

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL CASE NO: 09-6762-CI-15

DEUTCH BANK NATIONAL TRUST COMPANY AS
INDENTURE TRUSTEE FOR AMERICAN HOME
MORTGAGE INVESTMENT TRUST 2007-1, MORTGAGE-
BACKED NOTES AND GRANTOR TRUST CERTIFICATES,
SERIES 2007-1,

Plaintiff,

vs.

PEDRO PEREZ, et al.,

Defendants.

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

This cause came on before the court upon the Motion to Dismiss filed by Defendant, the court having reviewed same as well as the court file finds as follows:

No evidentiary issues are presented by the Motion to Dismiss and the court is thus able to rule upon it without hearing.

The court has judicial authority over real property based on *in rem* jurisdiction. Specifically, it has jurisdiction over the class of cases to which this case belongs as defined by Article V, Section 5(b) of the Florida Constitution as implemented by Section 26.012(2)(g), Fla. Stat. *Aledex Corp. v. Nachon Enter., Inc.*, 641 So.2d 858 (Fla. 1994). It also has jurisdictional authority over the real property in question as it is situated within the Sixth Judicial Circuit. *Hammond v. DSY Developers, LLC.*, 951 So.2d 985 (Fla. 2nd DCA 2007).

Plaintiff's Complaint contains all of the necessary allegations to state a cause of action for foreclosure which are the existence of a duty or contractual obligation which has been breached and has caused damage.

Plaintiff's Complaint contains an allegation that Plaintiff has performed all conditions precedent and it is sufficient to generally aver that all conditions precedent have been performed or have occurred. *Florida Rule of Civil Procedure 1.120(c)*.

For the purposes of passing on a motion to dismiss, the court must assume that all facts alleged in the complaint are true. And in analyzing a motion to dismiss, the court must confine itself strictly to the allegations within the four corners of the complaint. *Temples v. Fla. Indus. Constr.*, 310 So.2d 326 (Fla. 2d DCA 1975)

Failure of the Plaintiff to attach a copy of the Note to the Complaint is not a sufficient basis for dismissal of the action. A party is entitled to prove the existence of a contract at trial and a case should not be dismissed when a note is not attached to the Complaint. *National Loan Investors v. Joymar Assoc.*, 767 So.2d 549 (Fla. 3rd DCA 2000); *Amikder v. Mid-Century Ins. Co.*, 398 So.2d 974 (Fla. 1st DCA 1981); *Helton v. Gunderson*, 802 So.2d 1152 (Fla. 3rd DCA 2001).

There is no requirement of a written assignment or a recorded assignment in maintaining a foreclosure action. *WM Specialty Mortgage, LLC v. Salomon*, 874 So.2d 680 (Fla. 4th DCA 2004); *Chem. Residential Mortgage v. Rector*, 742 So.2d 300 (Fla. 1st DCA 1998). Further, a written assignment can take place after the foreclosure action is filed so long as equitable assignment occurred prior to the lawsuit. *WM Specialty Mortgage LLC*, *id.* and *Johns v. Gillian*, 134 Fla. 575 (Fla. 1938).

The fact that Plaintiff is not named as mortgagee in the mortgage and note is not a basis for dismissal of the action. An assignee of a mortgage has the same status as if named in the original mortgage. *Foster v. Foster*, 703 So.2d 1107 (Fla. 2nd DCA 1997.)

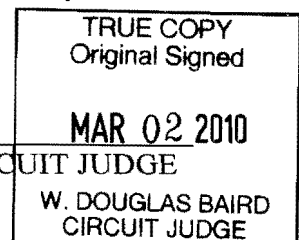
Plaintiff has alleged that it is the holder of the mortgage note. Being the holder of a negotiable instrument is all that is necessary for a party to have standing to enforce it and the mortgage note is a negotiable instrument as defined by Florida Statute 673.1041 (1)(c). *Mason v. Rubin*, 727 So.2d 283 (Fla. 4th DCA 1999).

Plaintiff's nominee has standing to maintain a foreclosure action. *Mortgage Elec. Registration Systems, Inc. v. Azize*, 965 So.2d 151 (Fla. 2nd DCA 2007); *Mortgage Electronic Registration Systems, Inc. v. Revoredo*, 955 So.2d 33 (Fla. 3rd DCA 2007); *Philogene v. ABN AMRO Mortgage Group, Inc.*, 948 So.2d 45 (Fla. 4th DCA 2006.)

WHEREFORE, the Motion to Dismiss is DENIED. The Defendant shall have 20 days from the date of this order to file an answer to the complaint.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida
this ____ day of March, 2010

W. DOUGLAS BAIRD, CIRCUIT JUDGE



Copies to:

Counsel/parties of record