SUPREME COURT OF CONNECTICUT

RMS Residential Properties, LLC v. Miller, 303 Conn. 224

32 A.3d 307 (2011) · Decided December 13, 2011

SUMMARY

The Connecticut Supreme Court held that a holder of a promissory note may have standing under General Statutes § 49-17 to foreclose a mortgage, because possession of the note creates a rebuttable presumption that the holder owns the underlying debt. The court also held that the mortgage was not void ab initio merely because Mortgage Electronic Registration Systems, Inc. was named as nominee mortgagee, and that the supporting affidavit was admissible. The court affirmed the judgment of foreclosure by sale.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Eveleigh, J.; McLachlan, J.; Norcott, J.; Palmer, J.; Rogers, J.; Zarella, J.
JURISDICTION	Connecticut
DECIDED	December 13, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of foreclosure by sale entered after the trial court granted RMS's motion for summary judgment.
STANDARD OF REVIEW	Subject matter jurisdiction and summary judgment rulings are reviewed de novo or plenarily. Summary judgment is proper when the pleadings, affidavits, and other proof show no genuine issue of material fact and the moving party is entitled to judgment as a matter of law; the evidence is viewed in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	Published Connecticut Supreme Court opinion; precedential
PARTIES	Anna M. Miller, also known as Anna K. Miller v. RMS Residential Properties, LLC, Mortgage Electronic Registration Systems, Inc.

TOPICS

foreclosure · mortgages · summary judgment · standing · evidence

PRACTICE AREAS

real estate · foreclosure · mortgages · civil procedure · evidence · uniform commercial code

QUESTIONS PRESENTED

1. Whether General Statutes § 49-17 confers standing to foreclose a mortgage on a holder of the promissory note who is not alleged to be the owner of the underlying debt.
2. Whether the evidence established that RMS was the holder of the note when it commenced the foreclosure action and supported summary judgment.
3. Whether an affidavit based on the affiant's review of business records was admissible under Practice Book § 17-46 and General Statutes § 52-180.
4. Whether a mortgage is void ab initio because the mortgagee is a nominee of the disclosed lender rather than the original lender or owner of the underlying debt.

HOLDINGS

1. A holder of a promissory note is presumed to be the owner of the underlying debt and, unless the defendant rebuts that presumption, may foreclose the mortgage under General Statutes § 49-17.
2. RMS was entitled to summary judgment because its affidavit established that it held the note when the action commenced, and Miller offered no evidentiary foundation showing a genuine issue of material fact.
3. An affidavit is not inadmissible merely because the affiant obtained personal knowledge of the relevant facts by reviewing business records.
4. A mortgage is not void ab initio merely because the disclosed lender names its nominee as mortgagee.

KEY QUOTATIONS

> *"Accordingly, because the defendant offered no evidence to impeach the validity of RMS' evidence that it possessed the note at the time that it commenced the present action or to rebut the presumption that RMS owns the underlying debt, and as a matter of law the mortgage follows the note, we conclude that RMS was authorized by statute to commence this foreclosure action."* (232)

> *"Accordingly, we conclude that a mortgage is not void, ab initio, by virtue of the naming of a nominee of the disclosed lender as mortgagee."* (238)

FACTUAL BACKGROUND

Miller executed a $637,500 promissory note to Finance America, LLC and mortgaged property in Madison, Connecticut to Mortgage Electronic Registration Systems, Inc., as nominee for Finance America. She made no mortgage payments, and the debt was accelerated. The mortgage was assigned to RMS, and RMS became holder of the note before commencing foreclosure. RMS submitted an affidavit stating that it became holder of the note before the action began, while Miller offered no evidence rebutting that fact or the presumption that the holder owned the underlying debt.

PROCEDURAL HISTORY

Miller defaulted on a promissory note secured by a mortgage. RMS commenced foreclosure after becoming holder of the note and after the mortgage had been assigned to RMS. The trial court initially denied the parties' summary judgment motions and Miller's motion to dismiss, but granted RMS's motion to reargue, then granted RMS summary judgment and rendered judgment of foreclosure by sale. Miller appealed, and the Connecticut Supreme Court transferred the appeal from the Appellate Court.

DISPOSITION

affirmed

CASES CITED

- Gupta v. New Britain General Hospital, 239 Conn. 574, 576, 594, 596-97, 687 A.2d 111 (1996)
- New Hartford v. Connecticut Resources Recovery Authority, 291 Conn. 511, 518, 970 A.2d 583 (2009)
- Bysiewicz v. DiNardo, 298 Conn. 748, 758, 6 A.3d 726 (2010)
- St. Paul Travelers Cos. v. Kuehl, 299 Conn. 800, 809, 12 A.3d 852 (2011)
- Andross v. West Hartford, 285 Conn. 309, 322, 939 A.2d 1146 (2008)
- Monroe v. Horwitch, 215 Conn. 469, 473, 576 A.2d 1280 (1990)
- State v. Tabone, 301 Conn. 708, 713-14, 23 A.3d 689 (2011)
- HSBC Bank USA, N.A. v. Navin, 129 Conn. App. 707, 711, 713, 22 A.3d 647 (2011)
- Chase Home Finance, LLC v. Fequiere, 119 Conn. App. 570, 576-77, 989 A.2d 606 (2010), cert. denied, 295 Conn. 922, 991 A.2d 564 (2010)
- Bankers Trust Co. of California, N.A. v. Vaneck, 95 Conn. App. 390, 391, 899 A.2d 41 (2006), cert. denied, 279 Conn. 908, 901 A.2d 1225 (2006)
- Fleet National Bank v. Nazareth, 75 Conn. App. 791, 795, 818 A.2d 69 (2003)
- New England Savings Bank v. Bedford Realty Corp., 238 Conn. 745, 759-60, 680 A.2d 301 (1996)
- Zbras v. St. Vincent’s Medical Center, 91 Conn. App. 289, 294, 880 A.2d 999 (2005), cert. denied, 276 Conn. 910, 886 A.2d 424 (2005)
- Episcopal Church in the Diocese of Connecticut v. Gauss, 302 Conn. 408, 421-22, 28 A.3d 302 (2011)
- Connecticut Podiatric Medical Assn. v. Health Net of Connecticut, Inc., 302 Conn. 464, 486, 28 A.3d 968 (2011)
- First National Bank of Bridgeport v. National Grain Corp., 103 Conn. 657, 662-64, 131 A. 404 (1925)