

CITIMORTGAGE, INC. V. LAURA TWEED

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**CITIMORTGAGE, INC., SUCCESSOR
BY MERGER TO ABN MORTGAGE
GROUP, INC.,
Plaintiff-Appellee,**

v.

**LAURA TWEED, FIRST COMMUNITY
BANK and THE UNKNOWN SPOUSE OF
LAURA TWEED, IF ANY,
Defendant-Appellant.**

No. 34,870

COURT OF APPEALS OF NEW MEXICO

December 30, 2015

APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY, George P.
Eichwald, District Judge

COUNSEL

Aldridge Pite, LLP, Denise A. Snyder, Albuquerque, NM, Eddie R. Jimenez, San Diego,
CA, for Appellee

JRSPC, LLC, Joshua Simms, Albuquerque, NM, for Appellant

JUDGES

J. MILES HANISEE, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge,
LINDA M. VANZI, Judge

AUTHOR: J. MILES HANISEE

MEMORANDUM OPINION

HANISEE, Judge.

{1} Defendant Laura Tweed (Homeowner) appeals from the district court's summary judgment ruling that Plaintiff CitiMortgage, Inc. (Bank) had standing to bring the foreclosure action. Our notice proposed to affirm. Bank filed a memorandum in support and Homeowner filed a memorandum in opposition. We remain unpersuaded by Homeowner's arguments, and thus affirm.

{2} Homeowner continues to challenge Bank's standing. [DS 1; MIO 2] As we stated in our notice, to establish standing to bring a foreclosure suit, Bank had to demonstrate the right to enforce both the promissory note and mortgage lien on the property at the time it filed its complaint. See *Bank of N.Y. v. Romero*, 2014-NMSC-007, ¶ 17, 320 P.3d 1. Pertinent to this, Bank attached a copy of the note to its complaint, which contains a blank indorsement from the original lender, thereby converting the note to bearer paper. [RP Vol.I/1, 37, 42, 45] See NMSA 1978, § 55-3-205(b) (1992) (providing that "[w]hen indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed"). In addition to being in possession of the note with a blank indorsement at the time it filed the complaint, Bank also introduced evidence to show that it was the successor in interest to the original lender. Specifically, in the course of the summary judgment proceedings below, Bank attached an affidavit of Kathy Bray, Vice President-Documents Control, providing that Bank was the successor by merger to the original lender and is the holder of the note. [RP Vol.II/214, 223, 224] As part of this, the affidavit attached copies of the certificate of merger. [RP Vol.II/265-68] In our view, this affidavit was sufficient to show Bank's ownership of the note and entitlement to pursue its foreclosure action. See *Bank of N.Y.*, 2014-NMSC-007, ¶ 17 (recognizing that a successor in interest is entitled to enforce the note). Apart from this, we additionally consider the "home affordable modification agreement" that Bank also attached to its complaint, wherein Homeowner renegotiated the terms of the loan documents with Bank. [RP Vol.I/64] In our view, this agreement is akin to an implicit admission by Homeowner to Bank's standing to proceed in the foreclosure action.

{3} In her memorandum in opposition, Homeowner does not dispute that Bank is the holder of the note, but instead shifts the focus of her standing challenge to the mortgage. Specifically, Homeowner argues that while the note was transferred to Bank, the mortgage did not necessarily follow the note. [MIO 3-4] In such instance, Homeowner asserts, the note is not secured by a mortgage, with the consequence that Bank lacks standing to bring the foreclosure action. [MIO 5] We need not address whether a mortgage automatically follows the promissory note, however, because as provided above Bank was the successor in interest to the original lender, such that not only was Bank the holder of the note, but that the mortgage to the note also belonged to Bank. See generally *Bank of N.Y.*, 2010-NMSC-007, ¶ 17 (recognizing that a successor in interest may enforce the contract).

{4} For the reasons provided herein and in the notice, we affirm.

{5} **IT IS SO ORDERED.**

J. MILES HANISEE, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

LINDA M. VANZI, Judge