STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: July 10, 2012)

JUDDITH ESTRELLA	:	
	:	
v.	:	**C.A. No. PC 2010-6940**
	:	
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS; OCWEN LOAN SERVICING, LLC; DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR THE REGISTERED HOLDERS OF THE SOUNDVIEW HOME LOAN TRUST 2006-NLC1, ASSET BACKED CERTIFICATES, SERIES 2006-NLC1	:	

DECISION

RUBINE, J. Before the Court is Defendants' Ocwen Loan Servicing, LLC ("Ocwen"), Mortgage Electronic Registration Systems ("MERS"), and Deutsche Bank National Trust Company as Trustee for the Registered Holders of the Soundview Home Loan Trust 2006-NLC1, Asset Backed Certificates, Series 2006-NLC1 ("Deutsche Bank") (collectively, "Defendants") Motion for Summary Judgment pursuant to Rule 56 of the Rhode Island Superior Court Rules of Civil Procedure. Plaintiff Juddith Estrella ("Plaintiff") filed a verified complaint ("Complaint") seeking declaratory and injunctive relief. Through the Complaint, Plaintiff petitions this Court to quiet title to certain real property located at 40-42 Norwich Avenue, Providence, Rhode Island ("the Property") by challenging Defendant Ocwen's foreclosure on the Property on behalf of Defendant Deutsche Bank.

I

Facts & Travel

The undisputed facts as evidenced by pleadings, undisputed exhibits and affidavit of Gina Johnson are as follows: On July 28, 2006, Plaintiff executed an adjustable rate note ("Note") in favor of lender First NLC Financial Services, LLC ("First NLC") in the amount of $264,000, having borrowed that amount to purchase the Property. The Note designates First NLC as the "Lender" and provides, "I [borrower] understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the 'Note Holder.'" (Compl. Ex. 2 at 1.)

To secure the Note, Plaintiff contemporaneously executed a mortgage ("Mortgage") on the Property. The Mortgage designates MERS as "mortgagee" and "nominee for Lender and Lender's successors and assigns." (Compl. Ex. 3 at 1.) The following language appears in the Mortgage deed, "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 3. The Mortgage deed further provides

> "Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender." Id.

The Mortgage was duly executed and properly recorded in the land evidence records of the City of Providence.

Thereafter, First NLC endorsed the Note in blank and subsequently transferred the Note to Deutsche Bank. (Johnson Aff. ¶ 5.) Ocwen acted as servicer of the loan on behalf of Deutsche Bank. (Johnson Aff. ¶ 6.)

On November 19, 2007, MERS, as mortgagee and nominee for the original lender First NLC and First NLC's successors and assigns, assigned its interest in the Mortgage to Deutsche Bank. (Johnson Aff. ¶ 4.) See Compl. Ex. 4. Thus, as of November 19, 2007, Deutsche Bank held both the Note and the Mortgage.

Plaintiff fell into arrears on the obligations owed under the Note and Mortgage. (Johnston Aff. ¶ 7.) As a result, Ocwen, as servicer for Deutsche Bank, commenced foreclosure proceedings, providing notice to Plaintiff. (Johnson Aff. ¶ 8.) On October 27, 2010, Ocwen foreclosed on the Property. An unidentified third party[1] prevailed as the successful bidder at the foreclosure sale. (Johnson Aff. ¶ 9.) After receiving notice of the pending matter, the third party attempted to rescind his purchase at the foreclosure sale, demanding a refund of his deposit. (Johnson Aff. ¶ 10.)

Defendants have now filed this Motion for Summary Judgment pursuant to Rule 56, averring that there exist no genuine issues of material fact and MERS had the authority as the original mortgagee, and pursuant to statutory authority, to assign the Mortgage interest to Deutsche Bank, thus granting Deutsche Bank the statutory authority to exercise the power of sale and properly foreclose on the Property upon Plaintiff's default. Plaintiff, although labeling her Memorandum "Objection to Defendants' Motion

[1] The unidentified this party is not a party to this action.

for Summary Judgment," proceeded to apply a standard of review applicable to a motion to dismiss under Rule 12, rather than the standard of review which is applicable to a motion for summary judgment under Rule 56. Accordingly, Plaintiff failed to establish the existence of a genuine issue of material fact.

II

Standard of Review

The Court will only grant a motion for summary judgment if "after reviewing the admissible evidence in the light most favorable to the nonmoving party[,]" Liberty Mut. Ins. Co. v. Kaya, 947 A.2d 869, 872 (R.I. 2008) (quoting Roe v. Gelineau, 794 A.2d 476, 481 (R.I. 2002)), "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 "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., 947 A.2d at 872 (quotation omitted). 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." Bourg v. Bristol Boat Co., 705 A.2d 969, 971 (R.I. 1998) (quotation omitted).

III

Analysis

Since the facts herein are nearly identical to the facts in Payette v. Mortgage Electronic Registration Systems, and the Mortgage executed by Plaintiff contains the same operative language as the mortgage considered in Payette, and the parties in their memoranda fail to offer any material distinctions between the undisputed facts and the facts relied upon in the Court's earlier determination of similar cases, this Court will incorporate and adopt the reasoning set forth in Payette. No. PC 2009-5875, 2011 WL 3794701 (R.I. Super. Aug. 22, 2011) (Rubine, J.). In that case, this Court determined that according to undisputed material facts the defendants were entitled to judgment as a matter of law. The same outcome obtains in this case.

The undisputed material facts, as evidenced by the provisions of the undisputed documents and affidavit of Gina Johnson are as follows: Plaintiff executed the Note in favor of First NLC. To secure the Note, Plaintiff contemporaneously executed a Mortgage on the Property. The Mortgage designated MERS as nominee of First NLC, as well as mortgagee. Further, as mortgagee, MERS, as well as the successors and assigns of MERS, were unequivocally granted the statutory power of sale by the plain unambiguous language of the Mortgage in the Mortgage instrument as acknowledged and executed by Plaintiff as borrower and mortgagor. Thereafter, on November 19, 2007, MERS assigned its interest in the Mortgage to Deutsche Bank. The assignment was duly executed and recorded. Deutsche Bank, by way of assignment, then became the mortgagee possessing the authority under the statutory power of sale as granted in the

Mortgage. Plaintiff defaulted under the terms of the Note and Mortgage. After Plaintiff's default, Ocwen, as servicer for Deutsche Bank, the current note-holder and mortgagee, had the right and ability to exercise the statutory power of sale and properly commenced foreclosure proceedings against Plaintiff. Accordingly, Plaintiff is not entitled to clear title to the Property, thereby leaving her as the owner of record, because the foreclosure sale was lawfully noticed and conveyed. While the Court agrees with Plaintiff's assertion that G.L. 1956 § 34-16-4 grants Plaintiff standing to bring a claim to quiet title, this standing does not grant Plaintiff the right to succeed on all of her claims. Plaintiff must prove as a matter of law, and to the satisfaction of the Court, that she has a legal right to rescission of the foreclosure sale and the return of title to the Property. Plaintiff has failed to do so.

Plaintiff has failed to demonstrate by affidavit, or otherwise, that there exists a genuine issue of material fact to vary this result.[2] Furthermore, the issues presented in this matter have been previously decided by this Court. See Kriegel v. Mortgage Elec. Reg. Sys., No. PC 2010-7099, 2011 WL 4947398 (R.I. Super. Oct. 13, 2011) (Rubine, J.); see also Payette, 2011 WL 3794701; Porter v. First NLC Financial Services, No. PC 2010-2526, 2011 WL 1251246 (R.I. Super. March 31, 2011) (Rubine, J.); Bucci v. Lehman Brothers Bank, FSB, No. PC 2009-3888, 2009 WL 3328373 (R.I. Super. Aug.

[2] Although Plaintiff alleges that MERS' assignment of the Mortgage interest was not signed by an authorized representative, and further asserts that the Court must accept this fact as true, thereby rendering the assignment void as failing to be duly executed in accordance with § 34-11-1, Plaintiff has presented no evidence to demonstrate that the signature is unauthorized. See Payette, 2011 WL 3794701 at * 11 (finding the contention that MERS' assignments were executed by an unauthorized signatory to be a mere conclusion or legal opinion that was insufficient to create a genuine issue of material fact). The Court notes that this is not a motion to dismiss, and therefore, the Court does not have to accept the allegations as set forth in the Complaint as true. In opposing a motion for summary judgment, the nonmoving party "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., 947 A.2d at 872 (quotation omitted). Plaintiff, as the party opposing this Motion for Summary Judgment, has not met her burden to show there exists a genuine issue of material fact as to whether the assignment was executed in accordance with § 34-11-1.

25, 2009) (Silverstein, J.); Rutter v. Mortgage Elec. Reg. Sys., Nos. PC 2010-4756, PD 2010-4418, 2012 WL 894012 (R.I. Super. March 12, 2012) (Silverstein, J.). Accordingly, Defendants are entitled to judgment as a matter of law based on the authority of the above cited cases. In the absence of controlling authority from the Rhode Island Supreme Court, the reasoning and result of Superior Court cases on this subject represent the prevailing view of the law in Rhode Island on this topic.[3] The decisions of the Superior Court unanimously support this result. The Court hereby incorporates by reference the reasoning and authorities relied upon in those previous decisions.

IV

Conclusion

Defendants' Motion for Summary Judgment is granted. Counsel for the prevailing party shall submit an Order in accordance with this Decision.

[3] Plaintiff's reliance on authority from other jurisdictions is misplaced as these jurisdictions are not binding precedent upon the Rhode Island Superior Court. Accordingly, the Rhode Island Superior Court will continue to follow the reasoning and results of its previously determined cases.