

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

WELLS FARGO BANK, N.A., AS TRUSTEE
FOR THE MASTR ASSET BACKED SECURITIES
TRUST 2007-NCW MORTGAGE PASS-
THROUGH CERTIFICATES SERIES 2007-NCW,

Appellant,

v.

Case No. 5D18-733

GRACE STEPHENSON AND TIMACUAN
COMMUNITY SERVICES ASSOCIATION, INC.,

Appellees.

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Opinion filed August 2, 2019

Appeal from the Circuit Court
for Seminole County,
Jessica J. Recksiedler, Judge.

David Rosenberg, Cynthia L. Comras, and
Jarrett E. Cooper, of Robertson, Anschutz
& Schneid, P.L., Boca Raton, for Appellant.

Nicholas A. Shannin, of Shannin Law Firm,
P.A., Orlando, for Appellee, Grace
Stephenson.

No Appearance for Appellee, Timacuan
Community Services Association, Inc.

COHEN, J.

Wells Fargo Bank, N.A., as Trustee for the MASTR Asset Backed Securities Trust
2007-NCW Mortgage Pass-Through Certificates Series 2007-NCW (“Wells Fargo”),

appeals the order dismissing its amended foreclosure complaint against Grace Stephenson without leave to amend and the order denying its motion for rehearing. On appeal, Wells Fargo argues that the trial court erred in dismissing its action because it sufficiently alleged its standing as the holder of the blank-indorsed note. We agree and reverse.

In May 2014, Wells Fargo filed its initial foreclosure complaint against Stephenson and her husband, Gene (collectively, “the Stephensons”). It alleged that it was the holder of the operative note and mortgage via transfer and that the Stephensons defaulted on payments since September 2011. It attached several documents in support, including: a copy of the note Gene executed in February 2007 payable to New Century Mortgage Corporation (“New Century”); a copy of an undated, blank indorsement from New Century; a certification of possession of the original note; and an assignment of mortgage to “Wells Fargo Bank, N.A., as Trustee for the Certificate Holders of MASTR Asset-Backed Securities Trust 2007-NCW, Mortgage Pass Through Certificates, Series 2007-NCW.” The Stephensons moved to dismiss the action based on the discrepancy between Wells Fargo’s name as presented in the complaint versus the assignment of mortgage. The trial court granted the Stephensons’ motion and dismissed the complaint with leave to amend.

With Stephenson’s agreement,¹ Wells Fargo filed its amended foreclosure complaint in August 2017. It again alleged that it was a holder and possessed the blank-indorsed note at issue. It attached a copy of the note and the blank indorsement, as well as a certification of possession of the original note. It also attached a corrective

¹ Gene passed away during the pendency of the case below, such that Grace proceeded individually.

assignment of mortgage. Stephenson again moved to dismiss based upon the discrepancy between Wells Fargo's name in the complaint versus the mortgage assignment. Wells Fargo responded in opposition, contending that it sufficiently alleged its standing as the holder of the blank-indorsed note. The trial court granted Stephenson's motion and dismissed the amended complaint without leave to amend. It found that Wells Fargo lacked standing based on the mortgage assignment, and it believed the issue could not be cured.

Wells Fargo timely moved for rehearing. It argued that the court erred in granting Stephenson's motion to dismiss because it should have taken the allegations regarding its status as holder of the blank-indorsed note as true. It maintained that any minor discrepancy in its name between the complaint and mortgage assignment was not dispositive of its standing. The court denied the motion, and Wells Fargo timely appealed.

The operative complaint alleged that Wells Fargo, as a trustee, held the blank-indorsed note and included a certification of possession of the original note, as well as a copy of a blank indorsement. Taken as true, such was sufficient to illustrate standing as a holder to overcome Stephenson's motion to dismiss. See Bonafide Props., LLC v. E-Trade Bank, 208 So. 3d 1279, 1281 (Fla. 5th DCA 2017); Fox v. Prof'l Wrecker Operators of Fla., Inc., 801 So. 2d 175, 178 (Fla. 5th DCA 2001). The assignment of mortgage, which Stephenson heavily relied upon below and on appeal, was not relevant to this allegation, nor were the slight variations in Wells Fargo's name. See Wilmington Sav. Fund Soc'y, FSB, v. Louissaint, 212 So. 3d 473, 475–46 (Fla. 5th DCA 2017); Bank of N.Y. Mellon Tr. Co., Nat'l Ass'n v. Ginsberg, 221 So. 3d 1196, 1197 (Fla. 4th DCA 2017).

We agree with our sister court that to prove standing, a plaintiff is not required to identify or prove the trust on whose behalf the plaintiff acts. Ginsberg, 221 So. 3d at 1197.

The fact that the trust identified in the complaint is somewhat different from the trust identified in the mortgage assignment does not create a defect in standing as a holder of the note that can be resolved on a motion to dismiss.

REVERSED and REMANDED.

GROSSHANS, J., and ROBERSON, E.C., Associate Judge, concur.