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1       **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **BANK OF NEW YORK MELLON, f/k/a**  
3 **THE BANK OF NEW YORK AS TRUSTEE**  
4 **FOR THE CERTIFICATEHOLDERS OF**  
5 **CWABS 2004-05,**

6           Plaintiff-Appellee,

7 v.

**NO. 34,041**

8 **HARCHARAN SINGH,**

9           Defendant-Appellant,

10 and

11 **JANE DOE SINGH, GERARD P. GARCIA,**  
12 **and TAXATION AND REVENUE DEPARTMENT**  
13 **OF THE STATE OF NEW MEXICO,**

14           Defendants.

15 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**  
16 **Beatrice J. Brickhouse, District Judge**

17 Little, Bradley & Nesbitt, P.A.

18 Sandra A. Brown

19 Albuquerque, NM

20 for Appellee

21 Harcharan Singh

1 Albuquerque, NM

2 Pro Se Appellant

3 **MEMORANDUM OPINION**

4 **VANZI, Judge.**

5 {1} Defendant Harcharan Singh (Homeowner), a self-represented litigant, appeals  
6 from the district court's order denying his motion to vacate the sale and to declare the  
7 default judgment in a foreclosure action against him void. In our notice of proposed  
8 summary disposition, we proposed to affirm. In response to this Court's notice,  
9 Homeowner filed a memorandum in opposition and the Bank of New York Mellon  
10 (the Bank) filed a memorandum in support, both of which we have duly considered.  
11 For the reasons stated in the notice of proposed disposition and below, we affirm.

12 {2} In our notice, we proposed to hold that Homeowner, by defaulting rather than  
13 answering the complaint or amended complaint for foreclosure, admitted the  
14 allegations made therein. [CN 2, 4-5] We further proposed to hold that those  
15 allegations became the facts of the case and established the Bank's standing to bring  
16 the foreclosure action. [CN 2, 4-5, 7] We also noted that the Bank's attorney filed an  
17 affidavit and stated that her office possessed the indorsed note prior to filing the  
18 amended complaint but inadvertently failed to attach a copy of the indorsed note to

1 the amended complaint. [CN 5-6] Accordingly, we proposed to hold that because the  
2 Bank was in possession of the indorsed note prior to filing its amended complaint, it  
3 had standing to foreclose at the time it filed its amended complaint. [CN 6-7]

4 {3} In Homeowner’s memorandum in opposition, he makes broad assertions that  
5 our proposed disposition is not supported by New Mexico law [MIO 1, 3], but he fails  
6 to clearly point out errors in fact or law. *See Hennessy v. Duryea*, 1998-NMCA-036,  
7 ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held that, in summary  
8 calendar cases, the burden is on the party opposing the proposed disposition to clearly  
9 point out errors in fact or law.”). Homeowner maintains that the Bank lacked standing  
10 to foreclose and that standing can be raised at any time, including the first time on  
11 appeal. [*See generally* MIO]

12 {4} As we discussed in our notice of proposed disposition, the amended complaint  
13 alleged that the Bank was a “holder” of the note—a term of art that carries with it the  
14 authority to enforce a note. [CN 2, 4-5] *See Bank of N.Y. Mellon v. Lopes*, 2014-  
15 NMCA-097, ¶ 10, 336 P.3d 443. Furthermore, the Bank alleged that the mortgage was  
16 assigned to it well before the date the foreclosure complaint was filed. [CN 2, 7] These  
17 admitted allegations, taken together, show that the Bank had the authority to enforce  
18 both the note and the mortgage at the time the foreclosure complaint was filed and  
19 thus also show that the Bank had standing to bring the foreclosure action. *See Bank*

1 of *N.Y. v. Romero*, 2014-NMSC-007, ¶ 17, 320 P.3d 1 (holding that for a plaintiff to  
2 establish standing to pursue foreclosure of mortgage, the plaintiff must establish it had  
3 timely ownership of both the note and the mortgage at the time the complaint was  
4 filed).

5 {5} As detailed in our calendar notice, the procedural posture of this case is crucial.  
6 [CN 2-3] By defaulting rather than answering the foreclosure complaint, Homeowner  
7 admitted the facts necessary to establish the Bank's standing to pursue the foreclosure  
8 action. [CN 4] This puts Homeowner in an entirely different position than, for  
9 example, the defendant in *Lopes*, who objected to the plaintiff bank's standing during  
10 the foreclosure proceedings. 2014-NMCA-097, ¶ 2; *see also Romero*, 2014-NMSC-  
11 007, ¶ 6 (same). The plaintiff in *Lopes* had notice of the standing issue and therefore  
12 had an opportunity to present any evidence it might have had concerning standing; the  
13 Bank in this case was not put on notice of the issue and is entitled to rely on  
14 Homeowner's admission by default of the allegations made in the complaint. To hold  
15 otherwise would render meaningless the default judgment that was entered in this  
16 case. [RP 113]

17 {6} To the extent that Homeowner opposes this Court's proposed disposition that  
18 the Bank's attorney possessed the indorsed note prior to filing the amended complaint,  
19 and therefore, the Bank had standing to foreclose at the time it filed its amended  
20 complaint, Homeowner has failed to meet his burden in opposing summary

1 affirmance. [MIO 3] *See Hennessy*, 1998-NMCA-036, ¶ 24 (stating that “the burden  
2 is on the party opposing the proposed disposition to clearly point out errors in fact or  
3 law”).

4 {7} Therefore, for the reasons stated here and in our notice of proposed summary  
5 disposition, we affirm.

6 {8} **IT IS SO ORDERED.**

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**LINDA M. VANZI, Judge**

9 **WE CONCUR:**

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**JAMES J. WECHSLER, Judge**

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**JONATHAN B. SUTIN, Judge**