2017 IL App (2d) 160623-U
No. 2-16-0623
Order filed July 24, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE BANK OF NEW YORK MELLON (f/k/a The Bank of New York), as Trustee For the Certificate Holders CWALT, Inc., Alternative Loan Trust 2006-J2 Mortgage Pass-Through Certificates, Series 2006-J2,	)	Appeal from the Circuit Court of McHenry County.
Plaintiff and Counterdefendant-Appellee,	)	
v.	)	No. 11-CH-1825
PATTY NESTLE, SPRING LAKE FARM SOUTH UNIT 3 DUPLEX HOMES, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as Nominee for Decision One Mortgage Company, LLC, UNKNOWN OWNERS-TENANTS and NONRECORD CLAIMANTS,	)	
Defendants-Appellants.	)	
(Patty Nestle, Defendant and Counterplaintiff-Appellant)	)	Honorable Michael J. Chmiel, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Hudson and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court properly entered summary judgment for plaintiff on its foreclosure complaint: defendant failed to submit evidence to rebut plaintiff's *prima facie* showing of standing, defendant lacked standing to allege noncompliance with a pooling and servicing agreement; and defendant failed to rebut the presumption that the trial judge was impartial; (2) defendant failed to rebut the presumption that plaintiff's counsel's appearance was duly authorized by plaintiff; (3) we awarded plaintiff a $500 sanction under Rule 375(b) for defendant's frivolous filings.

¶ 2 In this mortgage-foreclosure action, defendant, Patty Nestle, appeals the trial court's grant of summary judgment in favor of plaintiff, The Bank of New York Mellon (f/k/a The Bank of New York), as Trustee For the Certificate Holders CWALT, Inc., Alternative Loan Trust 2006-J2 Mortgage Pass-Through Certificates, Series 2006-J2. She argues that plaintiff lacked standing to foreclose based on missing endorsements on the note and that the trial court was improperly biased against her. Aside from disagreeing with defendant on the merits, plaintiff requests that we dismiss the appeal based on deficiencies in defendant's brief and requests sanctions for her frivolous filings. We affirm and award plaintiff $500 in sanctions.

¶ 3 I. BACKGROUND

¶ 4 In August 2011, plaintiff filed a complaint to foreclose property owned by defendant. Numerous lengthy and repetitive *pro se* pleadings were filed by defendant. While those filings asserted multiple arguments and listed multiple affirmative defenses, the materials essentially attacked plaintiff's standing to bring the action. In March 2014, plaintiff moved for summary judgment. Plaintiff attached a copy of the mortgage securing a loan made to defendant by Decision One Mortgage Company, with Mortgage Electronic Registration Systems (MERS) as the mortgagee with the right to exercise any or all interests in the property, including foreclosure. Also attached was a copy of an assignment of the mortgage from MERS to plaintiff, and the note, which Decision One Mortgage Company endorsed in blank. Plaintiff also included

documents showing a lack of payment. Plaintiff provided the trial court with the original mortgage and note, which defendant was allowed to inspect and were retained by the trial court.

¶ 5 Defendant responded, arguing that plaintiff lacked standing. In objecting to the briefing schedule on plaintiff's motion, defendant attached documents from a private investigator in Oregon. Defendant also filed a cross-motion for summary judgment, arguing mostly that plaintiff as the trustee did not comply with the pooling and servicing agreement (PSA) in regard to the assignment. She did not attach the PSA and instead cited to the location of the agreement on a government website. In January 2016, the trial court granted plaintiff's motion for summary judgment. Defendant then filed numerous repetitive motions seeking reconsideration and seeking recusal of the trial court judge. In addressing the motions, the court noted that defendant had previously asserted a counterclaim that had not been addressed. Plaintiff moved to dismiss the counterclaim and, after a hearing in which plaintiff argued that the counterclaim was essentially the same standing argument that defendant made on multiple other occasions, the court granted the motion to dismiss. Plaintiff moved for an order approving sale, and defendant continued to file various repetitive motions seeking to vacate previous orders. In July 2016, the court entered an order approving sale, and defendant appealed. Defendant has made numerous motions in this court on appeal, some of which are lengthy and repetitive.

¶ 6 II. ANALYSIS

¶ 7 Defendant's brief is difficult to follow, but three primary issues can be gleaned from it. First, defendant argues that plaintiff lacked standing because of a lack of proof that plaintiff was the holder of the note, given the lack of an endorsement. Second, she argues that the assignment violated the PSA. Third, she argues that she was denied due process because the court was improperly biased against her. Plaintiff requests that we strike the brief and dismiss the appeal

based on multiple briefing errors. Plaintiff also seeks sanctions for a frivolous appeal and frivolous motions on appeal.

¶ 8 As plaintiff notes, defendant's appellate brief violates multiple rules that govern appeals. In particular, Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013) requires that an appellant's brief contain a summary of the facts necessary to an understanding of the case, stated fairly and without argument or comment, and with appropriate citations to the record on appeal.

¶ 9 Further, Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) requires that the brief contain an "[a]rgument [section], which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." An appellant is obligated to define issues clearly, cite pertinent authority, and present a cohesive legal argument. *Gandy v. Kimbrough*, 406 Ill. App. 3d, 867, 875 (2010). The inclusion of citations to irrelevant authority scattered throughout a brief does not satisfy the rule. See *Britt v. Federal Land Bank Ass'n of St. Louis*, 153 Ill. App. 3d 605, 608 (1987).

¶ 10 Our supreme court's rules governing appellate briefing are rules, not mere suggestions. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7. They exist so that parties will present clear and orderly arguments and thus enable the reviewing court to ascertain issues and dispose of them properly. *Id.* The rules apply to *pro se* litigants as well as to attorneys. *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001).

¶ 11 An appellant, whether *pro se* or not, must comply with the rules governing appeals, as this court is not a repository into which appellants may dump the burden of research. *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993). When a party's failure to comply with the rules governing appeals precludes us from reviewing the issues raised, the party's appeal will not be entertained. *Biggs v. Spader*, 411 Ill. 42, 45 (1951).

¶ 12 Here, defendant's statement of facts is a list of events in the case with conclusory arguments interjected among the listed items. The argument section, while lengthy, is rambling, at times incoherent, and often lacks citation to Illinois authority. At times, defendant lists cases without explaining their applicability and often without clear citations. For example, many citations are nothing but case names, or are followed by what appear to be trial court docketing numbers. Often defendant cites cases from other jurisdictions without explaining why the law of those jurisdictions would apply. On other occasions, she cites pages of the record for legal support.

¶ 13 Nevertheless, we are able to discern the three general arguments noted above. Accordingly, we address those matters and agree with plaintiff that they are without merit. All other matters raised by defendant, we deem forfeited, based on the lack of cogent argument or lack of citation to relevant authority.

¶ 14 Defendant first contends that summary judgment was in error because plaintiff lacked standing. She argues that the note was nonnegotiable and was not endorsed to plaintiff.

¶ 15 Summary judgment is appropriate where the pleadings, depositions, admissions, and affidavits demonstrate that there exist 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 2014). In reviewing a motion for summary judgment, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the moving party to determine whether a genuine issue of material fact exists. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). A genuine issue of material fact exists where the relevant facts in the case are disputed, or where reasonable persons could draw different inferences and conclusions from undisputed facts. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). Because summary judgment is a drastic means to

resolve a controversy, it should be granted only where the moving party's right to it is clear and free from doubt. *Id*. We review *de novo* a trial court's ruling on a motion for summary judgment. *CitiMortgage, Inc. v. Bukowski*, 2015 IL App (1st) 140780, ¶ 17. The issue of standing presents a question of law and is also subject to *de novo* review. *Malec v. City of Belleville*, 384 Ill. App. 3d 465, 468 (2008).

¶ 16 Lack of standing to bring an action is an affirmative defense, and the burden of proving the defense is on the party asserting it. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252 (2010). A party is not required to allege facts in support of its standing or to prove standing in its pleadings. *In re Estate of Levi Schlenker*, 209 Ill. 2d 456, 461 (2004). In a foreclosure action, the plaintiff's mere provision of a copy of the note is itself *prima facie* evidence that the plaintiff owns the note. *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 24.

¶ 17 Contrary to defendant's assertions, a note is a negotiable instrument. *Bank of New York. Mellon v. Rogers*, 2016 IL App (2d) 150712, ¶ 36. "[P]ossession of a promissory note whether it be by the payee or an indorsee, is prima facie evidence of ownership, even if the indorsement is in blank." *Spiller v. Riva*, 278 Ill. App. 334, 340 (1935); see also *HSBC Bank USA, National Ass'n v. Rowe*, 2015 IL App (3d) 140553, ¶ 21 (noting that possession of bearer paper sufficiently demonstrates standing and is sufficient to entitle the plaintiff to a decree of foreclosure). This is because a note containing a blank endorsement becomes payable to bearer and may be negotiated by transfer of possession alone until specifically endorsed. 810 ILCS 5/3-205(b) (West 2014).

¶ 18 Here, plaintiff provided copies of the mortgage and the note and also provided the original note. Thus, it made a *prima facie* showing of standing, which defendant failed to rebut.

There was no evidence that the note was not the original and was not actually in plaintiff's possession.

¶ 19 Defendant argues that the documents from the Oregon private investigator rebut the *prima facie* showing of standing, but she has failed to present a cogent argument as to why. Defendant also contends that the document showing the assignment of the mortgage was an affidavit that was not in compliance with Illinois Supreme Court Rule 191 (eff. July 2, 2002). However, the assignment was not an affidavit.

¶ 20 Defendant next argues that the assignment was invalid because it violated terms of the PSA for the trust. The parties agree that the trust document provides that New York law is controlling. However, defendant lacks standing to bring this argument. In *Bank of America National Ass'n v. Bassman FBT, L.L.C.*, 2012 IL App (2d) 110729, ¶¶ 15, 20-21, after a thorough discussion of New York law, we held that a defendant lacked standing to challenge the transfer of mortgages under a PSA to which it was not a party and that noncompliance with the PSA did not render the transfer void. Defendant cites cases from a number of other jurisdictions to argue that the assignment was void and that *Bassman* is not good law. We decline to follow those cases and instead stand by our decision in *Bassman*. Defendant also contends that a new case, "*Bolling v. US Bank*," holds otherwise, but she fails to provide a citation, instead citing a portion of the record that contains what is purportedly an excerpt from that case. We are unable to locate an Illinois case by that name. We did locate a Massachusetts case, *U.S. Bank National Ass'n v. Bolling*, 57 N.E.3d 1033 (Mass. App. Ct. 2016), but that case applies Massachusetts law, and defendant fails to cogently argue how Massachusetts law is relevant. Accordingly, we continue to apply *Bassman*, under which defendant lacks standing to challenge the conformance of the assignment with the PSA.

¶ 21 Defendant next argues that she was denied due process because the trial court judge was biased against her. She makes a number of conclusory arguments, such as that the court ignored or bullied her. "A trial judge is presumed to be impartial, and the burden of overcoming this presumption rests on the party making the charge of prejudice." *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). Further, "the party making the charge of prejudice must present evidence of prejudicial trial conduct and evidence of the judge's personal bias." *Id*. Plaintiff has not presented evidence of prejudicial conduct or bias. Indeed, she often fails to cite specific pages of the record to support her claims at all, and a review of the record shows that the trial court was generally extraordinarily patient with defendant, who filed numerous arguably frivolous pleadings and who often attempted to interrupt the court during hearings. Accordingly, we find defendant's due process argument to be without merit.

¶ 22 Finally, in a motion taken with the case, defendant moves for proof of authority of plaintiff's counsel to represent plaintiff. There is no merit to this motion. When an attorney appears of record for a party, the presumption is that his appearance in such a capacity was duly authorized by the person for whom he is appearing. *Gray v. First National Bank of Chicago*, 388 Ill. 124, 129 (1944). Here, plaintiff's counsel filed an appearance on September 29, 2016, and defendant has not provided any reasonable argument to rebut the presumption that plaintiff's counsel's representation is valid.

¶ 23 Based on defendant's meritless motion taken with the case, and her filing of numerous repetitive motions, both in the trial court and on appeal, plaintiff asks that we award sanctions against defendant under Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994). Plaintiff sought sanctions both in its brief on appeal and in reply to defendant's motion taken with the case.

¶ 24 Rule 375(b) allows us to impose an appropriate sanction if the appeal is frivolous, not taken in good faith, or taken for an improper purpose, such as to harass or cause unnecessary delay or needless increase in litigation costs. *Id.* The purpose of Rule 375(b) is to condemn and punish the abusive conduct of litigants and their attorneys. *Gabuka v. Kurtz*, 2015 IL App (2d) 140252, ¶ 26. Imposition of sanctions under Rule 375(b) is discretionary. *Id.*

¶ 25 Illinois Supreme Court Rule 375(a) (eff. Feb. 1, 1994) deals with the failure to follow appellate rules and specifically states that "an order to pay a fine, where appropriate, may also be ordered against any party." Rule 375(b), which addresses frivolous appeals, does not specifically mention a fine as a possible penalty but states: "Appropriate sanctions for violation of this section may include an order to pay to the other party or parties damages, the reasonable costs of the appeal or other action, and any other expenses necessarily incurred by the filing of the appeal or other action, including reasonable attorney fees." Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994). The committee comments to the rule make clear, however, that the penalties for violating Rule 375(b) may also include a fine: "Under paragraph (b), a penal fine may be imposed if the conduct in a particular case also constitutes a violation of the civil appeals rules as set forth in paragraph (a) above." Ill. S. Ct. R. 375(b), Committee Comments (adopted Aug. 1, 1989); see *Korzen*, 2013 IL App (1st) 130380, ¶ 89.

¶ 26 Here, defendant filed numerous arguably frivolous pleadings in the trial court and has continued the practice on appeal by filing lengthy and repetitive motions lacking in merit or lacking cogent argument. In particular, her motion taken with the case was clearly lacking in merit. It appears from defendant's multiple filings that they served no purpose other than to harass or cause delay. As a result, we sanction plaintiff in the amount of $500 and caution her that any additional frivolous filings will be subject to further sanctions.

¶ 27 III. CONCLUSION

¶ 28 The trial court correctly ordered summary judgment in favor of plaintiff. Accordingly, the judgment of the circuit court of McHenry County is affirmed. We award plaintiff $500 in sanctions.

¶ 29 Affirmed.