

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division

**Case Number: 12-24032-CIV-MORENO**

BRANCH BANKING AND TRUST COMPANY,

Plaintiff,

vs.

RACHEL ASSOCIATES CORPORATION AND  
HILLEL A. MEYERS,

Defendant.

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**ORDER DENYING MOTION TO DISMISS AND  
REQUIRING ANSWER TO COMPLAINT**

THIS CAUSE came before the Court upon Defendant Rachel Associates Corporation's Motion to Dismiss (**D.E. No. 8**), filed on **December 7, 2012**.

THE COURT has considered the motion, response and the pertinent portions of the record, and being otherwise fully advised in the premises, it is


**ADJUDGED** that the motion is DENIED. Plaintiff Branch Banking and Trust Company, a North Carolina bank, is the alleged owner and holder of loan documents originally held by the now-defunct Colonial Bank. According to the Complaint, Defendants Rachel Associates, a New Jersey Corporation, and Hillel Myers, a Miami, Florida resident, entered into a loan agreement with Colonial Bank for an acquisition loan in the original principal amount of \$7,244,850, and for a construction loan in the original principal amount of \$1,500,000. The loans were secured by promissory notes.

Because the payee on the loan documents was listed as Colonial Bank and not Branch Banking and Trust Company, the defendants jointly move for dismissal on the grounds that the plaintiff has failed to show it has standing to bring this action because the Promissory Notes list "Colonial Bank" and not Branch Banking and Trust Company as the payee. However, as pointed out by the plaintiff, BB&T is not required to demonstrate its authority or capacity to sue in the Complaint. *See* Fed. R. Civ.

P. 9(a)(1). In addition, the plaintiff did not simply allege that it had standing to bring the action, nor did it neglect to plead how it came into possession of the promissory notes once held by Colonial Bank. Instead, the plaintiff properly alleged that it holds the promissory notes, and how it came to do so: as successor in interest to Colonial Bank by asset acquisition from the Federal Deposit Insurance Corporation, the receiver for Colonial Bank. For these reasons, the Motion to Dismiss is denied. It is further

**ADJUDGED** that the defendants shall file an answer to the plaintiff's Complaint by no later than **April 12, 2013**

DONE AND ORDERED in Chambers at Miami, Florida, this 30<sup>th</sup> day of March, 2013.

  
FEDERICO A. MORENO  
UNITED STATES DISTRICT JUDGE

Copies provided to:

Counsel of Record