

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
LAND COURT DEPARTMENT

NORM J. SPRINGER, JR. v. Deutsche Bank National Trust Company as Trustee of the Home Equity Mortgage Loan Asset-Backed Trust Series INABS 2006-D, Home Equity Mortgage Loan Asset-Backed Certificates, Series INABS 2006-D under the Pooling and Servicing agreement dated September 1, 2006 [\[Note 1\]](#)

21 LCR 22

MISC 10-432307

SUFFOLK, ss.

January 11, 2013

Grossman, J.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT

Introduction

Norm J. Springer, Jr. (plaintiff / Springer) initiated the instant action challenging the foreclosure of property located at 48 Cummings Avenue, Revere, Massachusetts (locus / property) by Deutsche Bank. In his first two counts, the plaintiff advances allegations of Fraud and Deceit (Court I) and challenges the defendant's standing (Count II). By way of Count III, the plaintiff seeks certain injunctive relief. [\[Note 2\]](#) This court has allowed Defendant's Motion to Dismiss on Count I. [\[Note 3\]](#) Defendant has now brought a Motion for Summary Judgment on Counts II and III. [\[Note 4\]](#)

Background

On July 26, 2006 Plaintiff executed a note (Note) in favor of IndyMac Bank, F.S.B. (IndyMac) in the amount of \$400,000. [\[Note 5\]](#) To secure his obligations under the Note, Plaintiff, simultaneously therewith, granted a mortgage (Mortgage) naming Mortgage Electronic Registration System, Inc. (MERS), as mortgagee and as nominee for IndyMac and its successors and assigns, against the property. [\[Note 6\]](#) The Mortgage is recorded with the Suffolk Registry of Deeds (Registry) at Book 40092, Page 1. [\[Note 7\]](#)

IndyMac entered into a Pooling and Servicing Agreement (PSA) dated September 1, 2006 with Deutsche Bank; the PSA had a closing date of September 13, 2006. [\[Note 8\]](#) The beneficial interest in the Mortgage was transferred to Deutsche Bank on September 13, 2006. [\[Note 9\]](#) At the same time, the Note was endorsed in blank and transferred to Deutsche Bank. [\[Note 10\]](#) On July 11, 2008 the Office of Thrift Supervision closed IndyMac and appointed the Federal Deposit Insurance Corporation (FDIC) as receiver for IndyMac. [\[Note 11\]](#) As receiver for IndyMac, FDIC transferred the IndyMac assets to the FDIC as conservator for IndyMac Federal Bank, F.S.B. (IndyMac Bank). [\[Note 12\]](#) On December 9, 2008 MERS, as mortgagee and nominee for IndyMac and its successors and assigns, assigned the Mortgage to IndyMac Bank. [\[Note 13\]](#) The assignment is recorded with the Registry at Book 44387, Page 1. [\[Note 14\]](#) On March 19, 2009, IndyMac Federal was placed into FDIC receivership. [\[Note 15\]](#) OneWest Bank, F.S.B. (OneWest) purchased the right to act as servicing agent for the Mortgage from the FDIC as receiver for IndyMac Bank by entering into a Servicing Business Asset Purchase Agreement on the same day. [\[Note 16\]](#) On June 19, 2009, the FDIC as Receiver and Conservator for IndyMac Federal Bank, F.S.B. assigned the said Mortgage to Deutsche Bank as Trustee. [\[Note 17\]](#) The assignment is recorded with the Registry at Book 45506, Page 221. [\[Note 18\]](#) On March 25, 2010 Deutsche Bank executed a Massachusetts Foreclosure Deed by Corporation (Foreclosure Deed), thereby conveying the locus to itself for a recited consideration of \$230,711.47. [\[Note 19\]](#) The Foreclosure Deed is recorded with the Registry at Book 46354, Page 63. [\[Note 20\]](#)

Summary Judgment Standard

Summary judgment is appropriate when pleadings, depositions, answers to interrogatories, and responses to requests for admission together with affidavits show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c). The moving party bears the burden of proving the absence of controversy over material facts and that he or she deserves a judgment as a matter of law. See *Highlands Ins. Co. v. Aerovox Inc.*, [424 Mass. 226](#), 232 (1997). Accordingly, when acting upon motions for summary judgment, this court is to determine whether, viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to judgment as a matter of law. *Augat, Inc. v. Liberty Mut. Ins. Co.*, [410 Mass. 117](#), 120 (1991). The burden on the

moving party may be discharged by showing that there is an absence of evidence to support the non-moving party's case. *Kourouvacilis v. General Motors Corp.*, [410 Mass. 706](#), 711 (1991), citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Thus, regardless of whether the moving party accompanies its summary judgment motion with affidavits, the motion may, and should, be granted so long as whatever is before the . . . court demonstrates that the standard for the entry of summary judgment . . . is satisfied. *Kourouvacilis v. General Motors Corp.*, 410 Mass. at 713, quoting *Celotex Corp. v. Catrett*, 477 U.S. at 323-24. In cases where the nonmoving party will bear the burden of proof at trial on a dispositive issue, a summary judgment motion may properly be made in reliance solely on the pleadings, depositions, answers to interrogatories, and admissions on file. *Id.*

A corollary to the moving party's burden is that the court is to make all logically permissible inferences from the facts in the non-moving party's favor. *Willitts v. Roman Catholic Archbishop of Boston*, [411 Mass. 202](#), 203 (1991). That said, the right of a party facing summary decision to have the facts viewed in a favorable light . . . does not entitle that party to a favorable decision and reliance upon mere bald conclusions is an inadequate means of defeating the motion. *Catlin v. Bd. of Registration of Architects*, [414 Mass. 1](#), 7 (1992).

Mass R. Civ. P. 56(c) permits the disposition of controversies if in essence there is no real dispute as to the salient facts, such that resolution of the matter depends solely upon judicial determination of a question of law. For summary judgment to enter, the undisputed facts have to be sufficient to furnish the judge with evidence upon which the key question of law might be resolved. As I find that there are no genuine issues of material fact, this matter is ripe for summary judgment.

Discussion

Defendant moves for summary judgment on the basis that, as to Counts II and III, there are no issues of material fact, and that as a matter of law Defendants are entitled to a decision in their favor. In support of its Motion for Summary Judgment (Motion) the defendant submitted documentary evidence to the court in the form of copies of the Note, the Mortgage, the PSA, the assignments, and other relevant documentation. In support of his opposition, Plaintiff provided the court with copies of the assignments and

three pages of barely legible photocopies of deposition transcripts taken in a different matter in a foreign jurisdiction.

A. Count II

Plaintiff alleges in Count II that: Defendant knew or should have known that it was required under the terms of the pooling and servicing agreement under which it receives its authority to act as Trustee, that the mortgage for the Plaintiff's property had not been properly assigned to the REMIC [Note 21] within the time period allowed by law and that therefore Defendant lacked standing to foreclose on the plaintiff's property.

More specifically, the plaintiff alleges as follows:

B. REMIC ISSUES:

11. The Defendant is a trustee for a Real Estate Mortgage Investment Conduit (REMIC).

12. Under the Internal Revenue Code regulations relative to REMICs, all mortgage assets must be transferred into the Trust at the start date of the Trust, in order for it to maintain [its] tax-exempt status. 26 USC 860 (G)(a)(3).

13. As the REMIC for which the Defendant is Trustee was formed September 1, 2006 and the mortgage was not assigned to the Defendant until June 12, 2009, the Defendant cannot be the valid holder of the mortgage without being in violation of the Internal Revenue Code.

14. Therefore the Defendant did not have standing to bring a foreclosure action.

For its part, the defendant asserts that the Note and beneficial interest in the Mortgage were properly transferred to Deutsche Bank prior to the closing date of the PSA.

Implicit in paragraph 13 is the notion that the mortgage may be perfectly valid though in violation of the Internal Revenue Code, thereby producing adverse tax consequences.

The PSA constitutes a contract between IndyMac and Deutsche Bank. It is the view of this court that the plaintiff is without standing to either directly or collaterally challenge the validity of the assignment of the Note and Mortgage into the Trust even if that assignment somehow contravened the terms of the PSA. See Kelly v. Deutsche Bank National Trust Co., as Trustee for Soundview Home Loan Trust 2006-OPT3, et al, 789 F. Supp. 2d 262 (D. Mass. 2011) (stating that, as the borrower was not an intended third-party beneficiary of the PSA contract, he lacked standing to challenge the foreclosure under the terms of the PSA); Correia v. Deutsche Bank Natl Trust Co., BAP No. MB 10-064 (B.A.P. 1st Cir., 2011) **(holding that where debtors could not show they were parties to the PSA contract, they lacked standing to challenge the mortgages chain of title under the PSA).** Plaintiff is not a third-party beneficiary with enforceable rights under the PSA. It is the investors who are the intended beneficiaries of the . . . Trust. US Bank National Assoc., as Trustee for SABR 2006-NC2 v. Orla, et al., Summary Process No. 10H84SP004564, Boston Housing Court (June 7, 2012, Winik, J.). **Limitations that may be placed on the timing of assignments of notes and mortgages into the Trust under the terms of the PSA are intended to protect the financial interests of these investors. Id. The plaintiff is not an investor in the Trust, and has not identified an enforceable benefit, right or protections that strangers to the Trust, such as himself, may hold.**

This court is satisfied, therefore, that the plaintiff is at best an incidental beneficiary without any authority to assert claims or defenses arising from the PSA. **Defendant's contention that the Note and beneficial interest in the mortgage were properly transferred into the Trust according to the terms of the PSA need not be addressed, as any challenge or defense based upon the PSA is not properly before this court.** As the plaintiff has failed to challenge the validity of the assignments on other grounds in his Complaint, [\[Note 22\]](#) his lack of standing is deemed dispositive by this court.

B. Count III

As a remedy for the alleged faulty foreclosure, plaintiff requests a preliminary and permanent injunction against defendant. In his request for an injunction, plaintiff states that the foreclosure was based on what upon information and belief is a faulty assignment of the note and mortgage,

[[Note 23](#)] that plaintiff will suffer irreparable harm if the foreclosure sale is allowed to stand, has a likelihood of success on the merits, and that the harm to plaintiff outweighs any potential harm that defendant may suffer if an injunction is granted. Given the disposition of Counts I and II by this court, this court is satisfied that the request for relief under Count III, has been rendered moot.

Conclusion

In light of the foregoing discussion, the court concludes that the plaintiff lacks standing to challenge the assignments of the Mortgage and Note under the PSA.

Accordingly, it is hereby

ORDERED that the defendant's Motion for Summary Judgment is hereby ALLOWED.

SO ORDERED.

Judgment to issue accordingly.

FOOTNOTES

[[Note 1](#)] Hereinafter Deutsche Bank.

[[Note 2](#)] Complaint, ¶¶ 15-22.

[[Note 3](#)] See Docket Entry Allowing in Part and Denying in Part Defendant's Motion to Dismiss.

[[Note 4](#)] See Deutsche Bank National Trust Company's Motion for Summary Judgment.

[[Note 5](#)] Affidavit of Charles Boyle in Support of Motion for Summary Judgment Pursuant to Rule 56 of Deutsche Bank National Trust Company (the Affidavit) Exhibit (Ex.) A.

[[Note 6](#)] Affidavit Ex. B.

[\[Note 7\]](#) Id.

[\[Note 8\]](#) See Affidavit Ex. C. Under the PSA IndyMac was the servicing agent for the Mortgage. Id.

[\[Note 9\]](#) See Affidavit ¶6. The transfer of the beneficial rights was noted on September 14, 2006 in MERS. Affidavit Ex. D.

[\[Note 10\]](#) Affidavit ¶6.

[\[Note 11\]](#) Affidavit ¶8.

[\[Note 12\]](#) See 12 U.S.C. ¶1821(d); Affidavit ¶9.

[\[Note 13\]](#) Affidavit Ex. E.

[\[Note 14\]](#) Id.

[\[Note 15\]](#) Affidavit ¶12.

[\[Note 16\]](#) Affidavit Ex. F.

[\[Note 17\]](#) Affidavit Ex. G.

[\[Note 18\]](#) Id.

[\[Note 19\]](#) Affidavit Ex. I.

[\[Note 20\]](#) Id. The Court notes that Plaintiff does not challenge the correctness of the foreclosure process itself, in terms of notice requirements or otherwise, so its review of the foreclosure is strictly limited to the enunciated issues in Plaintiff's Complaint.

[\[Note 21\]](#) Real Estate Mortgage Investment Conduit.

[\[Note 22\]](#) To the extent that the plaintiff alleges that the mortgage was improperly assigned because the name of the Mortgage assignee was not IndyMac or IndyMac Federal, this court finds the assignments to have been proper as the FDIC receiver stepped into the shoes of the failed banks by operation of law and was entitled to take over the assets of and operate the insured depository institution. See 12 U.S.C. 1821(2) (B) (i). Therefore, Deutsche Bank held the mortgage as of June 12, 2009, significantly prior to

the foreclosure sale which occurred on March 25, 2010. See U.S. Bank Nat'l Ass'n v. Ibanez, [458 Mass. 637](#) , 648 (2011).

Furthermore, to the extent that the plaintiff challenges the assignment of the Note into the Trust, the foreclosure sale occurred prior to June 22, 2012, and therefore whether Deutsche held the Note on the date of foreclosure is immaterial when considering the legality of the foreclosure. See Eaton v. Fed. Natl Mortg. Assoc., [462 Mass. 569](#) , 571 (2012). ([W]e exercise our discretion to treat the construction announced in this decision as a new interpretation of the relevant statute, only to apply to foreclosure under the power of sale where statutory notice is provided after the date of this decision.) The plaintiff's arguments to the contrary are, therefore, without merit.

Any arguments plaintiff raises as to the propriety of the signature on the first assignment likewise deserve no additional consideration. The Massachusetts statute regarding mortgage assignments requires that the assignment be executed before a notary public, by a person purporting to hold a position such as vice president, secretary or assistant secretary of the entity that holds record title of the mortgage. G.L. c. 183 54B. Even if a signatory lacks authority, an assignment may still be binding under Massachusetts law if the signatory purports to be an officer of the entity holding title to the mortgage and the assignment was executed before a notary public. In the present case, the Complaint does not allege a failure to comply with the requirements of Mass. Gen. Laws c. 183, 54B, but only that the signatory lacked authority, without more. Any and all other claims the plaintiff may have raised in argument have been considered by the court and found to be without merit.

[\[Note 23\]](#) Complaint, ¶20.

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