

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

MARY M. EATON, F/K/A MARY M.  
CAMPBELL,

Appellant

v.

BANK OF AMERICA, N.A. AND U.S. BANK  
NATIONAL ASSOCIATION, AS  
SUCCESSOR TRUSTEE TO BANK OF  
AMERICA, N.A. AS SUCCESSOR TO  
LASALLE BANK, N.A., AS TRUSTEE FOR  
THE MERRILL LYNCH FIRST FRANKLIN  
MORTGAGE LOAN TRUST, MORTGAGE  
LOAN ASSET-BACKED CERTIFICATES,  
SERIES 2007-4,

Appellees

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 347 WDA 2014

Appeal from the Order entered February 5, 2014,  
in the Court of Common Pleas of Beaver County,  
Civil Division, at No(s): 10939-2013

BEFORE: BENDER, P.J.E., BOWES, and ALLEN, JJ.

MEMORANDUM BY ALLEN, J.:

**FILED DECEMBER 23, 2014**

Mary M. Eaton, f/k/a Mary M. Campbell, ("Appellant"), appeals from the trial court's order sustaining the preliminary objections in the nature of a demurrer which were filed by Bank of America, N.A. and U.S. Bank National Association, as successor trustee to Bank of America, N.A., as successor to LaSalle Bank, N.A., as trustee for the Merrill Lynch First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-4, (collectively "Bank").

On June 18, 2013, Appellant filed a quiet title action against Bank. Under Count I, Appellant sought to strike the mortgage on her personal residence as invalid. Appellant averred that she did not sign the note relative to the purchase of the home, which had been executed solely by Appellant's husband prior to his death. Appellant further averred that the mortgage was invalid against her because she only signed the mortgage as a non-borrower. Under Count II, Appellant sought to strike the recorded assignment of her mortgage. On August 16, 2013, Bank filed preliminary objections in the nature of a demurrer, asserting that Appellant's action should be dismissed for failure to state a cause of action because Appellant had signed the mortgage, albeit as a non-borrower, and averring that Appellant lacked standing to challenge the assignment of the mortgage. In an order issued on February 4, 2014, and docketed on February 5, 2014, the trial court sustained Bank's preliminary objections and dismissed Appellant's complaint. Appellant filed a timely notice of appeal. The trial court did not order compliance with Pa.R.A.P. 1925.

Appellant presents the following issues for our review:

1. Does Count I of [Appellant's] Complaint properly state a cause of action for Quiet Title, taking the facts of the Complaint as true and given the Superior Court's holding in ***Regions Mortgage, Inc. v. Muthler***, 844 A.2d 580 (Pa. Super. 2004)?
2. Does a Plaintiff have standing to challenge assignments of a mortgage through a Quiet Title action?

Appellant's Brief at 3.

Appellant's issues challenge the trial court's order sustaining Bank's preliminary objections in the nature of a demurrer. Our standard of review "is to determine whether the trial court committed an error of law." ***Feingold v. Hendrzak, et al.***, 15 A.3d 937, 941 (Pa. Super. 2011). We are also mindful that:

Preliminary objections in the nature of a demurrer test the legal sufficiency of the complaint. When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom. Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases which it is clear and free of doubt that the pleader will be unable to prove facts legally sufficient to establish the right of relief. If any doubts exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections.

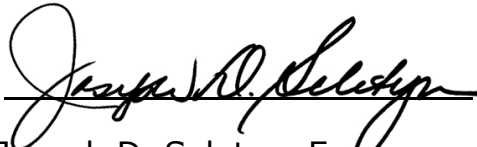
***Id. citing Haun v Community Health Systems, Inc.***, 14 A.3d 120, 123 (Pa. Super. 2011).

Mindful of the standard of review applicable to Appellant's issues, we carefully examined the certified record and found Appellant's claims of trial court error to be unavailing. The Honorable Deborah A. Kunselman filed a sound, comprehensive, well-reasoned, and well-written opinion, which we adopt and incorporate as our own. Citing prevailing and persuasive case law, Judge Kunselman addressed Appellant's challenges regarding whether Appellant's complaint failed to state a cause of action for quiet title, and whether Appellant lacked standing to challenge the assignment of her mortgage, such that further analysis by this Court would be redundant. We

therefore adopt the trial court's February 4, 2014 opinion, which was docketed on February 5, 2014, as our own in affirming the trial court's order sustaining Bank's preliminary objections in the nature of a demurrer.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 12/23/2014

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY  
PENNSYLVANIA  
CIVIL DIVISION

MARY M. EATON, f/k/a Mary M. Campbell,

Plaintiff,

vs.

BANK OF AMERICA and U.S. Bank  
National Association, as Successor Trustee  
to Bank of America, N.A., as Trustee for the  
Merrill Lynch First Franklin Mortgage Loan  
Trust, Mortgage Loan Asset-Backed  
Certificates, Series 2007-4,

Defendants.

No. 10939-2013

HANCOY WERME,  
PROTHONOTARY,  
BEAVER COUNTY, PA

2014 FEB -5 AM 10:12

FILED OR ISSUED

D. KUNSELMAN, J.

FEBRUARY 4, 2014

MEMORANDUM OPINION AND ORDER

Defendants Bank of America and U.S. Bank National Association asked this Court to grant their Preliminary Objections and dismiss Plaintiff's Complaint in Quiet Title. Plaintiff, Mary M. Eaton, filed a Complaint in Quiet Title seeking to have the mortgage and the assignment of the mortgage on her property declared invalid, discharged, and/or cancelled. Plaintiff claims that the mortgage should be declared invalid or discharged because her husband, who passed away, was the sole signer on the note, and her name appeared on the mortgage as a non-borrower. Plaintiff further claims that the assignment of the mortgage was invalid because it violated date restrictions in the prospectus for the loan trust at issue. Defendant argues that neither of these claims is cognizable as a matter of law, and the Complaint should be dismissed. For the reasons set forth in this Opinion, the Court sustains the preliminary objections.

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### FACTS

Plaintiff filed a Complaint in Quiet Title against Defendants seeking to have a mortgage on the subject property discharged and an assignment of that mortgage declared invalid and stricken from the record. Previously, the property in this case was owned by Plaintiff and her husband as tenants by the entireties. (Complaint ¶ 5). Plaintiff's husband passed away some time after the closing, and upon his death she became the sole owner of the property. (Complaint ¶ 6).

When the Plaintiff and her husband sought to purchase property in 2007, the loan financing was obtained through First Franklin Financial Corp. (Complaint ¶ 20). First Franklin did not want Plaintiff on the note, even though it knew Plaintiff and husband would both be on the deed. (Complaint ¶¶ 22-23). The documents prepared by First Franklin listed Plaintiff on the mortgage as a "non-borrower." Following her husband's death, Plaintiff tried to work with First Franklin concerning the loan, but they would not speak to her, "because she was not on the note or otherwise liable". (Complaint ¶ 29).

The mortgage seems to have been transferred several times. It appears from the caption of the Complaint that First Franklin placed the mortgage in a loan trust with the Merrill Lynch First Franklin Mortgage Loan Trust, Mortgage Backed Certificates, Series, 2007-4. LaSalle Bank NA, held the mortgage as Trustee for Merrill Lynch First Franklin Loan Trust. Bank of America became the successor trustee for LaSalle Bank. According to the Complaint, "[i]n an assignment of Mortgage dated September 13, 2011, U.S. Bank claims it obtained the mortgage from Mortgage Electronic Registration Systems, Inc., as nominee for the original lender First Franklin." (Complaint ¶ 43).



According to the Loan Trust's prospectus, the mortgages and mortgage notes must be held by the loan trust by the closing date, after which no more loans may be entered into the trust. (Complaint ¶ 46). The closing date on the trust was June 26, 2007 with a cutoff date of June 1, 2007. (Complaint ¶ 45). The assignment of the mortgage in this case did not occur until September 13, 2011.

Following the assignment, Bank of America and U.S. Bank started treating Plaintiff as a party to the note and the mortgage. (Complaint ¶32).

In this lawsuit, Plaintiff claims the mortgage should be stricken. Alternatively, Plaintiff claims the assignment of the mortgage to U.S. Bank is therefore void or voidable, and must be stricken from the record.

#### LEGAL ANALYSIS

Pursuant to Rule 1028(a)(4) of the Pennsylvania Rules of Civil Procedure, a defendant can raise preliminary objections and a trial court may dismiss an action for failure to state a claim upon which relief can be granted when "it is clear from doubt from all the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish a right to relief." Pennsylvania AFL-CIO v. Commonwealth, 757 A.2d 917 (Pa. 2000). Defendants correctly observe that the Court can take judicial notice of the mortgage documents, as they are court records, and judicial notice may be taken at any stage of the proceedings. Pa. R. Evid. 201(b), (f).

Plaintiff alleges, in Count 1 of the Complaint, that the mortgage should be declared invalid and discharged following the death of her husband, because she never signed the note, which accompanied the mortgage. Additionally, in Count 2 of the Complaint, Plaintiff claims that Assignment of Mortgage is invalid because it violated the date restrictions in the prospectus for the loan trust at issue.

Defendants disagree. Defendants argue that Plaintiff's Complaint does not state a valid cause of action; they argue that Plaintiff's attempt to strike-off the mortgage fails as a matter of law. They also claim that Plaintiff does not have standing to challenge the assignment of the mortgage. The Court will address each of these arguments.

**I. Does Count I of Plaintiff's Complaint state a valid cause of action to strike the mortgage on her property**

To support her argument that the mortgage is invalid and must be stricken from the record, Plaintiff relies on the decision in Regions Mortgage, Inc. v. Muthler, 844 A.2d 580 (Pa. Super. 2004). In that case, Mr. and Mrs. Muthler purchased property as tenants by the entireties. The deed for real property was made out to the husband and wife. Along with this purchase, Mr. Muthler executed a note and mortgage securing the property deeded to him and his wife, however, Mrs. Muthler was not on the note or mortgage. Id. at 582. Mr. Muthler passed away after the purchase of the property, and Mrs. Muthler took legal title to the property. She believed she did not have any obligations to Regions, because title was exclusively in her name and she never signed the mortgage the note. Id. The Superior Court held that absent a reformation, Mrs. Muthler had the right to take the property free and clear of the mortgage due to her husband's passing, and neither the mortgage or note were enforceable against her. Id. at 583.

The facts of this case are similar to the Regions case. In both cases, husband and wife owned property as tenants by the entireties, and only the husband signed the note. However, in the current case, Plaintiff signed the mortgage as a "non-borrower," whereas Mrs. Muthler did not sign the mortgage at all.

To refute Plaintiff's argument, Defendants rely on a case from West Virginia. In



Arnold v. Palmer, 686 S.E.2d 725 (W. Va. 2009), the husband and wife both signed the deed to trust, and both were listed on the deed, but only the husband signed the note. Id. at 729. The court in Arnold found that the deed of trust allowed the bank to foreclose on the home without any need to resort to the promissory note. Id. at 734.

The Defendants specifically cite to Paragraph 13 of the mortgage, stating that the language found within that particular paragraph is a common clause in mortgages, and was the same language as that used in the Arnold case. It states that a Borrower who co-signs the mortgage but does not execute the note is "co-signing this Security Instrument only to mortgage, grant and convey co-signer's interest in the Property under the terms of this Security Instrument" and is "not personally obligated to pay the sums secured by [the] Security Instrument." Mortgage, Paragraph 13, at page 10.

Defendants argue that because Plaintiff signed the mortgage, she obligated herself to the terms of that security instrument, and therefore has failed to state a legally cognizable reason for the mortgage to be discharged.

The Plaintiff maintains that the Arnold case is inapposite here for two reasons. First, the West Virginia case does not bind this Court. Also, the wife in Arnold signed the deed of trust knowing that the property was to be used as collateral on the promissory note. Plaintiff argues that in Pennsylvania, unlike West Virginia, the lender in a mortgage foreclosure is suing under the note, and not merely under the mortgage. Thus, in Pennsylvania, for the mortgage to be enforceable, the borrower must also sign the note. Plaintiff is mistaken.

We believe that the mortgage on the property is valid and enforceable and that Plaintiff cannot maintain an action for quiet title. Our review of Pennsylvania law on

mortgages supports this conclusion.

First, we observe that in Pennsylvania, a mortgage and a mortgage note are separate obligations. Hagerty v. Fetner, 481 A.2d 641, 646 (Pa. Super. 1984). The note is evidence of the debt and the mortgage provides the security for the debt. Id. citing Evanovich Estate, 408 A.2d 1092 (Pa. 1979). Although a note and a mortgage taken for the same debt are distinct securities and possess dissimilar attributes, they are nevertheless so far one, in that the payment of either discharges both, and a release or extinguishment of either, without payment, is discharge of the other unless the parties otherwise intend. Standard PA Practice 2d, § 121:2. When the property that is subject to a mortgage is transferred without payment of the mortgage, the property in the hands of the transferee continues to be security for the performance of the obligation, and for any default the mortgagee may seize and sell the property in the hands of the transferee; the contractual relationship between mortgagee and transferee continues by operation of law. Id at § 121:3, citing Bank of Pennsylvania v. G/N Enterprises, Inc. 463 A.2d 4, 6 (Pa. Super. 1983).

The Pennsylvania Supreme Court held that "a mortgage conveys the property subject to the mortgage to the mortgagee until the obligations under the mortgage are fulfilled." Pines v. Farrell, 848 A.2d 94, 100 (Pa. 2004). The court observed that a mortgage has a dual nature, acting as a conveyance of property between the mortgagor and the mortgagee, while also acting as a lien between the mortgagor or mortgagee and third parties. Id. at 99. A mortgage is more than just a security interest for the payment on money; it is also a conveyance of title. The court observed:

A mortgage is a pledge of an estate in real property as collateral security for payment of money or performance of

some other act. In form, it recites an obligation by the mortgagor to pay a certain sum of money to the mortgagee, and to keep certain other covenants... To secure performance of these obligations, the real property described in the mortgage is conveyed to the mortgagee, provided that the conveyance is defeasible (i.e. is to become void) if and when all of the covenants have been performed....

Id. *quoting*, Lader on Conveyancing in Pennsylvania (4<sup>th</sup> ed. 1979 & Supp. 2003).

In Pennsylvania, a lender who holds both the Note and the Mortgage, may proceed with litigation under either one or both of these documents. The action on the Note is an *in personam* action, seeking a personal judgment against the debtor for repayment of the debt. This can be followed by a writ of execution. An action on the mortgage is an *in rem*, action that a judgment on against the property, which was used as collateral offered to secure the Note. If an action is filed on both the mortgage and the Note, there can be no double recovery for the lender; the mortgagee may have only one satisfaction.

We agree with Plaintiff that because she did not sign the Note, she was not a borrower, and cannot be personally responsible for the repayment of the debt under the Note. Thus, the lender cannot sue her for a personal judgment on the Note and cannot require her to pay any shortfall, if the property is seized in a mortgage foreclosure action, and does not sell for the balance due under the Note.

However, we disagree that the mortgage should be stricken, or that the mortgage is invalid with respect to Plaintiff. Unlike the plaintiff in the Regions case, in this case, Plaintiff signed the mortgage. She is listed as a borrower in the body of the document, and she signed the document. Although her signature identifies her as a non-borrower, we believe this title has no effect on the validity or enforceability of the mortgage. It only



indicates that she is not a borrower under the Note and therefore cannot be personally liable for the debt.

We believe that as co-signor of the mortgage, Plaintiff is bound by its terms. Like her husband, she is a mortgagor. She signed the mortgage, recognizing and accepting that the property was being placed as collateral on the Note, in exchange for the money the lender was providing for the purchase of the property. Plaintiff's claim there was no consideration given for her signature on the mortgage is without merit. The consideration was the money provided by the lender for the purchase of her house. If the Note is unpaid, the lender may foreclose on the property. The lender could only obtain an *in rem* judgment, and could not pursue any other action against the Plaintiff for any additional balance due on the Note. Pursuant to the mortgage, Plaintiff and her husband, as signors of the mortgage, conveyed the property to the bank, and the mortgage will run with the property until it is paid. See, e.g. Pines v. Farrell, 848 A.2d 94, 100 (Pa. 2004).

Plaintiff filed this action seeking to strike the mortgage from the property. An action in quiet title, under the facts presented here, must fail. Therefore, Count 1 of Plaintiff's Complaint does not state a valid cause of action and the preliminary objection will be sustained.

**II. Does Plaintiff have standing to challenge the assignment of the mortgage under Count 2 of the Complaint**

In Count 2 of her Complaint, the Plaintiff pled that the transfer of the mortgage to U.S. Bank was outside the timeline permitted by the Loan Trust. Accordingly, she argues that the transfer was invalid and it places a cloud on her title.

Defendants argue that Plaintiff does not have standing to challenge the

assignment of the mortgage because the Plaintiff is not a party to the contract and she is not a third party beneficiary. See, Ira G. Steffy & Son v. Citizens Bank, 7 A.3d 278 (Pa. Super. 2010).

Defendants cite a litany of cases to support their argument. Notably, the Court observed in Souders v. Bank of America, 2012 WL 7009007 (M.D. Pa. Dec. 6, 2012), "[i]t is well-established that a borrower (in this case, Plaintiff) does not have standing to challenge the validity of mortgage assignments, because, according to 6A C.J.S. Assignments § 132, 'the only interest or right which an obligor or a claim has in the instrument of assignment is to insure him or herself that he or she will not have to pay the same claim twice.'" 6A C.J.S. Assignments § 132; (citations omitted).

The Court agrees that the Plaintiff does not have standing to complain of the validity of the assignment of the mortgage. Therefore, Defendant's preliminary objections to Court 2 are sustained.



IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY

PENNSYLVANIA  
CIVIL DIVISION

MARY M. EATON, f/k/a Mary M. Campbell

Plaintiff,

vs.

No. 10939-2013

BANK OF AMERICA and U.S. Bank  
National Association, as Successor Trustee  
to Bank of America, N.A., as Trustee for the  
Merrill Lynch First Franklin Mortgage Loan  
Trust, Mortgage Loan Asset-Backed  
Certificates, Series 2007-4

Defendants.

D. KUNSELMAN, J.

FEBRUARY 4, 2014

ORDER OF COURT

NOW, this 4<sup>th</sup> day of February, 2014, upon consideration of the foregoing  
Preliminary Objections, it is hereby ORDERED that the Preliminary Objections to the  
Complaint are sustained, and the Complaint is dismissed in its entirety.

BY THE COURT:

*Deborah A. Kunselman*

FILED OR ISSUE  
2014 FEB -5 AM 10:12  
NAHLY WERME  
PROTHONOTARY  
BEAVER COUNTY, PA

DEBORAH A. KUNSELMAN  
JUDGE

MIN-FEB-4 P-3-531

BY THE COURT