

STATE OF MAINE  
CUMBERLAND, ss

SUPERIOR COURT  
CIVIL ACTION  
Docket No. RE-16-060 ✓

U.S. BANK NATIONAL  
ASSOCIATION,

STATE OF MAINE  
Cumberland ss. Clerk's Office

SEP 13 2016

Plaintiff

**RECEIVED**

DECISION AND ORDER

v.

BEAR STEARNS RESIDENTIAL  
MORTGAGE CORPORATION,

Defendant

Before the court is plaintiff U.S. Bank National Association's motion for a default judgment and judgment on the pleadings in its declaratory judgment action against defendant Bear Stearns Residential Mortgage Corporation. Mortgage Electronic Registration Systems, Inc. (MERS) and Lauren Thomas, the mortgagor, are parties-in-interest. For the following reasons, plaintiff's motion is denied.

#### FACTS

On May 18, 2007, Ms. Thomas executed and delivered to defendant a promissory note in the amount of \$243,000.00. (Pl.'s Compl. ¶ 8; Pl.'s Ex. B.) To secure the note, Ms. Thomas executed a mortgage deed on property located at 9 Monroe Drive in Naples. (Pl.'s Compl. ¶ 10; Pl.'s Ex. C.) The mortgage was in favor of MERS as nominee for defendant. (Pl.'s Compl. ¶ 10.) MERS purported to assign the mortgage to plaintiff on February 28, 2012. (Id. ¶ 12; Pl.'s Ex. D.)

Plaintiff filed this declaratory judgment action on March 1, 2016. Plaintiff seeks a confirmatory nunc pro tunc order, an "effective reaffirmation" of the assignment from MERS to plaintiff, and a finding that plaintiff is the owner of both the note and the

mortgage. (Pl.'s Compl. ¶ 16.) Defendant and MERS were served with the complaint on March 3, 2016. Ms. Thomas was served on April 14, 2016. None of the parties answered the complaint. Plaintiff filed its motion for a default judgment and judgment on the pleadings on June 29, 2016. None of the parties responded to plaintiff's motion.

### DISCUSSION

Maine's Declaratory Judgments Act empowers the court to "declare rights, status and other legal relations" when doing so will "terminate the controversy or remove an uncertainty." 14 M.R.S. §§ 5953, 5957 (2015). First, it is unclear whether there is a controversy "between the litigants." Berry v. Daigle, 322 A.2d 320, 325 (Me. 1974).

Further, plaintiff has not established that it has standing to bring this action. The mortgage was purportedly assigned to plaintiff by MERS as nominee for defendant, and plaintiff has not offered "evidence of any independent assignment." See Bank of Am., N.A. v. Greenleaf, 2014 ME 89, ¶¶ 16-17, 96 A.3d 700. Plaintiff's standing is therefore unclear, regardless of whether this action is characterized as one for foreclosure or declaratory judgment. See id.; Berry, 322 A.2d at 325-26; (Pl.'s Mem. in Support of Mot. Default J. and J. Pleadings 4.)

Finally, especially in matters involving mortgage foreclosure, procedural rules must be followed. See JPMorgan Chase Bank v. Harp, 2011 ME 5, ¶ 15, 10 A.3d 718. Rule 55(b)(2) authorizes the court to conduct a hearing the court deems necessary and proper "to establish the truth of any averment by evidence." M.R. Civ. P. 55(b)(2).


### CONCLUSION

Plaintiff has not shown that it has standing to bring this action. A hearing is necessary to establish the truth of plaintiff's averments. M.R. Civ. P. 55(b)(2).

The entry is

Plaintiff's Motion for a Default Judgment and Judgment on  
the Pleadings is DENIED.

Date: September 12, 2016



Nancy Mills  
Justice, Superior Court

CUMB-RE-16-060