

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: MAY 3, 2012)

ALFRED A. CARDI, JR. :  
BARBARA A. CARDI :  
v. :  
MORTGAGE ELECTRONIC :  
REGISTRATION SYSTEMS; :  
INDYMAC BANK, FSB; INDYMAC :  
FEDERAL BANK FSB; :  
ONEWEST BANK FSB :

C.A. No. PC 2009-4798

DECISION

RUBINE, J. Before this Court is Defendants’ Mortgage Electronic Registration Systems (“MERS”) and OneWest Bank, FSB’s (“OneWest”), (collectively, “Defendants”)<sup>1</sup> Motion for Judgment on the Pleadings pursuant to Rule 12(c) of the Rhode Island Superior Court Rules of Civil Procedure and Motion for Entry of Final Judgment pursuant to Rule 54(b). Plaintiffs Alfred A. Cardi, Jr. and Barbara A. Cardi (collectively, “Plaintiffs”) filed a declaratory judgment action petitioning this Court to quiet title to certain real property located at 16 Phillips Court, Cranston, Rhode Island (“Property”). Plaintiffs are challenging Defendant OneWest’s statutory power of sale under the mortgage instrument at issue, as well as the validity of the assignment conveying the mortgage instrument to OneWest.

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<sup>1</sup> Defendants IndyMac Bank, FSB and IndyMac Federal Bank, FSB are not parties to this Motion for Judgment on the Pleadings.

## I

### **Facts & Procedural History**

On September 21, 2005, Plaintiffs executed a promissory note (“Note”) in favor of IndyMac Bank, FSB (“IndyMac Bank”) in the amount of \$840,000, having borrowed that amount to purchase the Property. See Compl. Ex. 1; see also Defs.’ Am. Ans. Ex. D. Contemporaneously, Plaintiffs executed a mortgage (“Mortgage”) on the property to secure the Note. The Mortgage states “Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender’s successors and assigns) and to the successors and assigns of MERS, with Mortgage Covenants upon the Statutory Condition and with the Statutory Power of Sale.” Compl. Ex. 2 at 3; Defs.’ Am. Ans. Ex. A at 3. The Mortgage was recorded in the land evidence records for the City of Cranston on September 26, 2005.

Thereafter, IndyMac Bank transferred the Note, through blank endorsement, to U.S. Bank National Association, as Trustee of the Structured Adjustable Rate Mortgage Loan Trust Series 2007-7N (“US Bank”). (Defs.’ Am. Ans. ¶ 9.) On August 11, 2010, US Bank subsequently endorsed the Note in blank to OneWest. Id.

On July 11, 2008, the Office of Thrift Supervision closed IndyMac Bank and appointed the Federal Deposit Insurance Corporation (“FDIC”) as receiver for IndyMac Bank. (Def.s’ Am. Ans. ¶ 3.) See Defs.’ Am. Ans. Ex. B. FDIC reorganized IndyMac Bank into a new entity it named IndyMac Federal, and transferred all of IndyMac Bank’s assets to IndyMac Federal. Id. see Defs. Am. Ans. Ex. C. Then, FDIC, still acting as receiver for IndyMac Federal, assumed IndyMac’s responsibilities as servicer of the Note that IndyMac had previously transferred to US Bank. Subsequently, on March 19, 2009,

OneWest purchased all of the servicing rights under the Mortgage from IndyMac Federal. Id. OneWest then entered into a servicing agreement with US Bank, authorizing OneWest to hold the Note on behalf of US Bank. Id.

On December 5, 2008, MERS, as nominee for IndyMac Bank's successors and assigns, assigned its interest in the Mortgage to IndyMac Federal. See Defs.' Am. Ans. Ex. E. This assignment was recorded in the land evidence records for the City of Cranston on December 16, 2008.

Plaintiffs failed to make timely payments pursuant to the terms of the Note. As a result, OneWest scheduled a foreclosure sale for June 23, 2009 which was subsequently rescheduled for November 2, 2009. On October 30, 2009 this Court entered a temporary restraining order, restraining the Defendants from carrying out the foreclosure sale scheduled for November 2, 2009. Thereafter, on November 25, 2009 this Court entered a permanent injunction preventing Defendants from foreclosing on the Property.

On June 15, 2010, IndyMac Federal assigned its interest in the Mortgage to OneWest. See Defs.' Am. Ans. Ex. F. This subsequent assignment was recorded in the land evidence records for the City of Cranston on June 22, 2010. Thus, as of June 15, 2010, OneWest had acquired the power to service the Note and the assignment of the Mortgage from IndyMac Federal. Shortly thereafter, OneWest acquired the Note in blank from US Bank.

Meanwhile, on December 3, 2010, Defendants filed this Motion for Entry of Judgment on the Pleadings under Rule 12(c). Plaintiffs thereafter filed an objection to Defendants' Motion. At the motion hearing on March 31, 2011, the parties agreed to submit supplemental memoranda to discuss the impact of the issued decision in Porter v.

First NLC Financial Services, No. PC-2010-2526, 2011 WL 1251246 (R.I. Super. March 31, 2011) (Rubine, J.) on the instant motion. After submission of supplemental memoranda by both parties, this Court took the matter under advisement.

## II

### **Standard of Review**

A Rule 12(c) Motion for Judgment on the Pleadings provides a trial court with the means of disposing of a case early in the litigation process when the material facts are not in dispute, after the pleadings have been closed, and only questions of law remain to be decided. Haley v. Town of Lincoln, 611 A.2d 845, 847 (R.I. 1992). “The standard to be applied by the court in determining whether to grant a Rule 12(c) motion is a restrictive one. The court is to view the alleged facts presented in the pleadings in the manner most favorable to the nonmoving party.” Id. at 847-48. Thus, the factual allegations contained in the non-movant’s pleadings are admitted as true for purposes of the motion and all proper inferences to be derived from the pleadings are to be drawn in favor of the non-movant. Id. at 847-48. “In this fashion the court considering a Rule 12(c) motion ensures that the rights of the nonmovant are adjudicated as fully as if there had been a trial.” Id. at 847-48.

## III

### **Analysis**

Since the facts herein are nearly identical to the facts in Payette, this Court will follow the reasoning set forth in that decision. No. PC-2009-5875, 2011 WL 3794701 (R.I. Super. August 22, 2011) (Rubine, J.). In that case, this Court determined that

according to undisputed materials facts the defendants were entitled to judgment as a matter of law. The same outcome obtains in this case.

The undisputed facts, as evidenced by the provisions of the undisputed documents and affidavits, are as follows: Plaintiffs executed a Note in favor of the original lender IndyMac Bank. To secure the Note, Plaintiffs executed a Mortgage on the Property. The Mortgage designated MERS as nominee of IndyMac Bank, as well as mortgagee. Further, as mortgagee, MERS, as well as the successors and assignees of MERS, were expressly granted the Statutory Power of Sale by the clear unambiguous language of the Mortgage instrument as acknowledged and signed by Plaintiffs as borrowers and mortgagors. See Compl. Ex. 2 at 3; see also Defs.' Am. Ans. Ex. A at 3. Thereafter, on December 5, 2008, MERS as nominee of IndyMac Bank assigned its interest in the Mortgage to IndyMac Federal. Subsequently, IndyMac Federal as assignee of MERS assigned its interest in the Mortgage to OneWest on June 15, 2010. OneWest then became an assignee of IndyMac Federal, thereby possessing the Statutory Power of Sale as explicitly granted in the Mortgage. Upon Plaintiffs' default, OneWest, as note-holder, through blank endorsement by US Bank, and holder of the Mortgage by way of assignment from MERS, possessed the right and ability to exercise the Statutory Power of Sale as granted by Plaintiffs in the Mortgage instrument. Therefore, OneWest is entitled to exercise the Statutory Power of Sale as note-holder and mortgagee, and foreclose upon the Property. The injunction precluding Defendant OneWest from foreclosing upon the Property shall be dissolved.

Plaintiffs have not demonstrated by affidavit, or otherwise, that there exists a genuine issue of material fact to vary this outcome. Furthermore, the issues presented in

this matter have been previously decided by this Court. See Kriegel v. Mortgage Elec. Reg. Sys., No. PC-2010-7099, 2011 WL 4947398 (R.I. Super. October 13, 2011) (Rubine, J.); see also Payette, 2011 WL 3794701; Porter, 2011 WL 1252146; Bucci v. Lehman Brothers Bank, FSB, No. PC-2009-3888, 2009 WL 3328373 (R.I. Super. August 25, 2009) (Silverstein, J.); Rutter v. Mortgage Electronic Registration Systems, Nos. PC-2010-4756, PD-2010-4418, 2012 WL 894012 (R.I. Super. March 12, 2012) (Silverstein, J.). Accordingly, Defendants' are entitled to judgment as a matter of law based on the aforementioned authority. In the absence of controlling authority from the Rhode Island Supreme Court, the reasoning and result of the Superior Court cases on this subject matter represents the prevailing view of the law in Rhode Island. Breggia v. Mortgage Electronic Registration Systems, No. PC-2009-4144, 2012 WL 1154738 (R.I. Super. April 3, 2012) (Rubine, J.). The decisions of the Superior Court unanimously support this result. The Court hereby incorporates by reference the reasoning and authorities relied upon in those previous decisions.

#### IV

#### **Conclusion**

The injunction previously entered in this matter is vacated. The Motion of Defendants MERS and One West, for Judgment as a Matter of Law is granted. There being no just reason for delay, Final Judgment shall enter in favor of Defendants MERS and OneWest under Rule 54(b).