

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3527-12T4

LYNX ASSET SERVICES, L.L.C.,

Plaintiff-Respondent,

v.

SIMON ZAROOUR,

Defendant-Appellant.

Submitted April 1, 2014 – Decided July 24, 2014

Before Judges Espinosa and O'Connor.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Docket No. L-
3783-11.

Simon Zarour, appellant pro se.

Law Office of Michael A. Alfieri, attorney
for respondent (Mr. Alfieri, on the brief).

PER CURIAM

Plaintiff sued defendant after he defaulted on a promissory note. After a bench trial, the court entered a judgment against defendant for \$264,934.30, which he now appeals. We affirm.

On August 16, 2007, defendant executed a promissory note in favor of National City Bank when it loaned defendant \$190,000.

Defendant and his wife, Lori B. Zarour, also executed a mortgage on their residence to secure the note.

National City Bank merged with PNC Bank, which became the successor bank. Thereafter, PNC Bank issued an assignment of the note and mortgage (assignment) and delivered the original note to plaintiff Lynx Asset Services, LLC. PNC Bank did not, however, indorse the assignment.

Defendant defaulted and plaintiff filed a complaint to enforce the note. At trial, defendant admitted he signed the note and mortgage and stopped paying on the note. Plaintiff provided evidence that, by the time of trial, defendant owed \$264,934.30 on the note. At the conclusion of the trial, the court entered judgment against defendant for that amount.

Defendant contends plaintiff did not have standing to enforce the note. He argues that, because National City Bank failed to indorse the assignment, PNC Bank did not have the power to transfer the note. As a consequence, plaintiff is not a holder in due course and does not have the right to enforce the note. There is no merit to defendant's contention.

The assignment was not from National City Bank to PNC Bank, but from PNC Bank to plaintiff; regardless, it is not disputed the assignment from PNC Bank to plaintiff was not indorsed and that plaintiff was not a holder in due course. Notwithstanding

these alleged deficiencies, plaintiff had the power to enforce the note.

Under N.J.S.A. 12A:3-301, a person entitled to enforce an instrument includes a "nonholder" in possession of an instrument – which is what plaintiff was when it received the original note from PNC Bank – who has the rights of a holder. One has the rights as a holder of an instrument if the instrument has been transferred to that person. See Wells Fargo Bank, N.A. v. Ford, 418 N.J. Super. 592, 599 (App. Div. 2011). A transfer occurs when a negotiable instrument is "delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument." N.J.S.A. 12A:3-203(a). Such a delivery, "vests in the transferee any right of the transferor to enforce the instrument[.]" N.J.S.A. 12A:3-203(b). The Uniform Commercial Code (UCC) Comment to N.J.S.A. 12A:3-203 clarifies that

[i]f the transferee is not a holder because the transferor did not indorse, the transferee is nevertheless a person entitled to enforce the instrument under section 3-301 if the transferor was a holder at the time of transfer. Although the transferee is not a holder, under subsection (b) the transferee obtained the rights of the transferor as holder.

[UCC Comment 2 to N.J.S.A. 12A:3-203.]

Here, National City Bank merged into PNC Bank, which became the successor bank and the holder of the note and mortgage. PNC Bank then transferred the original note to plaintiff, and issued an assignment, albeit not indorsed, to plaintiff stating the note "does hereby grant, sell, assign, transfer and convey to [plaintiff] all beneficial interest" in the mortgage and note. There was no dispute PNC Bank intended to assign the note and mortgage to plaintiff in accordance with the language in the assignment. Accordingly, as there was a transfer of the instrument to plaintiff with the purpose that it have the rights to enforce the instrument, plaintiff obtained the rights of PNC Bank as holder.

After considering the record and the briefs, we conclude defendants remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(e).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION