

2018 IL App (1st) 170817-U

No. 1-17-0817

Order filed July 13, 2018

Fifth Division

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 DISTRICT

DEUTSCHE BANK NATIONAL TRUST COMPANY,)	Appeal from the
as Trustee for Long Beach Mortgage Loan Trust 2006-3,)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	No. 09 CH 51414
v.)	
)	Honorable
RAYMOND CAMPBELL; JEANNETTE CAMPBELL,)	Robert E. Senechalle,
)	Judge Presiding.
Defendant-Appellants.)	
)	

JUSTICE HALL delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting summary judgment in favor of Deutsche Bank on its action to foreclose the note and mortgage at issue.

¶ 2 This appeal arises from an action involving the foreclosure and sale of residential property located at 2208 W. Eastwood Avenue, in Chicago, Illinois. The property was previously owned by defendants-appellants Jeannette Campbell and her husband Raymond

Campbell. Plaintiff-appellee Deutsche Bank National Trust Company, as trustee for Long Beach Mortgage Loan Trust 2006-3, filed a complaint to foreclose a mortgage on the subject property. The court granted plaintiff's motion for summary judgment on its complaint. For the reasons that follow, we affirm the trial court's judgment.

¶ 3 BACKGROUND

¶ 4 We limit our discussion of the background facts to those relevant to the issues on appeal. On February 2, 2006, defendant Jeannette Campbell executed an adjustable rate note in favor of Long Beach Mortgage Company to obtain a loan in the principal amount of \$446,400.00. The note was secured by a mortgage on the subject property. Defendant Raymond Campbell signed the mortgage, but not the note.

¶ 5 On March 12, 2008, Washington Mutual Bank, as successor in interest to Long Beach, assigned all of its rights, title, and interest in the loan documents, note, and mortgage to Deutsche Bank as trustee for Long Beach Mortgage Trust 2006-3.

¶ 6 On July 1, 2008, the Campbells executed a loan modification agreement with Deutsche Bank as trustee for Long Beach Mortgage Trust 2006-3. At the time of the modification, the principal balance due on the note was \$500,659.92.

¶ 7 In October 2008, defendants allegedly defaulted under the terms of the mortgage and note by failing to make scheduled monthly payments under the loan modification agreement.

¶ 8 On December 22, 2009, Deutsche Bank filed a complaint in the circuit court of Cook County against defendants, various other parties, and unknown owners and nonrecord claimants, seeking a judgment of foreclosure and sale of the subject property pursuant to the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1101 *et seq.* (West 2008)). After

extensive motion practice and numerous hearings spanning several years, the trial court granted summary judgment in favor of Deutsche Bank, denied defendants' cross-motion for summary judgment, and entered a judgment of foreclosure and sale of the subject property. The trial court later entered an order approving report of sale and distribution, an order for a personal deficiency judgment against defendant Jeannette Campbell in the amount of \$319,744.73, and an order of possession.

¶ 9 Defendants brought this appeal after the trial court denied their motion for reconsideration. As they did in the trial court, defendants proceed *pro se* on appeal.

¶ 10 ANALYSIS

¶ 11 Defendants' overarching argument on appeal is that the trial court erred in granting summary judgment in favor of Deutsche Bank on its complaint to foreclose the mortgage.

¶ 12 Our review of a trial court's order granting summary judgment is *de novo*. *Sears, Roebuck & Company v. Acceptance Insurance Co.*, 342 Ill. App. 3d 167, 171, (2003). Summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with any affidavits and exhibits, when viewed in the light most favorable to the nonmoving party, indicate there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (c) (West 2000); *Bier v. Leanna Lakeside Property Ass'n*, 305 Ill. App. 3d 45, 50 (1999). When, as in this case, the parties file cross-motions for summary judgment, they invite the court to decide the issues presented as a matter of law. *Lexmark International, Inc. v. Transportation Insurance Co.*, 327 Ill. App. 3d 128, 134 (2001).

¶ 13 Defendants argue that the verified answers and amended affirmative defenses they submitted in response and in opposition to the bank's complaint raised triable issues of material fact which should have precluded entry of summary judgment in favor of the bank. Defendants' arguments are predicated on their contention that the trial court erred in granting summary judgment in favor of Deutsche Bank in the foreclosure action because the court lacked subject matter jurisdiction over the action.

¶ 14 Defendants claim the trial court lacked such jurisdiction based on their allegation that Deutsche Bank did not have a valid assignment of the note and mortgage, and as a result, never had standing to bring the foreclosure action. Defendants contend that because the trial court lacked subject matter jurisdiction over the action, all of its orders are void. We disagree with these contentions.

¶ 15 Defendants appear to have conflated the doctrines of subject matter jurisdiction and standing. These two doctrines are separate and distinct, requiring separate analyses. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252-54 (2010). "[E]xcept in the context of administrative review, an Illinois circuit court possesses subject matter jurisdiction as a matter of law over all justiciable matters brought before it." *In re Luis R.*, 239 Ill. 2d 295, 301 (2010). "Generally speaking, a 'justiciable matter' is 'a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests.'" *In re Luis R.*, 239 Ill. 2d at 301 (quoting *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 335 (2002)). Suits to foreclose a mortgage under the Foreclosure Law are within the general class of cases that circuit

courts have the inherent power to hear and determine. *Neighborhood Lending Services, Inc. v. Callahan*, 2017 IL App (1st) 162585, ¶ 20.

¶ 16 In contrast, the doctrine of standing " ' is designed to preclude persons who have no interest in a controversy from bringing suit,' and 'assures that issues are raised only by those parties with a real interest in the outcome of the controversy.' " *Neighborhood Lending Services, Inc.*, 2017 IL App (1st) 162585, ¶ 23 (quoting *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999)). Moreover, while an alleged lack of subject matter jurisdiction cannot be forfeited, an alleged lack of standing will be forfeited if not raised in a timely manner in the trial court. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252-53 (2010). Accordingly, our supreme court has determined that issues of standing do not implicate the court's subject matter jurisdiction. *Id.*, at 253-54. Therefore, even if Deutsche Bank did not have standing to bring the foreclosure action, this would not support defendants' contention that the trial court's orders were void for lack of subject matter jurisdiction. See *Neighborhood Lending Services, Inc.*, 2017 IL App (1st) 162585, ¶ 23.

¶ 17 In this case, although defendants attempt to cloak their issue as one of subject matter jurisdiction, the content of their arguments go to standing. An alleged lack of standing in a civil case is an affirmative defense. *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 508 (1988). Therefore, it was not Deutsche Bank's burden to prove it had standing to file the foreclosure action, but rather, it was defendants' burden to prove the bank lacked such standing.

¶ 18 In the context of a mortgage foreclosure action, attaching a copy of the note to the foreclosure complaint is *prima facie* evidence that the plaintiff owns the note and has standing to pursue an action to enforce it. *Bayview Loan Servicing LLC v. Cornejo*, 2015 IL App (3d)

140412, ¶ 12; *Bank of New York Mellon v. Rogers*, 2016 IL App (2d) 150712, ¶ 30. A note is a negotiable instrument as defined by section 3-104 of the Illinois Uniform Commercial Code (Commercial Code) (810 ILCS 5/3-104 (West 2014)); *HSBC Bank USA, National Ass'n v. Rowe*, 2015 IL App (3d) 140553, ¶ 21. When a negotiable instrument is endorsed in blank, as was the case here, the "instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially endorsed." 810 ILCS 5/3-205(b) (West 2014).

¶ 19 In general, a person or entity in possession of a bearer instrument is considered a holder, and a holder of a bearer instrument is entitled to enforce its terms. 810 ILCS 5/1-201(b)(21)(A) (West 2014). Therefore, by demonstrating that it was in possession of the note endorsed in blank by defendants' original lender, Deutsche Bank established it was the holder of the note with standing to enforce its terms.

¶ 20 Nevertheless, in support of their argument that Deutsche Bank lacked standing to file the foreclosure action, defendants contend that the averments in their un rebutted affidavits raised genuine issues of material fact concerning the validity of the assignment of mortgage, and therefore, the trial court erred by entering summary judgment in favor of the bank on the issue of standing. Defendants argue that Washington Mutual Bank's assignment of mortgage to Deutsche Bank was defective because it was "robo-signed" by Christina Allen and Eric Tate, whom defendants claim were not authorized to execute "documents on behalf of the legal title holder or principle on whose behalf they purport to act." In support of this allegation, defendants submitted the affidavits of John O'Brien, Register of Deeds of the Southern Essex District of the Commonwealth of Massachusetts, in which he averred that he was aware that Christina Allen, Eric Tate, and Matthew Banaszewski were alleged robo or surrogate signers.

¶ 21 The trial court rejected this identical contention in denying defendants' motion to reconsider the summary judgment ruling. First, the court declined to take judicial notice of the purported facts contained in John O'Brien's affidavits after the court determined the affidavits were based on hearsay information provided by another individual. Second, and moreover, the trial court stated that even if it found that the assignment of the mortgage was robo-signed, this alone would not necessarily invalidate the assignment. The court stated in relevant part:

"Then let's assume for the sake of discussion that you had evidence, actual admissible evidence that these people were robo signers. It really – it is not relevant to the issues in the case. Because even if these people that were involved in the execution of this mortgage assignment from, I think, Washington Mutual to the Plaintiff in this case, Deutsche Bank, it isn't evidence that – that the assignment of mortgage wasn't the intentional and proper and binding act of Washington Mutual. I mean that is what you would need to show, is that Washington Mutual didn't in fact assign their interest. And the fact that they may have some person in their company that signs thousands of documents without reading them doesn't mean that it wasn't the authorized act of the assignor."

¶ 22 We believe the trial court was correct. Courts in other jurisdictions have reached substantially the same conclusion under analogous circumstances. See, e.g., *Wilson v. HSBC Mortgage Services, Inc.*, 744 F. 3d 1, 13-14 (1st Cir. 2014) (finding that bare allegation of "robo-signing" does not undermine the validity of a mortgage assignment); *Butler v. Deutsche Bank Trust Company Americas*, 748 F. 3d 28, 33-34 (1st Cir. 2014) (same).

¶ 23 Defendants next challenge the validity of the mortgage assignment on the ground that it bore different execution and notarization dates. Defendants maintain that the mortgage assignment is flawed in that the date next to the executor's signature (February 26, 2008) is later in time than the date filled in by the notary public attesting to that signature (February 21, 2008), which they claim calls into question the authenticity of the notarization. Defendants argue the date discrepancies invalidate the mortgage assignment. There are two reasons why we disagree.

¶ 24 First, the date of notarization on the photocopy of the assignment of mortgage contained in the record is not readily legible; the date on the photocopy could be interpreted as the number 21 or 26. Second, and more importantly, a defective notarization date does not necessarily invalidate an otherwise properly executed mortgage assignment, since an assignment can be either written or oral. See, e.g., *Klehm v. Grecian Chalet, Ltd.*, 164 Ill. App. 3d 610, 616 (1987) ("An assignment, oral or written, occurs when there is a transfer of some identifiable interest from the assignor to the assignee.").

¶ 25 To constitute a valid assignment no particular words or form are necessary so long as the intent to transfer is evident. *Id.*; *Community Bank of Greater Peoria v. Carter*, 283 Ill. App. 3d 505, 508 (1996). A valid assignment "need only to assign or transfer the whole or a part of some particular thing, debt, or chose in action and it must describe the subject matter of the assignment with sufficient particularity to render it capable of identification." *Klehm*, 164 Ill. App. 3d at 616-17.

¶ 26 Here, the mortgage assignment met all the criteria for validity. It assigned and transferred the mortgage and note from Washington Mutual Bank to Deutsche Bank and it

described both the mortgage and subject property in detail. Reviewing the mortgage assignment contained in the record, there is nothing on its face to suggest that the assignment was not valid.

¶ 27 Defendants next challenge the validity of the original note which was secured by the mortgage on the subject property. Defendants contend the note is fraudulent because it bears the forged signature of defendant Jeannette Campbell.

¶ 28 This is another argument the trial court rejected in denying defendants' motion to reconsider the summary judgment ruling. The trial court stated in relevant part to defendant Raymond Campbell: "That argument has already been decided adverse to you at the Motion to Summary Judgment. [Jeannette Campbell] never came in and said that she didn't sign that note, and I never received any expert testimony or any testimony from any witnesses that she didn't execute the note." Again, we believe the trial court was correct.

¶ 29 Defendant Raymond Campbell's conclusory allegations of forgery averred in his affidavits are insufficient to create a genuine issue of material fact as to whether Jeannette Campbell's signature on the original note was authentic in light of the fact that conclusory, self-serving allegations in an affidavit are insufficient to defeat a motion for summary judgment (*Robinson v. Village of Oak Park*, 2013 IL App (1st) 121220, ¶ 21) and where section 3-308(a) of the Commercial Code (810 ILCS 5/3-308(a) (West 2010)) provides that a signature on a negotiable instrument is presumed to be genuine and authorized.

¶ 30 The comment to section 3-308 of the Commercial Code explains that the word "[P]resumed" *** means that until some evidence is introduced which would support a finding that the signature is forged or unauthorized, the plaintiff is not required to prove that it is valid." 810 ILCS 5/3-308, cmt. 1 (West 2010). Here, it is noteworthy that defendants never presented

any affidavit or testimony from Jeannette Campbell herself contending that her signature was forged on the original note, nor did defendants present any other evidence to support the forgery claim.

¶ 31 Moreover, contrary to the defendants' suggestion, the trial court's observation that defendants never presented any expert testimony or evidence regarding the authenticity of defendant Jeannette Campbell's signature on the original note, does not establish that the court weighed any evidence before it. In sum, defendants have not sustained their burden of providing evidence that Jeannette Campbell's signature on the original note was not authentic.

¶ 32 Defendants next contend the trial court erred in relying on the affidavit of KaJay Williams in granting summary judgment in favor of Deutsche Bank on its complaint to foreclose the mortgage. Williams was a document control officer at Select Portfolio Servicing, Inc. (SPS), the servicing agent and attorney-in-fact for Deutsche Bank. The averments in Williams' affidavit concerned the amounts due and owing on the loan and the loan's payment history.

¶ 33 Defendants argue that Williams' affidavit fails to comply with the requirements of Illinois Supreme Court Rule 191(a) (eff. Jan. 4, 2013), which prescribes the form an affidavit must take when it is submitted in support of or in opposition to a motion for summary judgment. We disagree.

¶ 34 Supreme Court Rule 191(a) provides in relevant part that:

"Affidavits in support of and in opposition to a motion for summary judgment under section 2-1005 of the Code of Civil Procedure * * * shall be made on the personal knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counterclaim, or defense is based; shall have attached thereto

sworn or certified copies of all documents upon which the affiant relies; shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto." Ill. S.Ct. R. 191(a) (eff. Jan. 4, 2013).

¶ 35 "In summary judgment proceedings, the purpose of affidavits is to show whether the issues raised are genuine and whether each party has competent evidence to support his position." *Wiszowaty v. Baumgard*, 257 Ill. App. 3d 812, 819 (1994). Our review of the challenged affidavit reveals that it complied with the requirements of Rule 191(a).

¶ 36 Williams' affidavit provided details regarding the mortgage default. Williams averred that she was familiar with the terms of the mortgage and note. According to Williams, SPS, in its regular course of business, maintains a record keeping system along with a computer database of documents, including loan records and transactions for the mortgages it services. She indicated that defendant Jeannette Campbell had not satisfied her obligations under the mortgage and note and identified the amounts due and owing. Williams also averred that she had personal knowledge of Deutsche Bank's business records and explained how these records were kept in the regular course of business for the purpose of servicing mortgage loans, which satisfied the foundational requirements. See Ill. S. Ct. R. 236(a) ("Any writing or record * * * shall be admissible as evidence of the act, transaction, occurrence, or event, if made in the regular course of any business * * *.") Ill. S. Ct. R. 236(a) (eff. Aug. 1, 1992).

¶ 37 We find that Williams' affidavit filed in support of Deutsche Bank's motion for summary judgment on its foreclosure claim, complied with the requirements of Illinois Supreme Court

Rule 191(a). And for the same reasoning, we find the trial court did not err when it decided not to strike the affidavit.

¶ 38 In conclusion, we find that no genuine issues of material fact existed as to whether Deutsche Bank was the holder of the note with standing to bring the mortgage foreclosure action at the time it filed its complaint. The trial court's grant of summary judgment in favor of Deutsche Bank was proper.

¶ 39 For the foregoing reasons, we affirm the trial court's judgment granting summary judgment in favor of Deutsche Bank on its action to foreclose the note and mortgage and denying defendants' cross-motion for summary judgment. Additionally, in that defendants have not challenged the order approving report of sale, personal deficiency judgment and order of possession, we affirm those orders.

¶ 40 Affirmed.