

PHH MORTGAGE CORPORATION

Plaintiff,

v.

HOLUK-MAGINLEY, et al.

Defendants.

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION: BERGEN COUNTY

DOCKET No. F-12593-18

OPINION

Argued: May 29, 2020

Decided: June 10, 2020

Appearances: Christopher Ford, (RAS Citron LLC, attorneys) for Plaintiff

Joshua W. Denbeaux, (Denbeaux & Denbeaux, attorneys) for Defendants

HON. EDWARD A. JEREJIAN, P.J.Ch.

This matter comes before the Court by way of Motion to Proceed Notwithstanding Lost or Missing Original Assignment of Mortgage and to Direct the County Clerk to Record a Copy of the Assignment of Mortgage, filed on March 11, 2020 by RAS Citron LLC, attorneys for Plaintiff PHH Mortgage Corporation (“Plaintiff”), Christopher Ford, Esq. appearing. On April 22, 2020, Defendants Elaine Holuk-Maginley and Matthew Maginley (“Defendants”), by and through counsel Denbeaux & Denbeaux, Joshua W. Denbeaux, Esq. appearing, filed opposition to the Motion. On May 18, 2020, Plaintiff filed a reply to Defendants’ opposition. The Court heard oral argument on May 29, 2020.

BACKGROUND

On June 17, 2003, Defendants executed and delivered a promissory note (the “Note”) to American Money Centers, Inc. that secured the sum of \$296,000.00 with interest at the rate of 6.50% per annum on the unpaid principal balance. Accordingly, Defendants gave a Mortgage dated June 17, 2003 to American Money Centers, Inc. in the amount of \$296,000.00. Said Mortgage was recorded on July 1, 2003.

On July 8, 2003, American Money Centers, Inc. allegedly assigned its right, title, and interest in the Mortgage to Indymac Bank F.S.B. (“Indymac”) by assignment of mortgage; however, the original assignment was lost, misplaced, or destroyed, and thus was not recorded. Subsequently, on July 6, 2011, Federal Deposit Insurance Corporation (“FDIC”), as receiver for Indymac, as successor in interest to Indymac, assigned its rights, title and interest to the Note and Mortgage to Onewest Bank FSB (“Onewest”) by assignment of mortgage. Said assignment was recorded on October 25, 2011. On April 5, 2016, Onewest, by its attorney in fact Ocwen Loan Servicing, LLC (“Ocwen”) assigned its rights, title, and interest in the Note and Mortgage to Ocwen by way of assignment of mortgage; said assignment was recorded on April 11, 2016. On April 2, 2019, Ocwen assigned its rights, title and interest in the Note and Mortgage to Plaintiff by way of assignment of mortgage; said assignment was recorded on April 15, 2019.

Plaintiff certifies that it has possession of the original note and that it is either the holder of the original note, or it is a non-holder with rights of a holder.

The complaint in this matter was filed on June 15, 2018.

ANALYSIS

Plaintiff’s Motion seeks to address the lack of a recorded assignment from American Money Centers, Inc. to Indymac and thus seeks to correct this gap in the chain of assignments in

order to finalize its foreclosure action and for marketable title to be conveyed in accordance with a Sheriff's Sale.

In support of the notion that Plaintiff should be allowed to proceed regardless of a lack of an original assignment, Plaintiff asserts that an assignment of mortgage is not required to convey title to a note and mortgage. See Daly v. New York & Greenwood Lake R. Co., 55 N.J. Eq. 595, 599 (1897) (finding that "a mere delivery of a bond and mortgage, with the intention to pass the title, upon a proper consideration, will vest the equitable interest in the person to whom it is so delivered."); see also Galway v. Fullerton, et al., 17 N.J. Eq. 389 (1866). Accordingly, Plaintiff provides a copy of what is purported to be the original assignment and argues that said copy "provides abundant evidence of the conveyance of the rights under the Mortgage pursuant to an accompanying transfer and negotiation of the Note." As such, Plaintiff argues that the intention of American Money Centers, Inc. is clear in its desire to assign the Mortgage to Indymac and record said assignment, despite the original assignment being unrecorded.

In addition, Plaintiff argues that it would be inequitable to Plaintiff to be barred from proceeding with its foreclosure action and that it would constitute a windfall for Defendants.

Lastly, Plaintiff contends that it is entitled to an order directing the office of the county clerk/register to accept a copy of the assignment of mortgage for recording. In support of this contention, Plaintiff asserts that courts of equity must look to substance rather than form, and that here, the substance of the copy of the assignment of mortgage clearly demonstrates an intention for American Money Centers, Inc. to assign the mortgage to Indymac. See Applestein v. Board & Carton Corp., 60 N.J. Super. 333, 348-49 (Ch. Div. 1960); see Bruen v. Switlik, 185 N.J. Super. 97, 103 (App. Div. 1982) (finding that the parties' intentions are the primary test for discerning the legal effect of an instrument); see also Monmouth County Div. of Social Services

v. C.R., 316 N.J.Super. 600, 608 (Ch. Div. 1998) (“while equity may not disregard statutory law, it looks to intent, rather than merely its form”).

Defendants argue that the Motion should be denied because Plaintiff has not provided sufficient information regarding the alleged original assignment of mortgage that is missing. In support of this notion, Defendants contend that Plaintiff has failed to demonstrate the origins of the alleged original assignment of mortgage, and it does not provide sufficient information to show whether the assignment was correct and valid when it was created or whether the alleged assignment was intentionally not recorded. As such, Defendants argue that given the nature of a foreclosure action’s purpose to remove individuals from a home, that Plaintiff should be held to the highest standard and thus without a recorded assignment of mortgage its motion should be denied.

Here, although there is a gap in the chain of assignment of mortgage, equity requires Plaintiff to be allowed to proceed in its foreclosure action and to record its copy of the alleged original assignment of mortgage.

It is important to note that Defendants’ opposition could be rejected on the basis that they signed a consent order where “Defendants agree that they will not further contest the foreclosure judgment, subsequent eviction, or otherwise take any actions to delay those proceedings except as permitted by agreement of the parties.” The consent order was entered by this Court on October 11, 2019. Thus, Defendants’ opposition would purportedly be in violation of this consent order.

However, the Court has considered the substance of Defendants’ opposition and concludes the instant Motion should be granted for the following reasons.

First, it is unnecessary for Plaintiff to demonstrate a valid assignment of Mortgage in order to have standing to bring, continue, and complete its foreclosure action. A plaintiff has standing by satisfying the requirement that “either possession of the note or an assignment of the mortgage that predated the original complaint confers standing.” Deutsche Bank Trust Co. Ams. v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012). Proof of possession of the note must be provided to the Office of Foreclosure at the time of application for final judgment. Here, Plaintiff has certified that it has possession of the Note with all endorsements included. Thus, Plaintiff would have standing in this action regardless of the unrecorded assignment from American Money Centers, Inc. to Indymac.

Next, even if it was necessary to consider Plaintiff’s copy of the alleged original assignment of mortgage, the copy shows an intent of American Money Centers, Inc. to assign the mortgage to Indymac given that it was signed by the President of American Money Centers, Inc. and another witness, and contains a notarized signature. Thus, in looking at the substance of this copy of the alleged original assignment of mortgage, the Court concludes that there was an intention to assign the mortgage to Indymac despite the alleged original assignment being unrecorded.

As such, Plaintiff should be allowed to proceed in its foreclosure action despite the lost or missing original assignment and the copy of the alleged original assignment should be recorded. Therefore, Plaintiff’s Motion is hereby granted. An order accompanies this decision.