclose on the mortgage (*US Bank, National Ass'n v. Avdic*, 2014 IL App (1st) 121759, ¶ 37).

¶ 20 Based upon the allegation in the complaint that Chase filed this action in its capacity as mortgagee, the attachment to the complaint of a copy of the Note along with an endorsement in blank executed by AMNET, and the defendant's failure to submit any evidentiary material establishing that Chase was not the holder of the Note on the date it filed the instant action, the foregoing analysis leads us to conclude that the circuit court correctly denied the defendant's section 2-619 motion to dismiss the complaint based upon lack of standing. And for the same reasons, we also conclude that the circuit court correctly denied the defendant's motion for reconsideration of that order.

¶ 21 The defendant next argues that the circuit court erred in granting Wells Fargo's motion for summary judgment and entering a judgment of foreclosure and sale. However, other than setting forth the standards applicable to ruling on a motion for summary judgment, the defendant

merely restates her arguments addressed to Chase's standing to file the instant action. And again, we are not persuaded.

¶ 22 Summary judgment is appropriate "if 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 the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2014); *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 12. Our review of a summary judgment is *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). In conducting our review, we independently examine the evidentiary material presented in support of, and in opposition to, the motion for summary judgment to determine whether there is an issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Arra v. First State Bank & Trust Company of Franklin Park*, 250 Ill. App. 3d 403, 406 (1993).

¶ 23 In its motion, Wells Fargo sought a summary judgment on its complaint for foreclosure, and also on the affirmative defenses and counterclaims filed by the defendant. The motion was supported by the affidavits of Reardon and Kruse. In his affidavit, Reardon stated, *inter alia*, that he is a vice president of JPMorgan Chase Bank, N.A.; that he has access to Chase's business records relating to mortgages; that those records are kept in the ordinary course of business; and that the factual statements made in his affidavit are based upon his review of Chase's records and his personal knowledge of how those records are kept. He also stated that a true and correct copy of the Note is attached to his affidavit as an exhibit. The copy of the attached Note contains an endorsement in blank by AMNET. Reardon attested to the fact that MERS, as nominee for AMNET, assigned the Mortgage to Chase on December 7, 2009, and identified a copy of that assignment which is attached to his affidavit as an exhibit. In her affidavit, Kruse stated that she is a vice president of Wells Fargo, and that she is familiar with the records of Wells Fargo

relating to mortgages, which records are kept in the ordinary course of business. A copy of the written assignment of the Mortgage by MERS, as nominee for AMNET, to Chase which is dated and notarized on December 7, 2009, is attached to Kruse's affidavit as an exhibit and is identified and authenticated therein. The Kruse affidavit also identified and authenticated copies of the February 9, 2011, assignment of the Mortgage from MERS, as nominee for AMNET, to Chase and the assignment from Chase to FNMA dated the same date which are attached to the affidavit as exhibits. Kruse stated in her affidavit that, based upon her review of Wells Fargo's business records, the defendant defaulted under the Note commencing on December 1, 2008, and that the total amount due by the defendant on the Note as of August 27, 2014, including principal and accrued interest, is $512,481.44.

¶ 24 As noted earlier, the defendant filed a response to Wells Fargo's motion for summary judgment, attaching various pleadings and orders along with an unsigned and undated affidavit, copies of the assignments of the mortgage to Chase dated December 7, 2009, and February 9, 2011, and a copy of the mortgage to FNMA dated February 9, 2011. The unsigned affidavit contains no assertions going to the issue of Chase's standing to commence the action or its capacity to assign the Mortgage to FNMA, Wells Fargo's predecessor in interest.

¶ 25 On appeal, the defendant argues only that summary judgment was erroneously granted due to the existence of a material issue of fact on Chase's standing to commence this action. Implicated in the argument is not only Wells Fargo's entitlement to judgment as a matter of law on the complaint for foreclosure but also on the defendant's affirmative defense alleging Chase's lack of standing and her counterclaims based upon the same assertion. In her brief before this court, the defendant has not advanced any arguments addressed to the propriety of the summary judgment entered in favor of Wells Fargo on any of her affirmative defenses or counterclaims

based upon any theory other than lack of standing. As a consequence, any claim of error as to summary judgment having been entered on any affirmative defense or counterclaim based upon theories other than Chase's lack of standing to commence this action has been forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). Our analysis is, therefore, limited to the issue of Chase's standing to commence this action and Well Fargo's entitlement to judgment as a matter of law.

¶ 26 In her answer to the complaint, the defendant admitted the terms of the Mortgage. The Reardon affidavit submitted in support of Wells Fargo's motion for summary judgment established that copies of the same Note and Mortgage which are attached to the complaint are true and correct copies of the documents executed by the defendant on December 10, 2007. The copy of the Note attached to, and authenticated by, the Reardon affidavit contains an endorsement in blank executed by AMNET, as does the copy attached to Chase's original complaint. The Reardon and Kruse affidavits both identify and authenticate a copy of an assignment of the Mortgage by MERS, as nominee for AMNET, to Chase which is dated and notarized on December 7, 2009. The defendant has not attacked the sufficiency of either the Reardon affidavit or the Kruse affidavit, and she did not file any affidavits or other counter-evidentiary material contradicting the averments in either affidavit. She argued only, as she does on appeal, that the assignments of the Mortgage dated February 9, 2011, by MERS, as nominee for AMNET, to Chase and by Chase to FNMA create a genuine issue of fact on the issue of whether the Note and Mortgage were assigned to Chase prior to February 9, 2010, the date when it filed the original complaint in this action. The defendant asserts that the February 9, 2011, assignment to Chase is in conflict with the December 7, 2009, assignment, thereby creating the issue of fact. Wells Fargo contends that the defendant's argument in this regard does not contradict the evidence establishing that Chase was in possession of the Note endorsed in blank

by AMNET on the date that it filed the instant action, establishing its status as the equitable assignee of the Mortgage. We agree with Wells Fargo.

¶ 27 Well-alleged facts contained in an affidavit submitted in support of a motion for summary judgment are taken as true unless contradicted by counter-evidentiary material submitted in opposition, notwithstanding the existence of contrary averments in the adverse party's pleadings. *Fooden v. Board of Governors of State Colleges and Universities*, 48 Ill. 2d 580, 587 (1971). There is no doubt that Chase possessed the Note on the date that it filed the instant action, as it was able to attached a copy thereof to the complaint. Attached to the copy of the Note filed as an exhibit to the complaint is an endorsement in blank executed by AMNET, the named payee. Reardon's affidavit authenticated a copy of the Note with the same blank endorsement. This evidentiary material established Chase's status as the holder of the Note on the date it filed this action (*Korzen*, 2013 IL App (1st) 130380, ¶ 24) and, at minimum, its status as the equitable assignee of the Mortgage (*Kuipers*, 314 Ill. App. 3d at 635); thus establishing Chase's standing to commence this action (*Avdic*, 2014 IL App (1st) 121759, ¶ 37). Additionally, we do not believe that the mere fact there are two assignments of the Mortgage by MERS, as nominee for AMNET, to Chase, one dated December 7, 2009, and the other dated February 9, 2011, calls into question the authenticity of either. And, as the affidavits of both Reardon and Kruse attesting to the authenticity of the December 7, 2009, assignment were not contradicted by evidentiary material submitted by the defendant, we take the averments as true.

¶ 28 The foregoing analysis leads us to conclude that no genuine issue of material fact exists on Chase's standing to file the original complaint in this action. Further, the defendant did not submit any evidentiary material contradicting Kruse's averments that she defaulted on the Note and that the balance owed thereon as of August 27, 2014, was $512,481.44. We conclude,

therefore, that Wells Fargo was entitled to judgment as a matter of law and the circuit court correctly granted Wells Fargo's motion for summary judgment and entered a judgment of foreclosure and sale.

¶ 29 For her final assignment of error, the defendant argues that the circuit court erred in confirming the judicial sale of the Property. According to the defendant, Wells Fargo "improperly and fraudulently conducted the foreclosure sale when it lacked standing." Her argument in this regard appears to be predicated on the proposition that, since Chase had no standing to commence this action, Wells Fargo had no standing to prosecute it to judgment. For the reasons stated earlier, we reject the defendant's argument concerning Chase's standing and, therefore, also reject her derivative argument contesting Wells Fargo's standing. Based upon the grounds asserted by the defendant, we find no error in the circuit court's entry of the order both approving the report of the sale of the Property and distribution of the proceeds, and confirming the sale.

¶ 30 Affirmed.