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

2 **BAC HOME LOANS SERVICING, LP,**  
3 **f/k/a COUNTRYWIDE HOME LOAN**  
4 **SERVICING LP,**

5           Plaintiff-Appellant,

6 v.

**NO. A-1-CA-35495**

7 **MARGO E. CRUZ and MONICA C. CRUZ,**

8           Defendants-Appellees.

9 **APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY**

10 **John F. Davis, District Judge**

11 Little, Bradley & Nesbitt, P.A.

12 Lucinda R. Silva

13 Albuquerque, NM

14 for Appellant

15 Eric Ortiz & Associates

16 Eric N. Ortiz

17 Albuquerque, NM

18 for Appellees

19                                           **MEMORANDUM OPINION**

20 **VANZI, Chief Judge.**

1 {1} This interlocutory appeal arises from the district court’s order dismissing for  
2 lack of standing a foreclosure complaint filed years before our Supreme Court held  
3 in *Bank of New York v. Romero*, 2014-NMSC-007, ¶¶ 19-38, 320 P.3d 1, that the bank  
4 did not establish standing to foreclose when it could not prove that it had the right to  
5 enforce the promissory note on the mortgage (note) at the time it filed suit. *Romero*  
6 was the law when Defendants in the instant case moved to dismiss the foreclosure  
7 complaint for lack of standing, and was the explicit basis for the motion’s contention  
8 that standing to foreclose is a jurisdictional prerequisite that “must be established *at*  
9 *the time the complaint is filed.*” In response to the motion, Plaintiff BAC Home Loans  
10 Servicing, LP (BAC) submitted documents it contended established that it had  
11 standing at the time it filed suit. The district court treated *Romero* as controlling and  
12 cited the decision in ruling that the complaint should be dismissed without prejudice.

13 {2} Following the district court’s oral ruling on the motion (although before entry  
14 of the written order), our Supreme Court issued a decision clarifying that “standing  
15 is not a jurisdictional prerequisite in mortgage foreclosure cases in New Mexico,”  
16 *Deutsche Bank Nat’l Tr. Co. v. Johnston*, 2016-NMSC-013, ¶ 9, 369 P.3d 1046, and  
17 that, while the plaintiff must prove that it held the note at the time it filed suit (i.e.,  
18 standing), the proof is not required at the pleading stage but rather at the time standing  
19 is challenged by the defendant or raised by the court. *Id.* ¶¶ 26-27. Rulings in civil  
20 cases generally apply retroactively, unless the court limits the holding to prospective

1 application, by express language or consideration of certain factors. *Whelan v. State*  
2 *Farm Mut. Auto. Ins. Co.*, 2014-NMSC-021, ¶ 22, 329 P.3d 646; *Marckstadt v.*  
3 *Lockheed Martin Corp.*, 2010-NMSC-001, ¶ 31, 147 N.M. 678, 228 P.3d 462.  
4 Nothing in *Johnston* indicates that any part of that decision is limited to prospective  
5 application.

6 {3} Because *Johnston* allows a foreclosure plaintiff to establish that it had the right  
7 to foreclose when it filed suit *after* the issue is raised by the defendant, as BAC  
8 attempted to do in this case, and the district court dismissed the complaint without  
9 considering and ruling on the adequacy of BAC's proffered proof, we reverse and  
10 remand to the district court for further proceedings in accordance with *Johnston*.

11 {4} **IT IS SO ORDERED.**

12 \_\_\_\_\_  
13 **LINDA M. VANZI, Chief Judge**

14 **WE CONCUR:**

15 \_\_\_\_\_  
16 **STEPHEN G. FRENCH, Judge**

17 \_\_\_\_\_  
18 **JENNIFER L. ATTREP, Judge**