

2017 IL App (2d) 151288-U
No. 2-15-1288
Order filed January 25, 2017

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

| | | |
|---|---|-------------------------------|
| DEUTSCHE BANK NATIONAL TRUST |) | Appeal from the Circuit Court |
| COMPANY, as Trustee for WAMU Mortgage |) | of Du Page County. |
| Pass-Through Certificates Series 2005-AR2, |) | |
| |) | |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | No. 12-CH-5021 |
| |) | |
| FREDERICK S. JACOBS and FIFTH THIRD |) | |
| BANK f/k/a OLD KENT BANK, |) | |
| |) | |
| Defendants |) | Honorable |
| |) | Robert G. Gibson, |
| (Frederick S. Jacobs, Defendant-Appellant). |) | Judge, Presiding. |

JUSTICE BIRKETT delivered the judgment of the court.
Justices Burke and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant forfeited his challenge to the Bank's use of an incorrect legal description when he did not reassert the issue in regard to the Bank's amended complaint. Defendant's general attack on the Bank's standing failed where defendant did not present any evidence to controvert the Bank's attachment of the mortgage, note, and assignment to the amended complaint. Finally, defendant was unable to demonstrate that the Sheriff's sale price of about 78% of the value of the subject property was unconscionably low.

¶ 2 Plaintiff, Deutsche Bank National Trust Company, as Trustee for WAMU Mortgage Pass-Through Certificates Series 2005-AR2 (the Bank), filed a foreclosure action against

defendant, Frederick S. Jacobs. Later, the Bank filed an amended foreclosure complaint which was answered by defendant. The circuit court of Du Page County granted summary judgment in favor of the Bank and against defendant, confirmed the sale of defendant's property, and denied defendant's motion to reconsider the order confirming the sale of the subject property. Defendant appeals the grant of summary judgment, arguing that the Bank lacked standing and had not provided a correct legal description of the subject property. Defendant also argues that the trial court erred in confirming the sale of the subject property because the purchase price was unconscionably low, and it erred in denying a motion to reconsider the confirmation of the sale. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In 1989, defendant became the owner of the subject property, located in Oak Brook, Illinois. On October 22, 2004, defendant refinanced his loan on the property, executing the note and mortgage at issue in this case with Washington Mutual Bank in the amount of \$600,000. The note was endorsed in blank.

¶ 5 Washington Mutual failed and was placed into the receivership of the Federal Deposit Insurance Corporation. On September 25, 2008, JPMorgan Chase Bank, NA, purchased Washington Mutual's assets, including the loan at issue in this case.

¶ 6 In March 2011, defendant defaulted on the loan at issue in this case. On September 13, 2012, the Bank and JPMorgan Chase executed an assignment of the mortgage at issue in this case. On October 2, 2012, the assignment was recorded in Du Page County. On October 9, 2012, the Bank filed a foreclosure action against defendant. On October 13, 2012, the Bank purportedly obtained service of the complaint on defendant via abode service by leaving a copy of the complaint with an adult at the subject property.

¶ 7 Defendant did not appear or otherwise respond to the complaint. On February 5, 2013, the Bank moved to default defendant. In support of its motion for default, the Bank submitted an affidavit of the amounts due and owing under the note. On February 6, 2013, the trial court heard the motion for default, and defendant's counsel appeared. The trial court granted defendant time to answer or otherwise plead. On March 12, 2013, defendant filed a motion to quash service. On March 19, 2013, the trial court set a briefing schedule on the motion to quash and scheduled an evidentiary hearing. Instead of briefing the issue, the Bank opted to again attempt to effect service on defendant. On March 27, 2013, defendant was personally served. On May 6, 2013, the Bank filed a motion alleging that the March 2013 personal service of defendant mooted his motion to quash. The Bank also urged the trial court to allow defendant additional time to answer the complaint or otherwise plead.

¶ 8 On June 11, 2013, the trial court held that defendant's motion was rendered moot. It granted defendant 45 days to answer or respond to the Bank's complaint.

¶ 9 On July 25, 2013, defendant filed an answer to the complaint, and defendant raised three affirmative defenses. In his first affirmative defense, defendant alleged that the complaint contained an incorrect legal description; in the second affirmative defense, defendant alleged that the Bank was not registered with the Securities and Exchange Commission, rendering the trust invalid and rendering the Bank an improper plaintiff to maintain the foreclosure action; in the third affirmative defense, defendant alleged that the Bank lacked standing to pursue the foreclosure because the mortgage and note were transferred into the trust after the closing date referenced in the applicable Pooling and Servicing Agreement (PSA).

¶ 10 On September 24, 2013, the Bank filed a motion to strike defendant's affirmative defenses. After briefing and argument, on January 14, 2014, the trial court granted in part and

denied in part the Bank's motion to strike. Specifically, the trial court denied the motion with respect to the first affirmative defense regarding the legal-description issue, granted the motion with respect to the third affirmative defense regarding the Bank's standing, and determined that the second affirmative defense was moot in light of the Bank's proof of registration with the Security and Exchange Commission, which it provided to defendant during discovery. Regarding the first affirmative defense, the Bank attached copies of deeds to illustrate the correct legal description. Nevertheless, the trial court denied the motion to strike the legal-description affirmative defense and ordered the Bank either to reform its complaint in light of the correct legal description or to file an amended complaint. In addition, the trial court noted that, on that date, the Bank brought the original Note into court, apparently exhibiting it to the trial court and to defendant.

¶ 11 On January 24, 2014, the Bank filed its amended complaint. Attached to the amended complaint was a copy of the note, endorsed in blank, the mortgage, a corrected legal description attached to the mortgage, and the assignment of the mortgage.

¶ 12 On March 25, 2014, defendant filed his answer and affirmative defenses to the amended complaint. Defendant's first affirmative defense to the amended complaint alleged that the Bank lacked standing because it had failed to allege that it was the mortgagee in the amended complaint. Defendant's second affirmative defense to the amended complaint alleged that the Bank lacked standing because the assignment of the mortgage attached to the complaint only purported to be a memorialization of the assignment rather than the actual assignment as required by the PSA. Defendant did not reiterate any of the affirmative defenses he raised in opposition to the original complaint. On April 11, 2014, the Bank filed its answers to defendant's affirmative defenses to the amended complaint.

¶ 13 On June 20, 2014, the Bank filed a motion for summary judgment. The Bank represents that this motion was supported by an affidavit of the amounts due and owing; defendant represents that such an affidavit was not included with the motion for summary judgment. Our examination of the record shows that the Bank included an affidavit, but it did not go to the amounts due and owing under the note and mortgage; rather, the affidavit shows that defendant ceased payments on the note and mortgage beginning in March 2011. Thus, the affidavit attached to the motion for summary judgment supported the issue of defendant's default on the note and mortgage. On July 15, 2014, the trial court granted the Bank's motion for summary judgment and continued the matter for prove-up and to default the remaining defendants. On September 22, 2014, the Bank filed an amended motion for judgment of foreclosure and sale, and this included an affidavit of the amounts due and owing as well as a loss-mitigation affidavit.

¶ 14 On September 30, 2014, the trial court granted defendant 28 days to respond to the Bank's affidavit of amounts due and owing, and it continued until December 2, 2014, the hearing on the Bank's amended motion for judgment of foreclosure. On November 25, 2014, defendant filed a motion to vacate the July 15 order granting summary judgment. On December 2, 2014, the trial court granted defendant's motion to vacate, and it set a briefing schedule culminating in a hearing on the Bank's motion for summary judgment. On January 29, 2015, defendant filed a motion to strike the Bank's motion for summary judgment, which alternatively included defendant's response to the motion.

¶ 15 On February 3, 2015, the matter advanced to a hearing. The trial court commented that defendant had filed his motion to strike and alternative response nearly a month late and without leave of court. The trial court further noted that defendant's tardy filings were a "recurring situation." The Bank observed that defendant had not challenged any of the amounts due and

owing or any of the other information included in its affidavit and had not submitted a counteraffidavit. The trial court held that the Bank's affidavit satisfied the requirements of the Supreme Court Rules. The trial court then entered judgment on the Bank's motion for summary judgment in favor of the Bank and against defendant. In a separate order, the trial court entered a judgment of foreclosure and sale.

¶ 16 On April 3, 2015, the Bank filed a notice of sale, scheduling a sheriff's sale of the subject property for May 5, 2015. On May 4, 2015, defendant filed a substitute appearance through new counsel. At the same time defendant filed an emergency motion to stay the May 5, 2015, sale of the subject property. On May 5, 2015, the trial court denied defendant's emergency motion to stay and affirmatively ordered the scheduled sale to proceed. The sale proceeded and the Bank purchased the subject property for \$468,000, leaving defendant with a deficiency of \$236,941.

¶ 17 On May 12, 2015, the Bank filed a motion to confirm the sale. However, defendant's new counsel was not served with the motion. On May 21, 2015, the trial court confirmed the sale; later, after defendant's counsel had moved to vacate the confirmation order, the trial court vacated the confirmation and set a briefing schedule and hearing date for the motion to confirm.

¶ 18 Defendant did not file his response to the Bank's motion to confirm before the deadline; on September 10, 2015, the trial court allowed defendant to file his response *instanter*. Attached to the response, defendant included an affidavit stating that he believed the subject property to be worth \$700,000. The comparable properties that defendant used to support his estimate of the subject property's value included properties ranging in value from \$568,000 to about \$700,000, along with the subject property's assessed valuation of approximately \$600,000. The Bank subsequently filed its reply in support of the motion to confirm.

¶ 19 On October 13, 2015, the trial court held a hearing on the now-contested motion to

confirm. Following the parties' arguments, the trial court held:

"I am very familiar with this case. Counsel and [defendant] were here on numerous occasions discussing the specifics of the property itself, which is a large close to an acre lot in Oak Brook with a home on it, but according to [defendant] it was likely a tear down property, but a valuable property nonetheless.

There isn't an appraisal contesting the value of the property. The only admissible or clearly admissible evidence as to the value is the court can take judicial notice of the assessor's valuation. The assessor values the property at \$597,180, and the bidded sale was \$468,000. Certainly there's a gap there, but the case law outlines clearly that at a sheriff's sale there's not going to be the type of price that would be gained at an arm's length transaction where a buyer has the opportunity to inspect the property, to do its diligence, to get financing on the property. And it's only if the sales price was unconscionable where there would be a need either to conduct a further hearing or deny the confirmation of sale. On this record the sales price doesn't rise to that high standard of unconscionability and consequently the motion for order approving sale is granted."

The trial court entered an order confirming the sale of the subject property and entered a deficiency judgment against defendant in the amount of \$236,941.

¶ 20 Defendant moved to reconsider the trial court's order confirming the sale of the subject property. In the motion, defendant promised to supplement it with a newly obtained valuation of the subject property (apparently in an effort to show that the sales price had been unconscionable). At the initially scheduled hearing, defendant had not filed the promised valuation, and the matter was continued.

¶ 21 About a week before the rescheduled hearing on his motion to reconsider, defendant filed

the promised appraisal for the subject property. The appraisal valued the property at \$600,000.

¶ 22 On December 1, 2015, the trial court heard defendant's motion to reconsider. After the parties' argument, the trial court ruled:

“The default in this case occurred March 1st, 2011. So, more than four years ago. The judgment entered February 3rd, 2015. The Sheriff's sale, May 5th, 2015. The price was [\$468,000]. And then the order approving sale entered October 13th, 2015.

Judicial sales in mortgage foreclosure cases are governed by [section] 15-1508(b) [of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1508(b) (West 2010))]. And the parameters are, was notice properly given, that the terms weren't unconscionable, the sale wasn't conducted fraudulently, and justice not otherwise done?

In this case, the sale price was 78 percent of fair market value. The appraisal, submitted by [defendant] is effective November 23rd, 2015, and the Sheriff's sale occurred May 5th, 2015. Even putting that gap aside and the potential of some appreciation in the home during the period, the Sheriff's sale price was a reasonable price.

Note that the definitions and scope of work section of the appraisal defines market value as a transaction where, among other things, is, quote, a reasonable time allowed for exposure on the open market, close quote. In an arm's length transaction, the buyer has a chance to view the property, perform due diligence, and obtain financing, among other things, none of which are present in a judicial Sheriff's sale. Thus, a Sheriff's sale is not designed to create conditions which would result in a fair market sale, as defined by an appraiser.

Under Illinois law, the sale price, standing alone, is not a sufficient basis to deny

confirmation of a foreclosure sale without allegations of mistake, fraud, or violation of duty by the officer conducting the sale.

Here, none of the four prongs of 1508(b) are implicated. The appraisal actually confirms the reasonableness of the Sheriff's sale price. Percentages far lower than 78 percent of fair market value have been validated by Illinois Courts in approving foreclosure sales.

Parenthetically, the Court notes the default occurred March 1, 2011, and [defendant] had more than four years to sell the property on the open market and avoid the instant scenario.

Consequently, the motion to reconsider is denied.”

The trial court thus denied defendant's motion to reconsider.

¶ 23 Defendant timely appeals.

¶ 24 II. ANALYSIS

¶ 25 On appeal, defendant argues that the trial court erred in granting summary judgment because the Bank lacked standing or genuine issues of material fact regarding standing precluded the entry of summary judgment. Specifically, defendant challenges the Bank's alleged failure to include a singular and correct legal description in the original complaint and infers that the confusion over the legal description undermines the Bank's standing to foreclose. Additionally, defendant complains that the trial court's determination that the Bank had standing undermines the Uniform Commercial Code and that the principle of standing has been sacrificed in response to the recent economic recession of 2008. Next, defendant argues that the trial court erred in granting plaintiff's motion for confirmation of the sale of the subject property because the sale price was unconscionably low. We consider each issue in turn.

¶ 26 A. Standing and Conflicting Legal Descriptions

¶ 27 Defendant first contends on appeal that the trial court erroneously granted summary judgment in favor of the Bank because it lacked standing to pursue this foreclosure action. Summary judgment is properly granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014). In determining whether there exists a genuine issue of material fact, the court must consider the pleadings, depositions, admissions, exhibits, and affidavits on file, construing them strictly against the moving party and liberally in favor of the nonmoving party. *Schweihs v. Chase Home Finance, LLC*, 2016 IL 120041, ¶48. Where undisputed facts are susceptible to divergent inferences, summary judgment should be denied; indeed, summary judgment should be granted only where the moving party's right to judgment is clear and free from doubt. *Id.* We review *de novo* the trial court's judgment on a motion for summary judgment. *Id.*

¶ 28 In this appeal, defendant contends that the legal description in paragraph 3(I) of the original complaint relied on a subdivision document recorded in 1954, while the mortgage attached to the complaint contained a legal description from a subdivision document recorded in 1964. Defendant's first affirmative defense to the original complaint raised this issue. Defendant notes that the Bank attempted to strike the first affirmative defense to the original complaint by relying on a legal description drawn from deeds recorded in 1989 and 1994 and asserting that the legal description given in the complaint, not the mortgage, was correct. Defendant argues that the correct legal description has yet to be ascertained because the Bank never produced the documents used to create the conflicting legal descriptions. Instead, on January 3, 2014, the Bank "re-recorded" the original mortgage, but this time it contained a "corrected" legal description. When, on January 14, 2014, the trial court denied the Bank's

motion to strike with regard to defendant's first affirmative defense, the Bank was granted leave to reform its complaint or to file an amended complaint. The Bank chose the latter option and, on January 24, 2014, filed the amended complaint at issue.

¶ 29 Defendant argues that, by filing the amended complaint adopting the legal description attached to the mortgage "re-recorded" in January 2014, the Bank is effectively asserting that the description contained in the mortgage originally recorded in November 2004 was incorrect, and this inference supports the argument that the Bank did not have standing to pursue the foreclosure action. Defendant notes that, in answering the amended complaint, he denied that the copy of the mortgage attached to the amended complaint as Exhibit A was a true and correct copy. Defendant also argues that his answer and affirmative defenses to the amended complaint "challenged [the Bank's] standing to foreclose as of the time the action was commenced."

¶ 30 The Bank counters, contending that, while defendant specifically challenged the legal description in his first affirmative defense to the original complaint, defendant did not make the same challenge to the legal description in the amended complaint. The Bank argues that, by virtue of failing to raise the legal-description argument in response to the amended complaint, defendant has forfeited this argument for purposes of our review. We agree.

¶ 31 The effect of filing an amended complaint is to withdraw and abandon any previous version, unless the amended complaint incorporates or refers to the earlier pleading. *Bonhomme v. St. James*, 2012 IL 112393, ¶ 17. Here, the bank filed an amended complaint that did not refer to the original complaint. Therefore, the original complaint must be deemed to have been withdrawn and abandoned. Defendant could have challenged the legal description simply by filing an affirmative defense making the same argument he tries here to raise. However, defendant did not. Where a party does not make an argument below, he cannot raise it for the

first time on appeal. *Vician v. Vician*, 2016 IL App (2d) 160022, ¶ 41. Defendant strenuously contends that he did raise it below, in reference to the original complaint. We note, however, that defendant's challenge to the Bank's standing in reference to the amended complaint did not incorporate the legal-description issue. In this appeal, only the amended complaint is properly before this court; likewise, only defendant's affirmative defenses to the amended complaint are properly before this court. Necessarily, then, only defendant's arguments challenging the amended complaint are properly entertained on appeal. Because defendant did not again raise the legal-description issue, either directly or by reference to his affirmative defenses to the original complaint, that issue is not preserved for argument on appeal. Accordingly, we deem defendant's legal-description argument to be forfeited on appeal, and we will not address it. *Id.*

¶ 32 Defendant further argues that the trial court followed cases that erroneously interpret the Uniform Commercial Code. We see nothing in the proceedings below that raise this particular argument. Instead, defendant challenged the Bank's standing by arguing that it did not have a cognizable interest in enforcing the note (first affirmative defense to the amended complaint), and that it did not possess the note at the time the foreclosure action was instituted (second affirmative defense to the amended complaint). Further, in his argument in response to the Bank's motion for summary judgment, defendant did not raise either the cognizable-interest-in-enforcing or the possession-of-the-note arguments. Instead, defendant attacked the foundation for the Bank's affidavit supporting the motion for summary judgment, contending that the affiant did not have personal knowledge of the records that were transferred to the Bank along with the note and mortgage. Accordingly, we hold that defendant has forfeited this contention on appeal, because it was not raised before the trial court. *Id.*

¶ 33 Defendant also contends that the trial court's judgment guts the standing requirement in mortgage foreclosure cases. We believe that this contention is close enough to the issues raised in the affirmative defenses to the amended complaints to be preserved on appeal. Accordingly, we will address defendant's contention on this point.

¶ 34 Effectively, defendant contends that the Bank did not prove that it possessed anything other than an image of the note at the time it filed its complaint in this action. Defendant also argues that the Bank's assignment fails to pass muster and fails to demonstrate that the Bank possessed the note prior to filing the complaint in this matter.

¶ 35 As an initial matter, defendant presented no evidence to support his challenges to the Bank's standing. Accordingly, because there is no evidence to controvert the Bank's attachment of the mortgage, note endorsed in blank, and assignment attached to the amended complaint, defendant has failed to demonstrate the existence of a genuine issue of material fact regarding the note and the assignment. See *Schweihs*, 2016 IL 120041, ¶48.

¶ 36 Second, and more importantly, the Bank complied with the Foreclosure Law. Under this law, the Bank is required only to attach a copy of the mortgage and the note to the complaint. *CitiMortgage Inc. v. Moran*, 2014 IL App (1st) 132430, ¶ 40. The Bank attached a copy of the mortgage, note, and assignment to the amended complaint, thereby raising a presumption that it had standing to enforce the note. Defendant cannot overcome the fact that he presented no evidence to rebut this presumption. *Bayview Loan Servicing, LLC v. Cornejo*, 2015 IL App (3d) 140412, ¶ 14. Accordingly, we reject defendant's contention.

¶ 37 For the reasons above, defendant has forfeited the bulk of his challenges to the Bank's standing to maintain this action. With respect to the arguments not forfeited, defendant has

failed to persuade. Accordingly, we hold that defendant has failed to demonstrate that the trial court erred in granting summary judgment in favor of the Bank.

¶ 38 B. Confirmation of the Sale and Unconscionability of the Sale Price

¶ 39 Defendant next contends that the trial court erred in confirming the sale of the subject property. Under the Foreclosure Law, the trial court must confirm the sale of the subject property unless one of four conditions can be proved: (1) a required notice was not given; (2) the terms of the sale were unconscionable; (3) the sale conducted fraudulently; or (4) justice otherwise was not done. 735 ILCS 5/15-1508(b) (West 2012). The party challenging the sale bears the burden of proving any of these conditions. *Sewickley, LLC v. Chicago Title Land Trust Co.*, 2012 IL App (1st) 112977, ¶ 35. The trial court's judgment confirming a judicial sale pursuant to the Foreclosure Law will not be disturbed absent an abuse of discretion. *Id.* ¶ 26.

¶ 40 Defendant argues that the judicial sales price of the subject property was unconscionably low. Defendant contends that the value of the subject property was about \$700,000, based on his own valuation of his property. The sales price of \$468,000 represents only about two-thirds of the subject property's actual value. Finally, defendant also submitted a November 2015 appraisal which valued the subject property at \$600,000. Based on the fact that the subject property sold for only about two-thirds of the property's actual value, defendant contends that the sales price was unconscionably low and that the trial court erred in confirming the sale.

¶ 41 We disagree. Defendant's \$700,000 valuation was based on his own estimation of value, apparently based on comparable properties chosen from the website, Zillow.com. Against this is the valuation provided by a licensed appraiser and the assessed valuation of the subject property, both of which were about \$600,000. Thus, sources independent of defendant pegged the value of the subject property at \$600,000, and we cannot say that the trial court's acceptance of the

\$600,000 value of the subject property was against the manifest weight of the evidence or that the trial court otherwise abused its discretion in using the \$600,000 valuation to analyze whether the sale price was unconscionably low.

¶ 42 If the subject property is valued at \$600,000, then the sales price of \$468,000 is about three-quarters of the actual value. In *World Savings & Loan Ass'n v. Amerus Bank*, 317 Ill. App. 3d 772, 781 (2000), the court held that a sales price of about three-quarters the appraised value of the subject property was not unconscionable. Here, the sales price is about three-quarters of the valuation accepted by the court. Accordingly, we do not believe that the trial court abused its discretion in holding that the sales price was not unconscionably low.

¶ 43 The cases cited by defendant do not compel a different result. In *Resolution Trust Corp. v. Holtzman*, 248 Ill. App. 3d 105 (1993), the trial court ordered an evidentiary hearing to determine whether a recent valuation along with other evidence suggested that the defendant might have been able to sell the subject property at an amount sufficient to satisfy the indebtedness to the plaintiff. Here, by contrast, defendant's independent valuations suggest that the property was solidly worth \$600,000, and defendant had a four-year period in which to conduct an arms-length transaction to avoid a judicial sale. We determine that *Holtzman* is therefore distinguishable.

¶ 44 In *Merchants Bank v. Roberts*, 292 Ill. App. 3d 925 (1997), the defendants were denied the required hearing under section 15-1508 of the Foreclosure Law, and the sales price was only about half of the property's market value. Here, by contrast, defendant fully received and participated in the hearing contemplated by section 15-1508, and the judicial sales price was about three-quarters of the value of the subject property. *Roberts* is therefore distinguishable.

¶ 45 Finally, in *JP Morgan Chase Bank v. Fankhauser*, 383 Ill. App. 3d 254 (2008), the judicial sales price was about 10% of valuations provided by a broker and the defendant. Here, by contrast, the judicial sales price was a much greater percentage of the property's value, being a little more than three-quarters of the value. Accordingly, *Fankhauser* is also distinguishable.

¶ 46 Accordingly, based on the above reasoning, we hold that the trial court did not abuse its discretion in confirming the judicial sale of the subject property.

¶ 47 C. Change in Law

¶ 48 For the first time in this appeal and in his reply brief, defendant attempts to argue that a plaintiff trust lacks standing to pursue a foreclosure when the loan was transferred into the trust after the closing date of the trust. The Bank acquiesced to defendant's argument with the proviso that it be allowed to file a surreply. We allowed the challenged argument and surreply, and we consider them now.

¶ 49 Defendant cites *Deutsche Bank National Trust Co. v. Bodzianowski*, 2016 IL App (3d) 150632, ¶¶ 8-9, for the proposition that Illinois law changed when the *Bodzianowski* court accepted the rule, raised in an underlying federal case, that a transfer to a trust outside of the trust's authorizing agreement rendered the transfer void and deprived the plaintiff of standing to enforce the loan. According to defendant, *Bodzianowski* changed the law and, as a result, we must consider his argument regarding whether the assignment of the mortgage and note properly transferred the note at issue here into the plaintiff trust under New York law. We disagree.

¶ 50 In *Bodzianowski*, the court considered the preclusive effect of the federal court judgment on a later-filed action involving the same parties and same cause of action. *Id.* 17. The court held that the federal action involved the same parties and same cause of action, and that the plaintiff was simply seeking a do-over of the first action. *Id.* ¶¶ 21-22. It does not endorse the

substantive holding defendant seeks to promulgate; rather, it explicates the law of *res judicata*.
Id. ¶ 23.

¶ 51 We hold that *Bodzianowski* does not support the proposition defendant seeks to raise here. Accordingly, we need not further address this argument.

¶ 52 III. CONCLUSION

¶ 53 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 54 Affirmed.