

2019 IL App (1st) 171775-U

No. 1-17-1775

Order filed June 14, 2019

Fifth 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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

WELLS FARGO BANK, N.A.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CH 9812
)	
SHANE LUNDY,)	Honorable
)	Darryl B. Simko,
Defendant-Appellant.)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion by allowing the mortgage holder to file its response to the borrower's motion to dismiss one day late. Also, the trial court properly denied the borrower's motion to dismiss and granted the mortgage holder's summary judgment motion because the mortgage holder adequately alleged and established that it had standing to foreclose as the holder of the note.

¶ 2 In this mortgage foreclosure action, defendant Shane Lundy moved to dismiss plaintiff Wells Fargo Bank, N.A. (WF Bank)'s complaint, alleging that WF Bank was not the holder of

the note and, thus, lacked standing to pursue this foreclosure action. The trial court allowed WF Bank to file its response to the motion to dismiss one day late and thereafter denied that motion. Later, WF Bank moved for summary judgment, and the trial court granted that motion.

¶ 3 On appeal, Lundy challenges the trial court's rulings that (1) denied his motion to dismiss after allowing WF Bank to file a late response to that motion; and (2) granted WF Bank's motion for summary judgment.

¶ 4 For the reasons that follow, we affirm the judgment of the trial court.¹

¶ 5 I. BACKGROUND

¶ 6 In September of 2008, Lundy obtained from the original lender a \$365,400 loan, which was secured by a mortgage on the property located on South Langley Avenue in Chicago. The mortgage identified Mortgage Electronic Registration Systems, Inc. (MERS) as the original lender's nominee and provided that Lundy mortgaged, granted and conveyed the property to MERS and its successors and assigns. The note was specially indorsed to WF Bank.

¶ 7 Lundy defaulted on the mortgage payment in September 2011. In January 2012, MERS assigned its interest in the mortgage and note to WF Bank, and that assignment was recorded. In March of 2012, WF Bank filed a complaint to foreclose the mortgage against Lundy. Copies of the mortgage, the note, and the assignment were attached to the complaint.

¶ 8 In February 2014, Lundy filed an amended answer, which denied all the allegations in the complaint and asserted the affirmative defense that WF Bank lacked standing to bring the foreclosure action and alleged that the assignment of the mortgage and note to WF Bank was

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

fraudulent because the address of the alleged assignee was for Wells Fargo Home Mortgage, Inc. (WF Mortgage)² and not WF Bank.

¶ 9 Thereafter, Lundy filed a motion to dismiss under section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2012)), repeating his allegation that WF Bank lacked standing. On October 16, 2014, the trial court denied that motion, but the record does not contain a copy of that order or a report of the proceedings.

¶ 10 In March 2015, Lundy filed another 2-619 motion to dismiss, which was identical to the motion the court had already denied. WF Bank filed its response one day after the deadline set by the court. Lundy filed a document asking the court to find WF Bank in default and grant his motion to dismiss as a sanction because WF Bank's response was one day late.

¶ 11 On October 2, 2015, the trial court granted WF Bank's oral motion to deem its response timely and denied Lundy's motion to dismiss, stating that such a sanction would be "onerous" and finding that WF Bank did have standing to file the foreclosure action.

¶ 12 In November 2015, WF Bank moved for summary judgment, arguing that Lundy's sole affirmative defense—that WF Bank lacked standing to foreclose because the mortgage was allegedly assigned to WF Mortgage—lacked merit because WF Bank was the holder of the note, and WF Mortgage had merged into WF Bank in May of 2004. WF Bank supported its motion with several affidavits, business records establishing the amount of Lundy's loan default, and a copy of the merger certification letter.

¶ 13 Lundy did not file a response opposing the motion for summary judgment.

² According to the record, WF Mortgage was the mortgage servicer entitled to enforce the loan and lien on the property.

¶ 14 On February 8, 2016, the court granted summary judgment in favor of WF Bank, entered judgment of foreclosure and sale, and appointed a selling officer. The record does not include a report of this proceeding. The property was sold in May 2016; WF Bank moved to confirm that sale; and Lundy filed a response alleging again that WF Bank was not the holder of the note and mortgage. On June 13, 2017, the court entered an order confirming the judicial sale. Lundy timely filed an appeal challenging the court's October 2, 2015 order denying his 2-619 motion to dismiss and February 8, 2016 order granting summary judgment to WF Bank.

¶ 15

II. ANALYSIS

¶ 16 Lundy first argues that the trial court should have granted his 2-619 motion to dismiss because WF Bank filed its response to that motion one day late.

¶ 17 We review the trial court's decision to allow WF Bank to file its response one day late for an abuse of discretion. See *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 354 (2007) (the decision to grant an extension of time to file any pleading or do any act that the rules require to be done within a limited period falls squarely within the discretion of the circuit court). The circuit court abuses its discretion if it commits an error of law or no reasonable person would take the view adopted by the court. *U.S. Bank N.A.*, 2014 IL App (1st) 121759, ¶ 18.

¶ 18 The only requirement for obtaining an extension of time pursuant to Illinois Supreme Court Rule 183 (eff. Feb. 16, 2011) is to show "good cause" for the extension. Illinois' "broad overall policy goal of resolving cases on the merits rather than on technicalities" confirms that Rule 183 should be interpreted and applied expansively. *Vision Point of Sale, Inc.*, 226 Ill. 2d at 352.

¶ 19 We find no abuse of discretion by the trial court on this issue. The trial court correctly noted that it would have been “onerous” to dismiss the case for a motion response that was only one day late and “the fact that [WF Bank] filed late does not mean that the foreclosure goes away as a punishment.” Furthermore, Lundy suffered no prejudice by the extension because he filed a brief in reply to WF Bank’s response and the hearing on the motion to dismiss went forward as scheduled.

¶ 20 Next, Lundy argues that the trial court erred when it denied his 2-619 motion to dismiss the foreclosure complaint because the note and mortgage were transferred, according to Lundy, to WF Mortgage rather than WF Bank and, thus, WF Bank did not have standing to foreclose.

¶ 21 We review *de novo* the circuit court’s order denying a motion to dismiss a foreclosure complaint pursuant to section 2-619 of the Code. *CitiMortgage, Inc. v. Hoeft*, 2015 IL App (1st) 150459, ¶ 10. Section 2-619 permits dismissal based on certain defects or defenses, and provides that the motion must be supported by affidavit where the grounds for the motion do not appear on the face of the complaint. *O’Callaghan v. Satherlie*, 2015 IL App (1st) 142152, ¶ 19. When ruling on a motion to dismiss under section 2-619, a court must accept all well-pleaded facts in the complaint as true and draw all reasonable inferences from those facts in favor of the nonmoving party. *Hoeft*, 2015 IL App (1st) 150459, ¶ 10. As a result, a court should not grant a motion to dismiss unless it is clearly apparent that no set of facts can be proved that would entitle the nonmoving party to recovery. *Id.*

¶ 22 The record establishes that WF Bank properly alleged and made a *prima facie* showing of its capacity (and standing) to foreclose as the holder of the properly indorsed note because WF Bank attached a copy of its note to its complaint. See *Parkway Bank & Trust Co. v. Korsen*, 2013

IL App (1st) 130380, ¶ 24. A foreclosure may be brought by any “legal holder of the indebtedness.” 735 ILCS 5/15-1504(a)(3)(N) (West 2012). To become a holder of an instrument payable to a particular person, one must be transferred the instrument through negotiation. 810 ILCS 5/3-104(a), (e) (West 2012). In addition, “[t]he assignment of a mortgage note” through negotiation “carries with it an equitable assignment of the mortgage by which it was secured.” *Federal National Mortgage Ass’n v. Kuipers*, 314 Ill. App. 3d 631, 635 (2000). “When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person.” 810 ILCS 5/3-205(a) (West 2012).

¶ 23 Here, the note and assignment attached to the foreclosure complaint established that WF Bank was the holder of the note. The note was specially indorsed to WF Bank with the words “without recourse, pay to the order of Wells Fargo Bank, N.A.” written above the signature of the indorser on the note. The January 12, 2012 assignment of the note and mortgage likewise showed that WF Bank was the holder because the document specifically assigned any interest of the original lender to “Wells Fargo Bank, NA.”

¶ 24 Lundy asserts, without any supporting documentation, that the address listed on the assignment was not WF Bank’s address but rather the address for WF Mortgage. Lundy also asserts, without citation to any authority, that an address can supersede the name of a party specifically identified by that assignment.

¶ 25 Lundy’s argument lacks merit. “The well established rule is that no particular form of words is necessary to create a valid assignment,” and “[a]ny words that demonstrate the intent to transfer some identifiable property from the assignor to the assignee *** are adequate to accomplish an assignment.” *Matter of Estate of Martinek*, 140 Ill. App. 3d 621, 629 (1986).

Here, the assignment clearly demonstrated the intent to transfer the mortgage and note from the assignor to WF Bank, and the note was specially indorsed to WF Bank. Finally, the certification letter in the record shows that WF Mortgage merged into WF Bank in May of 2004, and was no longer in existence. Based on the foregoing, we conclude that the trial court did not err by denying Lundy's 2-619 motion to dismiss.

¶ 26 Finally, Lundy argues that the trial court should not have granted summary judgment for WF Bank, asserting again that WF Bank did not have standing to foreclose. Lundy, however, did not file an opposition to the summary judgment motion in the circuit court, and the record does not contain a report of the proceedings at the summary judgment hearing.

¶ 27 “It is well settled that issues not raised in the trial court are deemed waived and may not be raised for the first time on appeal.” *Cambridge Engineering, Inc. v. Mercury 90 BI, Inc.*, 378 Ill. App. 3d 437, 453 (2007). Furthermore, the appellant bears the burden to present a satisfactory record that is sufficiently complete to support his claim of error, and in the absence of such a record on appeal, this court indulges in every reasonable presumption that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Jackson v. Mount Pisgah Missionary Baptist Church Deacon Board*, 2016 IL App (1st) 143045, ¶ 60. Moreover, any doubt arising from the incompleteness of the record will be resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). As discussed above, Lundy's argument that WF Bank did not have standing to foreclose lacks merit. Accordingly, we conclude that the trial court did not err by granting summary judgment in favor of WF Bank.

¶ 28

III. CONCLUSION

¶ 29 For the foregoing reasons, we affirm the judgment of the circuit court.

No. 1-17-1775

¶ 30 Affirmed.