**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**PROVIDENCE, SC.** **SUPERIOR COURT**

**(FILED: AUGUST 29, 2012)**

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| **RICHARD E. COOKE, JR.** | **:** | |
| **JOYCE J. COOKE** | **:** | |
| | **:** | |
| **v.** | **:** | **C.A. No. PC 2011-3487** |
| | **:** | |
| **MORTGAGE ELECTRONIC** | **:** | |
| **REGISTRATION SYSTEMS, INC.;** | **:** | |
| **COUNTRYWIDE HOME LOANS, INC.;** | **:** | |
| **AND FEDERAL NATIONAL** | **:** | |
| **MORTGAGE ASSOCIATION** | **:** | |

## DECISION

**RUBINE, J.** Before this Court is Defendants' Mortgage Electronic Registration Systems, Inc. ("MERS"), Countrywide Home Loans, Inc. ("Countrywide") and Federal National Mortgage Association ("FNMA") (collectively, "Defendants") Motion to Dismiss Plaintiffs' complaint ("Complaint") pursuant to Rule 12(b)(6) of the Rhode Island Superior Court Rules of Civil Procedure. According to the allegations as set forth in the Complaint, the foreclosure sale conducted by FNMA on certain real property located at 1 Gold Mine Road, Foster, Rhode Island ("the Property") is a nullity as the assignment of the mortgage interest from MERS to FNMA is allegedly invalid. Thus, Plaintiffs allege that FNMA never possessed the statutory power of sale and therefore lacked standing to foreclose following Plaintiffs' default.

## I

## Facts & Travel

The facts as derived from the Complaint and the exhibits attached thereto and explicitly referenced therein are as follows: On September 25, 2006, Plaintiffs executed a note ("Note") in favor of lender Countrywide for $323,000, using the loan proceeds to finance the purchase of the Property. Plaintiffs contemporaneously executed a mortgage ("Mortgage") on the Property to secure the Note. The Mortgage designated Countrywide as the "Lender" and further designated MERS as "a nominee for [Countrywide] and [Countrywide's] successors and assigns," as well as "mortgagee." (Compl. Ex. 2 at 1.) The Mortgage further provided that "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." Id. at 2. In addition, the Mortgage provides that:

> "Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for [Countrywide] and [Countrywide's] successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property." (Defs.' Ex. A at 3.)[1]

The Mortgage was recorded in the land evidence records of the Town of Foster.

On September 18, 2008, MERS, as nominee for Countrywide and mortgagee, assigned the Mortgage interest to FNMA. See Compl. Ex. 3. Thus, as the assignee of

[1] Defendants' Exhibit A is a full copy of the Mortgage instrument. Plaintiffs submitted only various pages of the Mortgage as an attachment to the Complaint. Since the Complaint expressly references and incorporates the Mortgage instrument, this Court may properly consider the entire document as submitted by Defendants without converting this Motion to a motion for summary judgment under Rule 56. See Super. R. Civ. P. 10(c); see also 1 Kent, R.I. Civ. Prac. § 10.3 at 100 (1969); 5B Wright & Miller, Fed. Prac. & Proc., 3d § 1357 at 377.

MERS, FNMA possessed all the rights granted to MERS by Plaintiffs through Plaintiffs' execution of the Mortgage, including, but not limited to, the right to exercise the statutory power of sale following Plaintiffs' default. The assignment was recorded in the land evidence records of the Town of Foster.

Thereafter, Plaintiffs defaulted by failing to make timely payments under the terms of the Note. FNMA commenced foreclosure proceedings, foreclosing on the Property in September of 2010. Following the foreclosure sale, Plaintiffs filed the instant Complaint to Quiet Title on June 21, 2011, seeking nullification of the foreclosure sale and return of title to them. Defendants then filed this Motion to Dismiss under Rule 12(b)(6). Plaintiffs objected to Defendants' Motion averring that they set forth claims which are specific enough to entitle them to the relief sought. At the Motion hearing, both parties agreed to waive oral argument and submit this matter to the Court on the briefs. This Court then took the matter under advisement.

## II

## Standard of Review

"The 'sole function of a motion to dismiss' pursuant to Rule 12(b)(6) is 'to test the sufficiency of the complaint.'" McKenna v. Williams, 874 A.2d 217, 225 (R.I. 2005) (quoting Rhode Island Affiliate, ACLU, Inc. v. Bernasconi, 557 A.2d 1232, 1232 (R.I. 1989)). For purposes of the motion, the Court "assumes the allegations contained in the complaint to be true and views the facts in the light most favorable to the plaintiffs." Giuliano v. Pastina, Jr., 793 A.2d 1035, 1036-37 (R.I. 2002) (quotation omitted).

The United States Supreme Court has adopted the view that a complaint must allege facts that "raise a right to relief above the speculative level." Bell Atlantic Corp. v.

Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007) (citing 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235-36 (3d ed. 2004)). Hence, a plaintiff has an obligation to provide "the 'grounds' of his 'entitlement to relief.'" Id. (citing Papasan v. Allain, 478 U.S. 265, 286, 106 S.Ct. 2932 (1986)). This "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Id. Accordingly, a plaintiff's factual allegations contained in a complaint must be specific enough to cross "the line from conceivable to plausible." Id. at 570.

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949 (2009) (citing Twombly, 550 U.S. at 556); see also Peterson v. GMAC Mort., LLC, No. 11-11115-RWZ, Slip Copy, 2011 WL 5075613 at * 2 (D. Mass. Oct. 25, 2011) (Zobel, J.). "Where a complaint pleads facts that are 'merely consistent with' defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" Id. at 678, (quoting Twombly, 550 U.S. at 557). "Only a complaint that states a plausible claim for relief survives a motion to dismiss." Id. at 679 (citing Twombly, 550 U.S. at 556). A complaint that states "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," will not suffice. Id. at 678 (citing Twombly, 550 U.S. at 555). However, "when there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Id. at 679. "Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Id. (citing Iqbal v. Hasty, 490 F.3d 143,

157-58 (C.A.2 2007)).

The courts in Massachusetts have adopted the plausibility standard for whether a complaint can survive a motion to dismiss under the Federal Rules of Civil Procedure 12(b)(6) as articulated by the United States Supreme Court in Iqbal, 556 U.S. at 678-79 and Twombly, 550 U.S. at 550. See Iannacchino v. Ford Motor Car, 451 Mass. 623, 636 (2008); see also Peterson v. GMAC Mort., LLC, No. 11-11115-RWZ, Slip Copy, 2011 WL 5075613 at * 2 (D. Mass. Oct. 25, 2011) (Zobel, J.). Although Rhode Island has adopted the Federal Rules of Civil Procedure, the Rhode Island Supreme Court has yet to explicitly accept the Iqbal and Twombly standard as the operative standard with which to judge a Rule 12(b)(6) motion. In the case of Barrette v. Yakavonis, 996 A.2d 1231 (R.I. 2009), the Supreme Court stated the Rhode Island follows: the standard that "a pleading need not include 'the ultimate facts that must be proven in order to succeed on the complaint . . . or . . . set out the precise legal theory upon which [the plaintiff's] claim is based.'" Id. at 1234 (quoting Gardner v. Baird, 871 A.2d 949, 953 (R.I. 2005)). All that is required is that the "complaint 'provide the opposing party with fair and adequate notice of the type of claim being asserted.'" Id. Stated differently, the Court ruled: "th[e] Court examines the allegations contained in the plaintiff's complaint, assum[ing] them to be true, and views them in the light most favorable to the plaintiff." Id. (quoting Palazzo v. Alves, 944 A.2d 144, 149 (R.I. 2008)). Thereafter a motion to dismiss is "appropriate 'when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of plaintiff's claim.'" Id. However, based upon the analysis of the law as set forth below, Plaintiffs' Complaint cannot survive a Rule 12(b)(6) motion even under the more

forgiving notice pleading standard articulated in Barrette and Palazzo. The Court as a matter of law cannot consider legal argument or facts from Plaintiffs attempying to prove an alleged defect in an assignment since Plaintiffs lack standing, as strangers to the assignment, and therefore cannot as a matter of law prove their claim by proving that the assignment document evidences flaws that might effect the enforcement of the assignment as between the assignor and the assignee. Since Plaintiffs are neither, they are without standing to seek relief on that basis. The Defendants are entitled to dismissal of a claim that Plaintiffs cannot prevail upon under any set of facts dealing with defects in an assignment.

## III

## Analysis

The allegations set forth in the instant Complaint are nearly identical to the allegations of the complaint in Payette v. Mortgage Electronic Registration Systems, and the Mortgage executed by Plaintiffs contains the same operative language as the mortgage considered in Payette, therefore this Court will incorporate and adopt the reasoning set forth in Payette, No. PC 2009-5875, 2011 WL 3794700 (R.I. Super. Aug. 22, 2011) (Rubine, J.); see also Kriegel v. Mortgage Electronic Registration Systems, No. PC 2010-7099, 2011 WL 4947398 (R.I. Super. Oct, 13, 2011) (Rubine, J.). The Court will then address any additional issues that were not addressed in the aforementioned decision.

Plaintiffs, in their memorandum, fail to distinguish this matter from the Court's earlier determination and dismissal of similar cases. Rather, Plaintiffs have chosen to primarily criticize the precedent of the Rhode Island Superior Court as "wrong for a

variety of reasons" and "missing the point," attaching thereto and incorporating therein an exhibit to their memorandum entitled "Deconstruction of Payette." This Court is not persuaded by that argument, as the court believes it should follow its own precedent, at least until the Rhode Island Supreme Court determines that this Court's previous analysis is inconsistent with its view of applicable Rhode Island law. Rutter v. Mortgage Electronic Registration Systems, Nos. PC 2010-4756, PD 2010-4418, 2012 WL 894012 at * 10 (R.I. Super. March 12, 2012) (Silverstein, J.); see also Commonwealth Prop. Advocates v. U.S. Bank Nat'l Ass'n, No. 11-4168, slip op. at 1-2 (10th Cir. March 6, 2012) (affirming district court where appellant's counsel criticized rather than distinguished prior MERS cases). Likewise, Plaintiffs' reliance on case law of other jurisdictions, which are not binding precedent upon this Court, to further criticize the past decisions of this Court is also unpersuasive. The Court believes criticism of its earlier decisions is proper for appellate review. 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.); see also Rutter, 2012 WL 894012.

The crux of Plaintiffs' Complaint challenges that validity of the assignment of the Mortgage interest by MERS to FNMA, and thus, FNMA's standing to foreclose on the Property following Plaintiffs' default. Specifically, Plaintiffs' allege in their Complaint that Andrew S. Harmon ("Harmon") had no authority to execute the assignment of the Mortgage interest on behalf of MERS as Harmon was not a vice-president or assistant secretary of MERS. (Compl. ¶¶ 11, 12.) According to Plaintiffs, this proves that

Harmon was attempting to assign the Mortgage interest on behalf of Bank of America as Bank of America authorized the execution of the assignment by Harmon, not MERS. (Compl. ¶¶ 16-18.) Bank of America is not a party to this instant action, nor is Bank of America a party to the assignment of the Mortgage at issue. Thus, this allegation fails to state a claim entitling Plaintiffs to relief.

Moreover, it is well established in this court, as well as others that "homeowners lack standing to challenge the propriety of mortgage assignments and the effect those assignments, if any, on the underlying obligation." Payette, 2011 WL 3794700; see also Rutter, 2012 WL 894012 at * 17 (quoting Fryzel v. Mortgage Electronic Registration Systems, C.A. No. 10-325 M, 2011 U.S. Dist. LEXIS 95114, at * 41-42 (D.R.I. June 10, 2011)) The Rhode Island Supreme Court has in a different context adopted the principle that a non-party to a contract does not have standing to challenge the contract's subsequent assignment., Brough v. Foley, 525 A.2d 919, 922 (R.I. 1987) (holding that the plaintiff, whose property purchase was thwarted by an assignee's exercise of the assigned right of first refusal, had no standing to challenge the validity of the assignment); Peterson v. GMAC Mortg., LLC, No. 11-11115-RWZ, Slip Copy, 2011 WL 5075613 at * 4 (D. Mass. Oct. 25, 2011) (Zobel, J.) (court refused to read U.S. Bank Nat. Ass'n v. Ibanez, 458 Mass. 637, 941 N.E.2d 40 (2011) as an independent basis for mortgagors to collaterally contest previously executed mortgage assignments to which they are not a party and which do not grant them any interests or rights; finding mortgagors have no legally protected interests in the assignment of the mortgage and therefore lack standing to challenge it. In In re Correia, 452 B.R. 319 (B.A.P. 1st Cir. 2011) the bankruptcy appellate panel affirmed the bankruptcy judge's finding that mortgagors lacked standing

to challenge the validity of the mortgage assignment. Even if this Court were to find that Plaintiffs have standing to challenge the assignment of the Mortgage interest, Plaintiffs must allege facts entitling them to relief. Twombly, 550 U.S. at 555. Plaintiffs' allegations with respect to the invalidity of the assignment of the Mortgage interest are merely "conclusory statements" rather than statements of fact. Such conclusions are insufficient to survive a motion to dismiss. Iqbal, 556 U.S. at 678. Plaintiffs have failed to allege facts in their Complaint which "raise a right to relief above the speculative level." Twombly, 550 U.S. at 555. Accordingly, Plaintiffs' Complaint must be dismissed.

Plaintiffs further allege that there must be a recorded power of attorney from MERS authorizing Harmon to act on its behalf. (Compl. ¶ 19.) There is no requirement under Rhode Island law that MERS must record a power of attorney in order for Harmon to act on behalf of MERS. See Section 34-13-1. Thus, even assuming the veracity of Plaintiffs' allegation, this allegation does not entitle Plaintiffs to the relief they seek.

Furthermore, Defendants have submitted the MERS corporate resolution wherein Harmon is authorized to "execute any and all documents necessary to foreclose upon the [P]roperty . . . including but not limited to (a) assignments of mortgage." (Defs.' Ex. D.)[2] Thus, Harmon was authorized to act on behalf of MERS when executing the Mortgage assignment. The corporate resolution was recorded in the land evidence records in the City of Providence on March 13, 2006.

[2] Since the Complaint expressly references the corporate resolution, the Court may properly consider the entire document as submitted by Defendants without converting this Motion to a motion for summary judgment under Rule 56. See Super. R. Civ. P. 10(c); see also 1 Kent, R.I. Civ. Prac. § 10.3 at 100 (1969); 5B Wright & Miller, Fed. Prac. & Proc., 3d § 1357 at 377.

Plaintiffs further aver that MERS holds a mere legal title and thus an assignment which is limited to its beneficial interest transfers nothing as a matter of law as the Mortgage can only be transferred through negotiation of the Note. (Compl. ¶¶ 21-24.) To support this allegation, Plaintiffs rely upon Eisenberg v. Gallagher, 32 R.I. 389, 79 A. 941 (1911). Plaintiffs erroneously assert that Eisenberg stands for the proposition that the foreclosing party must own the note and mortgage at the time it commences foreclosure proceedings. Rather, Eisenberg stands for the proposition that the foreclosure sale was invalid as the foreclosing party sent notice prior to actually holding an interest in the mortgage. Id. Since the foreclosing party gave notice of the foreclosure sale prior to it possessing the mortgage it followed that the plaintiff in Eisenberg was entitled to the relief she sought, quieting title to her property. Id. The Mortgage instrument is the instrument granting FNMA the statutory power of sale. Accordingly, FNMA must be, and properly was, the mortgagee prior to commencing foreclosure proceedings.

Plaintiffs further allege that the Note was never transferred to or negotiated by Countrywide, (Compl. ¶ 50), and therefore FNMA does not have standing to enforce the Mortgage without the Note. (Compl. ¶¶ 51-53.) Likewise, this allegation fails to establish a claim entitling Plaintiffs to relief. The identity of the note holder is irrelevant as it is well established under current Rhode Island law that MERS and the assignees of MERS may act as nominee of the current note holder. See The Bank of New York Mellon v. Cuevas, Nos. PD 2010-0988, PC 2010-0553, 2012 WL 1388716 (R.I. Super. April 19, 2012) (Rubine, J.); see also Payette, 2011 WL 3794701; Bucci, 2009 WL 3328373. Moreover, the Note does not need to be transferred to Countrywide as

Countrywide is the original lender. This allegation does not give rise to a claim for the relief sought by the plaintiffs,

Plaintiffs further attempt to invalidate the foreclosure sale by averring that the note holder and mortgagee must be one of the same. Specifically, Plaintiffs aver that under §§ 34-11-21, 22 and 24, the note holder and mortgagee must be the same party.

The assertion by Plaintiffs that §§ 34-11-21, 22, and 24 require the note holder and mortgagee to be the same party is erroneous. Justice Silverstein has interpreted § 34-11-21 as not requiring "the note and mortgage to be held by the same entity at the time of foreclosure or at the time MERS assigns the mortgage to another entity." Rutter, 2012 WL 894012 at * 15. "Interpreting § 34-11-21 to require the mortgagee and lender always be the same entity would reach an absurd result because named mortgagees and lenders would be precluded from employing servicers to service and collect obligations secured by real estate mortgagees," and "clearly, the General Assembly envisioned a role for mortgage servicers in the lending industry." Id. at * 14 (quoting Bucci, 2009 WL 3328373). Moreover, "the designation of MERS as mortgagee and lender's nominee does not as a matter of law, cause a fatal defect in the foreclosure." Kriegel, 2011 WL 4947398 at * 9.

Furthermore, § 34-11-24 provides that an assignment of the mortgage shall also be deemed an assignment of the debt secured thereby. Rutter, 2012 894012; see also Kriegel, 2011 WL 4947398. Once the lender designates MERS as its nominee, MERS, and thus any assignee of MERS, also acts as holder of the debt secured by the mortgage and has the authority to assign the mortgage interest. Kriegel, 2011 WL 4947398 at * 15. By the clear and unambiguous language of § 34-11-24, an assignment of the mortgage

deed is assigned together with "the note and debt thereby secured." Section 34-11-24. Therefore, the assignment of the Mortgage interest by MERS to FNMA transferred the Mortgage as well as "the [N]ote and debt thereby secured." Section 34-11-24. FNMA then became an assignee of MERS, thereafter exercising all the rights as mortgagee, including the statutory power of sale. See Kriegel, 2011 4947398 at * 13-14 (quoting Weybosset Hill Investments, LLC v. Rossi, 857 A.2d 231, 240 (R.I. 2004) (an assignee steps into the shoes of the assignor and can avail itself of the assignor's rights). Thus, FNMA acted properly as the foreclosing party, and in commencing foreclosure proceedings following Plaintiffs' default.

Plaintiffs further rely on a United States Supreme Court case, Carpenter v. Longan, 83 U.S. 271 (1872), wherein the Court found the note and mortgage to be inseparable, holding that under Colorado law, the assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity. 83 U.S. at 274. This holding is in direct conflict with § 34-11-24 of the Rhode Island General Laws. Unlike the law of Colorado, § 34-11-24, as discussed supra, provides that an assignment of the mortgage carries with it "the note and debt thereby secured." Section 34-11-24. Accordingly, when drafting § 34-11-24 the legislature did not intend to render an assignment of a mortgage interest a nullity by the plain, unambiguous language of the statute itself. "It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret that statute literally and must give the words of the statute their plain and ordinary meanings." Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996); see also Bucci, 2009 WL 3328373 at * 10. To accept Plaintiff's interpretation of § 34-11-24, thereby rendering the assignment of the

Mortgage interest a nullity, would lead to an absurd result. "Statutes should not be construed to reach an absurd result." Bucci, 2009 WL 3328373 at * 12; see also Brennan v. Kirby, 529 A.2d 633, 637 (R.I. 1987). Accordingly, an assignment of the mortgage interest carries with it the note and debt thereby secured and will not be rendered a nullity. Since these allegations are not allegations of fact, but merely legal conclusions they fail to state a claim. See Iqbal, 556 U.S. at 678.

In addition, Plaintiffs erroneously rely on Eaton v. Fed. Nat'l Mortg. Ass'n, No. 1-1382, 2011 WL 3322892 (Mass. Super. June 17, 2011). While Eaton stands for the proposition that under Massachusetts law one must hold the note and mortgage in order to properly foreclose, it is not binding precedent upon the Rhode Island Superior Court. There is a wide array of case law throughout this country, evidencing a split of authority. This Court follows the past precedent of the Rhode Island Superior Court, that the assignment of the mortgage containing the language of the mortgage considered herein does not create a fatal disconnect between the note and the mortgage. Furthermore, no Rhode Island case law or statutory law requires that the foreclosing party hold the note and mortgage in order to foreclose. In effect, Rhode Island case law states that the foreclosing party may act as nominee for the note holder. See Porter v. First NLC Financial Services, No. PC 2010-2526, 2011 WL 1251246 (R.I. Super. March 31, 2011) (Rubine, J.); see also Bucci, 2009 WL 3328373; Kriegel, 2011 WL 4947398. As Justice Silverstein stated in Rutter, the Eaton case "has already been questioned and distinguished by" other cases [in Massachusetts], and directly "contradict[s] this Court's prior holding in Bucci" as well as other Superior Court cases. 2012 WL 894012 at * 15. Accordingly, this Court "will not overturn its own prior ruling[s] in favor of another

state's lower court opinion that has already been called in to doubt by subsequent decisions." Id.

Lastly, Plaintiffs aver that under Rhode Island law mortgage servicers cannot act as mortgagees. According to Plaintiffs, mortgage servicers are not authorized to foreclose following a mortgagor's default.[3]

In Kriegel, this court dismissed plaintiff's claim that the foreclosure sale conducted by the mortgage servicer on behalf of MERS' assignee was contractually invalid, thereby finding that the mortgage servicer had the ability to, and properly did, foreclose on behalf of the mortgagee following plaintiff's default. 2011 WL 4947398 at * 16. Therefore, plaintiff's claim was dismissed as "factually and legally unfounded." Kriegel, 2011 WL 4947398 at * 16 (citing 27A Fed. Proc., L. Ed. § 62:509); see also Bucci 2009 WL 3328373 at * 7 (clearly the General Assembly envisioned a role for mortgage servicers in the mortgage lending industry); G.L. 1956 § 34-26-8(a)(4), as amended by P.L. 1995, Ch. 95-131, § 1 (including mortgage servicers within the definition of "mortgagee" for purposes of § 34-26-8). The same outcome obtains here.

Accepting the allegations set forth in the Complaint as true, and viewing them in the light most favorable to the Plaintiffs, Plaintiffs have failed to establish a claim for relief. Furthermore, the issues presented in this matter have been previously decided by this Court. See Kriegel, 2011 WL 4947398; see also Payette, 2011 WL 3794701; Porter, 2011 WL 1252146; Bucci, 2009 WL 3328373; Rutter, 2012 WL 894012. Accordingly, Plaintiffs' Complaint is dismissed for failure to state a claim for relief. As set forth supra, in the absence of controlling authority from the Rhode Island Supreme Court, the

[3] This argument is misplaced as this assignment established FNMA's status as the mortgagee and did properly foreclose on the Property following Plaintiffs' default. The instant matter did not involve a mortgage servicer.

reasoning and result of the Superior Court cases on this subject matter represents the prevailing view of the law in Rhode Island. Breggia, 2012 WL 1154738. 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

Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) is granted. Counsel for the prevailing party shall submit an Order in accordance with this Decision.