2016 IL App (2d) 151054-U
No. 2-15-1054
Order filed September 21, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WELLS FARGO BANK, N.A.,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 13-CH-2859
	)	
DIANE CORTEZ, MCKENZIE STATION TOWNHOMES OWNERS ASSOCIATION, UNKNOWN OWNERS, AND NON-RECORD CLAIMANTS,	)	
	)	
Defendants	)	Honorable
	)	Paul M. Fullerton,
(Diane Cortez, Defendant-Appellant).	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Cortez's argument, that summary judgment was not allowed under section 15-1506 of the Foreclosure Law (735 ILCS 5/15-1506 (West 2014)) because her verified answer denied Wells Fargo's allegation that it was the note's holder, was forfeited because the trial court found that she had not filed that answer. Even otherwise, section 15-1506's plain language did not support Cortez's position. Second, the trial court properly granted summary judgment for Wells Fargo, as there was no genuine issue of material fact that it held the note. Therefore, we affirmed.

¶ 2 In this mortgage foreclosure case, defendant, Diane Cortez, appeals from the trial court's

grant of summary judgment in favor of plaintiff, Wells Fargo Bank, N.A. (Wells Fargo). On appeal, Cortez argues that the trial court erred in granting summary judgment because: (1) Wells Fargo's pleadings and judicial admissions established there was a genuine issue of material fact as to Wells Fargo's standing and capacity to prosecute this case; and (2) section 15-1506 of the Foreclosure Law (735 ILCS 5/15-1506 (West 2014)) required that Wells Fargo present evidence in court, because she had filed a verified answer. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 9, 2013, Wells Fargo filed a complaint to foreclose a mortgage against Cortez. Wells Fargo alleged as follows. Cortez took out a mortgage on February 29, 2008, from Wells Fargo. The amount of the "Original Indebtedness, including subsequent advances made under the mortgage," was $265,156, and the amount of indebtedness after a "Loan Modification" was $279,889.07. Cortez failed to make payments beginning on May 1, 2013, and she owed $268,099.44 plus interest, attorney fees, and other charges. Paragraph "N" of the complaint stated:

> "Capacity in which Plaintiff brings this suit: The *current mortgagee* is Wells Fargo Bank, N.A. Plaintiff is the *holder* of Indebtedness based on the attached Note, which is incorporated herein by reference." (Emphases added.)

The attached note listed Wells Fargo as the lender. The complaint also included a copy of the parties' loan modification agreement, signed in July 2011 by Cortez and the following month by Wells Fargo. The loan modification agreement identified Wells Fargo as the "Lender or Servicer."

¶ 5 On December 12, 2013, Cortez filed a *pro se* document stating: "I am in the process of refinancing and modifying my current mortgage. I do not plan on foreclosing on my [home]."

Cortez appeared through counsel on February 10, 2014. On June 12, 2014, the trial court gave her 28 days to file an answer. On July 2, 2014, Wells Fargo filed a motion for a judgment of foreclosure and a motion for summary judgment. Cortez subsequently moved to substitute the judge as of right, and her motion was granted. On November 12, 2014, the trial court entered an order stating that Cortez had filed an appearance and answer on December 12, 2013.

¶ 6 On January 30, 2015, Wells Fargo again filed a motion for judgment of foreclosure and a motion for summary judgment, with new supporting affidavits. Ronald Carter, a vice president of loan documentation for Wells Fargo, averred as follows, in pertinent part. He was familiar with the business records that Wells Fargo maintained to service mortgage loans. Wells Fargo, "directly or through an agent, has possession of the Promissory Note." Wells Fargo was "either the original payee of the Promissory Note or the Promissory Note has been duly indorsed." Cortez owed a total of $289,090.70, as shown by attached records.

¶ 7 Cortez filed a response to the motion for summary judgment on April 21, 2015. She argued that: Wells Fargo had filed an unverified complaint; she had filed a verified answer denying the complaint's material allegations; she specifically denied the allegation that Wells Fargo was the holder of the indebtedness; and based on her verified denial, a summary disposition was not permissible under section 15-1506 of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1506 (West 2014)). Cortez argued that the evidence was "required to be presented in open court subject to cross examination and confrontation," and that a summary disposition "based merely on affidavits" was not allowed here.

¶ 8 On May 14, 2015, Wells Fargo filed a reply in support of its motion for summary judgment. Wells Fargo stated that Cortez, "through her Answer, denied [Wells Fargo's] capacity and believes this is a sufficient basis to deny summary judgment."

¶ 9 Cortez filed a sur-response on May 26, 2015, without leave of the court. She attached an affidavit in which she averred that she received a correspondence from Wells Fargo dated September 5, 2014. The letter stated: "The good news—you may be eligible for a modification offered by Fannie Mae (the owner of your loan)." Cortez further averred that she accessed Fannie Mae's website, and that an attached printout from the website stated that Fannie Mae owned the loan "that was closed on or before May 31, 2009." Cortez argued that the letter from Wells Fargo constituted a judicial admission that it was not "the holder of the note," and that, in any event, the exhibits raised an issue of material fact as to what person or entity had the right to enforce the note.

¶ 10 A hearing on the motion for summary judgment took place on May 28, 2015. At the beginning of the hearing, the trial court asked if there was a file-stamped copy of Cortez's answer, which she had referred to in her responses to the motion for summary judgment. Counsel for Wells Fargo produced a copy of Cortez's December 12, 2013, *pro se* filing. Cortez's counsel produced a copy of a different, verified answer. Wells Fargo's counsel stated that he did not recognize it, and Cortez's counsel stated that it was served on Wells Fargo and that he thought that he had filed it.

¶ 11 Wells Fargo argued as follows. In support of its motion for summary judgment, it had attached an affidavit providing evidence of the amounts due and owing. Cortez's original *pro se* answer made no denial of any material allegation in the complaint, and the "second answer" produced at the hearing raised no affirmative defense. Cortez's sole issue seemed to be a vague attack on standing. The original loan was with Wells Fargo, the loan modification was with Wells Fargo, and the current plaintiff was Wells Fargo. Cortez's sur-reply was not timely, and even taking it into consideration, the attached documents had Wells Fargo's heading. They said

that Fannie Mae was the loan's owner, not its holder. Wells Fargo had at all times maintained its status "as a holder under the UCC and the ownership aspect as to Fannie Mae is as the investor." About half of the loans in the United States had Fannie Mae or Freddie Mac "investor ownership," and it was not sufficient to create a genuine issue of material fact in this case. Wells Fargo's attorney tendered to the trial court the original note and mortgage, as well as the loan modification agreement.

¶ 12 Cortez argued as follows. She denied in her verified answer that Wells Fargo was the note's holder, which raised the issue of standing. Therefore, section 15-1506 of the Foreclosure Law required a hearing in open court with confrontation and the presentation of evidence. Moreover, Wells Fargo's affidavit did "not address the issue of the note for their statuses [*sic*] mortgagee withholding [*sic*]." Well Fargo's correspondence admitted that Fannie Mae owned the mortgage, and Wells Fargo did not offer any case law to support a "distinction between homeowner [*sic*] and holder or mortgagee." Accordingly, a genuine issue of material fact remained in the case.

¶ 13 Wells Fargo responded that the Uniform Commercial Code (UCC) legally defined "holder," and that Carter's affidavit stated that Wells Fargo had possession of the promissory note directly or through an agent.

¶ 14 We summarize the trial court's findings. The court file and computer system indicated that the verified answer "was never even filed." Moreover, the response to the motion for summary judgment did not contain a counter-affidavit. A challenge to standing was an affirmative defense, but Cortez did not raise it in an answer, as a separate pleading, or in the response to the motion for summary judgment. Wells Fargo filed a motion for summary judgment with a proper affidavit, and it tendered the original note at the hearing. There was

"nothing to counter" the note. The trial court further did not agree with Cortez's position that "as long as you file a verified answer there can never be a motion for summary judgment." Accordingly, it granted summary judgment for Wells Fargo and entered a judgment for foreclosure.

¶ 15 Cortez filed a copy of her verified answer on June 3, 2015, without leave of the court.

¶ 16 On June 26, 2015, Cortez filed a motion to reconsider the grant of summary judgment. She argued that Fannie Mae's admitted ownership of the loan raised an issue of material fact, and that a recent unpublished Illinois case, *Bank of America, N.A. v. Russell*, 2015 IL App (2d) 140075-U, supported her position. She further argued that Wells Fargo was the loan's servicer. Cortez attached a copy of another letter from Wells Fargo, dated September 12, 2014, in which it referred to itself as "your account servicer."

¶ 17 On July 13, 2015, Wells Fargo filed a motion for sanctions. It argued that Cortez's motion to reconsider did not present any new evidence, changes in the law, or errors in the trial court's previous application of existing law. Wells Fargo maintained that Cortez argued that the trial court should follow an unpublished appellate decision.

¶ 18 On August 21, 2015, the trial court denied both the motion to reconsider and the motion for sanctions. On September 29, 2015, the trial court entered an order confirming the sale. The order stated that a proceeds check could be issued to "Wells Fargo Home Mortgage, the current Loan Servicer named in the Complaint to Foreclose a Mortgage." On October 5, 2015, Cortez filed a motion to vacate the September 29 order. The trial court denied Cortez's motion on October 15, 2015. Cortez timely appealed.

¶ 19 II. ANALYSIS

¶ 20 At issue in this appeal is the trial court's grant of summary judgment in favor of Wells Fargo. Summary judgment is appropriate only where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Gurba v. Community High School District No. 155*, 2015 IL 118332, ¶ 10. We review *de novo* an order granting summary judgment. *Id.*

¶ 21 We begin with Cortez's second issue. Cortez argues summary judgment was not permissible here because she filed a verified answer denying Wells Fargo's allegation that it was the mortgagee and note holder. Cortez cites section 15-1506, which states in relevant part:

> "(a). Evidence. In the *trial* of a foreclosure, the evidence to support the allegations of the complaint shall be taken in open court, except:
>
> (1) Where an allegation of fact in the complaint is not denied by a party's verified answer or verified counterclaim *** a sworn verification of the complaint or a separate affidavit setting forth such fact is sufficient evidence thereof against such party and no further evidence of such fact shall be required." (Emphasis added.) 735 ILCS 5/15-1506(a) (West 2014).

Cortez recognizes that subsection (c) of the same statute states: "Nothing in this Section 15-1506 shall prevent a party from obtaining a summary or default judgment authorized by Article II of the Code of Civil Procedure." 735 ILCS 5/15-1506(c) (West 2014). However, she argues that section 15-1107(a) of the Foreclosure Law resolves this conflict. That section states, as pertinent here: "[A]ny provision of Article XII or any other Article of the Code of Civil Procedure shall apply unless inconsistent with this Article and, in case of such inconsistency, shall not be applicable to actions under this Article." 735 ILCS 5/15-1107(a) (West 2014).

¶ 22 Cortez refers to the legal principle that where there are both a general statutory provision and a specific statutory provision relating to the same subject, the specific provision controls and should be applied. See *McKim v. Southern Illinois Hospital Services*, 2016 IL App (5th) 140405, ¶ 25. She argues that to construe section 15-1506 to permit summary judgment by affidavit contravenes the specific provision of subsection (a) and renders the filing of a verified answer a meaningless gesture. Cortez argues that the statute should be interpreted to allow summary judgment to be based on supporting affidavits if a defendant does not file a verified answer. She argues that, in contrast, where a verified answer is filed denying material allegations of the complaint, section 15-1506 mandates that the evidence shall be taken in open court.

¶ 23 Wells Fargo argues that Cortez forfeited her argument because the record shows that the only answer on file prior to the entry of summary judgment was Cortez's December 12, 2013, *pro se* filing. Wells Fargo maintains that the trial court specifically found that she never filed the verified answer.

¶ 24 Cortez points to Wells Fargo's statement in its reply in support of its motion for summary judgment that Cortez, "through her Answer, denied [Wells Fargo's] capacity and believes this is a sufficient basis to deny summary judgment." Cortez argues that the trial court also had the verified answer before it and considered only that answer in its ruling.

¶ 25 Wells Fargo counters that its reference to Cortez's answer was in the context of responding to Cortez's argument on its own terms, not conceding that she had filed a verified answer.

¶ 26 We agree with Wells Fargo that Cortez forfeited this issue by failing to timely file a verified answer. On November 12, 2014, the trial court entered an order stating that Cortez had filed an appearance *and* an answer on December 12, 2013. Additionally, at the hearing on the

motion for summary judgment, Wells Fargo produced a copy of Cortez's December 12, 2013, *pro se* filing, and only Cortez's counsel produced a non-file-stamped copy of the verified answer. The trial court ultimately found that the verified answer "was never even filed." The reference to Cortez's answer in Wells Fargo's reply in support of its motion for summary judgment can be interpreted as Wells Fargo responding to the argument Cortez advanced in her response to the motion for summary judgment.

¶ 27 Even absent forfeiture, Cortez's argument is without merit. In construing a statute, our primary objective is to ascertain and give effect to the legislature's intent, which is best indicated by the statute's plain language. *McVey v. M.L.K. Enterprises, L.L.C.*, 2015 IL 118143, ¶ 11. Here, the plain language of section 1506(a) refers to a "trial" of a foreclosure (735 ILCS 5/15-1506(a) (West 2014)), which did not occur here. Moreover, section 1506(c) specifically states that nothing in the statute prevents "a party from obtaining a summary or default judgment authorized by Article II of the Code of Civil Procedure." 735 ILCS 5/15-1506(a) (West 2014). Thus, section 1506(c) leaves the procedure for summary judgment unchanged. As Wells Fargo points out in its brief, the Code of Civil Procedure expressly provides that verified pleadings "do not constitute evidence except by way of admission." 735 ILCS 5/2-605(a) (West 2014). Also, as Wells Fargo notes, a verified answer to a complaint does not take the place of affidavits in a summary judgment proceeding. *Fryison v. McGee*, 106 Ill. App. 3d 537, 539 (1982). Thus, a verified denial of Wells Fargo's allegation would not, alone, prevent Wells Fargo from seeking and obtaining summary judgment.

¶ 28 Contrary to Cortez's assertions, such a construction does not render section 15-1506(a) meaningless. In its brief, Wells Fargo cites *Brandel Realty Co. v. Olson*, 159 Ill. App. 3d 230, 236 (1987), where the court stated, "The general rule is that affidavits are not competent

evidence and should not be considered by the court as trier of fact." Thus, section 15-1506(a) serves to decrease a plaintiff's evidentiary burden at trial in foreclosure cases by allowing affidavits in lieu of evidence where the defendant has not denied an allegation of fact in the complaint by a verified answer or verified counterclaim; section 15-1506(a) does not change the rules and procedures governing summary judgment.

¶ 29 Turning to Cortez's remaining argument, Cortez argues that Wells Fargo's pleadings and judicial admissions establish that there is a material issue of fact as to Wells Fargo's standing and capacity to prosecute this case. Cortez notes that capacity to sue is a distinct issue from that of standing. *Aurora Bank FSB v. Perry*, 2015 IL App (3d) 130673, ¶ 17. In *Perry*, the court stated as follows. Standing requires that a party have a real interest in the action and its outcome, either in an individual capacity or in a representative capacity. *Id.* Lack of standing is an affirmative defense that the defendant can forfeit if he or she fails to timely raise it. *Id.* ¶ 18. The denial of an allegation in a plaintiff's complaint does not rise to the level of an affirmative defense. *Id.* A party moving for summary judgment can raise an affirmative defense for the first time in a summary judgment motion, but the party defending against the motion for summary judgment may not do so. *Id.* ¶ 20. In contrast to standing, the legal capacity to sue or be sued refers to the party's status, such as if the party is an incompetent, an infant, or an unincorporated association. *Id.* ¶ 17. An allegation of capacity in a mortgage foreclosure proceeding is a material fact that the plaintiff must prove, whether or not the defendant admitted or denied it.

¶ 30 Cortez notes that Wells Fargo pled that it was the note's holder, and she argues that her verified answer specifically denied that material allegation. She cites *Fryison*, 106 Ill. App. 3d at 539, for the proposition that a verified answer is not a substitute for specific affidavits in a summary judgment proceedings, but it can be considered for the purpose of determining what

issues are raised by the controversy. Cortez further references Well Fargo's September 12, 2014, letter referring to itself as the loan's servicer; its September 5, 2014, letter referring to Fannie Mae as the loan's owner; and the document she accessed from the Fannie Mae website stating that Fannie Mae owned the loan. Cortez notes that order confirming the sale referred to "Wells Fargo Home Mortgage" as the loan servicer.

¶ 31 According to Cortez, Wells Fargo never submitted admissible evidence showing that it was the holder of the note, as it had alleged. Cortez argues that there was no evidence in the record that Wells Fargo had any capacity other than servicer, or that Fannie Mae had given it the right to pursue foreclosure proceedings. See *Bayview Loan Servicing, LLC, v. Nelson*, 382 Ill. App. 3d 1184, 1187-88 (2008) (loan servicer was not the proper party to file the complaint to foreclose the mortgage). Cortez maintains that although Wells Fargo relied on Carter's affidavit to substantiate its status as the note's holder, his affidavit cannot support the motion for summary judgment. Cortez points out that Carter stated that Wells Fargo possessed the note "directly *or* through an agent," and that it was "either the original payee of the promissory note *or* the promissory note has been duly indorsed." (Emphases added.) Cortez contends that the affidavit does not comply with Illinois Supreme Court Rule 191(a) (eff. Jan. 4, 2013) because the alternative statements show that Carter did not have any personal knowledge of the note or its possession.

¶ 32 Lack of standing is an affirmative defense that must be raised in an answer, or else it is forfeited. *U.S. Bank, N.A. v. Kosterman*, 2015 IL App (1st) 133627, ¶ 10. Cortez did not raise the affirmative defense of standing in either her December 12, 2013, *pro se* filing, or even in the untimely-filed verified answer, thus clearly forfeiting the question of standing. See also *Perry*,

2015 IL App (3d) 130673, ¶ 18 (the denial of an allegation in a plaintiff's complaint is not the equivalent of raising an affirmative defense).

¶ 33 That being said, we agree with Cortez that capacity to sue is a distinct question from that of standing, and that Wells Fargo was required to prove capacity. See *Perry*, 2015 IL App (3d) 130673, ¶¶ 17, 21. In *Perry*, the court held that the bank had the capacity to sue because it alleged that it was the mortgagee and proved its capacity as the holder of the indebtedness by attaching a copy of the note and through its supporting affidavit. *Id.* ¶¶ 23, 25; see *also HSBC Bank USA, National Ass'n v. Rowe*, 2015 IL App (3d) 140553, ¶ 18 (the plaintiff complied with the Foreclosure Law by alleging that the capacity in which it brought the foreclosure suit was that of mortgagee).

¶ 34 Here, Wells Fargo alleged that it was the "current mortgagee" and the "holder of Indebtedness based on the attached Note." The Foreclosure Law correspondingly defines "mortgagee" as, among other things, the "the holder of an indebtedness or obligee of a non-monetary obligation secured by a mortgage or any person designated or authorized to act on behalf of such holder." 735 ILCS 5/15-1208(i) (West 2012). The Foreclosure Law specifically provides that a "legal holder of the indebtedness" may bring a foreclosure suit. 735 ILCS 5/15-1504(a)(3)(N) (West 2012); see also *Bayview Loan Servicing, LLC v. Cornejo*, 2015 IL App (3d) 140412, ¶ 12 (a mortgagee or agent or successor of a mortgagee may bring an action to foreclose). Moreover, in this case the note listed Wells Fargo as the lender and stated that it was also the "Note Holder."

¶ 35 Wells Fargo further provided an affidavit from Carter, a vice president of loan documentation who averred that Wells Fargo possessed the note either directly or through an agent. Cortez argues that the affidavit was insufficient under Rule 191. Rule 191 is satisfied if,

looking at the affidavit as a whole, it appears that the affidavit is based on the affiant's personal knowledge and there is a reasonable inference that the affiant could competently testify to its contents at trial. *Doria v. Village of Downers Grove*, 397 Ill. App. 3d 752, 756 (2009). We believe that the affidavit met this standard here, as Carter described his position with the company, stated that he had examined business records, and attached copies of records used to arrive at the amounts due and owing. Though Carter did not specify whether Wells Fargo held the note directly or through an agent, either scenario would not affect Wells Fargo's capacity to sue. Moreover, Wells Fargo remedied any potential deficiency by bringing the original note to the hearing on the motion for summary judgment. See *CitiMortgage, Inc. v. Sconyers*, 2014 IL App (1st) 130023, ¶ 11 (where the bank produced the original note in open court, it was "therefore the holder of the note").

¶ 36 Once Wells Fargo filed a motion for summary judgment with a copy of the note and supporting affidavit, and it additionally produced the original note, the burden shifted to Cortez to prove that there was a genuine issue of material fact that Wells Fargo was not the note's holder. See *Bank of America, N.A. v. Adeyiga*, 2014 IL App (1st) 131252, ¶ 69. Cortez relied on letters indicating the Wells Fargo was the loan's servicer, and that Fannie Mae owned the mortgage.

¶ 37 Regarding the argument that Wells Fargo could not be the note's holder because it was the loan's servicer, we agree with Wells Fargo that Cortez forfeited this argument by first raising it in her motion to reconsider. See *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, ¶ 26 ("A party may not raise a new legal or factual argument in a motion to reconsider."). Cortez argued that the September 12, 2014, letter, which referred to Wells Fargo as the loan's servicer, was "[n]ewly discovered correspondence." However, for purposes of a motion to reconsider, the

newly discovered evidence must not have been available at the time of the first hearing (*In re Estate of Agin*, 2016 IL App (1st) 152362, ¶ 18), whereas the September 2014 letter predated the motion for summary judgment at issue. Even otherwise, Cortez cites no authority for the proposition that a bank may not be both the note's holder and the loan's servicer. To the contrary, in *Onewest Bank FSB v. Cielak*, 2016 IL App (3d) 150224, ¶ 30, the court stated that the bank had standing to foreclose as both the note's holder and the mortgage's servicer; the court thus recognized that a bank may have both roles.

¶ 38 As for evidence that Fannie Mae owned the loan, as we have already stated, the Foreclosure Law specifically provides that a "legal holder of the indebtedness" may bring a foreclosure suit (735 ILCS 5/15-1504(a)(3)(N) (West 2012)), and we have already determined that Wells Fargo presented sufficient evidence to show that it was the note's holder. In *Adeyiga*, 2014 IL App (1st) 131252, ¶ 67, the court directly stated that "[s]ection 15-1504 *does not require that a foreclosure be filed by the owner of the note and mortgage*, and instead states that the legal holder of the indebtedness, a pledge, an agent, or a trustee may file the lawsuit." (Emphasis added.) As Wells Fargo points out, the UCC also recognizes that a note's holder can be different from the owner. Section 3-301 of the UCC states that an instrument's holder is entitled to enforce it, and that "[a] person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument." 810 ILCS 5/3-301 (West 2012). Wells Fargo further cites an out-of-state case, *Wells Fargo Bank v. Watson*, 41 N.E.3d 79, ¶ 44 (Ohio Ct. App. 2015), where the court stated: "Wells Fargo's right to enforce the note as its holder is perfectly consistent with Fannie Mae's ownership of the mortgage loan, including the note." See also *In re Martinez*, 455 B.R. 755, 764 n.44 (Bankr. D. Kan. 2011) (the defendant that possessed the original note, which was presumably endorsed in blank, was the note's holder and could

enforce it against the plaintiff, even if Fannie Mae had bought the note); *CitiMortgage, Inc. v. Moran*, 2014 IL App (1st) 132430, ¶ 40 ("In the modern banking world, few loans remain with the original lender."); Dale A. Whitman, *What We Have Learned from the Mortgage Crisis About Transferring Mortgage Loans*, 49 Real Prop. Tr. & Est. L.J. 1, 12-17 (2014) (distinguishing ownership of the note from the right to enforce the note). We agree that the reasoning in *Watson* applies under Illinois law as well, for, as stated, the Foreclosure Law does not require that a party own the note to bring a foreclosure suit, but rather allows a note's holder to bring the suit. Thus, evidence that Fannie Mae owned the loan was not sufficient to raise a genuine issue of material fact in this case, and the trial court properly granted summary judgment for Wells Fargo.

¶ 39 III. CONCLUSION

¶ 40 For the foregoing reasons, we affirm the judgment of the Du Page County circuit court.

¶ 41 Affirmed.