

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: February 13, 2015)

113-115 Bellingham Street Realty :  
 Redemption Co., :  
 Plaintiff :  
 :  
 v. :  
 :  
 West End Trust 2012-1, :  
 Defendant/Third Party Plaintiff :  
 :  
 v. :  
 :  
 David J. Gregoire, :  
 Third Party Defendant :

C.A. No. PC-14-1423

**DECISION**

**RUBINE, J.** Before this Court is Defendant West End Trust 2012-1’s (Defendant) Motion for Summary Judgment pursuant to Rule 56 of the Rhode Island Superior Court Rules of Civil Procedure. Plaintiff, 113-115 Bellingham Street Realty Redemption Company (Plaintiff), filed a declaratory judgment action petitioning this Court to quiet title to certain real property located at 113-115 Bellingham Street, Woonsocket, Rhode Island. Previous to foreclosure, Plaintiff was the record owner of said property. This action arises out of Plaintiff’s challenge to the validity of Defendant’s mortgage interest in the property, which Defendant acquired via assignment, and the foreclosure which occurred pursuant to that mortgage

**I**

**Facts and Travel**

David J. Gregoire (Gregoire or Borrower) executed a note in favor of Equity One, Inc. d/b/a Equity One Mortgage Company (Equity One) for \$262,600 on April 13, 2007. To secure the note, Borrower contemporaneously executed a mortgage on certain real property located at

113-115 Bellingham Street in Woonsocket, Rhode Island. Gregoire was the borrower and original mortgagor relative to the mortgage. The mortgage names Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Equity One and provides MERS and its “successors and assigns” with the statutory power of sale. The mortgage was executed on April 13, 2007 and recorded on April 16, 2007 in Woonsocket at Book 1648 on Page 270. On August 3, 2012, Bayview Loan Servicing executed an assignment of this mortgage in favor of Bayview Opportunity Master Fund. Also, on August 3, 2012, Bayview Opportunity Master Fund executed an assignment of mortgage in favor of Defendant. It was not until April 16, 2013, however, that MERS executed an Assignment of Mortgage to Bayview Loan Servicing. On April 22, 2013, all three Assignments of Mortgage were recorded together in the Land Records in Woonsocket at Book 2028, starting on Page 44. The Defendant points out that on November 30, 2010—years before any of the assignments—Bayview Loan Servicing executed a loan modification agreement with Borrower.

It is undisputed that Borrower defaulted on the terms of the loan obligation in September 2013. Defendant sent Borrower a Notice of Default on October 21, 2013, including information of applicable cure periods. After Borrower failed to cure, Defendant sent Borrower a Notice of Default and Acceleration. On March 18, 2014, Gregoire conveyed to Plaintiff the mortgaged property by quit claim deed. At the time of the transfer, the mortgage in favor of Bayview Loan Servicing, as well as the mortgage assignment, were of record; accordingly, the transferee took the property subject to the mortgage and mortgage assignment. Plaintiff subsequently brought

action in this Court seeking declaratory judgment against Defendant.<sup>1</sup> Defendant contends they are now entitled to foreclose and move for summary judgment in Defendant's favor.

In support of their Motion for Summary Judgment, Defendant contends that they are entitled to judgment as a matter of law because (1) it is undisputed that Defendant is the mortgagee by assignment; (2) as a matter of law, Defendant is able to foreclose on the property in accordance with statutory power of sale as contained in the assigned mortgage instrument; (3) as a matter of law, the Plaintiff lacks standing to challenge the Assignments of Mortgage since the Plaintiff was not a party interested in the assignment, as it was neither the assignor or the assignee. In support of these arguments, Defendant submits the affidavit of Ana G. Castro, asset manager for Defendant, authenticating several exhibits. Through Ms. Castro's notarized affidavit and exhibits attached thereto, the Defendants establish the travel of the note from Bayview Loan Servicing to Bayview Opportunity Master Fund to Defendant. The Castro affidavit, however, fails to establish whether Bayview Loan Servicing was actually the holder of the mortgage at the time it transferred the mortgage to Bayview Opportunity Master Fund. Namely, the assignment from MERS to Bayview Loan Servicing occurred after the other two assignments, and this apparent break in the chain is not explained by any other documentation provided by Ms. Castro. Plaintiff objects to Defendant's Motion and contends that this Motion for Summary Judgment should be denied because of this break in the chain of assignments. Moreover, Plaintiff asserts that the assignment to Defendant is void as the trust was closed at the time of the assignment.

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<sup>1</sup> Defendant named the Borrower as a Third-Party Defendant as Borrower is apparently the owner of Plaintiff.

## II

### Standard of Review

It is well settled that when deciding a motion for summary judgment, “the Court views the evidence in the light most favorable to the nonmoving party.” Mruk v. Mortg. Elec. Registration Sys, Inc., 82 A.3d 527, 532 (R.I. 2013) (quoting Beauregard v. Gouin, 66 A.3d 489, 493 (R.I. 2013)). “Summary judgment is appropriate when no genuine issue of material fact is evident from ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any,’ and the motion justice finds that the moving party is entitled to prevail as a matter of law.” Id. (quoting Swain v. Estate of Tyre, 57 A.3d 283, 288 (R.I. 2012)). “The nonmoving party bears 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.” Id. (quoting Daniels v. Fluette, 64 A.3d 302, 304 (R.I. 2013)).

## III

### Analysis

Defendant argues that Plaintiff lacks standing to challenge the validity of the assignments in this case because Plaintiff is not a party to the corresponding assignment contracts. Defendant also contends that no exception may apply to allow Plaintiff standing as it is a commercial mortgagor, not a private residential mortgagor. At oral argument, Plaintiff conceded that it was a commercial mortgagor, not a private residential mortgagor.<sup>2</sup> Plaintiff, however, argues that it

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<sup>2</sup> In a supplemental brief filed after oral argument, Plaintiff attempts to blur the true identity of the Plaintiff in this case by presenting arguments why Borrower has standing. This suit was not brought by Gregoire, it was brought by Plaintiff. Furthermore, Plaintiff established in its Complaint that it received the subject property by quit claim deed from Borrower. Therefore, Plaintiff must demonstrate that Plaintiff—not Gregoire—has standing in this case.

nonetheless has standing because its allegations, if proved true, would render the assignments void. See Cruz v. Mortg. Elec. Registration Sys., Inc., No. 2012-136-M.P., 2015 WL 159059, at \*3 (R.I. Jan. 13, 2015).

“Standing is a threshold inquiry into whether the party seeking relief is entitled to bring suit.” Narragansett Indian Tribe v. State, 81 A.3d 1106, 1110 (R.I. 2014) (citing Blackstone Valley Chamber of Commerce v. Pub. Utils. Comm’n, 452 A.2d 931, 932, 933 (R.I. 1982)). “[I]n general, strangers to a contract lack standing to either assert rights under that contract or challenge its validity.” Mruk, 82 A.3d at 536. However, our Supreme Court outlined an exception to the general rule that prohibits strangers to a contract from asserting rights under that contract or challenging its validity. Id. The exception allows homeowners to challenge assignments “of mortgages on their homes to the extent necessary to contest the foreclosing entity’s authority to foreclose” based on an “invalid, ineffective, or void” assignment of mortgage. Id.; see also Cruz, No. 2012-136-M.P., 2015 WL 159059, at \*3.

Nevertheless, the exception is narrow and limited only to those situations where “private residential mortgagors [are] challenging the foreclosure of their homes” based on “invalid, ineffective, or void” assignments. Id. Specifically in developing this exception, our Supreme Court stated, “[w]e further reiterate that this exception is confined to private residential mortgagors challenging the foreclosure of their homes.” Id. Our Supreme Court recently reaffirmed the limitation of private residential mortgagors in Genao v. Litton Loan Servicing, No. 2012-127-M.P., 2015 WL 221149, at \*4 (R.I. Jan. 16, 2015). In that case, our Supreme Court held that where the property potentially being foreclosed on is operated as a business and rental property, it is commercial, and therefore the owner of such property “do[es] not fall within the narrow exception we carved out in Mruk for homeowners challenging void assignments.”

Genao, 2015 WL 221149, at \*4. There, the Court concluded, “[b]ecause the property in question is not a personal residence and Genao is not challenging the assignment as a private residential homeowner, we cannot say that he has standing to pursue his claims.” Id. Here, it is undisputed that Plaintiff is a commercial mortgagor. Therefore, the exception established in Mruk does not apply. See Genao, 2015 WL 221149, at \*4.

Plaintiff points to three foreign cases in an attempt to persuade this Court to find standing under the circumstances of this case. Specifically, Plaintiff contends that they have standing to challenge trust agreements and the validity of mortgage assignments to trusts. Plaintiff first points to Wells Fargo Bank, N.A. v. Erobo, 39 Misc. 3d 1220(A), 972 N.Y.S.2d 147 (N.Y. Sup. Ct. 2013). That case, however, is not persuasive as it does not confer standing on commercial mortgagors who are non-parties to the contract they challenge. See id. Plaintiff also cites two additional cases which hold that a borrower can challenge an assignment of borrower’s note if the defect would render the assignment void. In re Saldivar, No. 11-10689, 2013 WL 2452699, at \*1 (Bankr. S.D. Tex. June 5, 2013); Glaski v. Bank of Am., Nat’l Ass’n, 218 Cal. App. 4th 1079, 1095, 160 Cal. Rptr. 3d 449, 461 (2013). The courts in Saldivar and Glaski interpret Texas and California law, respectively, and although each deals with a private residential mortgagor, those courts do not expressly limit standing to residential mortgagors. Saldivar, 2013 WL 2452699; Glaski, 218 Cal. App. 4th 1079. Nevertheless, both Texas and California’s approaches to this standing issue are broader than that of Rhode Island. The holdings in Genao and Mruk clearly demonstrate that our Supreme Court only intended to narrowly confer standing to challenge the validity of mortgage assignments in the instance where the borrower/mortgagor is the owner of private residential property. Mruk, 82 A.3d at 536; Genao, No. 2012-127-M.P., 2015 WL 221149, at \*4. The fact that the merits of the challenge in

this instance raise an issue of whether the mortgage assignment is void—rather than voidable—is not pertinent to the threshold issue of standing. According to the holdings in Mruk and Genao, the trial court should not address the merits of the challenge if the plaintiff lacks standing to challenge the mortgage assignments. The Court must address the threshold issue of standing before it reaches the merits of the challenge.

Under Rhode Island law, only private residential mortgagors have standing to challenge a void assignment. See id. Because the Plaintiff has already conceded that it is not a private residential mortgagor, it does not have standing to challenge the assignment, regardless of the underlying allegations.

#### IV

#### **Conclusion**

Without a threshold finding of standing, Plaintiff is not entitled to seek relief, and this Court declines to review the merits of Plaintiff's claims in this case. Defendant's Motion for Summary Judgment is therefore granted.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**CASE NO:** PC-14-1423

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** February 13, 2015

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

**ATTORNEYS:**

**For Plaintiff:** Keven A. McKenna, Esq.

**For Defendant:** Jeffrey M. Thomen, Esq.