Opinion issued December 29, 2022

In The

Court of Appeals

For The

First District of Texas

NO. 01-21-00103-CV

BRANDON DUTCH MENDENHALL, Appellant

V.

DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR NOVASTAR MORTGAGE FUNDING TRUST, SERIES 2006-5 NOVASTAR HOME EQUITY LOAN ASSET-BACKED CERTIFICATES, SERIES 2006-5; OCWEN LOAN SERVICING, LLC; AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellees

On Appeal from the 189th District Court
Harris County, Texas
Trial Court Case No. 2017-28155

MEMORANDUM OPINION

Appellant Brandon Dutch Mendenhall sued appellees (1) Deutsche Bank National Trust Company as Trustee for Novastar Mortgage Funding Trust, Series

2006-5 Novastar Home Equity Loan Asset-Backed Certificates, Series 2006-5; (2) Ocwen Loan Servicing, LLC; and (3) Mortgage Electronic Registration Systems, Inc. (collectively, Appellees) to challenge Appellees' right to initiate a nonjudicial foreclosure on a piece of real property that Mendenhall had purchased. The trial court granted summary judgment in Appellees' favor, dismissing Mendenhall's claims against them. On appeal, Mendenhall contends that the trial court erred in granting summary judgment in Appellees' favor.[1]

We affirm.

Background

The real property involved in this case is located on Enchanted Park Lane in Katy, Texas (the Property). In August 2006, Latrice Harris purchased the Property. To finance the purchase, Harris obtained a mortgage loan (the Loan) from Novastar Mortgage, Inc. Harris signed a promissory note (the Note) payable to Novastar,

[1] Mendenhall also sued (1) Deutsche Bank National Trust Company as Trustee for Novastar Mortgage Funding Trust, Series 2006-5; (2) Novastar Mortgage, Inc.; and (3) Saxon Mortgage Services Inc. Mendenhall later nonsuited these three defendants. Although listed as "appellees" in the style of the parties' briefs, Mendenhall notes in his brief (and the record shows) that these three defendants were nonsuited, and he does not raise issues or points of error in his brief against the nonsuited defendants. Thus, they are not "appellees" in this appeal. *See Showbiz Multimedia, LLC v. Mountain States Mortg. Ctrs.*, Inc., 303 S.W.3d 769, 771 n.3 (Tex. App.—Houston [1st Dist.] 2009, no pet.) ("An appellee . . . must be a party to the trial court's final judgment and must be someone against whom the appellant raises issues or points of error in the appellant's brief."); *see also* TEX. R. APP. P. 3.1(c) (defining "appellee" as "a party adverse to an appellant").

showing that the principal amount of the Loan was $157,500. Pursuant to the Note, Harris agreed to make monthly payments to repay the principal, plus interest.

Harris and her husband, Robbie, also executed a Deed of Trust to secure repayment of the Note.[2] The Deed of Trust identified Mortgage Electronic Registration Systems, Inc. (MERS) as the beneficiary of the Deed of Trust and as nominee for Novastar Mortgage, Inc., its successors and assigns.[3]

Pursuant to a mortgage-loan purchase agreement, dated September 1, 2006, NovaStar Mortgage, Inc. sold various mortgage loans, including the Loan, to NovaStar Mortgage Funding Corporation. Also on that date, a pooling and servicing agreement (PSA) created the NovaStar Mortgage Funding Trust, Series 2006-5 and named Deutsche Bank National Trust Company (Deutsche Bank) as its trustee. Under the terms of the PSA, NovaStar Mortgage Funding Corporation "transfer[red], assign[ed], set over, and otherwise convey[ed]" to Deutsche Bank all of its "right, title, and interest" to certain mortgage loans identified on an attached schedule, including the Loan, in exchange for mortgage pass-through certificates.

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2 The parties do not dispute that the Deed of Trust was recorded in the real property records of Harris County in August 2006.

3 *Nominee*, Black's Law Dictionary (11th ed. 2019) ("2. A person designated to act in place of another, usu. in a very limited way. 3. A party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others.").

Ocwen Loan Servicing, LLC (Ocwen)[4] was Deutsche Bank's mortgage servicer for the Loan.[5]

According to an Ocwen representative's affidavit in the summary-judgment record, "the original blue-ink Note" for the Loan was delivered to Deutsche Bank "[i]n connection with the sale of the Loan to Deutsche Bank." Through Ocwen, Deutsche Bank sent the original Note to Appellees' attorney, whose law firm holds the Note as bailee for Deutsche Bank. The Note—a "true and correct copy" of which is attached to the Ocwen representative's affidavit—reflects that it was indorsed in blank by Novastar Mortgage Inc.[6]

On April 6, 2009, pursuant to a written assignment, MERS, as nominee for Novastar Mortgage, Inc., its successors and assigns, transferred the Deed of Trust to an assignee listed as "Deutsche Bank National Trust Company, Trustee For Novastar Mortgage Funding Trust, Series 2006-5." On April 16, 2009, the assignment was filed in the official public records of Harris County.

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[4] Effective June 1, 2019, PHH Mortgage Corporation became the successor by merger to Ocwen Loan Servicing, LLC, and PHH is Deutsche Bank's current mortgage servicer. For simplicity, we refer to Deutsche Bank's mortgage servicer as Ocwen, the party sued by Mendenhall in this case.

[5] The Property Code defines "mortgage servicer" as "the last person to whom a mortgagor has been instructed by the current mortgagee to send payments for the debt secured by a security instrument." TEX. PROP. CODE § 51.0001(3).

[6] A negotiable instrument is indorsed in blank if it does not identify a person to whom the indorsement makes the instrument payable. TEX. BUS. & COM. CODE § 3.205(b). The Note here is a negotiable instrument. *See id.* § 3.104.

On March 29, 2011, MERS filed a second assignment, entitled "Transfer of Lien." The Ocwen representative attested in her affidavit that the Transfer of Lien was issued to correct the assignee's name that appeared in the 2009 assignment. The Transfer of Lien stated that MERS transferred all of its right, title, and interest in the Deed of Trust to the assignee, which was corrected to be "Deutsche Bank National Trust Company as Trustee for Novastar Mortgage Funding Trust, Series 2006-5 Novastar Home Equity Loan Asset-Backed Certificates, Series 2006-5."

In October 2015, Mendenhall purchased the Property for $25,000 at a constable's sale conducted pursuant to a judgment obtained against Harris by her homeowners association. The constable's deed stated that Mendenhall was conveyed "all of the right title, interest and claim" that Harris had in the Property on the date of the constable's sale.

On April 27, 2017, Mendenhall filed this suit against Appellees Deutsche Bank, Ocwen, and MERS.[7] To his petition, Mendenhall attached and incorporated by reference a notice of substitute trustee's sale reflecting that a foreclosure sale of the Property would occur on May 2, 2017. The notice stated that the Harrises had signed the Deed of Trust to secure the payment of the indebtedness of the original principal amount of $157,500, as described in the Note, and that a default had

[7] As mentioned, Mendenhall also sued three other defendants, which he later non-suited.

occurred on the indebtedness. The notice stated that Deutsche Bank was the mortgagee of the Note and of the Deed of Trust. It also stated that Ocwen was the mortgage servicer authorized to collect the debt and administer the foreclosure of the lien on behalf of Deutsche Bank.

Among his claims, Mendenhall asked the trial court to render a declaratory judgment declaring that Appellees lacked standing to foreclose on the Property. He also asserted a claim to quiet title. Mendenhall sought damages and injunctive relief. The day after he filed suit, Mendenhall obtained a temporary restraining order, stopping the May 2, 2017 foreclosure sale.

Appellees filed a motion for summary judgment, which the trial court denied. Appellees later filed an amended combined traditional and no-evidence motion for summary judgment, seeking summary judgment on all of Mendenhall's claims. Mendenhall responded, and Appellees replied. The trial court granted the amended motion for summary judgment without specifying the basis for its ruling. Mendenhall now appeals the summary judgment, which ordered that he take nothing on his claims against Appellees.

Summary Judgment

On appeal, Mendenhall raises two issues in which he asserts that the trial court erred by granting summary judgment (1) on his claim seeking a declaratory judgment that Appellees lacked standing to foreclose on the Property and (2) on his

claim to quiet title.[8] Mendenhall does not challenge the trial court's grant of summary judgment on his other causes of action.

A. Standard of Review

We review a trial court's summary judgment de novo. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). In conducting our review, we take as true all evidence favorable to the non-movant, and we indulge every reasonable inference and resolve any doubts in the non-movant's favor. *Id.* If a trial court grants summary judgment without specifying the basis for granting the motion, we must affirm the trial court's judgment if any of the asserted theories are meritorious. *W. Invs., Inc. v. Urena*, 162 S.W.3d 547, 550 (Tex. 2005).

To prevail on a no-evidence summary-judgment motion, a movant must identify "one or more essential elements of a claim or defense . . . as to which there is no evidence." TEX. R. CIV. P. 166a(i); *see B.C. v. Steak N Shake Operations, Inc.*, 598 S.W.3d 256, 259 (Tex. 2020). The burden then shifts to the nonmovant to produce "summary judgment evidence raising a genuine issue of material fact." TEX. R. CIV. P. 166a(i).

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[8] Mendenhall listed eight issues in the "Issues Presented" section of his brief, but the argument section of his brief is organized around the two issues that we have identified. The eight issues listed in the "Issues Presented" section of Mendenhall's brief correspond to specific arguments Mendenhall raises in support of the two identified issues. We address Mendenhall's arguments as necessary to dispose of those two issues.

To prevail on a traditional motion for summary judgment, the movant bears the burden of proving that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *SeaBright Ins. Co. v. Lopez*, 465 S.W.3d 637, 641 (Tex. 2015). A defendant is entitled to summary judgment if it conclusively negates an essential element of the plaintiff's case. *Cathey v. Booth*, 900 S.W.2d 339, 341 (Tex. 1995). If the movant meets its burden, the burden then shifts to the nonmovant to raise a genuine issue of material fact. *Lujan v. Navistar, Inc.*, 555 S.W.3d 79, 84 (Tex. 2018).

B. Standing to Foreclose

In his first issue, Mendenhall contends that the trial court erred in granting summary judgment on his claim for declaratory judgment that sought a determination that Appellees Deutsche Bank, Ocwen, and MERS did not have standing to foreclose on the Property.[9]

[9] The term "standing" in this context refers to "the legal right to foreclose on a lien securing repayment of a debt as opposed to the concept of standing as a component of subject matter jurisdiction." *DHI Holdings, LP v. Deutsche Bank Nat'l Tr. Co., as Tr. for Gsamp Tr. 2006-SD1, Mortg. Pass-Through Certificates, Series 2006-SD1*, No. 05-21-00287-CV, 2022 WL 3030903, at *2 n.2 (Tex. App.—Dallas Aug. 1, 2022, pet. filed) (mem. op.) (citing *Pike v. Tex. EMC Mgmt., LLC*, 610 S.W.3d 763, 773–74 (Tex. 2020) (noting Texas courts sometimes apply label "standing" to statutory or prudential considerations that do not implicate subject-matter jurisdiction)).

1. Deutsche Bank and Ocwen

"Under the Texas Property Code, a party has standing to initiate a nonjudicial foreclosure sale if the party is a mortgagee." *EverBank, N.A. v. Seedergy Ventures, Inc.*, 499 S.W.3d 534, 538 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (citing TEX. PROP. CODE §§ 51.002, 51.0025). A mortgagee includes the grantee, beneficiary, owner, or holder of a security instrument, such as a deed of trust, or "if the security interest has been assigned of record, the last person to whom the security interest has been assigned of record." *Id.* § 51.0001(4).

But, even without a recorded interest in a security instrument, a party may nonetheless possess standing to foreclose if the party is the holder or owner of a note secured by the instrument. *EverBank*, 499 S.W.3d at 538. "This rule derives from the common law maxim, now codified in Texas, that 'the mortgage follows the note.'" *Id.* at 538–39 (citing TEX. BUS. & COM. CODE § 9.203(g) ("The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien."); *see Kiggundu v. Mortg. Elec. Registration Sys. Inc.*, 469 FED. APP'X 330, 332 (5th Cir. 2012) ("It was sufficient for the Bank of New York to establish that it was in possession of the note; it was not required to show that the deed of trust had been assigned to it."); *Antony v. United Midwest Sav. Bank*, No. H-15-1062, 2016 WL 914975, at *3 (S.D. Tex.

Mar. 10, 2016) (mem. op.) ("Even if the assignment of the Deed of Trust from MERS to Flagstar was void, the record shows that Flagstar was the holder of the Note at foreclosure and had standing to foreclose on that basis.")). And this Court has recognized the rule that the mortgage follows the note. *See Montoya v. AmCap Mortg., Ltd.*, No. 01-20-00799-CV, 2022 WL 3268535, at *6 (Tex. App.—Houston [1st Dist.] Aug. 11, 2022, no pet.) (mem. op.) (citing *EverBank* and stating that "'the rule in Texas is that the mortgage follows the note,' therefore a party who owns or holds the note is entitled to foreclose on property even in the absence of a valid assignment"); *Deweese v. Ocwen Loan Servicing L.L.C.*, No. 01-13-00861-CV, 2014 WL 6998063, at *3 (Tex. App.—Houston [1st Dist.] Dec. 11, 2014, no pet.) (mem. op.) ("When a mortgage note is transferred, the mortgage or deed of trust is also automatically transferred to the note holder by virtue of the common-law rule that 'the mortgage follows the note.'").

In its amended motion for summary judgment, Deutsche Bank asserted that it had standing to foreclose because it was the holder of the Note. Deutsche Bank supported its assertion with the affidavit of the Ocwen representative, who attested that Deutsche Bank had possession of "the original blue-ink Note." A "true and

correct" copy of the Note, indorsed in blank by Novastar Mortgage Inc., was attached to the affidavit.[10]

Under the Texas UCC, a "holder" includes a "person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession." TEX. BUS. & COM. CODE § 1.201(b)(21)(A). A "bearer" includes a person in possession of a negotiable instrument that is payable to bearer or indorsed in blank. *Id.* § 1.201(b)(5). "Negotiation means the transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder." *Id.* § 3.201(a). "If an instrument is payable to bearer, it may be negotiated by transfer of possession alone." *Id.* § 3.201(b). "When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed." *Id.* § 3.205(b).

Here, the Ocwen affiant, attesting that Deutsche Bank possessed the original Note signed by Harris, along with a copy of the Note reflecting that it was indorsed in blank by Novastar, conclusively established that Deutsche Bank had standing to foreclose as the holder of the Note. *See DHI Holdings, LP v. Deutsche Bank Nat'l Tr. Co., as Tr. for Gsamp Tr. 2006-SD1, Mortg. Pass-Through Certificates, Series*

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[10] As mentioned, Appellees filed a combined no-evidence and traditional motion for summary judgment, but on the issue of standing to foreclose, Appellees relied on traditional-motion-for-summary-judgment principles.

2006-SD1, No. 05-21-00287-CV, 2022 WL 3030903, at *3 (Tex. App.—Dallas Aug. 1, 2022, pet. filed) (mem. op.) (holding that trustee Deutsche Bank proved that it had standing to foreclose as holder of note because its summary-judgment evidence "established that the Note was indorsed in blank by Fremont [the original lender] and that Deutsche Bank ha[d] possession of the original Note"); *EverBank*, 499 S.W.3d at 543 (concluding that EverBank's summary-judgment evidence, comprised of "affidavit testimony that [EverBank] possessed the note, as well as a copy of the note indorsed in blank," was "sufficient to show that EverBank had standing to foreclose as the holder of the note") (citing *Rodriguez v. Bank of Am., N.A.*, No. SA-12-CV-00905-DAE, 2013 WL 1773670, at *8 (W.D. Tex. Apr. 25, 2013) ("Even if the assignment of the Deed of Trust was void (rather than voidable), the documents central to Plaintiff's case suggest, and no factual allegations controvert, that Defendant would have authority to foreclose pursuant to the terms of the Deed of Trust because Defendant is the holder of the Note.")).

The burden then shifted to Mendenhall to raise an issue that would preclude summary judgment. *See EverBank*, 499 S.W.3d at 543. In his summary-judgment response, Mendenhall asserted that Deutsche Bank had not established that it was the holder of the Note because Deutsche Bank did not establish "on what date Deutsche [Bank] received physical transfer of the Note and whether or not the Note was already endorsed by the Original Lender when Deutsche took possession."

In *EverBank*, the court considered and rejected a similar argument raised by the appellant, Seedergy. *See id.* There, Seedergy "argued that the note was ineffective to show that EverBank was the holder because the blank indorsement was undated." *Id.* The court noted that Seedergy had "not cite[d] to any authority that the indorsement must be dated" and stated that the court was "not aware" of such a requirement. *Id.* The court explained, "In fact, the Texas version of the UCC makes clear that a blank indorsement may be composed of just a signature." *Id.* (citing TEX. BUS. & COM. CODE § 3.205(c) ("The holder may convert a blank indorsement that consists only of a signature into a special indorsement . . ."); *id.* cmt. 2 ("A blank indorsement is usually the signature of the indorser on the back of the instrument without other words.")). The *EverBank* court concluded that "the [blank] indorsement was effective, even though it was undated." *Id.*

Similarly, here, Mendenhall has not cited any authority requiring Deutsche Bank to show when the Note was indorsed in relation to its transfer to Deutsche Bank. Like the *EverBank* court, we conclude that the Deutsche Bank was not required to show the indorsement's date for it to be effective. *See id.* As discussed, "[w]hen indorsed in blank, an instrument becomes payable to bearer"—here, Deutsche Bank. TEX. BUS. & COM. CODE § 3.205(b). Thus, Deutsche Bank met its summary-judgment burden to establish that it was a holder of the Note by showing it possessed the Note indorsed in blank without establishing the date of the

indorsement. *See id.*; *Gregg v. Select Portfolio Servicing, Inc.*, No. 4:18-CV-803, 2020 WL 467765, at *2 (E.D. Tex. Jan. 29, 2020) ("Defendants' summary judgment evidence establishes all that is required under Texas law to enforce the Note—physical possession of the Note endorsed in blank.").

Mendenhall also argued that Deutsche Bank could not be the Note's holder because it did not prove that it "got physical possession of the [N]ote by 'negotiation.'" Mendenhall further asserted that that "the physical transfer by which the [N]ote was acquired must be proved." In support of this point, Mendenhall cites this Court's opinion, *Leavings v. Mills*, 175 S.W.3d 301 (Tex. App.—Houston [1st Dist.] 2004, no pet.).

There, we required the transferee "to prove the note and an unbroken chain of assignments transferring to him the right to enforce the note according to its terms." *Id.* at 310. But, as the court in *DHI Holdings* recently observed, "*Leavings* involved a retail installment contract for a solar water heating system and an associated mechanic's and materialman's lien, not a negotiable instrument." 2022 WL 3030903, at *3 (citing *Leavings*, 175 S.W.3d at 311). And the *DHI Holdings* and *EverBank* courts also distinguished *Leavings* on the basis that the note in *Leavings* was not indorsed in blank. *See DHI Holdings*, 2022 WL 3030903, at *3; *EverBank*, 499 S.W.3d at 543 ("However, the court in *Leavings* did not mention that the note there had been indorsed in blank, which makes that case distinguishable."). Because

the Note here contained a blank indorsement, Deutsche Bank was not required to show the chain of transfers.[11] *See* TEX. BUS. & COM. CODE § 3.205(b); *DHI Holdings*, 2022 WL 3030903, at *3; *EverBank*, 499 S.W.3d at 543.

The summary-judgment evidence further established that Ocwen was the mortgage servicer for Deutsche Bank. The Property Code allows a mortgage servicer to initiate a nonjudicial-foreclosure sale. *See* TEX. PROP. CODE §§ 51.0001(3) (defining "mortgage servicer"), .0025 (mortgage servicer may administer foreclosure on behalf of mortgagee if given authority by mortgagee and if proper

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[11] Mendenhall also suggests that Deutsche Bank is not the holder of the Note because it did not offer evidence showing that the transfer of the Note complied with the terms of the PSA. In making this argument, Mendenhall conflates what was required to show Deutsche Bank's status as the owner of the Note with what was required to establish its status as the holder of the Note. In any event, because he was not a party to, or third-party beneficiary of, the PSA, Mendenhall cannot enforce its terms. *See Ybarra v. Ameripro Funding, Inc.*, No. 01-17-00224-CV, 2018 WL 2976126, at *4–5 (Tex. App.—Houston [1st Dist.] June 14, 2018, pet. denied) (mem. op.) (holding mortgagors were not parties to or third-party beneficiaries of PSA and could not enforce its terms) (citing *Ferguson v. Bank of N.Y. Mellon Corp.*, 802 F.3d 777, 782 (5th Cir. 2015) (explaining that "home-loan borrowers—such as the Fergusons—ha[ve] no standing under Texas law to enforce a PSA because they were neither parties to the PSA nor intended third-party beneficiaries under it")). Relatedly, Mendenhall also asserts that under New York law, which he contends governs the PSA, non-compliance with the PSA would render the transfer of the Note void. However, the Fifth Circuit Court of Appeals rejected a similar argument in *Ferguson*, and like that court, we find Mendenhall's argument "unavailing." *Ferguson*, 802 F.3d at 782 (rejecting mortgagor's argument that assignment of mortgage was void under New York law for violating terms of PSA, citing *Wells Fargo Bank, Nat'l Ass'n v. Erobobo*, 127 A.D.3d 1176, 9 N.Y.S.3d 312, 314 (2015) ("[A] mortgagor whose loan is owned by a trust[ ] does not have standing to challenge the [assignee's] possession or status as assignee of the note and mortgage based on purported noncompliance with certain provisions of the PSA.")); *DHI Holding*, 2022 WL 3030903, at *3 (considering and then rejecting similar argument by adopting *Ferguson* court's analysis).

notice provided); *Morlock, L.L.C. v. Nationstar Mortg., L.L.C.*, 447 S.W.3d 42, 47 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) ("Under section 51.0025, a 'mortgagee' or a 'mortgage servicer' may conduct foreclosure proceedings."). Mendenhall offered no argument or evidence, aside from disputing that Deutsche Bank had standing to foreclose as holder of the Note, to refute that Ocwen had authority to foreclose as the mortgage servicer.

We hold that, because they conclusively proved that Deutsche Bank was the holder of the Note and that Ocwen was the mortgage servicer, Deutsche Bank and Ocwen were entitled to summary judgment on Mendenhall's claim seeking a declaratory judgment that they lacked standing to foreclose. Thus, the trial court did not err in granting summary judgment on that claim.[12]

2. MERS

"A declaratory judgment is appropriate if a justiciable controversy exists concerning the rights and status of the parties that may be resolved by the declaration sought, and there must be a real and substantial controversy involving a genuine conflict of tangible interests and not merely a theoretical dispute." *Suniverse, LLC v. Universal Am. Mortg. Co., LLC*, No. 09-19-00090-CV, 2021 WL 632603, at *14

[12] We need not discuss Mendenhall's other arguments challenging Deutsche Bank's and Ocwen's standing to foreclose related to Deutsche Bank's status as owner of the Note or as assignee of the Deed of Trust. *See* TEX. R. APP. P. 47.1; *DHI Holdings*, 2022 WL 3030903, at *3.

(Tex. App.—Beaumont Feb. 18, 2021, pet. denied) (mem. op.); *see EWB-I, LLC v. PlazAmericas Mall Tex., LLC*, 527 S.W.3d 447, 471 (Tex. App.—Houston [1st Dist.] 2017, pet. denied). In the amended motion for summary judgment, MERS stated that it no longer had any interest in the Property, and it pointed out that it was "not the foreclosing party." Based on the summary-judgment record, we conclude that the trial court did not err in granting summary judgment for MERS on the declaratory-judgment claim because the record did not show a "real and substantial controversy" between Mendenhall and MERS with respect to that claim. *See Suniverse*, 2021 WL 632603, at *14 (holding that summary judgment in favor of Bank of America (BANA) on appellant's declaratory-judgment claim (seeking declaration that BANA did not have standing to foreclose) was proper because BANA "declared" in its motion for summary judgment that it "no longer had any interest in the Property" and appellant "failed to offer evidence of a 'real and substantial controversy' between the parties").

We overrule Mendenhall's first issue.

C. Claim to Quiet Title

Mendenhall also contends that the trial court erred by granting summary judgment on his claim to quiet title. To prevail on his quiet title claim, Mendenhall must show (1) an interest in the Property, (2) that title to the Property is affected by a claim by Appellees, and (3) that the claim, although facially valid, is invalid or

unenforceable. *Vernon v. Perrien*, 390 S.W.3d 47, 61-62 (Tex. App.—El Paso 2012, pet. denied). Here, Mendenhall's claim to quiet title relies on the invalidity of Deutsche Bank's claim to the Property. *See Essex Crane Rental Corp. v. Carter*, 371 S.W.3d 366, 388 (Tex. App.—Houston [1st Dist.] 2012, pet. denied). Because we have concluded that Deutsche Bank met its summary-judgment burden to show that it has the right to foreclose, we hold that the trial court did not err in granting summary judgment for Deutsche Bank, and its mortgage servicer Ocwen, on the quiet title claim. *See DHI Holdings*, 2022 WL 3030903, at *3; *EverBank*, 499 S.W.3d at 544. And summary judgment is proper for MERS because, as discussed, there is not "a claim by" MERS to the Property. *See Vernon*, 390 S.W.3d at 61–62.

We overrule Mendenhall's second issue.

Conclusion

We affirm the judgment of the trial court.

Richard Hightower
Justice

Panel consists of Justices Goodman, Hightower, and Guerra.