

IN THE UTAH COURT OF APPEALS

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Commonwealth Property Advocates, LLC,)	PER CURIAM DECISION
)	
Plaintiff and Appellant,)	Case No. 20110596-CA
)	
v.)	FILED
)	(December 8, 2011)
U.S. Bank National Association, as Trustee for the Structured Asset Investment Loan Trust, 2006-BNC3, and John Does of unknown numbers,)	
)	2011 UT App 415
Defendant and Appellee)	

Third District, West Jordan Department, 100404022
The Honorable Charlene Barlow

Attorneys: E. Craig Smay, Salt Lake City, for Appellant
George W. Pratt and Jessica P. Wilde, Salt Lake City, for Appellee

Before Judges Davis, McHugh, and Roth.

¶1 Commonwealth Property Advocates, LLC (CPA) appeals the trial court's order granting U.S. Bank National Association's (the Bank) motion for summary judgment and dismissing CPA's complaint. This is before the court on the Bank's motion for summary disposition. CPA has not opposed the motion. We affirm.

¶2 After receiving an interest in the property at issue through a quit claim deed, CPA brought suit against the Bank as the successor trustee on a trust deed related to the property. CPA asserted various claims, all essentially seeking a determination that the underlying note became unsecured when the note was packaged with other notes and sold as a security. Therefore, CPA contends that the trust deed was unenforceable. The trial court granted the Bank's summary judgment motion on all claims. CPA appeals.

¶3 This court recently addressed the same issues raised here in *Commonwealth Property Advocates, LLC v. Mortgage Electronic Registration System, Inc. (MERS)*, 2011 UT App 232, 686 Utah Adv. Rep. 11. In *MERS*, this court rejected Commonwealth Property Advocates's premise that the securitization of a note nullified the trustee's rights under the corresponding trust deed as a "mere conclusory allegation." *Id.* ¶ 10. In the instant case, CPA relies on the same premise, which we again reject. The plain language of the trust deed here granted the Bank the authority to exercise the rights and protect the interests of the ultimate beneficiaries, including foreclosing on the property. As in *MERS*, "CPA has failed to explain how the securitization of the Note could have revoked [the] language in the Deed of Trust." *Id.*

¶4 Contrary to CPA's implication that selling a note as a security invalidates rights under the related trust deed, under Utah law "[t]he transfer of any debt secured by a trust deed shall operate as a transfer of the security therefore." Utah Code Ann. § 57-1-35 (2010). The statute does not invalidate any contractual rights or authority granted in a trust deed, but rather simply "describes the long-applied principle in our jurisprudence that when a debt is transferred, the underlying security continues to secure the debt." *MERS*, 2011 UT App 232, ¶ 13. The statute does not interfere with the ability of the original parties to a note and a trust deed to "validly contract at the outset 'to have someone other than the beneficial owner of the debt act on behalf of that owner to enforce rights granted in [the security instrument].'" *Id.* (alteration in original) (citation omitted). In sum, the securitization of a note secured by a trust deed does not on its own alter the rights, obligations, or enforceability of the trust deed.

¶5 Because CPA's complaint in this case relies on the same erroneous principle raised in *MERS* that securitization of the note separated it from the trust deed, *MERS* is

dispositive.¹ The trial court did not err in granting summary judgment in favor of the Bank.

¶6 Affirmed.

James Z. Davis,
Presiding Judge

Carolyn B. McHugh,
Associate Presiding Judge

¶7 I CONCUR IN THE RESULT:

Stephen L. Roth, Judge

¹Because we rely on *Commonwealth Property Advocates, LLC v. Mortgage Electronic Registration System, Inc.*, 2011 UT App 232, 686 Utah Adv. Rep. 11, to resolve the appeal, we do not reach other issues raised in the Bank's motion. CPA has not opposed the motion or raised any other issue for review in response.