

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: April 1, 2013)

<b>SILVERIO PARRA</b>	:	
	:	
<b>V.</b>	:	<b>C.A. No. PC 2011-1828</b>
	:	
<b>MORTGAGE ELECTRONIC</b>	:	
<b>REGISTRATION SYSTEMS, INC.;</b>	:	
<b>AEGIS LENDING, INC.; OCWEN</b>	:	
<b>LOAN SERVICING, LLC; AND</b>	:	
<b>U.S. BANK, NA, AS TRUSTEE</b>	:	
<b>FOR THE REGISTERED HOLDERS</b>	:	
<b>OF AEGIS ASSET BACKED</b>	:	
<b>SECURITIES TRUST, MORTGAGE</b>	:	
<b>PASS-THROUGH CERTIFICATES</b>	:	
<b>SERIES 2005-5</b>	:	

**DECISION**

**RUBINE, J.** Before this Court is Defendants’, Mortgage Electronic Registration Systems, Inc. (MERS), Ocwen Loan Servicing, LLC (Ocwen), U.S. Bank, NA, as Trustee for the Registered Holders of Aegis Asset Backed Securities Trust, Mortgage Pass-Through Certificates Series 2005-5 (U.S. Bank) (collectively, “Defendants”), Motion for Summary Judgment pursuant to Super. R. Civ. P. 56.<sup>1</sup> Plaintiff filed a declaratory judgment action petitioning this Court to quiet title to certain real property located at 48-50 Union Avenue, Providence, Rhode Island (the “Property”). Plaintiff is challenging the validity of the foreclosure sale of the Property conducted by Ocwen, as servicer for U.S. Bank, on April 9, 2009. Plaintiff further challenges the validity of the title acquired by U.S. Bank as the purchaser at the allegedly invalid foreclosure sale.

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<sup>1</sup> Defendant Aegis Lending, Inc. is not a party to this Motion.

## I

### FACTS & TRAVEL

The record reflects that on October 5, 2005, Plaintiff executed an adjustable rate note (the “Note”) in favor of lender Aegis Lending Corporation (Aegis) for \$275,000. (Myers Aff. ¶ 2.) Following the execution of the Note, Aegis endorsed the Note in blank and subsequently transferred possession of the Note to U.S. Bank. (Myers Aff. ¶ 6.)<sup>2</sup>

To secure the Note, Plaintiff contemporaneously executed a mortgage (“Mortgage”) on the Property. (Myers Aff. ¶ 3; Compl. Ex. 2.) The Mortgage designates Aegis as the “Lender” and it further designates MERS as “mortgagee” as well as “nominee for Lender and Lender’s successors and assigns.” Id. at 1. In addition, the Mortgage provides that “Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender’s successors and assigns) and to the successors and assigns of MERS, with Mortgage Covenants upon the Statutory Condition and with the Statutory Power of Sale.” Id. at 2. The Mortgage was recorded in the land evidence records of the City of Providence on October 12, 2005. (Compl. Ex. 2.) Thereafter, MERS, as mortgagee and as nominee for Aegis, assigned the Mortgage to U.S. Bank. (Myers Aff. ¶ 5; Compl. Ex. 3.)

Ocwen acted as servicer of the Note and Mortgage on behalf of U.S. Bank. (Myers Aff. ¶ 7.) Plaintiff then defaulted under the Note and Mortgage by failing to make timely payments; thus, Ocwen commenced foreclosure proceedings on behalf of U.S. Bank. (Myers Aff. ¶ 8.) In order to avoid foreclosure, Plaintiff executed a

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<sup>2</sup> While Plaintiff avers that the copy of the Note submitted by Defendants is not true and accurate, Plaintiff has failed to provide a reason for this belief, nor produce what he believes is the operative note.

forbearance agreement with Ocwen wherein Plaintiff agreed to make certain payments in order to have the pending foreclosure sale postponed. (Myers Aff. ¶ 9; Defs.' Mot. Summ. J. Ex. E.) Plaintiff subsequently defaulted under the terms of the forbearance agreement, and Ocwen again commenced foreclosure proceedings on behalf of U.S. Bank. (Myers Aff. ¶ 10.) By certified mail, Ocwen sent written notice of default, acceleration, and mortgagee's right to foreclose to Plaintiff on November 15, 2008, and January 16, 2009. (Myers Aff. ¶ 11; Defs.' Mot. Summ. J. Ex. F.) On February 12, 2009, Ocwen sent by certified mail, return receipt requested, written notice whereby Ocwen notified Plaintiff of the time and place of the foreclosure sale. (Myers Aff. ¶ 12; Defs.' Mot. Summ. J. Ex. G.) After providing due notice to Plaintiff, the borrower/mortgagor, Ocwen, as servicer for U.S. Bank, foreclosed on the Property on April 9, 2009. (Myers Aff. ¶ 13.) U.S. Bank was the successful bidder at the foreclosure sale, purchasing the Property for \$65,100. (Myers Aff. ¶ 14.)

U.S. Bank, as purchaser of the Property at the foreclosure sale, commenced three separate eviction actions in the Sixth Division District Court (District Court) against Plaintiff and Plaintiff's two tenants residing at the Property. On April 6, 2011, Plaintiff and Plaintiff's tenants stipulated to judgment of possession in favor of U.S. Bank in all three eviction actions, and on April 27, 2011, an execution with respect to the judgments issued in favor of U.S. Bank in the District Court. Id. Subsequently, both tenants appealed the stipulated judgment, however, Plaintiff did not. On May 9, 2011, hearings were held with respect to the tenants' appeals and the Court found that the issue of ownership was moot as Plaintiff failed to file an appeal. Id.

On April 5, 2011, the day before Plaintiff stipulated to judgment in the District Court, Plaintiff filed the instant Complaint seeking declaratory and injunctive relief. Defendants then filed this Motion for Summary Judgment pursuant to Rule 56. At the hearing, the parties agreed to waive oral argument and granted Plaintiff additional time to object to Defendants' Motion. The Court then took this matter under advisement.

## II

### STANDARD OF REVIEW

The Court will only grant a motion for summary judgment if ““after viewing the [admissible] evidence in the light most favorable to the nonmoving party,”” Jessup & Conroy, P.C. v. Seguin, 46 A.3d 835, 838 (R.I. 2012) (quoting Empire Acquisition Group, LLC v. Atlantic Mortgage Co., 35 A.3d 878, 882 (R.I. 2012)), “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as matter of law.” Super. R. Civ. P. 56(c).

The nonmoving party, in this case the Plaintiff, ““has the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions.”” Liberty Mut. Ins. Co. v. Kaya, 947 A.2d 869, 872 (R.I. 2008) (quoting D’Allesandro v. Tarro, 842 A.2d 1063, 1065 (R.I. 2004)). To meet this burden, “[a]lthough an opposing party is not required to disclose in its affidavit all its evidence, he [or she] must demonstrate that he [or she] has evidence of a substantial nature, as distinguished from legal conclusions, to dispute the moving party on material issues of fact.” Jessup &

Conroy, P.C., 46 A.3d at 839 (quoting Bourg v. Bristol Boat Co., 705 A.2d 969, 971 (R.I. 1998)) (alteration in original).

### III

#### ANALYSIS

##### Res Judicata

Defendants aver that Plaintiff's claims could have been raised and adjudicated in an appeal to this Court from the District Court eviction action, and thus, Plaintiff's claims are barred by the doctrine of res judicata. Specifically, Defendants aver that all of Plaintiff's claims involve ownership of the Property and the validity of the foreclosure sale and that these issues could have been raised in an appeal of the District Court's judgment for possession in favor of U.S. Bank. Having failed to appeal, the District Court Judgment became final.

This Court has observed that it is in the context of an appeal from a District Court judgment of possession that the transfer of title by way of a foreclosure deed is often litigated. A common sequence of events is that a homeowner/borrower/mortgagor defaults in payment of his or her mortgage debt. That default leads the mortgagee to foreclose. Then, the mortgagee becomes the successful bidder at the foreclosure sale, and records a foreclosure deed. Undaunted, the mortgagor refuses to vacate the property or leave the premises and becomes a tenant at sufferance in the home, the record title of which is recorded in the name of the mortgagee. See G.L. 1956 §§ 34-18.1-2 and 34-18.1-3; see also Mathison v. Griffin, 76 R.I. 16, 17, 67 A.2d 833, 834 (1949) (owner of an estate who remains in possession of premises after his or her estate ends becomes a tenant at sufferance); Noorigian v. Greenfield, 52 R.I. 33, 34, 156 A. 515, 516 (1931)

(tenant in possession of premises after foreclosure sale is a tenant by sufferance). Finally, the mortgagee, who believes he holds title by means of the foreclosure deed, sends a notice of eviction to the mortgagor. If after such notice of eviction the mortgagee remains in possession of the subject property, the mortgagee commences an eviction action in accordance with § 34-18.1-2. If the mortgagor, who is now a tenant by sufferance, asserts plaintiff's lack of title as a defense, and the District Court believes that it lacks subject matter jurisdiction to consider that defense, the mortgagor/tenant by sufferance will stipulate to judgment and take an appeal to the Superior Court where the question of the mortgagee's title may be determined de novo. In that manner, the mortgagor/tenant by sufferance may raise issues concerning the validity of the foreclosure sale, and the title derived therefrom.

Defendants point to Garganta v. Mobile Vill., Inc. for guidance. See 730 A.2d 1 (R.I. 1999). Garganta v. Mobile Vill., Inc. was a retaliatory eviction action that followed a District Court eviction action involving the same parties. See id. at 2. In Garganta, a tenant rented space in a mobile home park for his mobile home. 730 A.2d at 2. The mobile home park filed an eviction action in the District Court against the tenant for non-payment of rent. Id. The District Court entered judgment in the mobile home park's favor and issued an execution for trespass and eviction against the tenant. Id. The tenant failed to appeal that judgment, and later filed a separate action in Superior Court for retaliatory eviction. Id. The Superior Court granted the defendant's motion to dismiss that action, and the Rhode Island Supreme Court affirmed stating that the tenant's "claims are barred by the doctrine of res [j]udicata as claims that could have been raised

in the District Court action or in any appeal therefrom to the Superior Court.” Id. at 4. This Court finds that the same outcome should govern the present matter.

“Res judicata, or claim preclusion, prohibits the relitigation of all issues that were tried *or might have been tried* in the original suit.” Bossian v. Anderson, 991 A.2d 1025, 1027 (R.I. 2010) (emphasis added) (internal quotation marks omitted). More specifically, “[c]laim preclusion refers to the effect of a judgment in foreclosing litigation of a matter that never has been litigated, because of a determination that it should have been advanced in an earlier suit.” Plunkett v. State, 869 A.2d 1185, 1188 (R.I. 2005). “[T]he doctrine of res judicata serves as an absolute bar to a second cause of action where there exists identity of the parties, identity of issues, and finality of judgment in an earlier action.” Bossian, 991 A.2d at 1027.

## A

### **Identity of Parties**

In Rhode Island, the application of res judicata does not require the identical arrangement of identical parties. Rather, all that is required for res judicata to have effect in a subsequent action is that the parties to the second action be the same as or in privity with the parties to the first action. See Duffy v. Milder, 896 A.2d 27, 36 (R.I. 2006). Moreover, “[p]arties are in privity when there is a commonality of interest between the [] entities and when they sufficiently represent each other’s interests.” Id. (internal quotation marks omitted).

This matter involves the same parties that were involved in the original eviction action in District Court—Plaintiff and U.S. Bank. This suit also involves additional parties—Ocwen and MERS—not involved in the original eviction action, but which are

in privity with U.S. Bank as they share a common interest in defending the validity of the foreclosure sale, resulting in the change of ownership of the Property. Accordingly, the Court finds that identity of parties exists for purposes of res judicata.

## **B**

### **Identity of Issues**

Our Supreme Court follows the “transactional” rule to discern the identity of issues between the original action and the action sought to be precluded by res judicata. Bossian, 991 A.2d at 1027. “The transactional rule provides that all claims arising from the same transaction or series of transactions which *could have properly been raised* in a previous litigation are barred from a later action.” Id. (emphasis added) (internal quotation marks omitted). Further, a transaction is comprised of facts that are related in terms of “time, space, origin, or motivation” and that form a convenient trial unit reflecting the parties’ expectations. Plunkett, 869 A.2d at 1189 (quoting Restatement (Second) of Judgments § 24).

In the present matter, the facts giving rise to Plaintiff’s claim are the same facts that were involved in the original eviction action, namely facts concerning ownership of the Property resulting from the foreclosure sale. Furthermore, Plaintiff could have raised the invalidity of the foreclosure sale, and thus the invalidity of the foreclosure deed, to lawfully pass title to the foreclosing bank in the District Court, or in any appeal following entry of judgment of possession, as it would affect the Plaintiff’s standing to commence

an eviction action.<sup>3</sup> Thus, identity of issues exist between this matter and the original eviction action in the District Court.

## C

### **Finality of Judgment**

The third element of res judicata is also satisfied because the judgment for possession, and the execution for trespass and eviction issued therefrom, became final when Plaintiff (the defendant in the eviction action) failed to appeal the judgment of the District Court. Notably, at least one other court has held that res judicata applied to a borrower's quiet title action against MERS and MERS' assignee where there had been a previous judgment for possession in favor of MERS' assignee in an eviction action. See Middlebrook v. Mortg. Elec. Registration Sys., Inc., No. 11-10612, 2011 WL 6934233, at \*4 (E.D. Mich. Dec. 30, 2011) (unpublished). In view of the conclusion that res judicata bars the claims asserted herein, it becomes unnecessary to consider Plaintiff's remaining contentions that genuine issues of material fact exist.

## IV

### **CONCLUSION**

Plaintiff's claims are precluded as a matter of law pursuant to the doctrine of res judicata. Thus, Defendants are entitled to judgment as a matter of law. Defendants' Motion for Summary Judgment is granted. Counsel for the prevailing party shall submit an appropriate order for entry.

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<sup>3</sup> As a matter of law, the Superior Court has exclusive jurisdiction over declaratory judgment and quiet title actions. See Sections 8-2-13; 9-30-1; 34-16-3.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

**TITLE OF CASE:** Silverio Parra v. Mortgage Electronic Registration Systems, Inc.; Aegis Lending, Inc.; Ocwen Loan Servicing, LLC; and U.S. Bank, NA, as Trustee for the Registered Holders of Aegis Asset Backed Securities Trust, Mortgage Pass-Through Certificates Series 2005-5

**CASE NO:** PC 2011-1828

**COURT:** Filed in Kent Superior Court

**DATE DECISION FILED:** April 1, 2013

**JUSTICE/MAGISTRATE:** Rubine, J.

**ATTORNEYS:**

For Plaintiff: Corey Allard, Esq.  
George Babcock, Esq.

For Defendant: James P. Marusak, Esq.