

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

AMERICAN HOME MORTGAGE)
SERVICING, INC.,)
)
Appellant,)
)
v.)
)
LUCY BEDNAREK,)
)
Appellee.)
_____)

Case No. 2D12-2099

Opinion filed October 25, 2013.

Appeal from the Circuit Court for
Pinellas County; Pamela A.M.
Campbell, Judge.

Albert Zakarian and Aaron W. Saoud
of The Law Office of Daniel C.
Consuegra, Tampa, for Appellant.

Matthew D. Weidner and Michael P.
Fuino of Matthew D. Weidner, P.A.,
St. Petersburg, for Appellee.

KELLY, Judge.

American Home Mortgage Servicing, Inc. (AHMSI),¹ appeals a final order
dismissing its foreclosure action against Lucy Bednarek for lack of standing. Because

¹The original plaintiff in this foreclosure action was American Home
Mortgage Servicing, Inc., a Maryland corporation (AHMSI-Maryland). The appellant,

we conclude the trial judge erred in finding that AHMSI did not establish its standing to foreclose under McLean v. JP Morgan Chase Bank National Ass'n, 79 So. 3d 170, 173 (Fla. 4th DCA 2012), we reverse.

On May 31, 2005, Ms. Bednarek executed a note and mortgage in favor of American Brokers Conduit for the purchase of real property. Thereafter, the loan was sold to Deutsche Bank. On March 30, 2006, American Brokers Conduit assigned the mortgage to the bank's servicing agent, AHMSI-Maryland. In September 2007, AHMSI-Maryland filed a complaint for foreclosure alleging it was the owner and holder of the underlying promissory note. With the complaint and the amended complaint, AHMSI-Maryland filed copies of the mortgage, the promissory note showing a blank endorsement, and the 2006 assignment of mortgage. In April 2008, AHMSI purchased AHMSI-Maryland, acquiring the company's servicing rights. In 2009, AHMSI filed the original note and mortgage with the trial court.

At the nonjury trial, AHMSI presented the testimony of its foreclosure special assets specialist, Krystal Kearse. Relying on computerized business records, Ms. Kearse traced the history of the loan from its inception until AHMSI received the documents to proceed with foreclosure proceedings. At the close of testimony, counsel for Ms. Bednarek made an oral motion to involuntarily dismiss the action, arguing AHMSI had no standing to foreclose because it was not the original plaintiff and not the owner and holder of the note. Relying on McLean, the trial court granted the motion on the ground AHMSI had failed to prove it was the owner and holder of the note and mortgage.

American Home Mortgage Servicing, Inc., a Delaware corporation (AHMSI), purchased AHMSI-Maryland during the pendency of the action.

A party seeking foreclosure must establish that it had standing to foreclose at the time it filed the complaint. McLean, 79 So. 3d at 173. A foreclosure plaintiff has standing if it owns and holds the note at the time suit is filed. Id. A plaintiff may also establish standing to foreclose by submitting evidence of a special endorsement on the note in favor of the plaintiff or a blank endorsement, an assignment from the payee to the plaintiff, or an affidavit of ownership. Id. at 174.

Because a promissory note is a negotiable instrument and because a mortgage provides the security for the repayment of the note, the person having standing to foreclose a note secured by a mortgage may be either the holder of the note or a nonholder in possession of the note who has the rights of a holder.

Stone v. BankUnited, 115 So. 3d 411, 413 (Fla. 2d DCA 2013) (quoting Mazine v. M & I Bank, 67 So. 3d 1129, 1131 (Fla. 1st DCA 2011)).

Here, both the complaint and the amended complaint reflect that AHMSI-Maryland, the original plaintiff, was the owner and holder of the note at the time the complaint was filed. An assignment of mortgage was attached to the complaint which provided that the original lender, American Brokers Conduit, assigned the mortgage to AHMSI-Maryland on March 30, 2006, more than one year prior to the filing of the original complaint. Also attached to the complaint and amended complaint was a copy of the note showing a blank endorsement. Because AHMSI possessed the original note, endorsed in blank, it was the lawful holder of the note entitled to enforce its terms. See id.; see also BAC Funding Consortium, Inc. ISAOA/ATIMA v. Jean-Jacques, 28 So. 3d 936, 938 (Fla. 2d DCA 2010) ("The proper party with standing to foreclose a note and/or mortgage is the holder of the note and mortgage or the holder's representative.");

Mortg. Elec. Registration Sys., Inc. v. Azize, 965 So. 2d 151, 153 (Fla. 2d DCA 2007)

("The holder of a note has standing to seek enforcement of the note.").

Accordingly, we reverse the involuntary dismissal of AHMSI's foreclosure action and remand for further proceedings.

CRENSHAW and BLACK, JJ., Concur.