2019 IL App (1st) 182600-U

No. 1-18-2600

Fourth Division
June 27, 2019

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

LENDINGHOME MARKETPLACE, LLC, Plaintiff-Appellee, v. STEWART REALTY CORPORATION, JAMES STEWART, and UNKNOWN OWNERS AND NONRECORD CLAIMANTS, Defendants (James Stewart, Defendant-Appellant).	)	Appeal from the Circuit Court of Cook County. No. 2017 CH 09260 The Honorable Gerald Vernon Cleary, III, Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice McBride and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's judgment is affirmed where defendant makes no arguments concerning the breach of guaranty and his arguments concerning the foreclosure judgment are unpersuasive, even if they were properly before this court.

¶ 2 The instant appeal arises from an action filed by plaintiff LendingHome Marketplace, LLC, for the foreclosure of a mortgage issued to defendant Stewart Realty Corporation, and

for breach of a guaranty signed by defendant James Stewart.[1] The trial court entered a judgment of foreclosure and sale, and granted summary judgment in plaintiff's favor concerning breach of the guaranty. Defendant appeals and, for the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 On July 5, 2017, plaintiff filed a complaint to foreclose a mortgage, alleging that the corporation was the mortgagor on a $150,500 mortgage issued on a property on South Dorchester Avenue in Chicago, and that the corporation had failed to pay the balance due under the mortgage and note as of the February 1, 2017, maturity date. Plaintiff alleged that it was the legal holder of the note, mortgage, and indebtedness. The complaint also contained a count for breach of guaranty, alleging that on January 8, 2016, defendant executed a guaranty agreement guaranteeing the "absolute, complete and punctual performance of the note and mortgage" by the corporation. The complaint alleged that defendant had breached the guaranty by failing to pay plaintiff the amounts due under the mortgage and note.

¶ 5 Attached to the complaint was a copy of the mortgage, which was signed by defendant as the agent of the corporation. The first page of the mortgage contained a "Certificate of Exemption" under the "Illinois Anti-Predatory Lending Database Program," which stated: "This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is not owner-occupied." The mortgage provided that the lender was LendingHome Funding Corporation and the borrower was "Stewart Realty Corporation, An Illinois Corporation." Article 5 of the mortgage concerned warranties and representations, and section 5.1(i) provided that the corporation warranted and represented:

[1] As James Stewart is the only defendant participating in the instant appeal, we refer to him as "defendant" and refer to Stewart Realty Corporation as the "corporation."

> "*Commercial Loan*. Borrower represents and warrants that the proceeds of this loan will be used by Borrower only for business purposes. If Borrower is a natural person, Borrower represents and warrants that Borrower does *not* intend to, and *will not* occupy or reside on the Property so long as the Loan remains outstanding. If Borrower is a legal entity, Borrower represents and warrants that no person affiliated with Borrower intends to or will occupy or reside on the Property so long as the Loan remains outstanding." (Emphases in original.)

¶ 6 Section 6.20 of the mortgage concerned waivers by the borrower and provided, in relevant part:

> "Borrower waives presentment, demand for payment, protest, notice of demand, dishonor, protest and non-payment, and all other notices and demands in connection with the delivery, acceptance, performance, default under, and enforcement of the Loan Documents."

¶ 7 Finally, section 6.26 of the mortgage addressed the sale of loan documents and provided, in relevant part:

> "Lender shall have the right to do any or all of the following at any time without prior notice to or the consent of Borrower or any other Person: (a) to sell, transfer, pledge or assign any or all of [the] Loan Documents, or any or all servicing rights with respect thereto; (b) to sell, transfer, pledge or assign participations in the Loan Documents ***; and (c) to issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement ***."

¶ 8 Exhibit B to the mortgage contained several additional Illinois-specific provisions. Section 6.31(h) concerned the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1101 *et seq.* (West 2016)) and provided, in relevant part:

> "(iii) Borrower represents and acknowledges that this Mortgage does not encumber either agricultural real estate (as defined in Section 15-1201 of the Foreclosure [Law]) or residential real estate (as defined in Section 15-1219 of the Foreclosure [Law])."

Section 6.31(k) further provided:

> "*Business Loan*. Borrower hereby represents and agrees that the proceeds of the Loan will be used for the purposes specified in the Illinois Interest Act, 815 ILCS 205/4(1), and the Obligations constitute a business loan which comes within the purview of Section 205/4(1)(c), and a loan secured by a mortgage on real estate within the purview of Section 205/4(1)(e)." (Emphasis in original.)

¶ 9 Also attached to the complaint was a copy of the note, signed by defendant as agent of the corporation. Section 4.5 of the note provided that the corporation represented and warranted:

> "*Commercial Loan*. Borrower represents and warrants that the proceeds of this loan will be used by Borrower only for business purposes. If Borrower is a natural person, Borrower represents and warrants that Borrower does *not* intend to, and *will not,* occupy or reside on the Property so long as the Loan remains outstanding. If Borrower is a legal entity, Borrower represents and warrants that no person affiliated with Borrower intends to or will occupy or reside on the Property so long as the Loan remains outstanding." (Emphases in original.)

¶ 10 Section 17 of the note concerned assignments and, provided, in relevant part:

> "Lender in its sole discretion may transfer this Note, and may sell or assign participations or other interests in all of any part of this Note, and/or designate any other Person as the holder thereof, all without notice to or the consent of Borrower."

¶ 11 Attached to the end of the note was an allonge, providing that the note was to be paid to plaintiff and an assignment of mortgage attached to the complaint, recorded June 16, 2017, assigned the mortgage to plaintiff.

¶ 12 Finally, attached to the complaint was a copy of the guaranty, executed by defendant on January 8, 2016, guaranteeing the corporation's indebtedness and obligations under the note and mortgage. Section 12.12 of the guaranty provided:

> "Guarantor represents and warrants that the proceeds of this loan will be used only for business purposes and that neither Guarantor, nor Borrower (or if Borrower is a legal entity, then no person affiliated with Borrower) will occupy or reside on the Property so long as the Loan remains outstanding."

¶ 13 Defendant was served with the summons and complaint on July 8, 2017, through personal service at an address on South Harvard Avenue in Chicago; the process server's affidavit indicated that he confirmed defendant's residence at that address at the time of service.

¶ 14 On July 11, 2017, plaintiff filed an affidavit of service of notice of foreclosure, in which one of plaintiff's attorneys averred that a notice of foreclosure was mailed to Michelle Harris, alderman of the ward in which the property was located, at both her ward and downtown offices, on or before July 11, 2017.

¶ 15 On August 7, 2017, defendant filed a *pro se* appearance and answer; the address listed on the appearance was the Harvard Avenue address.

¶ 16 On September 12, 2017, plaintiff filed a motion for summary judgment, claiming that there were no genuine issues of material fact concerning either count of the complaint and that it was entitled to judgment as a matter of law. Attached to the motion was an affidavit of amounts due and owing under the note and mortgage. On the same day, plaintiff filed a motion for default judgment against the corporation for failure to appear or plead.

¶ 17 On September 14, 2017, defendant filed a *pro se* amended answer to the complaint, alleging as affirmative defenses a violation of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2 (West 2016)) and violations of the Illinois Fairness in Lending Act (815 ILCS 120/1 *et seq.* (West 2016)).

¶ 18 On October 11, 2017, an attorney filed a limited scope appearance on behalf of defendant for the purpose of responding to the motion for summary judgment and, if the case proceeded to a judicial sale, to respond to a motion to approve sale.

¶ 19 On November 30, 2017, defendant, through counsel, filed a response to the motion for summary judgment. Defendant claimed that the affidavit attached to the motion for summary judgment was insufficient and failed to provide the business records on which the affidavit was based. On December 19, 2017, plaintiff filed a reply in support of its motion for summary judgment, claiming that defendant did not contest the material allegations of the complaint and that the affidavit submitted in support of the motion for summary judgment complied with the applicable law.

¶ 20 On December 22, 2017, defendant filed a *pro se* "Notice of Dispute," stating that he was giving notice under the federal Consumer Credit Protection Act (15 U.S.C. § 1692g(b)

(2016)) that the debt was disputed and requesting verification of the debt. On the same day, defendant filed a *pro se* motion to dismiss.

¶ 21 On January 3, 2018, the trial court denied plaintiff's motion for summary judgment "as complete business records/loan history are not attached." The court also noted that defendant withdrew his *pro se* motion without prejudice.

¶ 22 On April 12, 2018, plaintiff filed another motion for summary judgment, which was supported by a new affidavit of amounts due and owing. On the same day, plaintiff again filed a motion for default judgment against the corporation for failure to appear or plead.

¶ 23 On April 16, 2018, defendant filed a *pro se* motion to dismiss, which he filed in several parts. First, defendant filed a "Motion to Dismiss Pursuant to 735 ILCS 5/15-1503," claiming a violation of section 15-1503 of the Foreclosure Law because plaintiff failed to attach an affidavit attesting to the fact that notice was sent to the alderman of the ward in which the property was located. Next, defendant filed a "Motion to Dismiss Pursuant to TILA Conditions Precedent," in which he claimed that plaintiff had violated the federal Truth in Lending Act (15 U.S.C. § 1601 *et seq.* (2016)) by failing to send defendant the notices required by law. Third, defendant filed a "Motion to Dismiss Pursuant to Conditions Precedent," in which he claimed that there were assignments of the note and mortgage that had not been recorded prior to plaintiff's interest in the loan, and that such unrecorded sales violated the terms of the mortgage, as well as section 30 of the Conveyances Act (765 ILCS 5/30 (West 2016)). Finally, defendant filed a "Motion to Dismiss for Lack of Subject Matter Jurisdiction," claiming that the complaint should be dismissed under section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2016)) because the trial court did not have subject matter jurisdiction over the case. Attached to this final motion was an

affidavit in which defendant averred that he "is not in receipt of any document which verifies that LENDINGHOME MARKETPLACE LLC has standing to sue in any ILLINOIS court by virtue of being duly registered as 'LENDINGHOME MARKETPLACE LLC.' " Attached to the affidavit was the search result from the Secretary of State's online corporation database, indicating that a search for "LENDINGHOME MARKETPLACE LLC" did not return any results.

¶ 24 On May 7, 2018, the trial court entered an order granting defendant leave to withdraw his previously-filed answer and set a briefing schedule on defendant's motion to dismiss.

¶ 25 On May 29, 2018, plaintiff filed a response to defendant's motion to dismiss, claiming that defendant did not state any legal basis for dismissal. First, plaintiff claimed that section 15-1503 of the Foreclosure Law did not apply because the property was commercial property and the loan was a commercial loan. Similarly, plaintiff claimed that the Truth in Lending Act also did not apply because it applied only to residential mortgage transactions. Third, plaintiff claimed that the Conveyances Act was not a bar to foreclosure because the loan was transferred from the original lender to plaintiff with no other assignments and because it concerned notice to subsequent purchasers, not to borrowers; plaintiff further claimed that defendant did not have standing to challenge the validity of the assignment. Finally, plaintiff claimed that the trial court had subject matter jurisdiction over the case because the real estate sought to be foreclosed on was located in Cook County.

¶ 26 On June 18, 2018, defendant filed a *pro se* reply in support of his motion to dismiss, raising a number of additional claims. Defendant first acknowledged that the borrower under the mortgage was a corporation and stated that he did not occupy or reside on the property. Defendant then claimed that he had not received notice of the assignment of the note and

mortgage to plaintiff and that, at the time that plaintiff sent a "dunning letter" demanding the entire amount of the indebtedness, it was not the holder or owner of the loan and so lacked standing to send the letter. Defendant also claimed that plaintiff violated the Illinois Fairness in Lending Act (815 ILCS 120/1 *et seq.* (West 2016)) because at the time the loan was made, plaintiff knew or should have known that defendant would not be able to pay the loan because he was unemployed, overburdened with debt, and had a low credit score. Defendant further claimed that he was not given notice of home ownership counseling as required under the National Housing Act (12 U.S.C. § 1701 *et seq.* (2016)).

¶ 27 Additionally, defendant claimed that the property was residential, not commercial. Defendant further claimed that it was a violation of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2 (West 2016)) "to have a consumer form a corporation to avoid state usury limits on consumer loans." Defendant also challenged the validity of the allonge to the note and the assignment of the mortgage.

¶ 28 On July 9, 2018, the trial court denied defendant's motion to dismiss and gave defendant leave to refile his answer. The trial court found that, with respect to the Foreclosure Law, section 15-1503 was expressly limited to residential property, and did not apply to the property at issue, which was commercial property. With respect to the counts concerning the Truth in Lending Act, the court similarly found that they were applicable to residential, not commercial, property and further found that notice requirements were waived in the mortgage. With respect to defendant's argument about a missing assignment, the court found that there was no basis for defendant's argument, and that the mortgage and the note attached to the complaint was *prima facie* evidence that plaintiff had the standing to file suit. Finally, the court found that it had subject-matter jurisdiction over the action.

¶ 29 On July 24, 2018, defendant filed a *pro se* answer and affirmative defenses. As an affirmative defense, defendant alleged that plaintiff lacked standing to sue because plaintiff sent a "dunning letter" to defendant on May 23, 2017, but was not assigned the mortgage until June 6, 2017. Defendant also again alleged that plaintiff had failed to file an affidavit under section 15-1503 of the Foreclosure Law attesting to the service of notice to the alderman of the ward in which the property was located, alleged that he had not been given notice of the assignment of the loan, and alleged violations of the Illinois Fairness in Lending Act. Defendant also alleged that the mortgage was unconscionable and that the balance due was incorrect.

¶ 30 On July 30, 2018, defendant filed a motion to "void the order entered July 9, 2018," based on the trial court's lack of subject-matter jurisdiction. Defendant claimed that if the case was a commercial case, as the trial court found, then it was required to be transferred to the commercial case calendar. In the alternative, defendant claimed that if the trial court retained jurisdiction, then section 15-1503 of the Foreclosure Law required dismissal for failure to send the alderman notice. On August 14, 2018, the trial court denied the motion, finding that it had subject-matter jurisdiction and that defendant's argument concerning section 15-1503 had been previously ruled upon.

¶ 31 On August 15, 2018, plaintiff filed a third motion for summary judgment, which was amended on August 22, 2018, claiming that there was no genuine issue of material fact and that it was entitled to judgment as a matter of law. Plaintiff further argued that none of defendant's defenses had any merit and that, even though it was not required to do so, plaintiff had in fact served notice on the alderman of the ward in which the property was

located. Finally, plaintiff argued that defendant had not denied any of the allegations concerning the count for breach of the guaranty.

¶ 32 Attached to the motion for summary judgment was the affidavit of service attesting that the alderman of the ward in which the property was located had been served with notice of the foreclosure action on or before July 11, 2017.

¶ 33 On October 5, 2018, defendant filed a *pro se* motion to dismiss based on an alleged violation of section 15-1503(b) of the Foreclosure Law for failure to send notice of the action to the alderman and for failure to file an affidavit as to the service of the notice. Attached to the motion was an affidavit from defendant "in opposition to [plaintiff's] affidavit of service of notice of foreclosure." Defendant averred that on December 22, 2017, he reviewed the court file and did not observe any affidavit indicating that the alderman had been served with notice of the foreclosure action. He subsequently filed a number of motions, seeking dismissal on that basis. Defendant further averred that, on August 15, 2018, plaintiff attached such an affidavit to its motion for summary judgment.

¶ 34 On the same day, defendant filed a *pro se* response to plaintiff's motion for summary judgment.[2] Defendant challenged plaintiff's affidavit concerning service on the alderman, claiming that there was "no proof" the letter was sent, that the affiant did not certify that he personally sent the letter or had firsthand knowledge of the sending of the letter, and that the affiant was "not sure when the letter was sent" because the affidavit provided that it was sent "on or before" July 11, 2017. Defendant thus claimed that the affidavit "lack[ed] credibility." Defendant further claimed that the affidavit of amounts due and owing similarly lacked credibility. Defendant also claimed that, at the time it sent the "dunning letter," plaintiff

[2] While defendant previously had representation with respect to the motion for summary judgment, counsel was given leave to withdraw on September 6, 2018, at defendant's request.

lacked standing to do so because the mortgage had not yet been assigned to plaintiff and that defendant did not receive notice of the sale of the note and the conversion of the note to a security.

¶ 35 On November 8, 2018, the trial court entered a judgment of foreclosure and sale, finding that plaintiff had proved the allegations of the complaint and that plaintiff had a valid lien to the property. The court further found that the mortgaged real estate was not residential property and that the mortgagor had waived all rights of redemption by express waiver contained in the mortgage. The court accordingly entered a judgment for foreclosure and sale.

¶ 36 On the same day, the trial court granted plaintiff's motion for summary judgment as to defendant and entered judgment against defendant in the amount of $218,384.40. The order provided that the order was final and appealable pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016), and that there was no just reason or cause for delaying enforcement or appeal of the order. The court also entered an order of default against the corporation and dismissed all unknown owners and nonrecord claimants.

¶ 37 On November 30, 2018, plaintiff filed a notice of sale.

¶ 38 On December 10, 2018, defendant filed a notice of appeal.[3]

¶ 39 On May 21, 2019, defendant filed an emergency motion for a stay before this court. Attached to the motion were copies of a May 15, 2019, order approving the report of sale and distribution, confirming the sale, ordering immediate possession of the property to plaintiff,

[3] Although the notice of appeal was filed 32 days after the November 8, 2018, order, it was timely filed because the thirtieth day fell on a Saturday and defendant filed the notice of appeal on the following Monday. See Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017) (notice of appeal must be filed within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against the judgment or order); 5 ILCS 70/1.11 (West 2016) (if the last day of a time period within which an act is to be done falls on a Saturday or Sunday, the Saturday or Sunday is not included in the computation).

and entering a deficiency judgment against the corporation in the amount of $84,143.26. Also attached to the motion was a copy of a May 15, 2019, order in which the trial court denied defendant's motion for a stay pending appeal.

¶ 40 ANALYSIS

¶ 41 On appeal, defendant challenges the trial court's grant of summary judgment. A trial court is permitted to grant summary judgment only "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 that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2016). The trial court must view these documents and exhibits in the light most favorable to the nonmoving party. *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill. 2d 307, 315 (2004). We review a trial court's decision to grant a motion for summary judgment *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). *De novo* consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 42 "Summary judgment is a drastic measure and should only be granted if the movant's right to judgment is clear and free from doubt." *Outboard Marine Corp.*, 154 Ill. 2d at 102. However, "[m]ere speculation, conjecture, or guess is insufficient to withstand summary judgment." *Sorce v. Naperville Jeep Eagle, Inc.*, 309 Ill. App. 3d 313, 328 (1999). The party moving for summary judgment bears the initial burden of proof. *Nedzvekas v. Fung*, 374 Ill. App. 3d 618, 624 (2007). The movant may meet his burden of proof either by affirmatively showing that some element of the case must be resolved in his favor or by establishing " 'that there is an absence of evidence to support the nonmoving party's case.' " *Nedzvekas*, 374 Ill.

App. 3d at 624 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). " 'The purpose of summary judgment is not to try an issue of fact but *** to determine whether a triable issue of fact exists.' " *Schrager v. North Community Bank*, 328 Ill. App. 3d 696, 708 (2002) (quoting *Luu v. Kim*, 323 Ill. App. 3d 946, 952 (2001)). We may affirm on any basis appearing in the record, whether or not the trial court relied on that basis or its reasoning was correct. *Ray Dancer, Inc. v. DMC Corp.*, 230 Ill. App. 3d 40, 50 (1992).

¶ 43 In the case at bar, defendant claims that the trial court erred in granting summary judgment for a number of reasons. However, most of these arguments are not properly before this court, as it is the corporation that was the borrower under the mortgage and note, not defendant. A guarantor does not have standing to assert a claim that is merely derivative of injury suffered by the principal. *Performance Electric, Inc. v. CIB Bank*, 371 Ill. App. 3d 1037, 1040 (2007). Thus, defendant does not have standing to challenge the mortgage itself, as many of his arguments attempt to do.

¶ 44 Furthermore, even if they were properly before this court, the arguments raised by defendant are not persuasive. First, defendant claims that plaintiff failed to comply with section 15-1503(b) of the Foreclosure Law, which provides, in relevant part:

> "With respect to residential real estate, a copy of the notice of foreclosure *** shall be sent by first class mail, postage prepaid, to the municipality within the boundary of which the mortgaged real estate is located ***. *** Additionally, if the real estate is located in a city with a population of more than 2,000,000, *** the party must, within 10 days after filing the complaint or counterclaim: (i) send by first class mail, postage prepaid, a copy of the notice of foreclosure to the alderman for the ward in which the real estate is located and (ii) file an affidavit with the court attesting to the fact that

> the notice was sent to the alderman for the ward in which the real estate is located. The failure to send a copy of the notice to the alderman or to file an affidavit as required results in the dismissal without prejudice of the complaint or counterclaim on a motion of a party or the court." 735 ILCS 5/15-1503(b) (West 2016).

As the trial court found, this section expressly applies only to "residential real estate." "Residential real estate" is defined in the Foreclosure Law, in relevant part, as:

> "any real estate, except a single tract of agricultural real estate consisting of more than 40 acres, which is improved with a single family residence or residential condominium units or a multiple dwelling structure containing single family dwelling units for six or fewer families living independently of each other, which residence, or at least one of which condominium or dwelling units, is occupied as a principal residence either (i) if a mortgagor is an individual, by that mortgagor, that mortgagor's spouse or that mortgagor's descendants, or (ii) if a mortgagor is a trustee of a trust or an executor or administrator of an estate, by a beneficiary of that trust or estate or by such beneficiary's spouse or descendants or (iii) if a mortgagor is a corporation, by persons owing collectively at least 50 percent of the shares of voting stock of such corporation or by a spouse or descendants of such persons." 735 ILCS 5/15-1219 (West 2016).

¶ 45 In the case at bar, the property at issue does not fall within this category of "residential real estate" because it was not occupied as a principal residence by defendant and, in fact, expressly *could not* be occupied as a principal residence pursuant to the terms of the mortgage or note. Thus, section 15-1503(b)'s requirements would not apply. Moreover, even if they did apply, plaintiff satisfied those requirements. The complaint was filed on July 5,

2017. The record contains an affidavit of service of notice, filed July 11, 2017, in which one of plaintiff's attorneys certified under penalty of perjury that the notice of foreclosure was sent by first class mail, postage prepaid, to alderman Michelle Harris at both her ward and downtown offices, on or before July 11, 2017. In his affidavit, defendant averred that he examined the court file on December 22, 2017, and did not observe the affidavit of service to the alderman. However, this in no way suggests that plaintiff failed to file the affidavit—the affidavit appears in the record on appeal, bearing a file-stamp of July 11, 2017. Accordingly, even if such a notice was required, plaintiff satisfied that requirement.

¶ 46 Next, defendant claims that plaintiff did not have standing to sue because defendant was not served with a proper "dunning letter." Under the Foreclosure Law, a foreclosure action may be brought by the legal holder of an indebtedness secured by a mortgage, any person designated or authorized to act on behalf of such holder, or an agent or successor or a mortgagee. *MidFirst Bank v. Riley*, 2018 IL App (1st) 171986, ¶ 18; 735 ILCS 5/15-1208, 15-1501 (West 2016). A *prima facie* case for foreclosure is established if the complaint conforms to the requirements set forth in section 15-1504(a) of the Foreclosure Law and the note and mortgage are attached. *MidFirst Bank*, 2018 IL App (1st) 171986, ¶ 18. If this is done, the burden shifts to the mortgagor to prove lack of standing. *MidFirst Bank*, 2018 IL App (1st) 171986, ¶ 18. In the case at bar, there is no dispute that the complaint conforms to the requirements set forth in the Foreclosure Law, and the note and mortgage were attached to the complaint. Accordingly, plaintiff had standing unless defendant can establish otherwise. Defendant's only such argument is that plaintiff did not "own the alleged note and mortgage" at the time that it sent defendant a letter demanding payment of the loan. However, a party's standing to sue is determined as of the time the suit is filed. *U.S. Bank*

Trust National Ass'n v. Lopez, 2018 IL App (2d) 160967, ¶ 18. At the time the complaint was filed in the instant case, plaintiff owned the mortgage and note. Thus, it had standing to file the foreclosure action.

¶ 47 We are similarly unpersuaded by defendant's claim that he was not notified of the sale of the note. As defendant acknowledges, the mortgage and note expressly provide that the lender had the right to sell or transfer the loan documents "at any time without prior notice to or the consent of Borrower or any other Person." Thus, defendant was not entitled to prior notice of the transfer of the loan documents.

¶ 48 Finally, defendant claims that plaintiff violated either the Illinois Fairness in Lending Act (815 ILCS 120/1 *et seq.* (West 2016)) or the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.* (West 2016)). We note that defendant raises the Illinois Human Rights Act for the first time on appeal. It is well settled that issues not raised in the trial court are forfeited and may not be raised on appeal. *Susman v. North Star Trust Co.*, 2015 IL App (1st) 142789, ¶ 41; see *Daniels v. Anderson*, 162 Ill. 2d 47, 58 (1994) (" 'It has frequently been held that *** an issue not presented to or considered by the trial court cannot be raised for the first time on review.' " (quoting *Kravis v. Smith Marine, Inc.*, 60 Ill. 2d 141, 147 (1975)). Accordingly, the arguments concerning the Illinois Human Rights Act are not properly before this court.

¶ 49 Additionally, defendant's arguments concerning the Illinois Fairness in Lending Act are not persuasive. Defendant claims that he invested time and effort into remodeling the property, that the lender should have known he would be unable to pay the loan, and that he did not understand the implications of applying for a commercial loan at the time. However, none of defendant's factual assertions are supported by affidavit or other evidence and defendant does not explain how, even if true, these statements give rise to a violation of the

Illinois Fairness in Lending Act. Defendant suggests that he was the victim of "reverse redlining" but provides no support for this assertion, other than his conclusory allegations. Accordingly, we do not find his arguments persuasive.

¶ 50 In the case at bar, defendant makes no arguments concerning the grant of summary judgment based on the guaranty, and his arguments concerning the foreclosure judgment, even if they were properly before this court, are not persuasive. Accordingly, we affirm the trial court's judgment.

¶ 51 CONCLUSION

¶ 52 For the reasons set forth above, the trial court's judgment is affirmed.

¶ 53 Affirmed.