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EQUITY ONE, INC. *v.* THOMAS J. SHIVERS
(SC 18775)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh and McDonald, Js.

Argued February 15—officially released September 3, 2013

Robert J. Wichowski, with whom was *David F. Borrino*, for the appellant (plaintiff).

J. Hanson Guest, for the appellee (defendant).

Opinion

PALMER, J. In this certified appeal, the plaintiff, Equity One, Inc., as servicer for Nomura Home Equity Loan, Inc., appeals from the judgment of the Appellate Court, which reversed the judgment of strict foreclosure rendered by the trial court in favor of the plaintiff. The plaintiff claims that the Appellate Court incorrectly concluded that the trial court improperly had failed to conduct an evidentiary hearing to determine whether the plaintiff had standing to bring this action after the defendant, Thomas J. Shivers, challenged the plaintiff's standing. We agree with the plaintiff and, accordingly, reverse the judgment of the Appellate Court.

The following facts and procedural history, some of which are set forth in the opinion of the Appellate Court, are relevant to our disposition of this appeal. On November 28, 2006, the defendant executed a promissory note in favor of ResMAE Mortgage Corporation in the principal amount of $201,600. That note was secured by a mortgage deed on property located at 27 Mountain Street in the town of Vernon, which the defendant also executed on November 28, 2006, and delivered to Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for ResMAE Mortgage Corporation.[1] On June 27, 2007, the plaintiff commenced this action, seeking to foreclose on the mortgage. The plaintiff alleged that, because the defendant had failed to make payments as required by the note, the plaintiff, as the holder of the note and mortgage, had elected to declare the entire balance of the note due and payable and to foreclose on the mortgage. "On July 19, 2007, the plaintiff filed a motion for default for the defendant's failure to file a responsive pleading and a motion for a judgment of strict foreclosure. On July 23, 2007, the court granted the plaintiff's motion for default. On September 24, 2007, the court rendered a judgment of foreclosure by sale, with a sale date of January 5, 2008. The sale date was extended twice: the first time it was extended to May 3, 2008, at the request of the plaintiff; the second time it was extended to May 10, 2008, at the request of the committee appointed to conduct the sale. The May 10, 2008 foreclosure sale did not go forward because the defendant filed a bankruptcy petition on May 8, 2008.

"[Thereafter, on October 9, 2008, the automatic stay that had been imposed following the defendant's bankruptcy filing was lifted.] After the bankruptcy stay was lifted, the plaintiff filed a motion to reopen and to reenter the judgment on November 7, 2008. On November 21, 2008, the defendant filed an objection to the foreclosure, asserting that he was no longer in default and . . . that the plaintiff did not have standing to foreclose the mortgage. The defendant also filed a motion to compel, [in] which [he] requested that the court direct the plaintiff to produce the original note to prove that the plaintiff had standing to institute the foreclosure action. On

November 24, 2008, the court . . . heard argument from the parties [on] the motion to reopen and to reenter the judgment. At the conclusion of that hearing, the court [found that the plaintiff had standing to institute the action and] rendered judgment of strict foreclosure with the law days commencing on January 12, 2009." *Equity One, Inc.* v. *Shivers*, 125 Conn. App. 201, 203–204, 9 A.3d 379 (2010).

The defendant appealed to the Appellate Court from the judgment of the trial court, claiming, inter alia, that the trial court improperly had failed to conduct an evidentiary hearing to ascertain whether the court had subject matter jurisdiction after the defendant raised the issue of the plaintiff's standing. Id., 204. In agreeing with the plaintiff, the Appellate Court explained that, "[w]hen issues of fact are necessary to the determination of a court's jurisdiction, due process requires that a trial-like hearing be held, in which an opportunity is provided to present evidence and to cross-examine adverse witnesses." (Internal quotation marks omitted.) Id., 205. The Appellate Court further explained: "The [trial] court never held an evidentiary hearing to determine whether the plaintiff was the holder of the note at the time that it instituted the foreclosure action. The only hearing that the [trial] court held was in November, 2008, in response to the plaintiff's motion to reopen and to reenter [the] judgment. . . . [The court's] conclusion [that the plaintiff had standing] . . . was based on a brief colloquy between the court and the plaintiff's counsel in which the plaintiff's counsel presented an original copy of the note to the defendant and stated that he believed that the note was provided to the court at the time of the original judgment. The court did not find specifically that the plaintiff was the holder of the note at the time that [the plaintiff] instituted the action." Id., 206.

Thereafter, we granted the plaintiff's petition for certification, limited to the following issue: "Did the Appellate Court properly determine that the trial court should have conducted an evidentiary hearing when the defendant challenged the plaintiff's standing to bring the action?" *Equity One, Inc.* v. *Shivers*, 300 Conn. 936, 17 A.3d 474 (2011). In support of its contention that a full evidentiary hearing was not required, the plaintiff argues that, by presenting the note endorsed in blank at both the September 24, 2007 and the November 24, 2008 foreclosure hearings, a presumption of standing was thereby created, which the defendant was required but failed to rebut. The plaintiff further contends that, even if the transcripts of the foreclosure hearings do not expressly refer to the plaintiff's presentation of the note to the trial court, a presumption exists that the court acted in accordance with the legal requirements pertaining to mortgage foreclosures, including the requirement that the court inspect both the note and mortgage prior to rendering a judgment of foreclosure.

The defendant contends that the Appellate Court correctly determined that a trial-like evidentiary hearing was necessary to resolve the standing issue that the defendant had raised in the trial court. We agree with the plaintiff because the record establishes, consistent with the trial court's finding, that the plaintiff had standing to commence this action, and the defendant has failed to demonstrate, either at the time of the foreclosure hearings or on appeal, that the finding was flawed or that the procedure that the trial court followed was inadequate.[2]

"Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy." (Internal quotation marks omitted.) *Wilcox* v. *Webster Ins., Inc.*, 294 Conn. 206, 214, 982 A.2d 1053 (2009). "[When] a party is found to lack standing, the court is consequently without subject matter jurisdiction to determine the cause. . . . We have long held that because [a] determination regarding a trial court's subject matter jurisdiction is a question of law, our review is plenary." (Citation omitted; internal quotation marks omitted.) *RMS Residential Properties, LLC* v. *Miller*, 303 Conn. 224, 229, 32 A.3d 307 (2011). In addition, because standing implicates the court's subject matter jurisdiction, the issue of standing is not subject to waiver and may be raised at any time. E.g., *Burton* v. *Dominion Nuclear Connecticut, Inc.*, 300 Conn. 542, 550, 23 A.3d 1176 (2011).

Several general principles concerning mortgage foreclosure procedure also guide our analysis. "[S]tanding to enforce [a] promissory note is [established] by the provisions of the Uniform Commercial Code . . . . [See] General Statutes § 42a-1-101 et seq. Under [the Uniform Commercial Code], only a 'holder' of an instrument or someone who has the rights of a holder is entitled to enforce the instrument. General Statutes § 42a-3-301.[3] The 'holder' is the person or entity in possession of the instrument if the instrument is payable to bearer. General Statutes § 42a-1-201 (b) (21) (A).[4] When an instrument is endorsed in blank, it 'becomes payable to bearer and may be negotiated by transfer of possession alone . . . .' General Statutes § 42a-3-205 (b)."[5] (Footnotes added.) *Chase Home Finance, LLC* v. *Fequiere*, 119 Conn. App. 570, 577, 989 A.2d 606, cert. denied, 295 Conn. 922, 991 A.2d 564 (2010). In addition, General Statutes § 49-17[6] allows the holder of a note to foreclose on real property even if the mortgage has not been assigned to him. See, e.g., *RMS Residential Properties, LLC* v. *Miller*, supra, 303 Conn. 230 ("[o]ur legislature, by adopting § 49-17, created a statutory right for the rightful owner of a note to foreclose on real property regardless of whether the mortgage has been

assigned to him"); *Chase Home Finance, LLC* v. *Fequiere*, supra, 576 (§ 49-17 "codifies the common-law principle of long standing that the mortgage follows the note, pursuant to which only the rightful owner of the note has the right to enforce the mortgage" [internal quotation marks omitted]). This court also has recently determined that a loan servicer for the owner of legal title to a note has standing in its own right to foreclose on the real property securing the note. *J.E. Robert Co.* v. *Signature Properties, LLC*, 309 Conn. 307, 311, 317, A.3d (2013).

Before turning to the merits of the plaintiff's appeal, we first set forth certain additional facts that are necessary to our resolution of the plaintiff's claim that, contrary to the determination of the Appellate Court, the trial court was not required to conduct a trial-like evidentiary hearing because the procedure that the trial court followed was adequate under the circumstances. At the September 24, 2007 foreclosure hearing, the plaintiff's counsel provided both the court and the defendant, who was self-represented, with copies of the affidavit of debt. At that time, the court asked the defendant whether he had any questions with respect to the affidavit, and the defendant responded that he had a question concerning the escrow balance. After a brief colloquy between the court and the defendant, the court found that the value of the property exceeded the amount of the defendant's indebtedness[7] and rendered a judgment of foreclosure by sale.[8] In addition, at that time, the defendant requested ninety days to list the property for sale with a realtor. The court granted that request without objection, and set a sale date of January 5, 2008. At no time during that hearing did the defendant challenge the plaintiff's standing to bring the action.

Following the termination of the bankruptcy stay, the plaintiff filed a motion to reopen and reenter the judgment. The defendant filed an objection to the foreclosure, asserting that he no longer was in default and that the plaintiff "may not have standing" to foreclose on the property. The defendant also filed a motion to compel production of the original note in order to establish that the plaintiff was the holder of the note when it commenced the present action in June, 2007. A hearing on the plaintiff's motion to reopen and reenter the judgment was held on November 24, 2008. At the commencement of the hearing, the plaintiff's counsel presented the court and the defendant with an updated affidavit of debt and reminded the court that the defendant had filed a motion to compel. When the court inquired as to the nature of that motion, the plaintiff's counsel explained that it was a motion to compel "production of the . . . original note . . . that was handed up at the time of . . . the original judgment. . . . I do also have it in my hand, if Your Honor would like me to show it to [the] defendant, I'd be happy to." The

court responded that counsel should go ahead and show the note to the defendant. Immediately beforehand, the court recounted the procedural history of the case, observing that the original judgment was rendered on September 24, 2007, and that the judgment was opened and modified on January 3, 2008, and on April 21, 2008. The court then asked the defendant if he had any questions with respect to the updated affidavit of debt. The defendant responded that he did not believe that any of the mortgage companies listed on the affidavit had standing to bring the action. The court stated that it already had rendered "judgments previously on this matter with the plaintiff being Equity One [Inc.]. This is simply a termination of the stay in bankruptcy." The defendant responded that he nevertheless wished to object to the foreclosure on the ground that the plaintiff was not the "actual note holder at the time the action was commenced." Specifically, the defendant stated: "I'm not sure who . . . actually [is] the plaintiff right now. It says Equity One [Inc.], servicer for Nomura Home Equity [Loan, Inc.]. And then on the—it says the—is J.P. Morgan [Mortgage Acquisition Corporation]. None of these [is] my mortgage compan[y]. I'm not sure if they have legal standing to foreclose . . . . I'd like to object to the foreclosure for the reason that I don't think the . . . plaintiff has . . . standing . . . to institute this action. I don't believe the plaintiff was the actual note holder at the time the action was commenced."

At this point, the plaintiff's counsel stated that the plaintiff already had obtained numerous judgments against the defendant, including a default judgment for failure to plead.[9] The trial court responded that "standing implicates subject matter jurisdiction, which can be raised at any time," and asked the plaintiff's counsel whether he had all of the original mortgage documents with him. The plaintiff's counsel responded that he did, and the record reflects that the court reviewed a certified copy of the original mortgage to MERS and the assignment of the note and mortgage from MERS to the plaintiff. After examining the documents, the court stated: "All right. So under the mortgage, [MERS] was the [original] mortgagee. . . . And then MERS assigned [the mortgage] to [the plaintiff] . . . as servicer for Nomura Home Equity Loan, Inc. And that was on June 7, 2007. . . . So it appears we have a complete chain here. . . . [B]ased on the information that has been provided, I'm going to find that . . . [the plaintiff], as servicer for Nomura Home Equity Loan [Inc.] . . . does have standing." The defendant did not thereafter contest the authenticity of the note or the mortgage, did not dispute the representations of the plaintiff's counsel, offered no evidence or argument challenging the sufficiency or propriety of the trial court's finding, and did not request a further hearing. At the conclusion of the hearing, the court rendered a

judgment of strict foreclosure.

In light of the foregoing history, we find no merit in the defendant's contention that the plaintiff failed to produce the original mortgage note at the November 24, 2008 hearing, or that the hearing conducted on that date was inadequate for purposes of demonstrating that the plaintiff was the holder of that note when it commenced the action. In fact, the record clearly reflects that, in response to the defendant's motion to compel and assertion that the plaintiff was not "the actual note holder at the time the action was commenced," the plaintiff's counsel produced all of the pertinent documents, including a copy of the original note, which was endorsed in blank, as well as a certified copy of the mortgage and an assignment of the note and mortgage from MERS to the plaintiff, dated June 7, 2007. On the basis of these documents, the court reasonably and properly found that the plaintiff had standing to commence the action, and the defendant did not dispute that finding or object to the procedure that the trial court followed for purposes of resolving the jurisdictional issue.

Although the record of the November 24, 2008 hearing does not expressly reflect that the court reviewed the note, as distinguished from the mortgage and the assignment of the note and mortgage, necessary to the court's finding that the plaintiff had standing to enforce the note is the subsidiary or threshold finding that the plaintiff was, in fact, the holder of that instrument, as the plaintiff alleged in its complaint. See General Statutes § 42a-3-301. Indeed, as we have explained; see footnote 8 of this opinion; under Practice Book § 23-18, the court was required to review the note, mortgage and affidavit of debt before finding that the debt exceeded the value of the property and ordering strict foreclosure. It is well established that, "under the law of evidence, it is presumed, unless the contrary appears, that judicial acts and duties have been duly and regularly performed, the presumption of regularity attending the acts of public officers being applicable to judges and courts and their officers . . . . The general rule that a judgment, rendered by a court with jurisdiction, is presumed to be valid and not clearly erroneous until so demonstrated raises a presumption that the rendering court acted only after due consideration, in conformity with the law and in accordance with its duty. . . . The correctness of a judgment of a court of general jurisdiction is presumed in the absence of evidence to the contrary. We do not presume error. The burden is on the appellant to prove harmful error." (Citations omitted; internal quotation marks omitted.) *Brookfield* v. *Candlewood Shores Estates, Inc.*, 201 Conn. 1, 6–7, 513 A.2d 1218 (1986); see also *Rosenblit* v. *Danaher*, 206 Conn. 125, 134, 537 A.2d 145 (1988) ("we are entitled to assume, unless it appears to the contrary, that the trial court . . . acted properly"). Consequently, in the absence of

any evidence or other indication to the contrary, it is reasonable to presume that the trial court acted in accordance with law and examined the note and mortgage prior to rendering judgment of strict foreclosure.[10]

Moreover, it was proper for the court, at the November 24, 2008 hearing, to rely on the representation of the plaintiff's counsel that the note he produced at that hearing was the note that the plaintiff held at the time of the commencement of the action. In the absence of any fact based challenge to counsel's representation, such reliance was proper not only because the plaintiff's counsel is an officer of the court; see, e.g., *Certo* v. *Fink*, 140 Conn. App. 740, 752–53, 60 A.3d 372 (2013) (trial court properly relied on representations of plaintiff's counsel that he provided defendant with requested documents); but also because the assignment of the note and mortgage from MERS to the plaintiff, which the court examined at the November 24, 2008 hearing, concededly was executed twenty days prior to the commencement of the foreclosure action.

In addition, at no time during the November 24, 2008 hearing did the defendant proffer any evidence to support his assertion that the plaintiff did not have standing to bring the action because it did not possess the note when it commenced the action in June, 2007. See *RMS Residential Properties, LLC* v. *Miller*, supra, 303 Conn. 234–35 ("having failed to present any evidence rebutting the presumption that [the plaintiff] was the rightful owner of the debt at the time that it commenced the foreclosure action, the defendant has failed to satisfy her burden of providing any evidentiary foundation to demonstrate the existence of a genuine issue of material fact [as to the plaintiff's standing]"); *Conboy* v. *State*, 292 Conn. 642, 652, 974 A.2d 669 (2009) ("[i]f . . . the defendant submits either no proof to rebut the plaintiff's jurisdictional allegations . . . or only evidence that fails to call those allegations into question . . . the plaintiff need not supply counteraffidavits or other evidence to support the complaint, but may rest on the jurisdictional allegations therein" [citations omitted]); *HSBC Bank USA, N.A.* v. *Navin*, 129 Conn. App. 707, 712, 22 A.3d 647 (because defendant offered no evidence to contest plaintiff's assertion that it possessed note when it commenced foreclosure action, plaintiff was deemed to have standing), cert. denied, 302 Conn. 948, 31 A.3d 384 (2011); *Chase Home Finance, LLC* v. *Fequiere*, supra, 119 Conn. App. 577 (in rejecting defendant's claim that plaintiff was not proper party to bring foreclosure action, court stated that "[t]he defendant ha[d] failed to offer any evidence to counter the plaintiff's claim that it [was] a bona fide holder of the promissory note secured by the mortgage on the defendant's property," that "the plaintiff offered a copy of the promissory note that was endorsed in blank," and that it was "undisputed that the plaintiff [was] also in possession of the note").

In fact, even on appeal, the defendant refers to no evidence indicating that the plaintiff was not actually in possession of the note when it commenced the action. The defendant simply argues that the trial court failed to make an express finding to that effect. As we have explained, we reject this contention because a review of the record reveals that the court did, in fact, necessarily make such a finding when, upon examining the pertinent documents, the court concluded that the plaintiff had standing as the assignee of MERS.[11]

Finally, we disagree with the defendant's contention that he is entitled to an evidentiary hearing on the issue of the plaintiff's standing because a party seeking to foreclose a mortgage necessarily "must do more to prove standing than simply present a note endorsed in blank." "[A] holder of a note is presumed to be the owner of the debt, and unless the presumption is rebutted, may foreclose the mortgage under § 49-17. The possession by the bearer of a note [e]ndorsed in blank imports prima facie that he acquired the note in good faith for value and in the course of business, before maturity and without notice of any circumstances impeaching its validity. The production of the note establishes his case prima facie against the makers and he may rest there. . . . It [is] for the defendant to set up and prove the facts which limit or change the plaintiff's rights." (Internal quotation marks omitted.) *RMS Residential Properties, LLC* v. *Miller*, supra, 303 Conn. 231–32; see also id., 232 ("because the defendant offered no evidence to impeach the validity of [the plaintiff's] evidence that it possessed the note at the time that it commenced the [foreclosure] action or to rebut the presumption that [it] owns the underlying debt, and as a matter of law the mortgage follows the note, we conclude that [the plaintiff] was authorized by statute to commence [the] . . . action"); *Donnelly* v. *Garvan*, 111 Conn. 626, 630, 151 A. 168 (1930) ("[i]n thus setting up that she was the 'holder,' the plaintiff stated all that was necessary, prima facie, to establish her right to sue and recover"); *Chase Home Finance, LLC* v. *Fequiere*, supra, 119 Conn. App. 578 (concluding that presentation of note endorsed in blank established plaintiff's standing to foreclose when defendant "failed to present even a scintilla of evidence demonstrating that the plaintiff was not in possession of the promissory note" when it commenced foreclosure action).

In sum, under the facts and circumstances presented, the defendant has not demonstrated that he was entitled to a full evidentiary hearing on the issue of the plaintiff's standing.[12] It is apparent that the trial court reviewed the pertinent documents at the hearing on November 24, 2008, and at other hearings prior thereto, and that those documents fully support the trial court's determination, predicated on the plaintiff's status as the holder of the note, that the plaintiff had standing to commence

this action. Moreover, at no time during the pendency of the trial court proceedings or on appeal has the defendant suggested any reason to question the trial court's finding. We therefore conclude that the Appellate Court incorrectly concluded that the trial court had deprived the defendant of a fair hearing concerning whether the plaintiff had standing to bring the present action.[13]

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to address the defendant's remaining claim.[14]

In this opinion ROGERS, C. J., and NORCOTT, ZARELLA and EVELEIGH, Js., concurred.

[1] "As one court has explained, MERS does not originate, lend, service, or invest in home mortgage loans. Instead, MERS acts as the nominal mortgagee for the loans owned by its members. The MERS system is designed to allow its members, which include originators, lenders, servicers, and investors, to assign home mortgage loans without having to record each transfer in the local land recording offices where the real estate securing the mortgage is located. . . .

"The benefit of naming MERS as the nominal mortgagee of record is that when the member transfers an interest in a mortgage loan to another MERS member, MERS privately tracks the assignment within its system but remains the mortgagee of record. According to MERS, this system saves lenders time and money, and reduces paperwork, by eliminating the need to prepare and record assignments when trading loans. . . .

"If, on the other hand, a MERS member transfers an interest in a mortgage loan to a non-MERS member, MERS no longer acts as the mortgagee of record and an assignment of the security instrument to the non-MERS member is drafted, executed, and typically recorded in the local land recording office." (Internal quotation marks omitted.) *Chase Home Finance, LLC* v. *Fequiere*, 119 Conn. App. 570, 572 n.2, 989 A.2d 606, cert. denied, 295 Conn. 922, 991 A.2d 564 (2010); see also *Jackson* v. *Mortgage Electronic Registration Systems, Inc.*, 770 N.W.2d 487, 490–91 (Minn. 2009).

[2] We note that the defendant raised an additional, nonjurisdictional claim in the Appellate Court that that court did not reach in view of its favorable resolution of the defendant's standing claim, namely, that the trial court improperly had rendered judgment in violation of a bankruptcy stay. See *Equity One, Inc.* v. *Shivers*, supra, 125 Conn. App. 203. In light of our decision to reverse the judgment of the Appellate Court on the standing issue, the Appellate Court, on remand, will be required to consider that remaining claim.

[3] General Statutes § 42a-3-301 provides: " 'Person entitled to enforce' an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to section 42a-3-309 or 42a-3-418 (d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument."

[4] General Statutes § 42a-1-201 (b) provides in relevant part: "(21) 'Holder' means:

"(A) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession . . . ."

[5] General Statutes § 42a-3-205 provides in relevant part: "(b) If an endorsement is made by the holder of an instrument and is not a special endorsement, it is a 'blank endorsement'. When endorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially endorsed. . . ."

[6] General Statutes § 49-17 provides: "When any mortgage is foreclosed by the person entitled to receive the money secured thereby but to whom the legal title to the mortgaged premises has never been conveyed, the title to such premises shall, upon the expiration of the time limited for redemption and on failure of redemption, vest in him in the same manner and to the same extent as such title would have vested in the mortgagee if he had foreclosed, provided the person so foreclosing shall forthwith cause the

decree of foreclosure to be recorded in the land records in the town in which the land lies."

[7] We note that a subsequent appraisal submitted in connection with the November 24, 2008 hearing revealed that the property value then was less than the total amount due under the note.

[8] Although the record does not expressly indicate that the plaintiff also provided the trial court with a copy of the note and mortgage at this hearing, the plaintiff was required to do so under Practice Book § 23-18 (a) in order to prove the debt. Practice Book § 23-18 (a) provides in relevant part: "In any action to foreclose a mortgage where no defense as to the amount of the mortgage debt is interposed, such debt may be proved by presenting to the judicial authority the original note and mortgage, together with the affidavit of the plaintiff . . . stating what amount, including interest to the date of the hearing, is due, and that there is no setoff or counterclaim thereto."

[9] "A default admits the material facts that constitute a cause of action . . . and entry of default, when appropriately made, conclusively determines the liability of a defendant. . . . If the allegations of the plaintiff's complaint are sufficient on their face to make out a valid claim for the relief requested, the plaintiff, on the entry of a default against the defendant, need not offer evidence to support those allegations. . . . Therefore, the only issue before the court following a default is the determination of damages. . . . A plaintiff ordinarily is entitled to at least nominal damages following an entry of default against a defendant in a legal action." (Citations omitted; internal quotation marks omitted.) *Tang* v. *Bou-Fakhreddine*, 75 Conn. App. 334, 337–38, 815 A.2d 1276 (2003).

[10] The dissenting justice asserts that this conclusion "exalts the presumption over the facts of the case . . . ." We disagree with the dissenting justice's assertion that, in light of the facts and circumstances of the present case, it is somehow improper to indulge in a presumption that the court acted in conformity with the law. Our disagreement with the dissenting justice as to the applicability of this oft-relied on presumption stems largely from the fact that the defendant consistently has failed to demonstrate, by way of proffer or otherwise, why it is unfair or otherwise inappropriate to invoke the presumption.

[11] In support of his claim on appeal, the defendant speculates that, because the automatic stay that had been imposed after his bankruptcy filing was lifted on the basis of a motion filed by J.P. Morgan Mortgage Acquisition Corporation (J.P. Morgan), perhaps J.P. Morgan, and not the plaintiff, "is the real party in interest in this action" and, therefore, that the plaintiff may lack standing. We disagree. The defendant's sole claim on appeal is that the plaintiff failed to demonstrate that it had standing when it *commenced* the action because the record did not establish that the plaintiff was the holder of the note at that time. For the reasons previously set forth in this opinion, the trial court properly determined that the plaintiff did hold the note when it commenced the action and, therefore, had standing to do so. The record is clear that any interest that J.P. Morgan had or presently may have in the note and mortgage was obtained after commencement of this action and, consequently, has no bearing on whether the plaintiff had standing to commence the action in June, 2007. Moreover, as the plaintiff notes, J.P. Morgan, as an assignee of rights under the note and the mortgage, has the option of seeking to substitute itself as the plaintiff or maintaining the action in the plaintiff's name. See *Dime Savings Bank of Wallingford* v. *Arpaia*, 55 Conn. App. 180, 184, 738 A.2d 715 (1999) ("General Statutes § 52-118 . . . provides in relevant part that '[an] assignee . . . may sue . . . in his own name. . . .' Conversely . . . an assignee also has the option 'to maintain [an] action in the name of his assignor.' ").

[12] We do not suggest, of course, that a trial-like evidentiary hearing is never required when the issue of standing is raised in the context of a foreclosure action. On the contrary, when there is a genuine dispute as to jurisdictional facts and an evidentiary hearing is necessary to resolve that dispute, such a hearing ordinarily will be required.

We note that the dissenting justice highlights certain facts in the record that the defendant might have raised in the trial court in support of his belated standing claim. The defendant, however, relied on nothing more than a characterization of the record that incorrectly presumed error in the absence of express judicial findings, and failed to bring any other facts or evidence to the attention of the trial court, just as he has failed even to identify them on appeal. If the defendant had raised the same questions with reference to the same facts that the dissenting justice now poses for

the very first time, the trial court might have agreed to conduct an evidentiary hearing, even though none of those facts creates any serious doubt as to the plaintiff's standing. In any event, in relying on claims and evidence that never were brought to the attention of the trial court, the dissenting justice creates a record for purposes of his dissent that bears little resemblance to the record before the trial court.

[13] As we have noted, the plaintiff was not represented by counsel in the trial court proceedings that preceded his appeals to the Appellate Court and to this court. We recognize, of course, that "[i]t is the established policy of the Connecticut courts to be solicitous of [self-represented] litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the [self-represented] party." (Internal quotation marks omitted.) *Ajadi* v. *Commissioner of Correction*, 280 Conn. 514, 549, 911 A.2d 712 (2006). The sole issue in the present case, however, is whether it was necessary for the trial court to conduct a trial-like evidentiary hearing on the issue of standing. Under the facts and circumstances of this case, the self-represented status of the defendant has no bearing on our analysis or resolution of that issue.

Finally, as the dissenting justice notes, the recent mortgage foreclosure crisis may have resulted in an increase not only in the number of standing challenges in foreclosure actions due to mortgage securitization practices, but also in an increase in deficiencies in foreclosure practices. In contrast to the dissenting justice, however, we do not believe that these considerations have any material bearing on the proper resolution of this appeal.

[14] See footnote 2 of this opinion.