

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: December 13, 2012

514265

CHASE HOME FINANCE, LLC,
Respondent,

v

ANTHONY S. MICIOTTA, Also Known
as ANTHONY MICIOTTA, et al.,
Defendants,

and

SUSAN M. MICIOTTA, Also Known
as SUSAN MICIOTTA,
Appellant.

MEMORANDUM AND ORDER

Calendar Date: October 11, 2012

Before: Peters, P.J., Rose, Spain, McCarthy and Garry, JJ.

Susan J. Civic, Saratoga Springs, for appellant.

Fein, Such & Crane, LLP, Rochester (Marc H. Goldberg of
Phillips Lytle, LLP, Albany, of counsel), for respondent.

McCarthy, J.

Appeal from an order of the Supreme Court (R. Sise, J.),
entered October 6, 2011 in Saratoga County, which denied a motion
by defendant Susan M. Miciotta to, among other things, dismiss
the complaint.

In 2003, defendant Anthony S. Miciotta (hereinafter
Miciotta) executed a note to borrow \$227,000 from Charter One
Bank, N.A. Miciotta and his wife, defendant Susan M. Miciotta
(hereinafter defendant), also executed a mortgage with Charter

One against their real property to secure the note. Charter One assigned the mortgage to JPMorgan Chase Bank, N.A., which later assigned the mortgage to plaintiff. When defendant and Miciotta stopped making payments, plaintiff commenced this action to foreclose on the mortgage. Following joinder of issue, defendant moved for, among other things, dismissal of the complaint on the ground that plaintiff lacked standing to bring the foreclosure action. Supreme Court denied the motion, prompting defendant's appeal.

We affirm. A plaintiff has standing in a mortgage foreclosure action "where it is both the holder or assignee of the subject mortgage and the holder or assignee of the underlying note at the time the action is commenced" (Bank of N.Y. v Silverberg, 86 AD3d 274, 279 [2011]; accord Wells Fargo Bank, N.A. v Wine, 90 AD3d 1216, 1217 [2011]; CitiMortgage, Inc. v Rosenthal, 88 AD3d 759, 761 [2011]). "Either a written assignment of the underlying note or the physical delivery of the note prior to the commencement of the foreclosure action is sufficient to transfer the obligation" (U.S. Bank, N.A. v Collymore, 68 AD3d 752, 754 [2009]). The first mortgage assignment, from Charter One to JPMorgan Chase Bank, states that it assigns the mortgage, "together with all rights therein and thereto, all liens created or secured thereby, all obligations therein described, the money due and to become due thereon with interest." The second mortgage assignment, from JPMorgan Chase Bank to plaintiff, transfers the identified mortgage "and all indebtedness secured thereby," specifically noting that the mortgage was "given to secure the payment of a promissory note" in the amount of \$227,000. "[N]o special form or language is necessary to effect an assignment as long as the language shows the intention of the owner of a right to transfer it" (Bank of N.Y. v Silverberg, 86 AD3d at 280-281 [internal quotation marks and citations omitted]). As found by Supreme Court, the language of these assignments, which were both executed and recorded prior to the commencement of this action, was broad enough to transfer the interest in the mortgage as well as the underlying debt secured by the note. Therefore, plaintiff had standing when it commenced this action because plaintiff was the assignee of both

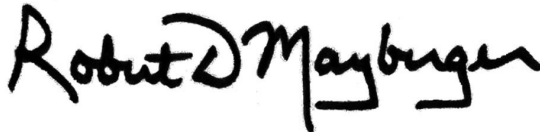
the mortgage and note at that time.¹

Defendant provided nothing more than speculation to support her allegations that the mortgage assignments were fraudulent. Accordingly, Supreme Court properly rejected those allegations. As defendant did not prevail on her motion, she was not entitled to counsel fees, costs or sanctions.

Peters, P.J., Rose, Spain and Garry, JJ., concur.

ORDERED that the order is affirmed, with costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large initial "R".

Robert D. Mayberger
Clerk of the Court

¹ Because plaintiff has standing as an assignee of the note, we need not address the alternate argument that plaintiff has standing as the holder of the note.