NO. 94347-8

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JOHN E. & SHELLEY A. ERICKSON,

Appellants

v.

DEUTSCHE BANK NATIONAL TRUST CO., et al.

Respondents.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

Court of Appeals, Div. I, No. 73833-0-I

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I. INTRODUCTION

Respondent Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4 ("Deutsche Bank") submits this answer to the Ericksons' Petition for Review. The Ericksons purport to seek review of Deutsche Bank's standing to sue on the Ericksons' promissory note primarily by claiming, contrary to the trial court record, that Deutsche Bank failed to show that it held the note at the time it filed this lawsuit.

The Ericksons' argument is meritless, both factually and legally, and the Court of Appeals properly denied the Ericksons' appeal.[1] The Court of Appeals' ruling is not contrary to any existing Washington authority and the case does not present an issue of substantial public interest.

Deutsche Bank submitted the Ericksons' original note and deed of trust at summary judgment and obtained a foreclosure judgment in the trial court. The Ericksons offered no contrary evidence. The law should – and does – enable the party holding the Ericksons' original note to enforce payment through foreclosure (the Ericksons have made no payments since

[1] The Ericksons' arguments are addressed in greater detail in Respondent's Appellate Brief submitted to the Court of Appeals below.

2009.) That result is not only the expected outcome on the law and facts before the trial court, it is undeniably the right outcome.

The Ericksons fail to establish any basis for review by this Court under RAP 13.4 and the petition should be denied.

II. ARGUMENT

A. Deutsche Bank Held the Ericksons' Note When it Filed this Lawsuit

The Ericksons' statement of the record before the trial court incorrectly states the relevant facts. Deutsche Bank filed the present lawsuit in King County Superior Court in 2014 to foreclose on the Note and Deed of Trust. CP 1. Deutsche Bank filed a summary judgment motion to dismiss the Ericksons' affirmative defenses and counterclaims and to obtain a decree of foreclosure. CP 215.

At the hearing on the summary judgment motion, Deutsche Bank produced the original Note, endorsed in blank, and the Deed of Trust. VRP at 5-7. The Ericksons failed to challenge the originality of the note in their answer, as specifically required under RCW 62A.3-308(a).[2] Nevertheless, the trial court at the first summary judgment hearing gave the Ericksons a chance to have an expert examine the note. VRP at 41. At the subsequent hearing, the Ericksons made no argument that the note was

[2] Respondent's Appellate Brief pp. 7-10.

not the original. VRP at 45-46. After the second hearing and some supplemental briefing by the parties, Deutsche Bank's summary judgment motion was granted. CP 539. A final judgment of foreclosure was subsequently entered. CP 680.[3] This appeal followed.

Previously, in August 2010, the Ericksons had sued Long Beach, Washington Mutual Bank, Deutsche Bank National Trust Company, and Chase Bank in King County Superior Court. CP 470 (Supp. Eidson Decl. Exs. B, C); *Erickson v. Long Beach Mortg. Co.* (*Long Beach*), No. 10-1423 MJP, 2011 WL 830727, at *2 (W.D. Wash. Mar. 2, 2011), *aff'd*, 473 F. App'x 746 (9th Cir. 2012) (the "2010 District Court Case").[4] Among other things, in 2010 the Ericksons asserted quiet title and injunction claims against foreclosure on the basis that the defendants were not the original creditors and could not produce the Ericksons' original Note and therefore lacked standing to foreclose. *Id.*

In the 2010 District Court Case, Deutsche Bank filed a summary judgment motion and submitted a supporting declaration establishing that the Ericksons' Note and Deed of Trust had been transferred to a mortgage

[3] While the Ericksons complain about the amount of the judgment, they failed to raise the affirmative defense of payment, and again, provided the trial court with no evidence. Respondent's Appellate Brief, pp. 31-34.

[4] The case was removed to federal court.

trust, that Deutsche Bank was the trustee for the mortgage trust, and that it owned and held the Ericksons' original Note.

> Plaintiff's [the Ericksons'] loan was subsequently sold into a securitized pool of loans known as the Long Beach Mortgage Loan Trust 2006-4 ("Trust"), with Defendant Deutsche Bank National Trust Company ("DB") acting as Trustee.

CP 446 (Thomas Reardon declaration).[5]

In March 2011, the federal district court rejected the Ericksons' argument that Deutsche Bank and its servicer lacked standing to foreclose because they were not the original creditors and could not produce the original Note, finding that "[m]ore importantly, [Deutsche Bank and its servicer] provide[d] evidence demonstrating their ownership of the note, which the Ericksons do not credibly challenge." CP 470; *Long Beach*, 2011 WL 830727, at *1, 3. *Id.* The federal district court granted Deutsche Bank's motion for summary judgment, denied the Ericksons' motion for summary judgment, and dismissed the Ericksons' lawsuit. *Id.*

At no point in the trial court proceedings below in this case did the Ericksons produce any evidence that Deutsche Bank did not hold the Ericksons' original note, endorsed in blank, since 2010, when Mr. Reardon's declaration established that Deutsche Bank held the

[5] As the record shows, the Reardon declaration was before the trial court below as part of the summary judgment proceeding.

Erickson's note. CP 446 *supra*. In particular, the Ericksons submitted no evidence showing that the Note had somehow left Deutsche Bank's possession between the 2010 District Court Case and the filing of the instant action in 2014.[6]

Faced with a summary judgment motion to dismiss their affirmative defenses, including their standing defense, and the evidence that showed Deutsche Bank possessed the Note in the 2010 District Court Case, the Ericksons were obligated by the summary judgment rules to produce contrary evidence to create a genuine issue of material fact to defeat summary judgment. If the moving party demonstrates that there is an absence of any material fact, the nonmoving party must identify a material fact creating a genuine issue for trial. *See Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 770 P.2d 182 (1989); CR 56(e) ("[A]n adverse party . . . must set forth specific facts showing that there is a genuine issue for trial."). The nonmoving party may not rely on the allegations in its complaint, speculation, argumentative assertions that unresolved factual issues remain, or its own affidavits, considered at face value. *E.g. Herman v. Safeco Ins. Co. of Am.*, 104 Wn. App. 783, 787-88, 17 P.3d 631 (2001); *see* CR 56(c).

[6] For example, the Ericksons produced no evidence of transfers of the note to another party, or that another party claimed to hold the note and had made demand upon the Ericksons to pay this Note.

party entitled to enforce the Note, and the Deed of Trust securing the Note.[8]

C. The Ericksons Fail to Raise Any Issue of Substantial Public Interest

Undoubtedly, a plaintiff must have standing to sue on a note. But as explained above, Deutsche Bank established standing. Standing is a party's right to make a legal claim or seek judicial enforcement of a duty or right. *State v. Link*, 136 Wn. App. 685, 692, 150 P.3d 610, *rev. denied*, 160 Wn.2d 1025 (2007). The doctrine of standing prohibits a party from asserting another's legal right. *West v. Thurston County*, 144 Wn. App. 573, 578, 183 P.3d 346 (2008). The rule ensures that courts render a final judgment on an actual dispute between opposing parties that have a genuine stake in resolving the dispute. *Lakewood Racquet Club, Inc. v. Jensen*, 156 Wn. App. 215, 223, 232 P.3d 1147 (2010). Deutsche Bank's submission of the Note at summary judgment assured the trial court that Deutsche Bank was the proper party entitled to obtain a final judgment on the Note obligation and to enforce the security for the Note through foreclosure. The Ericksons face no risk of double payment.

The Ericksons, ignoring the trial court summary judgment record, argue that Deutsche Bank had some different procedural duty to show it

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[8] Respondent's Appellate Brief, pp. 6-16.

had standing at the time of filing the complaint in some manner other than the evidence already in the record. But whether standing to sue on a note should be challenged through an affirmative defense, or how and when a plaintiff should establish its standing in some other manner are not issues raised by this case on the record below. The Ericksons never submitted evidence contradicting the evidence Deutsche Bank submitted at summary judgment, and have submitted no Washington authority identifying some other rule. *See Deutsche Bank Nat'l Trust Co. v. Slotke*, 192 Wn. App. 166, 367 P.3d 600 (2016). The Ericksons submit case law from other jurisdictions addressing the requirement that a plaintiff must show that it holds the defendant's note at the time of filing its complaint to establish standing to sue on the note. But the Ericksons submit no similar existing Washington authority and failed to rebut the evidence at summary judgment established by their own prior 2010 District Court Case.

In short, this alleged issue is not contrary to any existing Washington case law nor is it an issue of substantial public interest. Indeed, there is no evidence that Washington trial courts have been subjected to a plague of plaintiffs filing lawsuits on notes they don't hold, only later to obtain possession of the notes by the time of filing a summary judgment motion. It is undisputed that Deutsche Bank held the Ericksons' original promissory note; that Deutsche Bank is the party entitled to