An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-1019

Filed 05 September 2023

Mecklenburg County, No. 21 CvD 2062

BANK OF AMERICA, N.A., Plaintiff,

v.

ABDEL WAHAD LEMAGNI, Defendant.

Appeal by Defendant from order entered 9 September 2021 by Judge Paulina Havelka in Mecklenburg County District Court. Heard in the Court of Appeals 8 August 2023.

Sessoms & Rogers, P.A., by Andrew E. Hoke, for Plaintiff-Appellee.

Abdel Wahad Lemagni, pro se, Defendant-Appellant.

COLLINS, Judge.

Defendant Abdel Wahad Lemagni appeals from an order granting summary judgment in favor of Plaintiff Bank of America, N.A., renewing a previous judgment against Defendant. Defendant argues that Plaintiff lacked standing to renew the judgment because Plaintiff was not a party to the original judgment. Because Plaintiff alleged that it was successor-in-interest to the party that obtained the

original judgment, and Defendant did not deny the allegation, Plaintiff had standing to renew the judgment. Accordingly, the trial court's order is affirmed.

I. Background

On 8 April 2011, FIA Card Services N.A., ("FIA") obtained a judgment on the pleadings to recover $2,703.80 plus costs from Defendant ("2011 judgment"). On 23 September 2011, Defendant made a payment of $60.00, leaving his account balance at $2,978.80.

On 1 October 2014, FIA merged into and under the charter and title of Bank of America, N.A. On 12 February 2021, Plaintiff filed an action to renew the 2011 judgment, alleging:

> 1. . . . . The Plaintiff, Bank of America, N.A. ("BANA"), is a wholly-owned subsidiary of Bank of America Corporation and the successor-in-interest to FIA Card Services, N.A., formerly known as MBNA America Bank, N.A. ("FIA"). FIA was merged into and under the charter and title of BANA effective October 1, 2014.
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> . . . .
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> 3. On or about April 8, 2011, the Plaintiff obtained a Judgment against the Defendant. . . . Payments in the amount of $60.00 have since been received and applied toward the prior Judgment. The date of last payment is September 23, 2011.
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> 4. This action to renew is brought within the ten (10) year statute of limitations. The Plaintiff should therefore be entitled to a renewal of the previous Judgment, with the new Judgment bearing the same force and effect as the previous Judgment for an additional ten (10) year period.

Defendant answered, denying the allegations in paragraphs 3 and 4 but failing

to respond to paragraph 1.[1] After hearing arguments from the parties, the trial court granted summary judgment in Plaintiff's favor on 9 September 2021. Defendant appealed.

II. Discussion

Defendant argues that Plaintiff lacked standing to renew the 2011 judgment because Plaintiff was not a party to the 2011 judgment.

"Every claim shall be prosecuted in the name of the real party in interest." N.C. Gen. Stat. § 1A-1, Rule 17 (2021). "The real party in interest is the party who by substantive law has the legal right to enforce the claim in question." *Dawson v. Atlanta Design Assocs., Inc.*, 144 N.C. App. 716, 719, 551 S.E.2d 877, 879 (2001) (citation omitted).

In its complaint, Plaintiff alleged:

> The Plaintiff, Bank of America, N.A. ("BANA") is a wholly-owned subsidiary of Bank of America Corporation and the successor-in-interest to FIA Card Services, N.A., formerly known as MBNA America Bank, N.A. ("FIA"). FIA was merged into and under the charter and title of BANA effective October 1, 2014.

Defendant did not deny this allegation; thus it is deemed admitted. N.C. Gen.

[1] In its brief, Plaintiff explained that Defendant's answer that was included in the record on appeal "is different from the Answer that was received by [Plaintiff] during the lawsuit. The Answer attached to the Record on Appeal includes additional writing that did not appear on the original Answer." In his reply brief, Defendant admitted that "[t]he defendant's answer that is included with the record on appeals might be rephrased but still addresses the two main issues pertaining to documentations." Defendant's augmented answer did not deny paragraph 1 but included additional writing regarding a lack of evidence or documentation of a merger.

Stat. § 1A-1, Rule 8(d) (2021) ("Averments in a pleading to which a responsive pleading is required . . . are admitted when not denied in the responsive pleading."). Accordingly, Plaintiff had standing to renew the 2011 judgment as FIA's successor-in-interest.

III. Conclusion

Because Plaintiff had standing to bring the action, the trial court did not err by granting summary judgment in Plaintiff's favor.

AFFIRMED.

Judges ZACHARY and RIGGS concur.

Report per Rule 30(e).