

**IN THE DISTRICT COURT OF APPEAL FOR THE
STATE OF FLORIDA FOURTH DISTRICT**

MARY TUCKER

Appellant,

v.

CASE NO. 4D23-2026

L.T. Case No.: CACE 09-034235

SRS FS, LLC

Appellee

APPELLANT'S INITIAL BRIEF

On Appeal from the Circuit Court of the Seventeenth
Judicial Circuit in and for Broward County, Florida

MARY TUCKER, *Pro Se*
6699 Racquet Club Drive,
Lauderhill, FL 33319
954-696-2853

Appearing for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... iii

PRELIMINARY STATEMENT..... 1

JUDICIAL NOTICE..... 1

STATEMENT OF THE CASE AND FACTS..... 2

STANDARD OF REVIEW..... 12

SUMMARY OF THE ARGUMENT..... 13

ARGUMENT..... 14

 I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR
 AND DEPARTED FROM THE PLAIN LANGUAGE AND THE
 ESSENTIAL REQUIREMENTS OF THE LAW WHEN IT
 DENIED APPELLANT'S MOTION FOR INVOLUNTARY
 DISMISSAL FOR LACK OF STANDING..... 14

 1. Appellee Failed to Establish it Had Standing at Inception..... 14

 2. The Ortiz Presumption of Standing Test..... 15

 3. The Trial Court Abandoned Ortiz and Turned to the Assignments.. 18

 II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR
 AND DEPARTED FROM THE PLAIN LANGUAGE AND THE
 ESSENTIAL REQUIREMENTS OF THE LAW WHEN IT
 GRANTED APPELLEE A FINAL JUDGMENT OF
 FORECLOSURE..... 19

 1. Florida's Uniform Commercial Code..... 19

 (i) Special Indorsements, Blank Indorsements and Anomalous
 Indorsements..... 19

 (ii) The “If This Then That” Rule..... 22

 (iii) The Now Defunct Arch Bay was the Last Holder
 of the Note Appellant Executed with Homeview..... 26

 2. The Mortgage Follows the Note..... 29

 3. Appellant Did not Execute a Deed of Trust with Homeview..... 31

 4. Failure to Authenticate the 2016 Undated Blank Endorsement..... 33

| | |
|--|----|
| 5. Appellee is not Entitled to Enforce the Note it Introduced at Trial.. | 35 |
| CONCLUSION..... | 36 |
| CERTIFICATE OF SERVICE..... | 37 |
| CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS..... | 37 |

TABLE OF AUTHORITIES

| <u>Cases</u> | <u>Page(s)</u> |
|--|----------------|
| <i>Carpenter v. Longan</i> , 83 U.S. 271, 275, 16 Wall. 271, 21 L.Ed. 313 (1872)..... | 30 |
| <i>Deutsche Bank Nat'l Tr. Co. v. Huber</i> , 137 So. 3d 562, 563 (Fla. 4th DCA 2014)..... | 13 |
| <i>Dixon v. Express Equity Lending Grp., LLLP</i> , 125 So. 3d 965, 967-68 (Fla. 4th DCA 2013)..... | 22 |
| <i>Focht v. Wells Fargo Bank, N.A.</i> , 124 So.3d 308, 310 (Fla. 2 nd DCA 2013)..... | 14, 15, 27 |
| <i>Friedle v. Bank of N.Y. Mellon</i> , 226 So.3d 976, 978-79 (Fla. 4th DCA 2017)..... | 18 |
| <i>Harvey v. Deutsche Bank Nat. Trust Co.</i> , 69 So. 3d 300, 303 (Fla. 4th DCA 2011)..... | 27 |
| <i>Kronen v. Deutsche Bank Tr. Co.</i> , 267 So. 3d 447, 448 (Fla. 4th DCA 2019)..... | 16 |
| <i>Lewis v. US Bank Nat'l Ass'n</i> , 298 So.3d 72, 75 (Fla. 4th DCA 2020)..... | 12 |
| <i>McLean v. JP Morgan Chase Bank Nat'l Ass'n</i> , 79 So.3d 170, 173 (Fla. 4 th DCA 2012)..... | 14 |
| <i>Ortiz v. PNC Bank, Nat. Ass'n</i> , 188 So. 3d 923 (Fla. 4th DCA 2016)..... | <i>passim</i> |
| <i>Penny Mac Loan Services LLC v. Ustarez</i> 303 So. 3d 578 (Fla. 4th DCA 2020)..... | 12 |
| <i>Purificato v. Nationstar Mortg., LLC</i> , 182 So.3d 821, 823 (Fla. 4 DCA 2016)..... | 12 |
| <i>Russell v. Aurora Loan Servs., LLC</i> , 163 So. 3d 639, 642 (Fla. 2d DCA 2015)..... | 15 |
| <i>Sosa v. Bank of N.Y. Mellon</i> , 187 So. 3d 943 (Fla. 4th DCA 2016)..... | 27 |
| <i>Tilus v. AS Michai LLC</i> , 161 So. 3d 1284, 1286 (Fla. 4 th DCA 2015)..... | 30 |
| <i>U.S. Bank Nat'l Association v. Becker</i> (Fla. 4th DCA 2017)... | 25 |
| <i>Matthews v. Fed. Nat'l Mortg. Ass'n</i> , 160 So.3d 131, 132 (Fla. 4th DCA 2015)..... | 12 |
| <i>Westport Recovery Corp. v. Midas</i> , 954 So.2d 750, 752 (Fla. 4th DCA 2007)..... | 12 |

| | |
|--|----|
| <i>Wilmington Sav. Fund Soc'y, FSB v. Stevens</i> , 290 So. 3d 115, 118 (Fla. 4th DCA)..... | 12 |
|--|----|

Rules and Statutes

| | |
|---|---------------|
| Florida Rule of Appellate Procedures 9.045..... | 37 |
| The If This Then That Rule..... | 22 |
| Florida Statute § 671.201(5)..... | 27 |
| Florida Statute § 671.201(22)(a)..... | 27 |
| Florida Statute § 673.2011(1)..... | 20 |
| Florida Statute § 673.2011(2)..... | 29 |
| Florida Statute § 673.2031(2)..... | 21 |
| Florida Statute § 673.2041(1)..... | 20 |
| Florida Statute § 673.2051(1)..... | <i>passim</i> |
| Florida Statute § 673.2051(2)..... | 21, 27, 29 |
| Florida Statute § 673.2051(4)..... | 21 |
| Florida Statute § 673.3011(1)..... | 36 |

A. PRELIMINARY STATEMENT

The Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida in which the foreclosure proceedings (“**Foreclosure Action**”) took place will be referred to as the “Trial Court”. The United States Bankruptcy Court, Southern District of Florida, Fort Lauderdale Division will be referred to as the “Bankruptcy Court”.

Defendant-Appellant, Mary Tucker, *Pro Se*, will be referred to throughout this brief, as "Appellant" and Plaintiff-Appellee, SRS FS, LLC, will be referred to as "Appellee".

All references in this brief to the record on appeal are designated by the symbol "R" followed by the page number/range [R.____]. All references to the transcript of the trial before Judge Christopher Pole (“**Judge Pole**”) in the Trial Court on July 19, 2023 are designated by the symbol "T" followed followed by the page number/range. [T.____]. All references to the appendix attached hereto are designated by the symbol "A" followed by the page number/range [A.____].

B. JUDICIAL NOTICE

Appellant requests this Court take judicial notice of the Stay Relief Motion Appellee filed in Appellant's Bankruptcy Case No. 19-19364-SMG

(“**2019 Bankruptcy Case**”) [A. 4] and the Stay Relief Motion filed in Bankruptcy Case No. 22-14596-SMG (“**2022 Bankruptcy Case**”) [A. 61].

Additionally, Appellant requests this Court take judicial notice of the dockets in the following Broward County foreclosure cases: 1) CACE-2012-025224: *PNC Bank, Nat. Ass'n, v. Ortiz* in particular the September 22, 2014 filing of the Verified Amended Complaint in that case. [A. 116] and 2) CACE-2015-005265: Deutsche Bank National Trust Company as trustee for WAMU Pass-through certificates, Series 2006-AR3 vs. Barry Kronen *et al.*, in particular the Verified Complaint to Foreclose Mortgage. [A. 150].

C. STATEMENT OF THE CASE AND FACTS

1. Non-Party Lender

On July 30, 2007 Appellant executed a promissory note (“**Note**”) in the amount of \$212,500.00 in favor of non-party Homeview Lending, Inc., (“**Homeview**”). Homeview was registered on or around December 13, 2005 as a foreign profit corporation with the address 25520 Commercentre Drive, Second Floor, Lake Forest, CA 92630. According to Florida's Sunbiz, Homeview published annual reports two times in years 2006 and 2007 and according to Trademarkia, Homeview's trademark was abandoned on March 9, 2008 and on September 26, 2008 the entity was revoked for annual report.

2. Original Foreclosure Complaint

On December 31, 2008 the acquisition of Wachovia Bank, NA (“**Wachovia**”) by Wells Fargo Bank, N.A., was completed after a government-forced sale to avoid Wachovia's failure. The Wachovia brand was absorbed into the Wells Fargo brand and the resulting entity is Wells Fargo Bank, N.A., successor by merger to Wachovia Bank, N.A., (“**Merged Wells Fargo**”).

On June 19, 2009 it was Wachovia, as the first of five plaintiffs, who filed a 2-count complaint for mortgage foreclosure against Appellant in the Trial Court (“**2009 Original Complaint**”). [R. 29]. Count 1 of the 2009 Original Complaint was for mortgage foreclosure and count 2 was for re-establishment of a lost note. Attached to the 2009 Original Complaint were copies of 1 note and 1 mortgage. The note attached to the 2009 Original Complaint bore no indorsements nor was there an Assignment of Mortgage (“**AoM**”) attached to the note.

On or around January 13, 2010 Appellant filed her Motion to Dismiss the 2009 Original Complaint followed by an Amended Motion to Dismiss on February 19, 2010 [R. 71] which was denied on June 30, 2010. [R. 75]. Thereafter, Appellant filed her Answer and Affirmative Defenses. [R. 76]. Among her defenses were Appellant's challenge to Wachovia's standing to bring

the action, failure to state a cause of action and lack of endorsement on the note [R. 79].

3. Three Verified Amended Complaints

Over the years, three “Verified Amended Complaints” were filed in the Trial Court: on August 12, 2013 [R. 119], on October 7, 2013 [R. 164], and on February 4, 2016 [R. 257].

The August 12, 2013 “Verified Amended Complaint” (“**8/2013 Amended Complaint**”) [R. 119], filed by Domus Holdings, LLC (“**Domus**”) the third plaintiff in the case, was for two counts: count 1 was for re-establishment of a lost note and count 2 was for mortgage foreclosure. To the 8/2013 Amended Complaint were attached, 1 note, 1 mortgage, and 3 AoMs (“**8/2013 Loan Documents**”). Like the note in the 2009 Original Complaint, the note in the 8/2013 Amended Complaint bore no endorsements. The first AoM from MERS, as nominee for Homeview, to Wachovia, “together with the note”, was dated June 23, 2009, 4 days after the 2009 Original Complaint was filed. [R. 158]. Likewise, the second AoM from Wachovia to Arch Bay was made “together with the note”. [R. 160]. However, the third AoM from Arch Bay to Domus does not include the word “note” in the AoM. [R. 162]. Notice the tiny font size of the text on that page.

The October 7, 2013 “Verified Amended Complaint” (“**10/2013 Amended Complaint**”) [R.164], also filed by Domus, was also for two counts: count 1 was for re-establishment of a lost note and count 2 was for mortgage foreclosure. To the 10/2013 Amended Complaint were attached a copy of 1 note, 1 mortgage and 3 AoMs (“**10/2013 Loan Documents**”). The note, as before, bore no indorsements, and the 3 AoMs appeared identical to those filed with the 8/2013 Amended Complaint.

On October 29, 2013 Appellant filed and served a “Motion to Dismiss Plaintiff’s Verified Amended Complaint in Mortgage Foreclosure with Prejudice” [R. 215] which was denied on November 20, 2013. [R. 220].

The February 4, 2016 “Verified Second Amended Complaint”¹ (“**2016 Amended Complaint**”) [R. 257] for one count, was filed by the fourth plaintiff in the Foreclosure Action, Housing Opportunity Partners REO, LLC (“**HOP REO**”), two years after a notice of dropping the lost note count was filed in the Trial Court on January 27, 2014. [R. 252]. Attached to the 2016 Amended Complaint were the 2016 Loan Documents comprised of: 1 note and 1 mortgage, 5 AoMs, one blank endorsement [R. 270] and two documents each on a separate piece of paper entitled “ALLONGE TO NOTE” (“**2016 Allonges**”)

¹ This amended complaint is actually the “Third Amended Complaint” as two amended complaints were filed previously on August 12, 2013 and October 7, 2013 and even the plaintiff in the foreclosure case acknowledged this. See R. 254. Yet it is referred to as “VERIFIED SECOND AMENDED COMPLAINT”.

[R. 273-74]. The first 3 AoMs appeared identical to those filed in the 8/2013 and the 10/2023 Amended Complaint along with 2 new ones. [R. 305-308].

The 2016 Allonges show the following information:

| | |
|-----------------------|---|
| LOAN NUMBER: | 07-IF2051 |
| NOTE DATE: | 7/30/2007 |
| BORROWER: | MARY A. TUCKER |
| ORIGINAL LOAN AMOUNT: | \$212,500.00 |
| PROPERTY ADDRESS: | 6699 RACQUET CLUB DRIVE LAUDERHILL, FL 33319 |

(**“Identifying Information”**) [R. 273-74].

The undated blank endorsement, that appeared with the 2016 Loan Documents, was made by one named Aimee J. Alford listed as "VP Secondary Marketing" (**“2016 Undated Blank Endorsement”**). [R. 270]. The 2016 Allonges show no dates of creation on their faces but show a chain of endorsements from Homeview to Merged Wells Fargo to Arch Bay Holdings, LLC – Series 2009B (**“Arch Bay”**).

Appellant moved to dismiss the 2016 Amended Complaint for failure to state a cause of action and for lack of standing. [R. 333]. That motion was denied on April 19, 2016 [R. 344], like the two before [R. 71 and R. 215]. Thereafter, on April 3, 2018 Appellant filed her Answer and Affirmative Defenses to Plaintiff's third amended 1-count complaint. [R. 370]. Among her defenses Appellant cited lack of standing to bring the action, lack of capacity to

sue, failure to state a cause of action and lack of subject matter jurisdiction. [R. 376].

4. Documents Appellee Filed in Appellant's 2019 Bankruptcy Case

In December 2019 Appellee filed a Stay Relief Motion in Appellant's 2019 Bankruptcy Case (“**2019 Stay Relief Motion**”). [R. 4-60].

The documents, Appellee attached to its 2019 Stay Relief Motion appear identical to the 2016 Loan Documents it filed in the Trial Court including the 2016 Allonges [A. 16-17] and the 2016 Undated Blank Endorsement. [A. 13]. Additionally, there were two additional AoMs (for a total of 5 AoMs) [A. 42-51], and one Assignment of Deed of Trust (“**AoDOT**”), [A. 52], (“**2019 Loan Documents**”).

The fourth AoM was from Domus to Housing Opportunity Partners Trust 2013-1 (“**HOP Trust**”) [A. 48]. The fifth AoM was from HOP Trust to Housing Opportunity Partners REO, LLC (“**HOP REO**”), [A. 50]. Finally, the AoDOT was from HOP REO to Appellee. [A. 52].

In addition, Appellee filed an Affidavit [A. 54-57] of a one “Jodi Lee....presently employed SN Servicing Corporation, servicer and authorized agent for SRS FS, LLC as its Bankruptcy Asset Manager” attached to the Stay Relief Motion which states in pertinent part:

“True and correct copies of the Note with allonge, Mortgage, Riders, and Assignments, are attached here as Exhibit "A".” [A. 55]. [Emphasis added].

**5. “Original Note & Certified Copy of Mortgage”
Appellee Filed in the Trial Court in 2021**

On April 26, 2021, Appellee filed in the Trial Court documents it dubbed “Original Note & Certified Copy of Mortgage” [R. 472]. Those documents include 1 note and 1 mortgage, 5 AoMs, 1 AoDOT and one blank indorsement [R. 478] on a separate sheet of paper (“**2021 Loan Documents**”). The undated blank endorsement appeared identical to the 2016 Undated Blank Endorsement in the 2016 Loan Documents. [R. 270]. Noteworthy is the fact that Appellee did not file the two 2016 Allonges, included with the 2016 Loan Documents, with the 2021 Loan Documents it filed in the Trial Court.

On August 2, 2021 Appellant filed an Amended Answer and Affirmative Defenses. Among Appellant's defenses were lack of standing/standing at inception, failure to state a cause of action, lack of capacity to sue and lack of subject matter jurisdiction [R. 537].

6. Documents Appellee Filed in Appellant's 2022 Bankruptcy Case

On July 19, 2022 Appellee filed a Stay Relief Motion followed by an Amended Stay Relief Motion on August 3, 2022 (“**2022 Stay Relief Motion**”) in Appellant's 2022 Bankruptcy Case. [61-115].

Documents Appellee attached to its 2022 Stay Relief Motion it filed in Appellant's 2022 Bankruptcy Case included 1 note and 1 mortgage, the 2016 Allonges [A. 74-75], the 2016 Undated Blank Endorsement [A. 71], five AoMs [A. 100-109] and one AoDOT [A. 110] (“**2022 Loan Documents**”).

The AoMs Appellee attached to its Stay Relief Motion it filed in Appellant's 2022 Bankruptcy Case, look identical to those filed with its 2019 Stay Relief Motion it filed in Appellant's 2019 Bankruptcy Case.

Table 1 [A. 191] compares the Loan Documents filed by all plaintiffs, including Appellee, in the Trial Court with those Appellee filed in Appellant's 2019 Bankruptcy Case and her 2022 Bankruptcy Case.

In addition, Appellee filed an Affidavit [A. 112-114] of a one “Ben L. Roth....currently employed by SRS FS, LLC as its president” attached to the Stay Relief Motion which states in pertinent part:

“True and correct copies of the Note with allonge, Mortgage, Riders, and Assignments, are attached here as Exhibit "A.” [See A. 113]. [Emphasis added].

7. The Trial

At the July 19, 2023 trial, Judge Pole presided. Appellee introduced what it referred to as the original note featuring the 2016 Undated Blank Endorsement located on “the back of [p]age 5” (*i.e.*, the last page) of the note, and took testimony from its witnesses. It is important to note that at the trial, Appellee did

not introduce or mention the 2016 Allonges attached to the 2016 Amended Complaint and which it filed in Appellant's 2019 Bankruptcy Case and her 2022 Bankruptcy Case just a year earlier.

One of Appellee's witnesses acknowledged that the Note was lost from 2009 to 2016, and that he only became aware in 2020 that the alleged lost Note was found in 2016 and that he had no knowledge as to how or when said Note was lost:

THE COURT: Okay. Go ahead.

BY MR. KARIM:

Q So my question to you is: Were you aware that the original note was lost from 2009 to 2016?

A I was made aware of that, yes.

Q Who made you aware of that?

A The Plaintiff -- or, the Plaintiff attorney.

Q Okay. In your files, is there any documentation of how or when the actual original note was found?

A No, sir. I came into this, in fact, in 2020 after the original note was found and presented to us.

Q Okay. So there is nothing in your records that would explain how it was found?

A Correct. Nothing, sir.

Q And if -- Mr. Montalvo, if you could scroll to the final page here? Perfect. [T. 112-113].

The witness further testified that he had no knowledge as to when the endorsement was placed on “the back of [p]age 5” of the Note:

BY MR. KARIM:

Q Do you know when this document was stamped with this endorsement? Do you have any independent knowledge of it?

A Endorsements are not required to have a time stamp on them, so this is in a regular course of business a regular executed document. Majority, 90-something percent do not have time stamps or dates on them.

MR. KARIM: I'm going to move to strike as unresponsive.

THE COURT: Overruled.

BY MR. KARIM:

Q Okay. Do you know when this was stamped to the document? Do you have independent knowledge as to when this was stamped?

A I would say -- no, I would be speculating.

Q Okay.

A If I said at the time of -- the note was sold.

Q But you don't have any knowledge of actually when it was stamped?

A No. I wasn't around back then.

Q Very good.

A For that transaction.

Q Very good.

MR. KARIM: I have nothing further, Your Honor.

[T. 113-114].

After Appellee rested its case, Appellant then made an *ore tenus* motion for involuntary dismissal which the Trial Court denied:

MR. TOWNSEND: No more witnesses, Your Honor.

THE COURT: You rest?

MR. TOWNSEND: Plaintiff rests.

THE COURT: And Mr. Karim?

MR. KARIM: Your Honor, at this time I'd like to make an oral motion to dismiss based on --

THE COURT: Involuntary dismissal?

MR. KARIM: Yes, correct.

THE COURT: Okay. That's what you're moving for?

MR. KARIM: [...] At this time I'm asking that the Court dismiss it as they have not shown that they have had standing, that they don't have a qualified witness to show when that document was --

THE COURT: Motion is denied.

MR. KARIM: Very good. Your Honor, we'd like to move right to closing.

THE COURT: Okay. So you rest?

MR. KARIM: Yes, Your Honor. [T. 113].

After the parties rested, the matter proceeded to closing where the arguments centered primarily on the issue of standing.

On July 19, 2023 the Trial Court entered Final Judgment of Foreclosure [R. 691-696]. Thereafter, Appellant filed a Motion for Rehearing on August 3, 2023 [R. 697] which the Trial Court denied on August 9, 2023. [R. 703]. This appeal followed.

D. STANDARD OF REVIEW

This appeal involves review of the Trial Court's decision to deny Appellant's motion for involuntary dismissal for lack of standing and grant final judgment in favor of Appellee. [R. 691]. "A party's standing is a legal issue reviewed de novo." *Lewis v. US Bank Nat'l Ass'n*, 298 So.3d 72, 75 (Fla. 4th DCA 2020); *Ortiz v. PNC Bank, Nat. Ass'n*, 188 So. 3d 923 (Fla. 4th DCA 2016) quoting *Westport Recovery Corp. v. Midas*, 954 So.2d 750, 752 (Fla. 4th DCA 2007); *Wilmington Sav. Fund Soc'y, FSB v. Stevens*, 290 So. 3d 115, 118 (Fla. 4th DCA); *Matthews v. Fed. Nat'l Mortg. Ass'n*, 160 So.3d 131, 132 (Fla. 4th DCA 2015)(when reviewing standing to bring an action by original and substituted plaintiffs); *Purificato v. Nationstar Mortg., LLC*, 182 So.3d 821, 823 (Fla. 4 DCA 2016), *Penny Mac Loan Services LLC v. Ustarez* 303 So. 3d 578

(Fla. 4th DCA 2020) citing *Deutsche Bank Nat'l Tr. Co. v. Huber*, 137 So. 3d 562, 563 (Fla. 4th DCA 2014)(when reviewing rulings on motions for involuntary dismissals).

E. SUMMARY OF THE ARGUMENT

Appellee failed to meet its *prima facie* burden to demonstrate standing to foreclose, either as an owner or holder of the Note Appellant executed with Homeview. For this reason a foreclosure judgment was not proper and said judgment is void and subject to attack at any time.

The first plaintiff in the case was neither the original payee nor the lender named in the Note and despite substituting in four (4) plaintiffs and filing a plethora of amended complaints each failing to state a claim, the trial court entered Final Judgment of Foreclosure in favor of Appellee.

Because Wachovia, the first plaintiff, claimed that the Note was lost, and Appellee's witnesses at the trial confirmed that the Note was lost from 2009 to 2016, neither Wachovia nor any of the subsequent plaintiffs could possibly have held the Note at suit inception on June 19, 2009. Hence, at best, the Final Judgment of Foreclosure entered on July 19, 2023, foreclosed a mortgage with no debt associated with it since the mortgage follows the note.

Foreclosing a mortgage that is not legally associated with a corresponding debt is clear error; reversible error. Not only should the Final Judgment of

Foreclosure be reversed, the case should be dismissed with prejudice for a total absence or lack of jurisdiction or standing.

F. ARGUMENT

I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR AND DEPARTED FROM THE PLAIN LANGUAGE AND THE ESSENTIAL REQUIREMENTS OF THE LAW WHEN IT DENIED APPELLANT'S MOTION FOR INVOLUNTARY DISMISSAL FOR LACK OF STANDING

1. Appellee Failed to Establish it Had Standing at Inception

Florida plaintiffs in mortgage foreclosure suits must prove standing to foreclose both at the time suit is filed and at the time of the trial. Failure to demonstrate standing at either time requires dismissal of the suit. See *Focht v. Wells Fargo Bank, N.A.*, 124 So.3d 308, 310 (Fla. 2d DCA 2013) and *McLean v. JP Morgan Chase Bank Nat'l Ass'n*, 79 So.3d 170, 173 (Fla. 4th DCA 2012).

As evidence of its standing, the first plaintiff in the Foreclosure Action, Wachovia, attached copies of the note and mortgage to the 2009 Original Complaint it filed in the Trial Court. However, there was no assignment of mortgage and the unendorsed note attached to the complaint was not payable to Wachovia, but to Homeview, the non-party lender. Appellant's motion to dismiss the 2009 Original Complaint [R. 71] should have been granted and the Trial Court denied it in error. [R. 75].

Three subsequent amendments to the 2009 Original Complaint, beginning in 2013 and ending with the 2016 Amended Complaint, not only failed to resolve but further complicated the issue of standing at inception because: 1) the first assignment of mortgage was postdated, four days after the 2009 Original Complaint was filed [R. 158-59; R. 203-04]; 2) the 2016 Allonges contained special indorsements to entities not including Appellee [R. 273-274], and 3) the 2016 Undated Blank Endorsement speaks for itself; it is undated. [R. 270].

Since the first plaintiff in the case, Wachovia, lacked standing, that lack was imputed to all four substituted plaintiffs (*i.e.*, Arch Bay, Domus, HOP REO and Appellee, SRS) who acquired only the standing, or lack thereof, of the first plaintiff since “a substituted plaintiff acquires only the standing of the first plaintiff[]”. See *Russell v. Aurora Loan Servs., LLC*, 163 So. 3d 639, 642 (Fla. 2d DCA 2015) and *Focht*.

In light of the foregoing facts and legal authorities, Appellee failed to establish standing as owner and holder of the Note and therefore the Trial Court erred in denying Appellant's motion for involuntary dismissal at the trial. [T. 113].

2. The Ortiz Presumption of Standing Test

It is well settled in this Court that there is a presumption of standing when the copy of the note attached to a mortgage foreclosure complaint, at suit

inception, is in the same condition as the original note [A. 124]; *Ortiz v. PNC Bank, Nat. Ass'n*, 188 So. 3d 923 (Fla. 4th DCA 2016). Applying the *Ortiz* presumption is also allowed when there is a minor difference between the original and the copy such as redaction of a loan number on the copy [A. 157-14]; *Kronen v. Deutsche Bank Tr. Co.*, 267 So. 3d 447, 448 (Fla. 4th DCA 2019).

Here, it is undisputed that the unendorsed Note attached to the 2009 Original Complaint at suit inception is different from the note Appellee introduced at the trial. When counsel for Appellant reminded Judge Pole of the significance of the fact that the 2016 Undated Blank Endorsement was not present on the note filed with the 2009 Original Complaint, the judge seemed confused and disoriented:

THE COURT: Gentleman, gentleman, let me ask you a question.

MR. KARIM: Yes, sir.

THE COURT: My understanding under the law, I think it's the Ortiz [] case, that if the plaintiff proves that they had -- there is a note, there's a blank endorsement, then anybody that possesses that note has the authority or the standing to proceed; and that original note and mortgage are filed with the Court and they're exactly the same as the one attached to the complaint, that's standing. Where are we going with all these bankruptcy notes and . . .

MR. KARIM: And I apologize for interrupting. It's our contention the this was added later on.

THE COURT: What was added later on?

MR. KARIM: That -- that standing.

THE COURT: What standing?

MR. KARIM: The blank endorsement. It's not dated. No one can testify to when it was. It mysteriously appeared seven years later.

THE COURT: What difference does that make if the original note and mortgage are the same as the ones that are attached to the complaint? They had possession of it at the time that they filed the complaint and they have filed the original in the --

MR. KARIM: That's NOT the case. In 2009 -- on June 19th of 2009, it was NOT attached; then the second amended amount, it was NOT attached.

THE COURT: What was not -- when you say "attached," what was not attached?

MR. KARIM: This [pointing to the 2016 Undated Blank Endorsement]. [Emphases added]. [T. 38-40].

Clearly, Judge Pole's reliance on *Ortiz* to support standing at inception, is woefully misplaced. *Ortiz* is distinguishable from the case at bar in that the *Ortiz* plaintiff properly proved that the indorsement was made prior to filing the original complaint and that the indorsed note was in plaintiff's possession at the time suit was filed. It accomplished this by attaching a copy of the note bearing the undated blank indorsement, by the non-party lender, to the complaint. [A. 121-124]. Further, the undated blank indorsement in *Ortiz* was placed on the note in a proper fashion (*i.e.*, it appears on the same page below the homeowners' signatures untethered from other confounding special endorsement allonges on separate pieces of paper). [A. 124].

Here the copy of the note Wachovia attached to the 2009 Original Complaint lacked an indorsement [R. 60-66] compared to the original note filed

seven years later with the 2016 Amended Complaint [R. 270] then filed with the Trial Court in 2021 [R. 478] and admitted into evidence at the non-jury trial in 2023 containing the 2016 Undated Blank Endorsement [T. 57]. Further, the 2016 Undated Blank Endorsement, is not placed on the same page below Appellant's signature where there is ample room for the stamp. See R. 477. Instead it appears on a separate sheet of paper [R. 478] designated as the back of page 5. Therefore, the unendorsed copy of the note [R. 60-66] does not prove standing at the time the 2009 Original Complaint was filed. See *Friedle v. Bank of N.Y. Mellon*, 226 So.3d 976, 978-79 (Fla. 4th DCA 2017).

In *Friedle*, unlike *Ortiz*, the copy of the note attached to the original complaint was not in the same condition as the original note. The *Friedle* court, having found that “the Bank failed to prove standing at the filing of suit, [and that] the court erred in entering the final judgment of foreclosure[,]” reverse[d] and remand[ed] for vacation of the final judgment and entry of an involuntary dismissal of the complaint.”

Here, *Ortiz* is instructive only by way of contrast to *Friedle*, and *Friedle* is indistinguishable from the case at bar as it relates to the negotiability of the note.

3. The Trial Court Abandoned *Ortiz* and Turned to the Assignments

Unperturbed with its misplaced reliance on *Ortiz*, the Trial Court turned to the subject of the assignments:

THE COURT: Well let me ask you: What about the assignments? Let's forget about the Ortiz case for a minute; what about the assignments?

MR. KARIM: Yeah. So really, our defense is they -- when this case was filed, including the assignment, because the assignment was made on June -- and again, Ortiz aside -- case was filed, the complaint was filed on the 19th of June, 2009. There was not an assignment made until June 23rd of 2009; that's what the evidence shows.

THE COURT: But aren't we going on a amended complaint, a fourth amended complaint? That's what we're traveling on; it was done in 2016?

MR. KARIM: That is correct, but this -- but the case is still 2009 case and if when they filed the original complaint, that's when the -- and I could pull up the case law for that. One moment. [T. 115].

Despite counsel for Appellant challenging Judge Pole's reliance on *Ortiz* and citing to the post-dated June 23, 2009 AoM and to *LaFrance v. US Bank Nat'l Ass'n*, 141 So. 3d 754, 756 (Fla. 4th DCA 2014), to argue lack of standing at suit inception, [T. 116] the judge, unhindered by legal boundaries and authorities, ruled in favor of Appellee, denied Appellant's involuntary motion to dismiss and, with unbridled enthusiasm, entered final Judgment of Foreclosure in favor of Appellee. [R. 691].

II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR AND DEPARTED FROM THE PLAIN LANGUAGE AND THE ESSENTIAL REQUIREMENTS OF THE LAW WHEN IT GRANTED APPELLEE A FINAL JUDGMENT OF FORECLOSURE

1. Florida's Uniform Commercial Code

(i) Special Indorsements, Blank Indorsements and Anomalous Indorsements

Pursuant to Florida's Uniform Commercial Code (“UCC”), a negotiable instrument such as the Note Appellant executed in 2007 with Homeview, may

be transferred by “negotiation.” The term “negotiation” means “a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.” Fla. Stat. § 673.2011(1). “[I]f an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.” Fla. Stat. § 673.2011(2). The term “indorsement” means “a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of negotiating the instrument [.]” Fla. Stat. § 673.2041(1).

There are two primary types of indorsements, special indorsements and blank indorsements:

(1) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a “special indorsement.” When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person[.] See Fla. Stat. §§ 673.2011(2); 673.2051(1).

(2) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a “blank indorsement.” “When indorsed in blank, an

instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed”. Fla. Stat. § 673.2051(2).

The transfer of an instrument, “whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course[.]” Fla. Stat. § 673.2031(2). However, “the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.” *Id.*

In addition to blank and special indorsements, Florida's UCC provides for an “anomalous indorsement” which is statutorily defined as an “indorsement made by a person who is not the holder of the instrument[]” with no obvious link to the note. See Fla. Stat. § 673.2051(4). “An anomalous indorsement *does not* affect the manner in which the instrument may be negotiated.” *Id.* [Emphasis added].

The first of the 2016 Allonges attached to the 2016 Amended Complaint [R. 273] and Appellee's stay relief motions [A. 16, A. 74] as a paper affixed to, and becoming a part of the Note, bearing the signature of a Homeview representative, served to special indorse the Note to Merged Wells Fargo, making it the holder of the Note which “may be negotiated only by the indorsement of [Merged Wells Fargo]” See Fla. § 673.2051(1).

In point of fact, the special indorsement from Homeview to Merged Wells Fargo vis-à-vis the first Allonge [R. 273, A. 16, A. 74] rendered the Note incapable of being “negotiated by transfer of possession alone”. *Id. See also Dixon v. Express Equity Lending Grp., LLLP*, 125 So. 3d 965, 967-68 (Fla. 4th DCA 2013)(holding that the bank which filed the foreclosure complaint did not have standing to foreclose when the original note contained a special indorsement in favor of another party).

(ii) The “If This Then That” Rule

Homeview's special indorsement, *vis-à-vis* the first Allonge [R. 273, A. 16, A. 74], to Merged Wells Fargo conferred on Merged Wells Fargo holder status and transferred the Note to Merged Wells Fargo. Therefore, Merged Wells Fargo was the first transferee to receive the Note from Homeview and Homeview subsequently lacked the capacity to indorse the Note to anyone else without it first being transferred back to Homeview; there is no evidence that was done. Instead, Merged Wells Fargo transferred the Note to Arch Bay by way of a special endorsement vis-à-vis the second Allonge. [R. 274, A. 17, A. 75]. There is no record evidence that Arch Bay negotiated the Note thereafter. And, IF there is no record evidence that Arch Bay negotiated the Note it received from Merged Wells Fargo, THEN, the Note stopped with Arch Bay and went no further. Indeed, the AoM from Arch Bay to Domus [R. 303, R.

509] makes no mention of the Note being transferred to Domus and there is no evidence to the contrary. And, IF the Note was never transferred to Domus, THEN, by extension, it was never transferred to any subsequent plaintiff, including Appellee, downstream of the now defunct Arch Bay.

Based on his testimony at trial, Appellee's witness believed the AoM from Arch Bay to Domus [R. 162, R. 207, R. 303, R. 509; A. 46, A. 104] transferred the Note:

Q You did an overview of the boarding? You did an overview of the board process that SN Servicing did for this loan, correct?

A Yes, in general; although, we have an entire department that's dedicated to that, as well.

Q Understood. Through this boarding process did you come across or, your business come across any documents that show how the original document was found after it was missing for seven years?

A As far as I recall, when I was looking through there yesterday, we have in our application management system a -- probably two -- at least 200 different categories of subfiles. One file, one subfile is for allonges and another subfile is for assignment; and I believe I found one of the allonges that was in the assignments or vice versa.

Q So -- go ahead, sir.

A I believe that was the one from -- I believe it was [Arch Bay] to D[omus].(phonetic). [Emphases added] [T. 92].

The witness's belief is unfounded, because it is clear from the evidence that Arch Bay did not transfer the Note. But assuming, *arguendo*, that somehow it did, Appellee cannot get around the undisputed fact that the first AoM from Homeview to Wachovia was post-dated, to June 23, 2009, four (4) days after the

complaint was filed on June 19, 2009. And, IF the first AoM was post-dated, and Appellee's witness could not testify as to when the 2016 Undated Blank Endorsement was placed on the Note, THEN the first plaintiff lacked standing and THAT lack was imputed to all subsequent plaintiffs including Appellee. This is the “If This Then That Rule” (“**ITTT Rule**”) Appellee cannot get around.

Appellee's inability to get around the stringent ITTT Rule, caused it to make a calculated decision, for the sake of expediency, to exclude from evidence the two Allonges attached to the 2016 Amended Complaint, filed by its predecessor HOP REO [R. 273-74]. It accomplished this by unaffixing the two Allonges that were, by definition, affixed to and made a part of the Note, and filing the altered/forged Note in the Trial Court in 2021 [R. 473-80] with just the 2016 Undated Blank Endorsement [R. 478] then introducing it into evidence at trial. [T. 57]. But, as stated previously, the 2016 Undated Blank Endorsement Appellee filed in the Trial Court is of no moment, due to the post-dated nature of the first AoM and the witness's inability to testify as to the date of the 2016 Undated Blank Endorsement. Therefore, like the first AoM, the 2016 Undated Blank Endorsement is post-dated.

Additionally, it is important to note that the 2016 Allonges [R. 273-74] identify the Note by Appellant's name, property address, loan amount and note

date Identifying Information followed by signatures on behalf of Homeview and Merged Wells Fargo by their representatives. In contrast, the 2016 Undated Blank Endorsement, has no such Identifying Information linking it with the Note. R. 270/R. 478. Hence, the 2016 Undated Blank Endorsement could easily be associated with any note Homeview originated up to the time it ceased to exist, for any borrower, for any amount and for any property in any state. In point of fact, without any evidence to the contrary, Appellant contends, that the 2016 Undated Blank Endorsement was taken/stolen from the loan file of any of the thousands of loans Homeview originated with other borrowers in any state in the country, for any amount and at any time, up to February 4, 2016 when Appellee's predecessor filed it with the Trial Court.

Critically, at no time did Appellee introduce any supporting evidence that the two 2016 Allonges were anomalous indorsements to justify unaffixing them from the Note Appellant executed with Homeview. On the contrary, the record shows that the entities listed on the 2016 Allonges are in fact in the chain of transfer, to wit: Homeview to Wachovia Wells to Arch Bay. See *U.S. Bank Nat'l Association v. Becker* (Fla. 4th DCA 2017)(holding that allonge bearing anomalous indorsement should have been excluded from the chain of transfer to allow bank to establish standing by virtue of its possession of a blank-indorsed note). Therefore, the two 2016 Allonges should not have been excluded.

Appellee unaffixing the Allonges affixed to the Note Appellant executed with Homeview and filing it with the Trial Court, but excluding it from evidence, for the sake of expediency, is tantamount to fraud upon the court.

(iii) The Now Defunct Arch Bay was the Last Holder of the Note Appellant Executed with Homeview

According to Florida law, failure of Arch Bay to transfer the note, renders all subsequent assignments, including the AoDOT to Appellee, outside the chain of title. Arch Bay's failure was followed by voluntary termination of its corporate existence in Florida on or around April 16, 2014 when it formally ceased all operations in the state and by so doing, it relinquished the liability protection afforded its business by foreign qualifying.

Pursuant to Florida's UCC, because the Note from Merged Wells Fargo to Arch Bay was specially indorsed and made payable to Arch Bay, said Note could only be negotiated by the indorsement of Arch Bay because “[w]hen specially indorsed an instrument becomes payable to the identified person and may be negotiated only by the endorsement of that person [.]” See Fla. Stat. § 673.2051(1). Hence, by simple syllogism, the specially indorsed Note to Arch Bay could only be reconverted to bearer paper by Arch Bay's blank indorsement of said Note.

To date there is no record evidence of Arch Bay ever negotiating to anyone, the specially-indorsed Note it received from Merged Wells Fargo, who

took possession of it from Homeview by special indorsement. [R. 273-274]. Indeed, the only blank indorsement that Appellee could travel on is the one that was never executed by Arch Bay who was last in possession of the Note it received “specially indorsed” from Wells Fargo. *Id.*

In the context of the law of negotiable instruments, the “holder” of an instrument is “[t]he person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession.” Fla. Stat. § 671.201(22)(a). See also *Harvey v. Deutsche Bank Nat. Trust Co.*, 69 So. 3d 300, 303 (Fla. 4th DCA 2011). A “bearer” is “a person in possession of a negotiable instrument.... that is indorsed in blank.” Fla. Stat. § 671.201(5).

Where, as here, the party seeking to foreclose is not the original lender on the note, that party frequently proves it is a holder by submitting a note with an indorsement that specifically names the party seeking to enforce (a special indorsement) or that does not name any person (a blank indorsement). See Fla. Stat. §§ 673.2051(1)(2); *Sosa v. Bank of N.Y. Mellon*, 187 So. 3d 943 (Fla. 4th DCA 2016)(citing *Focht v. Wells Fargo Bank, NA* 124 So. 3d 308, 310 (Fla. 2nd DCA 2013)).

In order for Appellee to become the holder of the original Note, sans allonges, featuring just the 2016 Undated Blank Endorsement, it needed to

proffer a chain of transfer similar to the one illustrated by the schematic in Figure 1 in accordance with Florida's UCC. [A. 192].

In the schematic, Homeview would transfer the Note by special indorsement to Merged Wells Fargo who would then transfer it by another special indorsement to Arch Bay. See solid-line arrows in Figure 1; (1) and (2). [A. 192]. Arch Bay would then blank-indorse the Note thereby converting it to bearer paper on which each and every successor entity (*i.e.*, Domus, HOP Trust, HOP REO and Appellee) could travel. See broken-line arrow in Figure 1; (3). [A. 192].

Critically, there is no record evidence of a blank indorsement from Arch Bay or of a special indorsement from Arch Bay back to Homeview and from Homeview to blank/bearer. Instead, the three indorsements attached to the note and filed with the 2016 Amended Complaint [R. 270, R. 273-74], and which Appellee filed with the Bankruptcy Court, in Appellant's 2019 Bankruptcy Case: [A. 13, A. 16-17] and her 2022 Bankruptcy Case: [A. 71, A. 74-75]] create a conundrum for Appellee because it places the Note with two different entities at the same time, a chronological impossibility.

Appellee could not get around the implications of the 2016 Allonges affixed to the Note, so in its failed attempt to convert the Note into bearer paper, it intentionally unaffixed the 2016 Allonges from the Note, and introduced it

into evidence at the trial with just the 2016 Undated Blank Endorsement. This is tantamount to fraud upon the court.

In point of fact, Appellee managed to confuse Judge Pole in attempting to disappear the two Allonges when it filed them in Appellant's 2019 Bankruptcy Case [A. 16-17] and intentionally failed to file them with the 2021 Loan Documents in the Trial Court along with the 2016 Undated Blank Endorsement [R. 478] only to presented them again to the Bankruptcy Court in 2022. [A. 74-75] before excluding them from the trial in 2023:

THE COURT: “Where are we going with all these bankruptcy notes and....” [T. 39].

The only legal way for Appellee to travel on a blank-indorsed note is if Arch Bay had executed a blank indorsement, in accordance with Fla. Stat. §§ 673.2011(2), 673.2051(2), [A. 192], or if the two 2016 Allonges [R. 273 and R. 274] did not legally exist and the 2016 Undated Blank Endorsement had been placed on the Note before or at the time the 2009 Original Complaint was filed in accordance with *Ortiz*.

2. The Mortgage Follows the Note

It is well established that the mortgage is a mere incident to the debt it secures and that its transfer or assignment does not transfer or assign the note. The mortgage goes with/follows the note. If the note is transferred or assigned

the mortgage automatically goes along with the assignment or transfer. However, the mortgage, being a mere incident of the note, cannot be assigned separately from it, so as to give any beneficial interest. See *Carpenter v. Longan*, 83 U.S. 271, 275, 16 Wall. 271, 21 L.Ed. 313 (1872) (noting “[a]ll the authorities agree that the debt is the principal thing and the mortgage an accessory.”).

In the case at bar, the first AoM to the first plaintiff Wachovia, dated June 23, 2009, was made “together with the note”. [R. 158]. Likewise, the second AoM to Arch Bay, dated December 28, 2009, was made “together with the note”. [R. 160]. However, the third AoM dated March 19, 2013 from Arch Bay to Domus failed to transfer the Note as it is made WITHOUT assignment of the note. [A. 162]. Notice the tiny font size of the text intentionally reduced to near illegibility to obfuscate the critical fact that Arch Bay failed to transfer the Note to Domus.

Not surprisingly, the Arch Bay to Domus AoM unequivocally assigned only the mortgage – the Note was not mentioned because it was not transferred to Domus and there is no record evidence to the contrary.

“[A]n assignment of mortgage is insufficient to prove standing where the assignment reflects transfer of only the mortgage, not the note.” *Tilus v. AS Michai LLC*, 161 So. 3d 1284, 1286 (Fla. 4th DCA 2015).

Assigning mortgage to Domus, without the Note, is of no force or effect, is useless and invalid, and conferred no rights whatsoever upon Domus and its successors including Appellee. Indeed, an assignment of the note carries the mortgage with it, whilst assignment of the latter alone is a nullity. Appellee had neither Note nor mortgage transferred to it.

3. Appellant Did not Execute a Deed of Trust with Homeview

Since, the AoM dated March 19, 2013 from Arch Bay to Domus failed to transfer the Note [R. 162], Domus never took possession of the Note from Arch Bay, and could not transfer the Note to its successor HOP TRUST who would then transfer it to HOP REO then on to its successor Appellee.

To make matters worse, the document Appellee received from its assignor HOP REO is actually an “ASSIGNMENT OF DEED OF TRUST dated January 30, 2018”. [R. 515]. Among other things, the AoDOT to Appellee is invalid since a DOT is a document which is executed by the borrower and lender in certain states not including Florida:

“Deed of Trust. An instrument in use in some states, taking the place and serving the use of a mortgage, by which the legal title to real property is placed in one or more trustees, to secure the repayment of a sum of money or the performance of other conditions.” *Blacks Law Dictionary*.

The states that require DOTs are Alaska, Arizona, California, Colorado, the District of Columbia, Georgia, Hawaii, Idaho, Maine, Maryland,

Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Oregon, Tennessee, Texas, Utah, Virginia, Washington, West Virginia and Wyoming. Further, in Alabama, Arizona, Arkansas, Illinois, Kentucky, Maryland, Michigan, Montana and South Dakota the lender has a choice of either a DOT or a mortgage. In any other state, including Florida, only mortgages are used. At no time did Appellant ever execute a DOT despite what the witness for Appellee claimed:

Q And please tell the -- please tell the Court what this document is.

A This is the adjustable rate note that originally accompanied the deed of trust as the security interest for this loan. [T. 56] [Emphasis added].

With its DOT/AoDOT, [R. 515], by/from whomever, Appellee is relying on a fictional theory that plaintiffs in judicial foreclosure states need not show they have the rights of a holder with an interest in the note before they can enforce the DOT vis-à-vis procedures that are not codified in the UCC.

But whether Appellee received an AoDOT or an AoM from HOP REO, is a moot issue in the absence of a negotiable note capable of conferring holder status on Appellee since both a mortgage and a DOT would follow the note while an assignment of either mortgage or DOT alone is a nullity.

Here, Homeview, the original transferor of the Note it executed with Appellant, signed an Allonge [R. 273] which was clearly intended to be a

special indorsement of the Note to Merged Wells Fargo. Merged Wells Fargo then special-indorsed the note by a second Allonge [R. 274] and transferred it to Arch Bay who did not convert the Note to bearer paper. See Figure 1(3): [A. 192].

4. Failure to Authenticate the 2016 Undated Blank Endorsement

At the trial, Appellee's witnesses' testimonies revealed they: 1) were unaware that only the 2016 Amended Complaint contained the 2016 Undated Blank Endorsement and that neither the 2009 Original Complaint nor the two 2013 Amended Complaints did; 2) had no knowledge as to how and when the 2016 Undated Blank Endorsement was placed on the back of the last page of the note and 3) had never heard of Aimee J. Alford whose signature stamp was used to create the 2016 Undated Blank Endorsement. [T. 94-98].

Pursuant to Fla. Statute § 90.901 “Authentication or identification of evidence is required as a condition precedent to its admissibility. The requirements of this section are satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”

Counsel for Appellant objected to the authenticity of the 2016 Undated Blank Endorsement at trial based on Appellee's witnesses' inability to authenticate the endorsement from personal knowledge:

Q And please tell the -- please tell the Court what this document is.

A This is the adjustable rate note that originally accompanied the deed of trust as the security interest for this loan.

MR. TOWNSEND: Your Honor, Plaintiff respectfully requests that the Court take judicial notice of the original note which has been previously filed with the Broward County clerk of courts; and I request that the original of the document, a copy of which was previously marked as Plaintiff's 1A for information is moved into evidence.

MR. KARIM: Your Honor, we're going to object as we believe only the first five pages were authenticated and we don't believe that there was enough foundation or predication on the back of the document of who signed it and when it was signed and if it was authenticated.

THE COURT: Okay.

MR. KARIM: We would not object to the first five pages being entered into evidence.

THE COURT: Okay. Over the objection of the defense, the Court is going to take judicial notice of the original note, adjustable rate note, filed with the Court. I have it in front of me and in possession. Upper right-hand corner it says "Loan Number 071F2051" and it consists of five pages; and that will be Plaintiff's 1. (The Original Note was marked into evidence as Plaintiff's Exhibit No. 1.) [T. 56-57]. [Emphases added].

Specifically, the witnesses had no knowledge that the Note was lost or: 1) how the 2016 Undated Blank Endorsement was made on the Note or, 2) who placed it there or, 3) who Aimee Alford is or, 4) any other document or testimony showing that the Note was transferred prior to suit inception.

In point of fact, one witness for Appellee conceded that the post-dated "assignment of mortgage" dated June 23, 2009 represented "factual evidence" that the "[Undated Blank] endorsement was placed [on the note] after the filing

date of the original [2009] complaint, which is June 19, 2009.” [T. 96-97]. Therefore, the Trial Court erred when it overruled Appellant's objection and admitted the 2016 Undated Blank Endorsement into evidence.

But, assuming, *arguendo*, that the Note Appellee introduced into evidence at the trial, had been authenticated, ignoring the existence of the Allonges, the Note is inadmissible because there is no evidence the 2016 Undated Blank Endorsement was placed on the Note at or at/prior to suit inception; Appellee's mere possession of the Note alone did not confer onto it standing to sue.

5. Appellee is not Entitled to Enforce the Note it Introduced at Trial

The law of negotiable instruments is inextricably intertwined with mortgage foreclosure laws. Because the issue now before this Court is whether or not Appellee had standing to foreclose against Appellant's property, it is necessary for the Court to determine whether Appellee is the holder in possession of the Note and entitled to enforce it. Since Appellee is not in possession of the original Note and not entitled to enforce it, this Court must reverse the Final Judgment of Foreclosure entered by the Trial Court.

As previously discussed, Arch Bay's failure to indorse in blank the Note it obtained by Allonge through a special indorsement from Merged Wells Fargo [R. 274], to convert it to bearer paper, on which subsequent successors,

including Appellee could travel, renders Appellee neither in possession of nor holder of the Note.

Pursuant to Fla. Stat. § 673.3011(1), only the holder of the note is entitled to enforce it. Since Appellee neither owns nor holds the Note, it is not legally entitled to enforce it to obtain any relief against Appellant's homestead real property.

At best, Appellee is the holder of a copy of a note with a special indorsement conferring on it no authority to be heard. At worst, Appellee has committed fraud upon the court when it altered the Note by removing the 2016 Allonges and filed forged documents in the Trial Court to procure relief it is not entitled to.

In light of the foregoing facts, legal authorities, rules and tests, Appellee failed to establish standing as owner and holder of the Note Appellant executed with Homeview and therefore the Trial Court erred in denying Appellant's motion for involuntary dismissal.

CONCLUSION

Appellant requests this Court reverse and remand for the Trial Court to vacate the Final Judgment of Foreclosure and enter an Order of involuntary dismissal. Dismissal should be with prejudice for, *inter alia*, fraud.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by E-service or U.S. mail on this 1st day of April, 2024 to counsel of record for Appellee, Damian G. Waldman, Esq., at damian@dwaldmanlaw.com and service@dwaldmanlaw.com, Law Offices of Damian G. Waldman, P.A., 10333 Seminole Blvd., Units 1 & 2 Seminole, FL 33778.

Respectfully Submitted,

By: /s/ *Mary Tucker*

Mary Tucker, *Pro Se* Appellant

6699 Racquet Club Drive,

Lauderhill, FL 33319

Phone: 954-696-2853

Designated Emails: servemary@gmail.com

and mtuckeronline@gmail.com

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I HEREBY CERTIFY that this document complies with the font requirements of Florida Rule of Appellate Procedures 9.045 (Bookman Old Style, 14-point font).

By: /s/ *Mary Tucker*

Mary Tucker, *Pro Se* Appellant