



1 of 1 DOCUMENT

JEANNE A. GOLRICK vs. U.S. BANK NATIONAL ASSOCIATION, trustee,¹ & others.²

1 Of MASTR Asset Backed Securities Trust 2007-HE2.

2 Sand Canyon Corporation; American Home Mortgage Servicing, Inc.; Option One Mortgage Corporation; Sanjit Korde; Eric Naticchioni; and Mary Scimeni. Prior to trial, the judge properly dismissed all of the named defendants except U.S. Bank National Association (U.S. Bank), finding that only U.S. Bank claims a fee interest in the property at issue in this "quiet title" action.

15-P-841

APPEALS COURT OF MASSACHUSETTS

2016 Mass. App. Unpub. LEXIS 441

April 22, 2016, Entered

NOTICE: SUMMARY DECISIONS ISSUED BY THE APPEALS COURT PURSUANT TO ITS RULE 1:28, AS AMENDED BY 73 MASS. APP. CT. 1001 (2009), ARE PRIMARILY DIRECTED TO THE PARTIES AND, THEREFORE, MAY NOT FULLY ADDRESS THE FACTS OF THE CASE OR THE PANEL'S DECISIONAL RATIONALE. MOREOVER, SUCH DECISIONS ARE NOT CIRCULATED TO THE ENTIRE COURT AND, THEREFORE, REPRESENT ONLY THE VIEWS OF THE PANEL THAT DECIDED THE CASE. A SUMMARY DECISION PURSUANT TO RULE 1:28 ISSUED AFTER FEBRUARY 25, 2008, MAY BE CITED FOR ITS PERSUASIVE VALUE BUT, BECAUSE OF THE LIMITATIONS NOTED ABOVE, NOT AS BINDING PRECEDENT. SEE CHACE V. CURRAN, 71 MASS. APP. CT. 258, 260 N.4 (2008).

JUDGES: Green, Vuono & Henry, JJ.⁵

5 The panelists are listed in order of seniority.

OPINION

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiff commenced this "action to quiet title" following a foreclosure sale of real property at 9-11 West Main Street, Millers Falls, Montague (the property). After a bench trial, the trial judge allowed the self-represented plaintiff extra time to submit written argument in support of admission of the eleven proposed exhibits. The trial judge determined that none of the plaintiff's proposed exhibits were admissible. The judge made findings of fact and rulings of law expressly finding that the assignment at issue in this case complied with G. L. c. 183, § 54B, constituted a valid assignment, and, therefore, the plaintiff's claim that U.S. Bank National Association (U.S. Bank or defendant) lacked authority to foreclose must fail. Accordingly, the trial judge granted the defendant's motion for directed verdict, and judgment entered for the defendant. We affirm.

We note at the outset that the plaintiff has not

provided a complete transcript of the trial. It is the appellant's burden to present us with a record sufficient to allow appellate review, and self-represented litigants are held to the same standards as those represented by counsel in this regard. *Davis v. Tabachnick*, 425 Mass. 1010, 1010 (1997). In the absence of a complete transcript, we must assume all of the judge's findings of fact are supported by the evidence and are not clearly erroneous. See *Connolly v. Connolly*, 400 Mass. 1002, 1003 (1987); *Cameron v. Carelli*, 39 Mass. App. Ct. 81, 84 (1995).

In addition, while the plaintiff's brief contains a list of authorities, the plaintiff does not make reference to them in the body of the argument of her brief and the argument is largely unsupported by legal authority. "[T]he right of a party to have this court consider a point entails a duty; that duty is to assist the court with argument and appropriate citation of authority." *Cameron*, 39 Mass. App. Ct. at 86, quoting from *Lolos v. Berlin*, 338 Mass. 10, 14 (1958). Notwithstanding the inadequacy of the brief and record appendix, we will comment briefly on the plaintiff's arguments.

The judge found that in order to finance her purchase of the property, on June 1, 2007, the plaintiff executed an adjustable rate note in the amount of \$164,700 payable to Option One Mortgage Corporation (Option One), secured by a mortgage on the property in favor of Option One. The judge found that Option One changed its name to Sand Canyon Corporation (Sand Canyon) on May 29, 2008, and that the directors of that corporation authorized certain officers and employees to execute mortgage assignments. The judge found that pursuant to that authority, Kim Martinez, Assistant Vice President of Sand Canyon, executed an instrument assigning to U.S. Bank the interest of Sand Canyon f/k/a Option One in the plaintiff's mortgage and note. The judge further found that the plaintiff made few payments on her note and on September 23, 2010, U.S. Bank conducted a foreclosure sale of the property.

As noted above, we must assume these findings were supported by the evidence. The plaintiff claims nonetheless that the mortgage and note were never properly assigned to U.S. Bank and, therefore, there was a break in title and U.S. Bank's foreclosure was invalid. To the extent the plaintiff contends Sand Canyon lacked authority to assign the mortgage in 2010 because it either was not the successor of Option One or Sand Canyon was

itself defunct at the time of the assignment, the plaintiff failed to introduce admissible evidence to support her theories.³

3 The plaintiff contends Option One executed unrecorded assignments of the note and mortgage to U.S. Bank in the days after their original execution. The absence of admissible evidence of those assignments makes it impossible for us to review them.

Moreover, the judge found that the preforeclosure assignment complied with G. L. c. 183, § 54B, and we have said that where an assignment complies with the statute, it is "'effective to pass legal title' and cannot be shown to be void." *Bank of N.Y. Mellon Corp. v. Wain*, 85 Mass. App. Ct. 498, 503 (2014), quoting from *Culhane v. Aurora Loan Servs. of Nebraska*, 708 F.3d 282, 291 (1st Cir. 2013). Where a homeowner challenges a foreclosure on the basis of the validity of an assignment, only void assignments will render a foreclosure sale conducted by the assignee void. *Wain, supra* at 502. The homeowner has no right to raise hidden problems, including any issue that might provide a basis to claim that the assignment was potentially voidable. *Ibid*. But, even if it could be said the plaintiff raised issues that could render the foreclosure void, on the record presented and facts found by the judge, there was no error in the judge's conclusion that there was a valid assignment of the mortgage. The plaintiff's failure to introduce admissible evidence to challenge the assignment, which even she acknowledges appears valid on its face, warrants the directed verdict entered.⁴

4 To the extent we do not address other issues raised by the plaintiff, "they 'have not been overlooked. We find nothing in them that requires discussion.'" *Department of Rev. v. Ryan R.*, 62 Mass. App. Ct. 380, 389 (2004), quoting from *Commonwealth v. Domanski*, 332 Mass. 66, 78 (1954).

Judgment affirmed.

By the Court (Green, Vuono & Henry, JJ.⁵),

5 The panelists are listed in order of seniority.

Entered: April 22, 2016.