

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH
DISTRICT**

**Victoria S. Magaldi v. Deutsche Bank National Trust Co., as Trustee
for WAMU 2005-AR6**

199 So. 3d 982 (Fla. Dist. Ct. App. 2016) · No. 4D15-1043 · Decided June 15, 2016

SUMMARY

The Fourth District Court of Appeal of Florida reversed a foreclosure judgment because Deutsche Bank failed to prove that it had standing when the foreclosure action was filed. The court held that the note attached to the complaint lacked an endorsement establishing the bank's status as holder, and that later filing of the original note, a post-complaint assignment, and evidence of transfer to a trust did not establish standing at inception.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Ciklin, C.J.; Taylor, J.; May, J.
JURISDICTION	Florida
DECIDED	June 15, 2016
DOCKET	4D15-1043
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from a final judgment of foreclosure entered in favor of Deutsche Bank National Trust Company.
STANDARD OF REVIEW	Not expressly stated in the opinion.
PRECEDENTIAL VALUE	Published and precedential Florida District Court of Appeal opinion
PARTIES	Victoria S. Magaldi v. Deutsche Bank National Trust Company, as Trustee for WAMU 2005-AR6

TOPICS

foreclosure standing mortgages appellate procedure real estate

PRACTICE AREAS

foreclosure real estate commercial law appellate procedure

QUESTIONS PRESENTED

1. Whether Deutsche Bank proved that it had standing to enforce the note at the inception of the foreclosure action.
2. Whether the post-complaint original note, post-complaint assignment, pooling and servicing agreement, and related testimony established standing when the suit was filed.

HOLDINGS

1. Deutsche Bank failed to prove that it was entitled to enforce the note when it filed the foreclosure suit and therefore lacked proven standing at the inception of the action.

KEY QUOTATIONS

“A “person entitled to enforce” an instrument is: “(1) [t]he holder of the instrument; (2) [a] nonholder in possession of the instrument who has the rights of a holder; or (3) [a] person not in possession of the instrument who is entitled to enforce the instrument pursuant to s[ection] 673.3091 or s[ection] 673.4181(4).””

“Evidence of a transfer of the note into a trust is not, standing alone, sufficient to establish standing at inception of the suit.”

FACTUAL BACKGROUND

Magaldi executed a promissory note payable to Washington Mutual Bank, FA, in 2004. Deutsche Bank filed a foreclosure suit in 2009, alleging that it owned the note, but the copy attached to the complaint was payable to Washington Mutual and contained no endorsement. The original note filed in 2014 contained an undated blank endorsement, while the assignment relied on by the bank was executed after the foreclosure action began. The bank also presented a pooling and servicing agreement and testimony concerning the loan transfer.

PROCEDURAL HISTORY

Magaldi executed a promissory note in 2004. Deutsche Bank filed a foreclosure action in 2009, later filed the original note containing an undated blank endorsement, and obtained a final foreclosure judgment. The Fourth District Court of Appeal reversed because the bank failed to prove that it had standing when the foreclosure action was filed.

DISPOSITION

reversed

CASES CITED

- Murray v. HSBC Bank USA, 157 So. 3d 355, 358 (Fla. 4th DCA 2015)
- McLean v. JP Morgan Chase Bank National Ass'n, 79 So. 3d 170, 173 (Fla. 4th DCA 2012)
- Perez v. Deutsche Bank National Trust Co., 174 So. 3d 489, 491 (Fla. 4th DCA 2015)
- Jarvis v. Deutsche Bank National Trust Co., 169 So. 3d 194, 196 (Fla. 4th DCA 2015)

OPINION

CIKLIN, J.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT
VICTORIA S. MAGALDI, Appellant, v. DEUTSCHE BANK NATIONAL TRUST COMPANY,
As Trustee For WAMU 2005-AR6, Appellee. No. 4D15-1043 [June 15, 2016] Appeal from the
Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Roger B. Colton, Senior
Judge; L.T. Case No. 502009CA015214XXXXMB.

Victoria S. Magaldi, Jupiter, pro se. Philip E. Rothschild and Brian K. Hole of Holland & Knight
LLP, Fort Lauderdale, for appellee. CIKLIN, C.J. Victoria Magaldi appeals the final judgment of
foreclosure entered in favor of Deutsche Bank National Trust Company as Trustee for WAMU
2005-AR6 (“the bank”).

We agree with Magaldi that the bank failed to prove it had standing at the inception of the
underlying suit and thus we reverse. In 2004, Magaldi executed a promissory note in favor of
Washington Mutual Bank, FA (“the lender”).

In 2009, the bank brought a foreclosure suit against Magaldi. The bank alleged it was the “owner”
of the note. It attached to its complaint a copy of the note made payable to the lender. The note did
not contain any endorsements.

In 2014, the bank filed the original note with the court which contained an undated blank
endorsement by the lender. At trial, the following exhibits were introduced into evidence: copies of
the original note and mortgage, a pooling and servicing agreement (“the PSA”), and a post-
complaint assignment of the mortgage and note by JP Morgan Chase Bank to the bank.

The bank’s witness, Linda Kuerzi, was employed by the entity that services the loan for the bank.
She provided testimony about the note, assignment, and the PSA. This court has explained the
process by which standing in a foreclosure case may be established: A “person entitled to enforce”
an instrument is: “(1) [t]he holder of the instrument; (2) [a] nonholder in possession of the
instrument who has the rights of a holder; or (3) [a] person not in possession of the instrument who
is entitled to enforce the instrument pursuant to s[ection] 673.3091 or s[ection] 673.4181(4).” §
673.3011, Fla. Stat. (2013).

A “holder” is defined as “[t]he person in possession of a negotiable instrument that is payable
either to bearer or to an identified person that is the person in possession.” § 671.201(21)(a), Fla.
Stat. (2013). Thus, to be a holder, the instrument must be payable to the person in possession or
indorsed in blank. See § 671.201(5), Fla. Stat. (2013). *Murray v. HSBC Bank USA*, 157 So.

3d 355, 358 (Fla. 4th DCA 2015) (alterations in original). At trial, the bank appeared to proceed as
a holder. 1 However, none of the evidence introduced at trial established its standing at the

inception of the suit.

The copy of the note attached to the complaint did not establish standing, as it was not made payable to the bank and did not contain a special endorsement in the bank's favor or a blank endorsement. Although the original note contains an endorsement in blank, it was filed after suit was brought and thus did not establish standing at inception of the suit. See *McLean v. JP Morgan Chase Bank Nat'l Ass'n*, 79 So.

3d 170, 173 (Fla. 4th DCA 2012). The bank relies to some extent on the assignment, but the assignment was dated 2010—after suit was filed—and does not offer any indication of whether the bank held the note endorsed in its favor or in blank when it commenced the subject litigation.

To the extent the bank proved, through the PSA and Kuerzi's testimony, that the loan was transferred to the trust in 2005, this does not prove that at the time of the transfer, the note contained an endorsement in the bank's favor or in blank. Evidence of a transfer of the note into a trust is not, standing alone, sufficient to 1 This is confirmed in the bank's answer brief, in which it explains how it proved standing as the holder of the note.

2 establish standing at inception of the suit. See *Perez v. Deutsche Bank Nat'l Trust Co.*, 174 So. 3d 489, 491 (Fla. 4th DCA 2015); *Jarvis v. Deutsche Bank Nat'l Trust. Co.*, 169 So. 3d 194, 196 (Fla. 4th DCA 2015). Because the bank did not prove it had standing at inception of the law suit, we reverse.

The remaining issue raised on appeal is moot. Reversed. TAYLOR and MAY, JJ., concur. * * *
Not final until disposition of timely filed motion for rehearing. 3