

Wells Fargo Bank, N.A. v. Thayer, No. 63-1-09 Rdcv (Cohen, J., Oct. 28, 2009)

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**STATE OF VERMONT  
RUTLAND COUNTY**

<b>WELLS FARGO BANK, N.A., s/b/m</b>	)	<b>Rutland Superior Court</b>
<b>to WELLS FARGO HOME MORTGAGE, Inc.,</b>	)	<b>Docket No. 63-1-09 Rdcv</b>
<b>f/k/a NORWEST MORTGAGE, INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>GREGORY THAYER, JULIANNE THAYER,</b>	)	
<b>CAPITAL ONE BANK, and OCCUPANTS</b>	)	
<b>RESIDING at [Redacted],</b>	)	
<b>RUTLAND, VERMONT,</b>	)	
	)	
<b>Defendants</b>	)	

**DECISION RE PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT,**  
**FILED JULY 23, 2009**

This matter comes on before the Court on plaintiff Wells Fargo Bank, N.A.’s Motion for Summary Judgment as to defendants Gregory Thayer and Julianne Thayer, filed July 23, 2009. Defendants Gregory and Julianne Thayer filed an Answer to the Motion for Summary Judgment on August 11, 2009. Plaintiff Wells Fargo Bank, N.A. (“Wells Fargo”) is represented by Corey J. Fortin, Esq. Defendants Gregory and Julianne Thayer (the “Thayers”) appear *pro se*.

**Summary Judgment Standard**

Summary judgment is appropriate where there is no genuine issue of material fact and the party is entitled to judgment as a matter of law. V.R.C.P. 56(c)(3). In response

to an appropriate motion, judgment must be rendered "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, ... show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law." V.R.C.P. 56(c)(3). In determining whether a genuine issue of material fact exists, the Court accepts as true allegations made in opposition to the motion for summary judgment, provided they are supported by evidentiary material. *Robertson v. Mylan Labs, Inc.*, 2004 VT 15, ¶ 15, 176 Vt. 356. The nonmoving party then receives the benefit of all reasonable doubts and inferences arising from those facts. *Woolaver v. State*, 2003 VT 71, ¶ 2, 175 Vt. 397.

### **Background and Discussion**

Along with its Motion for Summary Judgment, plaintiff filed a Statement of Material Facts as required by V.R.C.P. 56(c). In their Answer to the Motion for Summary Judgment defendant Thayers did not file a Statement of Material Facts to which it is contended that there exists a genuine issue of fact. Plaintiff's Statement of Material Facts sets forth the following:

On July 26, 1996, Gregory and Julianne Thayer (the "Thayers") purchased certain real property in Rutland, Vermont, and executed a Promissory Note (the "Note") in favor of Chittenden Trust Company ("Chittenden Trust") in the original principal amount of \$80,150. Said Note is attached to the Complaint. The Note is secured by a Mortgage Deed dated Jul 26, 1996, from the Thayers to Chittenden Trust. This Mortgage Deed was recorded in the Land Records of the City of Rutland.

The Note and Mortgage Deed were assigned from Chittenden Trust to Norwest Mortgage Inc. ("Norwest") by an instrument dated August 2, 1996, and recorded in the

Rutland Land Records on August 30, 1996. The Thayers have failed to make payments called for under the subject Note and Mortgage.

The attached Note was endorsed specifically from Chittenden Trust to Norwest on August 2, 1996. The note was then endorsed in blank by Norwest. The assignment of the mortgage from Chittenden Trust to Norwest, executed on July 26, 1996, is attached to the Complaint.

Also attached to the Complaint is an “Assignment of Mortgage/Deed of Trust/Deed to Secure Debt” from Norwest to Government National Mortgage Association, dated August 24, 1998. The document states: “For value received, Norwest Mortgage Inc., a California Corporation, hereby sells, assigns and transfers to Government National Mortgage Association its successors and assigns, all its right, title and interest in and to a certain mortgage/deed of trust/deed to secure debt executed by Gregory M. Thayer and Julianne P. Thayer...” The assignment was signed by Edwin L. Edwards, Assistant Secretary of Norwest, and notarized in Minnesota.

It appears that Norwest assigned its interest in the Thayer’s mortgage to Government National Mortgage Association in 1998. Therefore, Wells Fargo, as successor to Norwest, may not be the proper party to bring the foreclosure action. This assignment of the Mortgage from Norwest to Government National Mortgage Association creates a genuine issue of material fact as to the ownership of the mortgage. Summary Judgment is not appropriate and plaintiff Wells Fargo is not entitled to judgment as a matter of law. See V.R.C.P. 56(c)(3).

**Order**

Plaintiff’s Motion for Summary Judgment, filed July 23, 2009, is DENIED.

Dated at Rutland, Vermont this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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Hon. William Cohen  
Superior Court Judge