

Circuit Court for Montgomery County
Case No. 434969V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2636

September Term, 2018

RESHMA ALI, et al.

v.

JAMES E. CLARKE, et al.

Berger,
Friedman,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 26, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

— Unreported Opinion —

In this appeal from a foreclosure action in the Circuit Court for Montgomery County, Reshma Ali and Khwaja I. Ali, appellants, challenge the court's denial of motions to dismiss the action. For the reasons that follow, we shall affirm the judgments of the circuit court.

In June 2007, appellants obtained from The CIT Group/Consumer Finance, Inc. ("CIT") a loan secured by a deed of trust on their residence. Appellants executed a promissory note in which they promised to pay the amount of the loan, plus interest, to the lender. Attached to the note was an allonge containing an indorsement in blank, without recourse, to The Bank of New York Mellon, as trustee for CIT Mortgage Loan Trust 2007-1 ("CIT Trust"), by Caliber Home Loans, Inc. ("Caliber"), as its attorney in fact. In the deed of trust, appellants granted and conveyed the property to a trustee, in trust, with a power of sale. In August 2012, CIT assigned the mortgage to The Bank of New York Mellon as trustee on behalf of CIT Trust.

In August 2016, appellants defaulted on the terms of the note. In June 2017, appellees¹ were appointed as substitute trustees under the deed of trust. In August 2017, appellees filed the order to docket the foreclosure action.

In December 2017, appellants filed a motion to dismiss the action, on the ground that CIT Trust "is not licensed as a collection agency and not registered to do business in the [S]tate of Maryland." Appellees subsequently filed an opposition to the motion. Appellees attached to the opposition an affidavit in which Nathaniel Mansi, Default Service

¹Appellees are James E. Clarke, Renee Dyson, Hugh J. Green, Shannon Menapace, Christine M. Drexel, and Brian Thomas.

Officer for Caliber, affirmed under the penalties of perjury and upon personal knowledge that in September 2007, appellants’ “mortgage was . . . sold [by CIT to], and placed into, CIT Trust.” On September 6, 2018, appellants filed a second motion to dismiss, in which they contended that the lender had twice failed to appear for mediation. The court subsequently denied both motions to dismiss.

Appellants contend that the court erred in denying the motions to dismiss, because “Montgomery County land records” do not reflect the September 2007 sale of the mortgage to CIT Trust, and hence, appellees have “no legal standing.” (Capitalization and boldface omitted.) Appellees counter that we “must dismiss this appeal because it does not stem from a final judgment or is not otherwise permitted by law.” (Capitalization and boldface omitted.) Alternatively, appellees contend that they “had a legal right to file the foreclosure action” (capitalization and boldface omitted), because the “date in which [the] Loan, evidenced by the Note, was securitized into CIT [Trust] is irrelevant for the purposes of determining whether [a]ppellees have the legal right to file the foreclosure action either as holders of the note endorsed in blank or as the non-holders in possession of the Note.”

We disagree with appellees as to whether the instant appeal must be dismissed. Md. Code (1974, 2013 Repl. Vol., 2018 Supp.), § 12-303 of the Courts and Judicial Proceedings Article, states that a party may appeal from an order refusing to grant an injunction. The Court of Appeals has stated that because a motion to dismiss “contemplate[s] injunctive relief as a remedy,” the movant has “the right to appeal [an] interlocutory order denying the [m]otion.” *Fishman v. Murphy*, 433 Md. 534, 540 n. 2 (2013) (citations omitted). Hence, the instant appeal is permitted.

Nevertheless, we agree with appellees that they have standing. Appellants do not explain why the failure to record in Montgomery County the September 2007 sale of the mortgage to CIT Trust prohibits that entity from enforcing the terms of the note. In *Deutsche Bank v. Brock*, 430 Md. 714 (2013), the Court of Appeals stated that if a person or entity is in possession of a note “that is indorsed in blank,” the person or entity “is therefore the holder of the [n]ote, and, as the holder, is a person or entity entitled to enforce it.” *Id.* at 732 (citation omitted). Here, CIT Trust is in possession of the note, and as a holder, CIT Trust and its substitute trustees are entitled to enforce it. Hence, the court did not err in denying appellants’ motions to dismiss.

**JUDGMENTS OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANTS.**