

No. 1-17-3045

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)	Appeal from the
COMPANY, as Trustee for Morgan Stanley ABS)	Circuit Court of
Capital I Inc. Trust 2007-HE2 Mortgage Pass-through)	Cook County
Certificates Series 200-H#2,)	
)	
Plaintiff-Appellee,)	
)	
v.)	No. 15 CH 13546
)	
TANISHA WASHINGTON,)	Honorable Allen Price
)	Walker and John J. Curry Jr.,
Defendant-Appellant.)	Judges, Presiding.

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

ORDER

¶ 1 *Held:* We affirm the orders of the circuit court granting the plaintiff's motions for summary judgment, entry of a judgment for foreclosure and sale, and for confirmation of sale. The defendant forfeited the issue of standing by failing to raise it before the circuit court.

¶ 2 The defendant, Tanisha Washington, appeals from various orders entered by the circuit court of Cook County in this mortgage foreclosure action brought by the plaintiff, Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2007-

HE2 Mortgage Pass-through Certificates Series 200-H#2, (Deutsche Bank). In urging reversal, the defendant argues that Deutsche Bank lacked standing to bring this foreclosure action. For the reasons that follow, we affirm.

¶ 3 The following factual and procedural history is derived from the pleadings and exhibits of record.

¶ 4 On September 21, 2006, the defendant executed a \$297,000 promissory note payable to New Century Mortgage Corporation (New Century) which was secured by a mortgage on the defendant's property commonly known as 5326 Bentgrass Drive, Richton Park, Illinois (the property). The mortgage contract named Mortgage Electronic Registration Systems, Inc. as Nominee for New Century Mortgage Corporation (MERS) as the mortgagee.

¶ 5 On September 11, 2015, Deutsche Bank filed a complaint under section 15-1101 of the Illinois Mortgage Foreclosure Law (IMFL) (735 ILCS 5/15-1101 (West 2014)) seeking to foreclose on the property by reason of the defendant's failure to make installment payments on the promissory note for six consecutive months. Deutsche Bank attached to its complaint copies of the mortgage and the promissory note.

¶ 6 The defendant appeared and filed an answer to the complaint, stating that she did not have sufficient information to admit or deny the allegations. Thereafter, Deutsche Bank filed a motion for summary judgment and for the entry of a judgment for foreclosure and sale. In support of its motion, Deutsche Bank attached copies of (1) the assignment of the mortgage from MERS to Deutsche Bank Trust Company Americas, formerly known as Banker's Trust Company, as trustee and custodian for Morgan Stanley ABS I Capital Inc., MSAC 2007-HE2 (Banker's Trust) and (2) the assignment of the mortgage from Banker's Trust to Deutsche Bank. The defendant never filed a response to the motion.

¶ 7 On September 14, 2016, the trial court granted Deutsche Bank's motion for summary judgment and entered a judgment for foreclosure and sale. Pursuant to the judgment, the property was sold at a judicial sale on September 26, 2017. On November 6, 2017, the trial court entered an order confirming the sale of the property. This appeal followed.

¶ 8 On appeal, the defendant contends that Deutsche Bank failed to demonstrate it had standing to bring the instant action; and as a consequence, the circuit court erred when it granted Deutsche Bank's motion for summary judgment, entered the judgment for foreclosure and sale, and entered the order confirming the sale. However, the record reflects that the defendant never raised Deutsche Bank's lack of standing before the circuit court, resulting in the issue being forfeited.

¶ 9 Lack of standing is an affirmative defense which defendant has the burden to plead and prove. *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 494 (1988); *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 28. The plaintiff is not required to plead facts to establish standing in a foreclosure action. *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1, 6 (2010). The issue of the plaintiff's standing to bring an action is forfeited if it is not raised in a timely fashion in the trial court. *Id*; *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252 (2010).

¶ 10 The defendant failed to raise the issue of Deutsche Bank's standing before the circuit court. As a consequence, the issue has been forfeited and cannot form the basis for relief on appeal. *Barnes*, 406 Ill. App. 3d at 6.

¶ 11 Forfeiture aside, we believe that the record establishes Deutsche Bank's standing to bring this foreclosure action. Under the IMFL, a foreclosure action may be brought by (1) the legal holder of an indebtedness secured by a mortgage; (2) any person designated or authorized to act

on behalf of such holder; or (3) an agent or successor of a mortgagee. 735 ILCS 5/15–1503; *Barnes*, 406 Ill. App. 3d at 7; 735 ILCS 5/15–1503, 15–1504(a)(3)(N) (West 2014). If the complaint conforms to requirements set forth in section 15–1504(a) of the IMFL, a *prima facie* case for foreclosure is established. 735 ILCS 5/15–1504(a); *Barnes*, 406 Ill. App. 3d at 7. The mere fact that a copy of the note is attached to the complaint is itself *prima facie* evidence that the plaintiff owns the note. *Parkway Bank & Tr. Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 24.

¶ 12 Deutsche Bank's complaint included a copy of the original note which indicated that it was enforceable by the "Note Holder" defined as "anyone who takes this Note by transfer and who is entitled to receive payments under this Note". Further, in its motion for summary judgment, Deutsche Bank included the assignments that demonstrate the transferred interest from MERS to Banker's Trust and from Banker's Trust to itself. Additionally, the defendant does not challenge that Deutsche Bank was in possession of the note. Therefore, Deutsche Bank's possession of the note together with the assignments of the mortgage are *prima facie* proof that it was entitled to bring the instant action. *Sconyers*, 2014 IL App (1st) 130023, ¶ 11.

¶ 13 Affirmed.