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

2 **FEDERAL NATIONAL**
3 **MORTGAGE ASSOCIATION,**

4 Plaintiff-Appellee,

5 v.

No. A-1-CA-36553

6 **PATRICIA LEVEY,**

7 Defendant-Appellant.

8 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

9 **Raymond Z. Ortiz, District Judge**

10 Stone & Associates, PC

11 B.W. Stone

12 Albuquerque, NM

13 for Appellee

14 Gleason Law Firm, PC

15 Deirdre Gleason

16 Heath, MA

17 for Appellant

18 **MEMORANDUM OPINION**

19 **VANZI, Chief Judge.**

1 {1} Defendant Patricia Levey, appeals from the district court's judgment of
2 foreclosure. We issued a notice of proposed summary disposition proposing to affirm,
3 and Defendant has responded with a timely memorandum in opposition. Having
4 considered Defendant's arguments and remaining unpersuaded that our initial
5 proposed disposition was incorrect, we affirm.

6 {2} In her memorandum in opposition, Defendant continues to argue that Plaintiff
7 Federal National Mortgage Association failed to prove standing to foreclose. [MIO
8 1-10] *See Bank of N. Y. v. Romero*, 2014-NMSC-007, ¶ 7, 320 P.3d 1 (recognizing
9 that a plaintiff must demonstrate that it had standing at the time it filed the complaint);
10 *see also PNC Mortg. v. Romero*, 2016-NMCA-064, ¶ 19, 377 P.3d 461 (stating that
11 to demonstrate standing, the foreclosing party has to demonstrate that it had the right
12 to enforce the note and the right to foreclose the mortgage at the time the foreclosure
13 suit was filed). We disagree. The record indicates that Defendant executed a
14 promissory note (the Note) to First Horizon Home Loan Corporation (First Horizon).
15 [RP 6] On October 10, 2013, Plaintiff filed a complaint for foreclosure in which it
16 alleged that Defendant made and delivered the Note, secured by a mortgage on real
17 property. [RP 1] Plaintiff alleged that it was the holder of the Note and the mortgage,
18 and was entitled to enforce the Note. [RP 2 ¶ 4] Plaintiff also attached a copy of the
19 Note to the complaint, which contained a blank indorsement signed by Stacy Largent,

1 vice president of First Horizon. [RP 9] Our case law has recognized that this is
2 sufficient to make a prima facie showing of standing to enforce the Note. *Deutsche*
3 *Bank Nat'l Trust Co. v. Johnston*, 2016-NMSC-013, ¶ 25, 369 P.3d 1046 (recognizing
4 that where a party presents a note indorsed in blank with the initial complaint, it is
5 “entitled to a presumption that it could enforce the note at the time of filing and
6 thereby establish standing”).

7 {3} Defendant argues that Plaintiff failed to show that First Horizon was the holder
8 at the time the indorsement appearing on the Note was made, and therefore it is
9 unclear whether the indorsement is in fact a blank indorsement or whether it is an
10 anomalous indorsement. *See* NMSA 1978, § 55-3-205(b) (1992) (“If an indorsement
11 is made by the holder of an instrument and it is not a special indorsement, it is a ‘blank
12 indorsement.’ ”); Section 55-3-205(d) (“ ‘Anomalous indorsement’ means an
13 indorsement made by a person who is not the holder of the instrument.”). Defendant
14 notes that a blank indorsement and an anomalous indorsement can appear identical,
15 but that an anomalous indorsement does not vest any right to enforce the note. [MIO
16 2-3, 4] Defendant argues that, as there is no presumption that an indorsement was
17 made by the holder, Plaintiff was required to present evidence to establish that the
18 indorsement was actually made by the holder and was not an anomalous indorsement,
19 i.e., that First Horizon was the holder when the indorsement was made. [MIO 6, 9]

1 {4} We disagree, however, that the record was insufficient to show that the
2 indorsement was made by the holder. The Note produced by Plaintiff was made
3 payable to a single lender, First Horizon. *See Romero*, 2014-NMSC-007, ¶ 21 (noting
4 that “[t]he payee is always a holder if the payee has possession” (internal quotation
5 marks and citation omitted)). As First Horizon was the original lender, in order for it
6 to have lost its status as holder prior to making the indorsement at issue here, it would
7 have had to have first negotiated the Note to another party. *See* NMSA 1978, § 55-3-
8 201(a) (1992) (“ ‘Negotiation’ means a transfer of possession, whether voluntary or
9 involuntary, of an instrument by a person other than the issuer to a person who thereby
10 becomes its holder.”). The copy of the Note, payable to First Horizon, also contained
11 a single indorsement by First Horizon. It follows from this that First Horizon was the
12 holder at the time the indorsement was made, because there is no indication of a prior
13 negotiation in the form of another indorsement. *See* § 55-3-201(b) (stating that “if an
14 instrument is payable to an identified [party], negotiation requires transfer of
15 possession of the instrument and its indorsement by the holder”). As the indorsement
16 did not identify a person to whom the Note was payable, the indorsement was a blank
17 indorsement and not a special indorsement. Section 55-3-205(a) (stating that if an
18 indorsement is made by the holder of an instrument “and the indorsement identifies
19 a person to whom it makes the instrument payable, it is a ‘special indorsement’ ”);

1 Section 55-3-205(b) (“If an indorsement is made by the holder of an instrument and
2 it is not a special indorsement, it is a ‘blank indorsement.’ ”).

3 {5} We therefore hold that Plaintiff established a prima facie case that the
4 indorsement was a blank indorsement. Plaintiff’s possession of a Note indorsed in
5 blank was sufficient to establish its standing to foreclose Defendant’s mortgage as the
6 holder of the Note. *See Johnston*, 2016-NMSC-013, ¶ 25 (stating the holder of a note
7 indorsed in blank may, as a general matter, enforce the note); *see also* § 55-1-
8 201(b)(21)(A) (stating that the holder is “the person in possession of a negotiable
9 instrument that is payable either to bearer or to an identified person that is the person
10 in possession[.]”).

11 {6} We also reject Defendant’s argument that the district court was required to
12 dismiss the case after denying Plaintiff’s first motion for summary judgment when
13 Plaintiff did not respond with additional evidence. [MIO 8] “The denial of a summary
14 judgment motion is an interlocutory order and may be reconsidered by the district
15 court at any time before final judgment.” *Thompson v. Potter*, 2012-NMCA-014, ¶ 5,
16 268 P.3d 57; *see also Melnick v. State Farm Mut. Auto. Ins. Co.*, 1988-NMSC-012,
17 ¶ 5, 106 N.M. 726, 749 P.2d 1105 (determining that it was not error for the district
18 court to initially deny the defendant’s motion for a directed verdict and later grant it

1 because a trial court may rescind or revise an interlocutory order at any time before
2 entry of judgment that concludes the litigation).

3 {7} Finally, we address Defendant’s argument that *Edwards v. Mesch*, 1988-
4 NMSC-085, 107 N.M. 704, 763 P.2d 1169, is inapposite to this case. [MIO 5-6] We
5 cited to *Edwards* in our notice of proposed summary disposition for the proposition
6 that, under the Uniform Commercial Code (UCC), the holder of a negotiable
7 instrument is one who has possession of an instrument indorsed in blank. *See id.*,
8 ¶ 3; *see also* § 55-1-201(b)(21)(A) (defining “holder” under the UCC). As Plaintiff
9 had possession of a negotiable instrument indorsed in blank, it was the holder, and
10 therefore could enforce the instrument. *See* NMSA 1978, § 55-3-301 (1992)
11 (recognizing that the holder of an instrument is entitled to enforce it). Defendant
12 argues that this case differs from *Edwards* because in *Edwards*, the promissory note
13 at issue was never transferred. [MIO 6] It is irrelevant, however, whether or not the
14 Note in this case was transferred after indorsement and before it came into Plaintiff’s
15 possession. As explained above, the Note was indorsed in blank and contained no
16 special indorsement. “When indorsed in blank, an instrument becomes payable to
17 bearer and may be negotiated by transfer of possession alone until specially indorsed.”
18 Section 55-3-205(b).

19 {8} For these reasons, we affirm the district court.

1 {9} **IT IS SO ORDERED.**

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LINDA M. VANZI, Chief Judge

4 **WE CONCUR:**

5

6 **JULIE J. VARGAS, Judge**

7

8 **EMIL J. KIEHNE, Judge**