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FEB 14 2017

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Deutsche Bank National Trust Company,)
 as Trustee on Behalf of Morgan Stanley)
 ABS Capital I Inc. Trust 2007-HE6,)
 Mortgage Pass-Through Certificates,)
 Series 2007-HE6,)
)
 Plaintiff,)
 -vs-)
)
 Robert Mantooh, Mortgage Electronic)
 Registration Systems, Inc., solely as)
 Nominee for Decision One Mortgage)
 Company, LLC, and Upper Beaver Creek)
 Homeowners Association, Inc.,)
)
 Defendant(s).)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT
 C/A No.: 2010-CP-42-2514

ORDER

- Denying Defendant Robert Mantooh's Motion To Dismiss**
- Denying Defendant Robert Mantooh's Motion to Strike**
- Granting Plaintiff's Motion to Quash Subpoenas**
- Granting Defendant Robert Mantooh's Motion to Compel**

This matter is before the Court on several motions: (1) Defendant Robert Mantooh's Motion to Dismiss pursuant to Rule 12(b)(6), SCRCPP; (2) Defendant Robert Mantooh's Motion to Disallow/Strike Corporate Assignment of Mortgage; and (3) Plaintiff's Motion to Quash Subpoenas to Third Parties. The Court hereby denies Defendant Mantooh's Motion to Dismiss and Motion to Strike and grants Plaintiff's Motion to Quash, for the following reasons:

1. Defendant Robert Mantooh's Motion to Dismiss is denied.

Defendant Robert Mantooh alleges that Plaintiff lacks standing to prosecute this lawsuit because certain assignments of mortgage upon which the Plaintiff relies are fraudulent or improperly recorded in the Spartanburg County RMC/ROD Office. Mr. Mantooh further asserts that the Plaintiff lacks standing because the original complaint was originally filed in the name of

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a 2006 trust.¹ Finally, Mr. Mantooth argues that the Plaintiff has not produced the original note and mortgage upon which it seeks to foreclose, and therefore has no standing to bring this action.

Under Rule 12(b)(6), a defendant may move to dismiss a complaint due to its "failure to state facts sufficient to constitute a cause of action." In considering a motion to dismiss under Rule 12(b)(6), a court must base its ruling solely on the allegations set forth in the complaint. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). "To have standing, a plaintiff must establish (1) prejudice from a particularized injury that is not merely a matter of general interest common to all members of the public; (2) a causal connection between the injury and the conduct complained of; and (3) a likelihood, as opposed to speculation, that the injury will be redressed by a favorable decision. *Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. South Carolina Dep't of Natural Res. & Cmty. Servs. Assocs.*, 345 S.C. 594, 600-01, 550 S.E.2d 287, 291 (2001).

Mr. Mantooth's allegations concerning the assignments of mortgage are not contained in the Complaint and therefore may not be considered when ruling upon Mr. Mantooth's Motion to Dismiss. In the Complaint, the Plaintiff alleged that it is the present holder of the note and mortgage. *See* Complaint at ¶¶ 7, 11. Plaintiff also alleges that Mr. Mantooth is in default on the note, and that Plaintiff seeks the remedy of foreclosure in order to recover damages resulting from the default. *Id.* at ¶¶ 14, 15, (2). Therefore, the Plaintiff has alleged that it has been injured by Mr. Mantooth's default and that it will obtain a recovery in the event that the Court orders foreclosure of the subject property. As such, the Plaintiff has alleged facts sufficient to support its claim, and sufficient to demonstrate standing.

Further, the Court rejects Mr. Mantooth's assertion that the Plaintiff is precluded from bringing suit because it has not produced the original note and mortgage. South Carolina law

¹ This error was subsequently corrected by the Order Amending Caption filed on March 31, 2015.

clearly provides for enforcement of duplicate instruments. *See Bank of Am., N.A. v. Draper*, 405 S.C. 214, 223, 746 S.E.2d 478, 482 (Ct. App. 2013) (affirming grant of summary judgment to lender presenting a copy of the note). Therefore, Mr. Mantooth's motion to dismiss is denied.

2. Defendant Robert Mantooth's Motion to Strike is denied.

Mr. Mantooth requests that the Court strike two assignments of mortgage from the record and the Spartanburg County RMC/ROD Office. The first is an Assignment of Mortgage recorded in in the Spartanburg County RMC/ROD Office on July 15, 2011 in Book 4479, Page 893. The second is a Corrective Corporate Assignment of Mortgage recorded in the Spartanburg County RMC/ROD Office on March 6, 2015 in Book 4948, Page 344. The corrective assignment was recorded to correct earlier errors in the 2011 assignment.

Mr. Mantooth provides no basis upon which the Court may strike the assignments from the record. He argues that the assignments are fraudulent. However, his basis for asserting the argument appears to be speculation. In any event, the Plaintiff has properly alleged that it is the holder of the subject note and mortgage, and the corrective assignment appears to support this allegation. The Court has ruled that the Plaintiff may proceed with this claim. Further, Mr. Mantooth has failed to argue any basis upon which the Court should strike these assignments from the Spartanburg County RMC/ROD record. For these reasons, Mr. Mantooth's Motion to Strike is denied.

3. Plaintiff's Motion to Quash Subpoenas to Third Parties is granted.

At Mr. Mantooth's direction, the Spartanburg County Clerk of Court issued subpoenas to nine individuals for attendance at the March 24, 2016 hearing. It appears that only one of the individuals is a South Carolina resident. Mr. Mantooth did not serve the subpoenas directly to the

individuals. Rather, he transmitted the subpoenas by regular mail to Mortgage Electronic Registration Systems, Inc. at an address in Danville, Illinois.

The subpoenas violate Rule 45, SCRCF, in several respects. First, the subpoenas are extraterritorial, and were not served directly upon the individuals through means proscribed in the South Carolina Rules of Civil Procedure. Therefore, Mr. Mantooth did not serve the subpoenas in accordance with Rules 4(d) through (j), SCRCF, as required by Rule 45(b)(1), SCRCF. Further, it is unclear why the individuals were served with the subpoena to travel great distances and attend a hearing on Mr. Mantooth's motion to dismiss. Clearly, these individuals would be required to travel more than 50 miles from their residences or places of business to attend the hearing. Therefore, the subpoenas place an undue burden on these individuals and violate Rule 45(c)(3)(A)(ii) and (iv), SCRCF. For these reasons, the Court hereby quashes the subpoenas issued by the Spartanburg County Clerk of Court to Karen Malcomson, Teddie Travers, Kathy Gohran, Michelle Black, John Kelchner, Ebony Clayborn, Joann Mote, Parkash Mann and Tracey Snyder.

4. Defendant's Motion Requesting Production of the Original Note and Mortgage is granted.

CONCLUSION

For the reasons set forth above, the Court denies Mr. Mantooth's motion to dismiss and motion strike and grants Plaintiff's motion to quash. Defendant Mantooth's motion to compel is granted.

IT IS SO ORDERED.

J. Derham Cole
Judge, Seventh Judicial Circuit

Dated this _____ day of _____, 2016
Spartanburg, SC



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SC Court of Appeals

Spartanburg Common Pleas

Case Caption: Deutsche Bank National Trust Company , plaintiff, et al VS Robert
Mantooth , defendant, et al
Case Number: 2010CP4202514
Type: Order/Other

IT IS SO ORDERED !

s/ J. Derham Cole

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-42-2514

Deutsche Bank National Trust Company, et al,

Robert Mantooth,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: the Court	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Liti gant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.

ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other

ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRCP; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Defendant Robert Mantooth's Motion for Reconsideration is denied.

IT IS SO ORDERED.

J. Derham Cole
Circuit Court Judge

2053
Judge Code

02/09/17
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Matt Tillman, Womble, Carlyle, Sandridge & Rice, Esq. Bar. No. 70338

5 Exchange Street,
Charleston, SC 29401

Robert Mantooth

104A Franklin Avenue, #176
Spartanburg, SC 29301

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Spartanburg Common Pleas

Case Caption: Deutsche Bank National Trust Company , plaintiff, et al VS Robert Mantooth , defendant, et al

Case Number: 2010CP4202514

Type: Order/Form 4

IT IS SO ORDERED !

s/ J. Derham Cole