

2019 IL App (1st) 161546-U  
Nos. 1-16-1546 & 1-16-1565 (Cons.)  
March 11, 2019

FIRST 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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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DITECH FINANCIAL f/k/a GREEN TREE	)	Appeal from the Circuit Court
SERVICING, LLC,	)	Of Cook County.
	)	
Plaintiff-Appellee,	)	No. 12 CH 17078
	)	
v.	)	The Honorable
	)	Robert E. Senechalle, Jr.,
LESLIE S. MITCHNER,	)	Judge Presiding.
	)	
Defendant-Appellant.	)	

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JUSTICE WALKER delivered the judgment of the court.  
Justices Pierce and Griffin concurred in the judgment.

**ORDER**

*Held:* A mortgage servicer has standing to sue for foreclosure of the mortgage if the owner of the mortgage and the note authorizes the servicer to act on its behalf. Where the petitioner failed to allege facts that, if true, would justify the granting of a motion for substitution of judge for cause, the trial judge need not refer the motion to a different judge for hearing.

¶ 1      Green Tree Servicing, LLC, sued to foreclose a mortgage on property Leslie Mitchner owned. Mitchner moved to dismiss the complaint on grounds that Green Tree, the servicer

of the loan, lacked standing because it did not own the mortgage and the note. Judge Robert Senechalle denied the motion and later denied Mitchner's petition for substitution of judge for cause.

¶ 2 We hold that Green Tree had standing to sue as holder of the note, authorized to act on behalf of the note's owner. We find that Mitchner did not adequately state facts that could provide cause for substitution of judge, so Judge Senechalle did not err by denying the petition for substitution of judge without sending the petition to a different judge for hearing. We affirm the circuit court's judgment.

¶ 3 BACKGROUND

¶ 4 In 2007, GMAC Mortgage, LLC, loaned Mitchner \$228,300 in exchange for a promissory note and a mortgage on Mitchner's home. In October 2013, after GMAC assigned its interest in the mortgage to Green Tree, Green Tree filed a complaint for foreclosure of the mortgage. In her motion to dismiss the complaint, Mitchner alleged that Fannie Mae, not Green Tree, owned the mortgage and the note. She supported her motion with a letter she received from Green Tree, where Green Tree said:

"The servicing of the above account was transferred from GMAC Mortgage, LLC \*\*\* to Green Tree on February 1, 2013. The servicing transfer did not affect the account terms and conditions, other than those related to the servicing of the account. The owner of the Note is Fannie Mae \*\*\*. Please be advised that the owner does not service the mortgage account. \*\*\* The servicer has authority to act on the owner's behalf with regard to the administration of the mortgage account and respond to any questions about your mortgage account."

¶ 5 The circuit court denied the motion to dismiss, and in 2015, the court entered a judgment of foreclosure. Green Tree purchased the property at the foreclosure sale.

¶ 6 On March 11, 2016, Mitchner filed a petition for substitution of judge for cause, alleging that Judge Senechalle harbored a bias against her. Judge Senechalle denied the petition because Mitchner had not sufficiently alleged facts showing bias. On May 4, 2016, Judge Senechalle entered an order approving the foreclosure sale. Mitchner now appeals.

## ANALYSIS

¶8 We have jurisdiction over the appeal because Mitchner filed a timely notice of appeal from the final order approving the foreclosure sale. See *In re Marriage of Verdung*, 126 Ill. 2d 542, 555 (1989).

¶ 9 Mitchner raises two arguments in her *pro se* appeal. She contends that Green Tree lacked standing to sue because it did not own the mortgage and the note, and she contends that Judge Senechalle lacked jurisdiction to enter the order approving the sale because he entered it after she filed the petition for substitution of judge.

¶ 10 Green Tree attached a copy of the mortgage and the note to the complaint. The copy of the mortgage and the note established Green Tree's *prima facie* case for standing. *U.S. Bank Trust National Ass'n v. Hernandez*, 2017 IL App (2d) 160850, ¶¶ 18-19. Green Tree admitted that Fannie Mae, not Green Tree, owned the note, but that admission did not defeat the *prima facie* case for standing. Any party "authorized to act on behalf of [the] holder" of the note and the mortgage has standing to sue for foreclosure. 735 ILCS 5/15-1208 (West 2014); see *Aurora Bank FSB v. Perry*, 2015 IL App (3d) 130673, ¶¶ 29-30.

¶ 11 Mitchner emphasizes, Green Tree stated that Fannie Mae authorized Green Tree to act on Fannie Mae's behalf "with regard to the administration of the mortgage account." Green Tree's statement that Fannie Mae authorized it to administer the account does not support Mitchner's assertion that Green Tree lacked authority to act on Fannie Mae's behalf in mortgage foreclosure proceedings. Green Tree's attachment of the note and mortgage to the complaint stands as uncontradicted evidence that Green Tree had standing, as servicer of the loan and holder of the note and mortgage, to sue for foreclosure. The circuit court correctly denied Mitchner's motion to dismiss the complaint for lack of standing.

¶ 12 Mitchner also argues that the circuit court conducted no valid proceedings after March 11, 2016, when Mitchner filed her petition for substitution of judge for cause. Section 2-1001(a)(3) of the Code of Civil Procedure provides:

"(ii) Every application for substitution of judge for cause shall be made by petition, setting forth the specific cause for substitution and praying a substitution of judge. The petition shall be verified by the affidavit of the applicant.

(iii) Upon the filing of a petition for substitution of judge for cause, a hearing to determine whether the cause exists shall be conducted as soon as possible by a judge other than the judge named in the petition." 735 ILCS 5/2-1001(a)(3) (West 2016).

¶ 13 Our supreme court held:

"[A] party's right to have a petition for substitution heard by another judge is not automatic. \*\*\* Trial courts are required to refer a petition to another judge

for a hearing on whether cause for substitution exists only if the party seeking that relief is able to bring himself or herself within the provisions of the law.

\*\*\*

To meet the statute's threshold requirements, a petition for substitution must allege grounds that, if true, would justify granting substitution for cause. [Citations.] Where bias or prejudice is invoked as the basis for seeking substitution, it must normally stem from an extrajudicial source, *i.e.*, from a source other than from what the judge learned from her participation in the case before her." *In re Estate of Wilson*, 238 Ill. 2d 519, 553-54 (2010).

¶ 14 Mitchner has not included, in the record on appeal, a legible copy of the petition for substitution of judge. She only included her affidavit in support of the petition. In the affidavit, she said only:

"3. The Judge ROBERT E. SENECHALLE JR. has violated my due process at law.

4. Judge ROBERT E. SENECHALLE JR. continues to show bias and prejudice and I will not have a fair and impartial hearing before Judge ROBERT E. SENECHALLE JR.

5. The bank has never produced the original promissory note in this case.

6. The Judge in this case has put a real bind and stress on the alleged defendant in this case by not properly letting the bank respond to my motion only.

7. The judge in this case has cause major conflict in this case."

¶ 15 We find the affidavit lacking factual assertions. The affidavit suggests that Judge Senechalle's rulings on her request to see the original note and other motions have caused Mitchner difficulty. The affidavit does not state facts that would make inapplicable the general principle that "[a] judge's previous rulings almost never constitute a valid basis for a claim of judicial bias or partiality." *Wilson*, 238 Ill. 2d at 554. As in *Wilson*, the petitioner's allegations do not show cause for substitution, and therefore "the trial court had no obligation under the statute to refer the matter to another judge for a hearing." *Wilson*, 238 Ill. 2d at 555. The trial judge properly denied the petition for substitution of judge.

¶ 16 CONCLUSION

¶ 17 Green Tree, as servicer of the mortgage for the mortgagee who held the mortgage and the note, had standing to sue to foreclose the mortgage. Judge Senechalle properly denied the petition for substitution of judge because in the motion Mitchner did not allege facts that would establish cause for substitution. Accordingly, we affirm the circuit court's judgment.

¶ 18 Affirmed.