

CREDITOR'S RIGHTS ALERT

New Jersey Appellate Division Finds Defendant's Belated Challenge to Bank's Standing to be Too Little, Too Late

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In a recent decision, *Deutsche Bank Trust Co. Americas v. Angeles*, A-2522-11 (Oct. 11, 2012), the Superior Court of New Jersey, Appellate Division, determined that it would be inequitable to allow a homeowner in a foreclosure action to vacate a default judgment two years after judgment was entered and three-and-one-half years after the complaint was filed, despite the possibility that plaintiff may have lacked standing when it filed the foreclosure complaint. This decision is significant as it serves as a stern reminder to both trial courts and litigants in foreclosure matters that equity must be applied equally to both plaintiffs and defendants.

The defendant in *Angeles*, Yony Angeles, had executed a note with First Equity Financial Corporation ("First Equity") and to secure payment of the note executed a mortgage to Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for First Equity. Mr. Angeles ultimately defaulted under the note and on May 29, 2008 - two weeks prior to execution of the assignment of mortgage by MERS to Deutsche Bank - Deutsche Bank filed a foreclosure complaint. The complaint, however, alleged that the plaintiff was the owner of the note and mortgage being foreclosed.

On July 23, 2008, Deutsche Bank filed an amended complaint and due to his failure to file a responsive pleading, default was properly entered against Mr. Angeles on September 11, 2008. Final judgment of foreclosure was entered more than a year later on November 6, 2009.

As a result of multiple delays stemming from the New Jersey foreclosure system, the equitable powers exercised by the court in granting defendant's hardship application to stay an eviction, and additional delay resulting from plaintiff's attempt to amicably resolve the matter, Mr. Angeles successfully remained residing at the home throughout 2010 and 2011.

After negotiations with the bank failed, on November 16, 2011 - more than three years after the action was instituted - Mr. Angeles filed an order to show cause seeking to: (1) vacate the sheriff's sale; (2) enjoin Deutsche Bank from conveying title; and (3) permit Mr. Angeles to either file an answer to the foreclosure complaint or, alternatively, dismiss the complaint for lack of standing. After this application was denied, the eviction and lock-out were completed on January 3, 2012.

The Appellate Division, while not relaxing the requirement of *Deutsche Bank National Trust Co. v. Mitchell*, 422 N.J. Super. 214 (App. Div. 2011), that in order to have standing, a plaintiff must have either an assignment that predates the original

complaint or possession of the note, focused on the equitable factors warranting a denial of defendant's motion to vacate default judgment.

In response to defendant's argument that under *Rule* 4:50-1(d) the final judgment was void for lack of standing, the Court found that, while the assignment of mortgage post-dated the filing of the original complaint, defendant had not definitively demonstrated that plaintiff lacked standing. The Court reasoned that plaintiff may have had possession of the note at that time of filing the complaint. Indeed, the Court emphasized that Mr. Angeles at no time denied his responsibility for the debt incurred nor could he reasonably argue that Deutsche Bank was not the party legitimately in possession of the property.

The Court emphasized that “[i]n foreclosure matters, equity must be applied to plaintiffs as well as defendants.” Since Mr. Angeles did not raise the issue of standing until after he had the benefit of many years of delay, the Court held that as a matter of equity, the trial court did not abuse its discretion in rejecting defendant's “last-ditch effort to relitigate the case.”

Angeles marks an important step in New Jersey courts' recognition of the equitable rights of lenders and servicers instituting residential foreclosures in New Jersey. Lenders and servicers should take caution, however, in relying on *Angeles* without first evaluating the unique factual circumstances of the case at hand. Accordingly, it remains a best practice in New Jersey to obtain the original note and assignment of mortgage prior to filing a foreclosure complaint.

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