

“Summary judgment is appropriate when no genuine issue of material fact is evident from ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any,’ and the motion justice finds that the moving party is entitled to prevail as a matter of law.” Mruk v. Mort. Elec. Registration Sys., Inc., 82 A.3d 527, 532 (R.I. 2013) (quoting Swain v. Estate of Tyre, 57 A.3d 283, 288 (R.I. 2012)). “[T]he nonmoving party bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions.” Id. (quoting Daniels v. Flurette, 64 A.3d 302, 304 (R.I. 2013)).

In this matter, the Plaintiff has failed to submit competent evidence demonstrating issues of material fact. Plaintiff argues that Deutsche Bank National Trust Company (Deutsche Bank) did not have the power to foreclose as the Note and Mortgage were not assigned together. Our Supreme Court has rejected similar arguments in Bucci v. Lehman Bros. Bank, FSB, 68 A.3d 1069 (R.I. 2013) and Mruk, 82 A.3d at 527, and this Court find these cases to be controlling here. Id.

The Plaintiff further contends that Deutsche Bank never had possession of the Note so it could not have conducted a foreclosure sale. This Court has addressed a similar argument in the recent decision of Merola v. Mortg. Elec. Registration Sys., No. PC-2011-4089, 2015 WL 1606035, at *3-*4 (R.I. Super. Apr. 7, 2015) (Rubine, J.). This Court reiterates that G.L. 1956 § 34-11-24 provides:

“An assignment of mortgage substantially following the form entitled ‘Assignment of Mortgage’ shall, when duly executed, have the force and effect of granting, bargaining, transferring and making over to the assignee, his or her heirs, executors, administrators, and assigns, the mortgage deed with the note and

within the discretion of the [superior] court.” Ryan v. Roman Catholic Bishop of Providence, 941 A.2d 174, 187-88 (R.I. 2008).

debt thereby secured, and all the right, title and interest of the mortgagee by virtue thereof in and to the estate described therein, to have and to hold the mortgage deed with the privileges and appurtenances thereof to the assignee, his or her heirs, executors, administrators and assigns in as ample manner as the assignor then holds the same, thereby substituting and appointing the assignee and his or her heirs, executors, administrators and assigns as the attorney or attorneys irrevocable of the mortgagor under and with all the powers in the mortgage deed granted and contained.” (Emphasis added.)

Accordingly, pursuant to § 34-11-24, a note may be transferred by assignment of the corresponding mortgage. See also Merola, 2015 WL 1606035, at *3-*4. However, unlike the note in Merola, the current Note contains no endorsements. Nevertheless, the contractual terms of the Note provide Deutsche Bank with the contractual authority to be deemed the “Note Holder” in this case. See Bucci, 68 A.3d at 1069. The first page of the Note states: “I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the ‘Note Holder.’” (Emphasis added.) In this case, Defendant has provided authenticated evidence that Deutsche Bank received the Mortgage by a valid and recorded assignment of mortgage. Accordingly, the Note and debt thereby secured was also transferred to Deutsche Bank. See § 34-11-24. Based on the terms of the Note, as well as the assignment of mortgage in this case, Defendant has provided this Court with sufficient evidence that Deutsche Bank was the Note Holder and mortgagee at the time of foreclosure. See id. Plaintiff, on the other hand, has provided this Court with no evidence to contradict that Deutsche is the current mortgagee and note holder. As there is no genuine dispute that Deutsche Bank holds the Note and the Mortgage, this Court should find that it may exercise the statutory power of sale upon borrower’s default under the Note. See Bucci, 68 A.3d at 1069.

Finally, the Plaintiff contends that Defendants have not complied with the notice requirements as set forth in the mortgage contract. The undisputed facts of this case provide no support for Plaintiff's claims that she did not receive proper notice.

After reviewing the memoranda and attached authenticated exhibits, and the responses thereto, this Court finds no genuine dispute of material fact. Defendant, Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2006-HE7 Mortgage Pass Through Certificates, Series 2006-HE7, is entitled to judgment as a matter of law.

Defendant's motion for summary judgment is hereby granted.

Judgment shall enter for Defendant and counsel should prepare and file a form of judgment for entry by the Court.

Entered as an Order of this Court on this _____ day of July, 2015.

ENTER:

PER ORDER:

Allen P. Rubine
Associate Justice

Clerk



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Rene M. Samos v. New Century Mortgage Corporation, et al.

CASE NO: PC 2012-3896

COURT: Providence County Superior Court

DATE DECISION FILED: July 22, 2015

JUSTICE/MAGISTRATE: Rubine, J.

ATTORNEYS:

For Plaintiff: George E. Babcock, Esq.

For Defendant: Peter Francis Carr, II, Esq.