

**JP MORGAN CHASE BANK V. BUSI**

This memorandum opinion was not selected for publication in the New Mexico Appellate Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

**JP MORGAN CHASE BANK,  
NATIONAL ASSOCIATION,  
Plaintiff-Appellee,  
v.  
LINDA BUSI,  
Defendant-Appellant,  
and  
LOS ALAMOS NATIONAL BANK,  
Defendant.**

No. 34,224

COURT OF APPEALS OF NEW MEXICO

December 7, 2016

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY, Francis J. Mathew,  
District Judge

**COUNSEL**

Hinkle Shanor LLP, Nancy S. Cusack, Santa Fe, NM, for Appellee

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

**JUDGES**

JONATHAN B. SUTIN, Judge. WE CONCUR: MICHAEL E. VIGIL, Chief Judge,  
TIMOTHY L. GARCIA, Judge

**AUTHOR:** JONATHAN B. SUTIN

**MEMORANDUM OPINION**

**SUTIN, Judge.**

{1} Plaintiff JP Morgan Chase Bank, National Association, sought foreclosure of Defendant Linda Busi's mortgage in May 2009. Plaintiff attached a copy of a note and mortgage naming Chase Bank USA, N.A. as the lender. The note showed no endorsement to Plaintiff from Chase Bank USA. Plaintiff filed a motion for summary judgment. Defendant did not object to Plaintiff's standing to sue.

{2} The district court entered a judgment of foreclosure against Defendant in December 2009. The mortgaged property was sold in February 2010, and the district court entered an order approving the sale in March 2010. Defendant did not appeal from the foreclosure judgment and related orders.

{3} In July 2014 Defendant filed a motion pursuant to Rule 1-060(B) NMRA to set the judgment aside as void, basing the motion on our Supreme Court's opinion in *Bank of New York v. Romero*, 2014-NMSC-007, ¶ 1, 320 P.3d 1, which held that a foreclosure judgment was void for lack of subject matter jurisdiction when the plaintiff did not have standing to file the foreclosure complaint. The district court denied Defendant's motion on the basis that the motion was untimely and beyond the limits of Rule 1-060(B). Defendant appealed.

{4} We review a district court's denial of relief under Rule 1-060(B) for an abuse of discretion. *Meiboom v. Watson*, 2000-NMSC-004, ¶ 29, 128 N.M. 536, 994 P.2d 1154. However, the application of Rule 1-060(B) to the facts is a question of law that we review de novo. See *Harrison v. Bd. of Regents of Univ. of N.M.*, 2013-NMCA-105, ¶ 14, 311 P.3d 1236 (“[E]ven when we review for an abuse of discretion, our review of the application of the law to the facts is conducted de novo.” (internal quotation marks and citation omitted)).

{5} Our Supreme Court in *Deutsche Bank National Trust Co. v. Johnston*, 2016-NMSC-013, 369 P.3d 1046, took the opportunity to clarify statements in *Romero* and held that the issue of standing in mortgage foreclosure cases is prudential rather than jurisdictional. *Johnston*, 2016-NMSC-013, ¶¶ 9, 11, 13. The Court held that, as a prudential matter, a standing issue in a foreclosure case may be raised any time “prior to the completion of a trial on the merits.” *Id.* ¶ 16. Although the *Johnston* Court ultimately held that the homeowner in that case did not waive the issue of standing because he raised it prior to trial, *id.* ¶ 17, the Court did clarify that once a final judgment is entered, a party may not use lack of standing as the basis for a collateral attack on a final judgment. *Id.* ¶ 34. According to the Court, “a final judgment on . . . an action to enforce a promissory note . . . is not voidable under Rule 1-060(B) due to a lack of prudential standing.” *Id.* Applying our Supreme Court's holding in *Johnston* that expressly prohibits the type of collateral attack that Defendant attempts to make, we conclude that Defendant's motion to set the judgment aside had no legal basis, and Defendant can find no relief in her tardy Rule 1-060(B) motion.

{6} We affirm the district court's denial of Defendant's motion to set aside the foreclosure judgment and proceedings following that judgment.

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

**JONATHAN B. SUTIN, Judge**

**WE CONCUR:**

**MICHAEL E. VIGIL, Chief Judge**

**TIMOTHY L. GARCIA, Judge**