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)