

BAC HOME LOANS SERVICING, LP V. HENDERSON-STILL

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BAC HOME LOANS SERVICING, LP
f/k/a Countrywide Home Loans Servicing, LP,
Plaintiff-Appellee,

vs.

JO B. HENDERSON-STILL;
MICHAEL P. STILL; U.S. BANK
NATIONAL ASSOCIATION, ND;
and JOHN DOE AND JANE DOE (true
names unknown), tenants,
Defendants-Appellants.

No. 31,634

COURT OF APPEALS OF NEW MEXICO

June 1, 2012

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, C. Shannon
Bacon, District Judge

COUNSEL

Susan C. Little & Associates, P.A., Susan C. Little, Albuquerque, NM, for Appellee

Jo B. Henderson-Still, Michael P. Still, Albuquerque, NM, Pro se Appellants

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: JAMES W. WECHSLER, Judge,
CYNTHIA A. FRY, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

Defendants Jo B. Henderson-Still and Michael P. Still appeal, pro se, from a district court order denying their motion to dismiss a foreclosure complaint. We issued a calendar notice proposing to affirm. Defendants have responded with a memorandum in opposition. We affirm.

A default foreclosure judgment was entered on August 17, 2010. [RP 61] In January 2011 Defendants filed a motion to set aside that judgment. [RP 120] The motion was denied on June 28, 2011. [RP 242] Defendants then filed a motion to dismiss the complaint, alleging that Plaintiff lacked capacity to sue. [RP 245] The motion was denied. [RP 294]

As we indicated in our calendar notice, the issue of a plaintiff's capacity to sue is waived if not raised by motion or answer. *Hugh K. Gale Post No. 2182 VFW v. Norris*, 53 N.M. 58, 62, 201 P.2d 777, 779 (1949). "It is waived after answer [is] filed." *Id.* We are bound by this Supreme Court precedent. See *Alexander v. Delgado*, 84 N.M. 717, 718, 507 P.2d 778, 779 (1973) (holding that Supreme Court precedent controls).

As we stated above, a default judgment was entered in this case; thus no answer was ever filed. We note, however, that Defendants did not raise the standing issue in their motion to set aside the default judgment and the accompanying brief. [RP 120- 21] Defendants acknowledge that they first raised the issue in their reply to the response to their motion to set aside the default judgment. [MIO 4] That motion was denied on June 28, 2011. [RP 242] We therefore conclude that Defendants had waived their standing issue by waiting to raise it until after a post-judgment motion had been denied. We also note that the fact that they are pro se will not persuade us to overlook the timeliness issue. See *Newsome v. Farer*, 103 N.M. 415, 419, 708 P.2d 327, 331 (1985) ("Although pro se pleadings are viewed with tolerance, . . . a pro se litigant, having chosen to represent himself, is held to the same standard of conduct and compliance with court rules, procedures, and orders as are members of the bar." (emphasis omitted)).

For the reasons set forth above, we affirm.

IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

WE CONCUR:

JAMES W. WECHSLER, Judge

CYNTHIA A. FRY, Judge