

No. 22-345

In The
Supreme Court of the United States

FILED
OCT 19 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

PAUL SILADI,

Petitioner,

v.

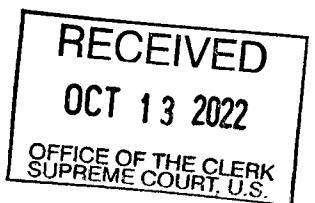
DEUTSCHE BANK NATIONAL TRUST COMPANY,
AS TRUSTEE FOR WAMU MORTGAGE
PASS-THROUGH CERTIFICATE SERIES 2005-AR-6,

Respondent.

On Petition For Writ Of Certiorari
To The Connecticut Supreme Court

PETITION FOR WRIT OF CERTIORARI

PAUL SILADI
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QUESTIONS PRESENTED

1. Whether the Connecticut Supreme Court's Order Denying Petitioner's Petition for Certification to Appeal to that Court upholding the Connecticut Appellate Court's Orders and the Superior Court's Orders and Judgments violates Petitioner's due process rights to a trial as guaranteed by the 5th and 14th amendments to the U.S. Constitution?
2. Whether the CT Superior Court's Protection Order(s) denying Petitioner discovery as to the standing of the Respondent-Plaintiff to pursue foreclosure in this action are flagrant violations of due process and the rules of law?
3. Whether the lack of written judicial findings of fact and reason for decisions violates procedural due process as guaranteed by the 5th amendment and Section 1 of the 14th amendments of the United States Constitution?

PARTIES TO THE PROCEEDING

Petitioner and Appellant Below

Paul Siladi

Respondent and Appellee Below

Deutsche Bank National Trust Company, as
Trustee For WAMU Mortgage Pass-Through
Certificate Series 2005-AR-6

LIST OF THE PROCEEDINGS BELOW

Connecticut Supreme Court

*Deutsche Bank National Trust Company as
Trustee for WAMU Mortgage Pass-Through
Certificate Series 2005-AR-6 v. Paul Siladi,*
SC201401 (Conn.)

Appellant/Defendant Petition for Certification
to Appeal Denied. No written opinion or re-
dress by the court despite Notice of issues.

Connecticut Appellate Court

*Deutsche Bank National Trust Company as
Trustee for WAMU Mortgage Pass-Through
Certificate Series 2005-AR-6 v. Paul Siladi,* AC
45086 (Connecticut Court of Appeals).

Appellant/Defendant's Appeal to Judgment of
Strict Foreclosure Denied. No written opinion
despite notice of issues.

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OPINIONS BELOW

The Connecticut Supreme Court Denial of the Petition for Certification to Appeal is at *Deutsche Bank National Trust Company as Trustee for WAMU Mortgage Pass-Through Certificate Series 2005-AR-6 v. Siladi, Paul* SC201401 reproduced at App., 1 and 3. The Connecticut Supreme Court's Order denying petitioner's Motion to Stay Pending Decision by the United States Supreme Court is reproduced at App. 5. The Connecticut Appellate Court Order denying petitioner's Motion for Reconsideration En Banc is reproduced at App. 6.

JURISDICTION

The Connecticut Supreme Court issued its final Order Denying Petition for Certification to Appeal on May 17, 2022. On June 6, 2022 Justice Sotomayor extended the time for filing this petition to and including October 14, 2022. Application No. 21A786. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V of the United States Constitution:

The guarantee of due process requires the government to respect all rights, guarantees, and protections afforded by the U.S. Constitution and all applicable statutes before the

government can deprive any person of life, liberty or property.

Amendment VII of the United States Constitution:

In suits of common law where the value of the controversy shall exceed twenty dollars the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, other than required by common law.

Amendment XIV Section 1 of the United States Constitution:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without process of law; nor deny to any person within the jurisdiction the equal protection of the laws.

**INTRODUCTION AND
STATEMENT OF THE CASE**

This case is a judicial foreclosure action brought by Deutsche Bank National Trust Company as Trustee for WAMU Mortgage Pass-through Certificate Series 2005. Deutsche Bank was not the original owner of the note and mortgage. The original owner was

Washington Mutual Bank, F.A. Deutsche Bank alleges it obtained the subject note and mortgage prior to initiating this foreclosure action on March 28, 2012, that the assignee, JP Morgan Chase Bank, National Association, successor in interest by purchase from the FDIC, as receiver of Washington Mutual Bank, F.A., had acquired the note and mortgage from the FDIC via a purchase and assumption agreement dated September 25, 2008. On July 5, 2012 Petitioner ("Siladi") filed answers and counter-claims against Deutsche Bank challenging its standing to pursue this foreclosure action.

On January 24, 2012 the United States Bankruptcy Court District of Case # 11-32614 in a Chapter 7 filing Discharged the Appellant Paul Siladi as to any Obligation as to the Note associated with the subject Mortgage. Nevertheless, fourteen months later this Mortgage Foreclosure action was commenced by Deutsche Bank by Summons and Complaint returnable to the Judicial District at New Haven on April 16, 2013, pleading entitlement to enforce the Mortgage and Discharged Note. Deutsche Bank in its pleadings and motions to the several Connecticut courts has never clarified that this foreclosure action cannot attempt by Order of the Bankruptcy court to enforce the discharged note only the lien against the subject property.

Petitioner (Siladi) on July 5, 2015 filed his Answer and Special Defenses to The Complaint in which he denied Deutsche Bank was owner of the note and mortgage. He further alleged in his answer that:

Plaintiff [Deutsche Bank] in its complaint deceptively ignored To mention the actual person deemed owners clause of the Pooling and servicing agreement which clearly states that the Persons deemed owners are the certificate owners. Therefore, Deutsche Bank cannot be the owner of the mortgage and note.

On May 20, 2015, nearly two years later, Deutsche Bank filed a motion for summary judgment, a violation of Connecticut Practice Book Section 10-6 Pleadings allowed and Their Order, as well as other procedural precedents. Failing as required in that section to respond to Siladi's special defenses. The superior court ordered on June 30, 2015 that discovery shall proceed. Numerous motions by Siladi for interrogatories and production were objected to by Deutsche Bank hindering his attempts to prepare his defense. Deutsche Bank filed motions objecting to interrogatories and production on October 16, 2015 Siladi filed a notice of deposition and request for production on January 4, 2016. In response, on January 13, 2016 Deutsche Bank filed a motion for protection order which was granted by the superior court on January 22, 2016 over the objections of Siladi filed on January 21, 2016. After another effort within the restrictions imposed by the superior court's first protection order, Siladi attempted to pursue discovery (as ordered by the superior court on June 30, 2015). Deutsche Bank responded March 10, 2016 with a second motion for protection order. On April 6, 2016 Deutsche Bank filed a third motion for protection order which the superior granted on April 18, 2016. Siladi filed an appeal challenging the

superior court's granting of the third protection order to the Connecticut Appellate Court on May 2, 2016, which was dismissed for lack of final judgment on a single page decision without any explanation of findings of fact or legal basis on June 6, 2016.

Petitioner Siladi filed a motion on November 17, 2017 objecting to summary judgment and requesting the superior court to schedule an evidentiary hearing. The superior court scheduled instead a short calendar hearing for December 6, 2016. Siladi filed on November 30, 2016 an objection to motion for summary judgment and a detailed memorandum of law opposing summary judgment. App. 13. A short calendar hearing was held on December 6, 2016. On March 27, 2016 the superior court granted Deutsche Bank's motion for summary judgment. Siladi filed an appeal to the appellate court on April 11, 2016 which was denied on June 8, 2016 on a single page order for lack of final judgment. Deutsche Bank filed yet another Objection to Motion for interrogatories and production on April 26, 2016.

Deutsche Bank filed a motion for strict foreclosure on June 7, 2017 which the superior court granted over the objections of the petitioner at a short calendar hearing on December 18, 2017 and denied Siladi's motion to dismiss. Siladi filed an appeal on January 3, 2018 which the appellate court denied and remanded to the superior court on April 2, 2018. Siladi filed a petition for certification to appeal to the Connecticut Supreme Court which was denied on a single paragraph page September 11, 2019.

On September 21, 2021 Deutsche Bank filed a motion to modify judgment after appeal. Siladi filed a motion objecting to the order modifying judgment after appeal on September 29, 2021. The superior court on October 12, 2021 issued a judgement of strict foreclosure. Siladi on November 1, 2021 appealed the strict foreclosure judgment of the superior court. On December 6, 2021 Siladi filed a motion for articulation in the appellate court as to the superior court judgment of strict foreclosure. On December 21, 2021 the superior court denied the motion for articulation scribbling a one sentence denial on the last page of Siladi's motion for articulation.

On January 5, 2022 the appellate court granted Deutsche Bank's motion to dismiss appeal and denied pending motion by Siladi as to the denial of the superior court's denial of his motion for articulation. Siladi filed a petition for certification to the Connecticut Supreme Court which was denied on May 5, 2022. Siladi filed a motion for stay on June 6, 2022 to the appellate court to file a Writ of Certiorari to the United States Supreme Court which the Court denied on June 17, 2022. On May 22, 2022 Siladi filed an application for extension of time within which to file for a writ of certiorari to justice Sotomayor, who on June 6, 2022 extended the time to file to and including October 14, 2022.



REASONS FOR GRANTING WRIT

I. NO TRIAL OR EVIDENTIARY HEARING

The Connecticut Superior Court by granting summary judgment and strict foreclosure without conducting a trial or evidentiary hearing, as requested by Petitioner where he could, as provided for by the 5th and 14th amendments to the U.S. Constitution, assert his due process rights as summarized by Judge Henry Friendly in his treatise "Some Kind of Hearing" created a list of due process rights which apply equally to civil due process and criminal due process are:

1. An unbiased tribunal.
2. Notice of a proposed action and the grounds asserted for it.
3. Opportunity to present reasons why the proposed action should not be Taken.
4. The right to present evidence, including the right to call witnesses.
5. The right to know opposing evidence.
6. The right to cross examine adverse witnesses.
7. A decision based exclusively on the evidence.
8. Opportunity to be represented by counsel.
9. Requirement that the tribunal prepare a record of the evidence.

10. Requirement that the tribunal prepare written findings of the facts and reasons for its decision.

The superior court in denying Siladi a trial or evidentiary hearing deprived him of the following due process rights as stated by Judge Friendly as follows:

1. An unbiased tribunal.
4. The right to present evidence, including the right to call witnesses.
3. The right to cross-examine adverse witnesses.
10. Requirement that the tribunal prepare written findings of the facts and reasons for its decisions.

The denial by the superior court of Siladi's procedural due process rights defied the intent of the U.S. Constitution based on the concept of "fundamental fairness." Fundamental due process rights are in a group of rights including loss of property that this court has recognized requiring a high degree of protection from government encroachment. Denial of a trial to an individual attempting to protect his home from an entity that did not in this foreclosure prove standing to pursue this foreclosure action.

II. PROTECTION ORDERS DENYING PROCEDURAL DUE PROCESS

Between May 20, 2015 and January 4, 2016 petitioner Siladi attempted to pursue discovery over the

persistent objections of Deutsche Bank, The superior court ruled on June 30, 2015 and again on November 2, 2015 that discovery should proceed. Deutsche Bank filed several motions for extension of time to respond and then on October 16, 2015 filed motions objecting to Siladi's motions for interrogatories and production.

On January 6, 2016 Siladi posted a notice of deposition and request for production. Deutsche Bank responded on January 13, 2017 with a motion for protection order, which the superior court granted on January 22, 2016 Appendix 12. Deutsche filed a second motion for protection order on March 10, 2016. Deutsche Bank filed a third protection order on April 6, 2016 which the superior court granted on April 18, 2016, Appendix 13. Siladi appealed to the appellate court on May 5, 2016 asserting the protection orders granted by the superior court violated his constitutional rights to due process. The appellate court denied his appeal on a one page, one paragraph denial for lack of a final judgment on June 13, 2016.

Deutsche Bank moved forward with its summary judgment motion and a short calendar hearing was held on December 6, 2016. Siladi's objection to motion for summary judgment memorandum of law, Appendix 10, cited a recent Connecticut superior case in which the court had denied JPMorgan Chase Bank, N.A. ("CHASE") summary judgment because the same document the Purchase and Assumption Agreement (PSA) dated September 25, 2008 between CHASE and the FDIC, which Deutsche Bank alleged in their initial foreclosure complaint the basis for its right to the

Siladi mortgage, did not list any mortgages that Chase claimed to have purchased and that was a triable issue not warranting summary judgement. See Siladi memorandum Appendix 13 page 12 *JP Morgan Chase, National Association v. Michael Porzio, et al.*, Superior Court Docket No. FST CV 09-501388 S (October 26, 2013). Further, Siladi cited two cases in which CHASE had admitted under oath that they had not purchased WAMU mortgages from the FDIC in the PAS but only the servicing rights. See *JP Morgan Chase Bank v. Butler* Superior Court of the State of New York, Kings County 2013 NY Slip Op 51050 (U) and also *Juan C. Chavez v. JPMorgan Chase Bank, N.A.*, United States District Court for the District of Massachusetts Civil Action No. 12-cv-10691 WGY (July, 2014) See Petitioner's objection to motion for summary judgment memorandum of law Appendix 13.

There is no evidence in the record of this instant case demonstrating that the Siladi mortgage was part of the WAMU assets that the FDIC sold to JP Morgan Bank, N.A. via the PSA dated September 25, 2008. The only true evidence as it relates to whether Chase acquired the mortgages in the WAMU purchase from the FDIC is their own documented admission in the above cited cases that they did not acquire the mortgages but only the servicing rights.

III. NO WRITTEN FINDINGS OF FACTS OR REASONING FROM THE CONNECTICUT APPELLATE OR SUPREME COURTS

Petitioner's appeal to the appellate court on May 2, 2016 as to the superior court's order granting Deutsche Bank's motion for protection order was denied on June 6, 2016, for lack of final judgment on a single page no written finding of the facts or reasons for the decision. Siladi's appeal on April 11, 2017, to the Appellate court as to the granting of the superior's court's order granting summary judgment was denied on June 13, 2017 on a single page with no findings of the facts or reasons for the decision. On November 1, 2022 Siladi filed an appeal to the appellate court challenging the superior court's judgment of strict foreclosure which the appellate court denied on January 5, 2022 on a single page no written finding of the facts or reasons as frivolous. Siladi filed a petition for certification to the Connecticut Supreme Court on June 13, 2019 which was denied with no explanation. On April 19, 2022 filed a petition for certification to the Connecticut supreme court which was denied by the appellate court on June 17, 2022 with no written findings of the fact or reasons for the decision.

It is apparent that in foreclosure proceedings the Connecticut judicial system is not interested in the facts as they relate as to who has standing to pursue foreclosure actions.

It is also important to emphasize what is and what is not at issue in Challenges to foreclosure standing. Foreclosure standing litigation

Does not directly relate to the issue of whether the homeowner is in Default on the mortgage or even indebted and to what amount. The Mortgage title issue does not generally go to the question of the Validity of the mortgage or the generic enforceability. Problems with Mortgage title do not mean that a loan is not outstanding or that is Not in default. Instead, the mortgage title issue is about the specific Question of *who* has the right to enforce the mortgage and the Consequences of improper foreclosures. (Leviton, *The Paper Chase: Securitization, Foreclosure, and the Uncertainty of Mortgage Title* (2013) 63 Duke L.J. 650.

IV. SUMMARY AND CONCLUSION

In Connecticut procedural due process rights, guaranteed by the 5th, 7th and Section 1 of the 14th amendment to the United States Constitution and in the Connecticut Constitution's Section 10, Article 4, have eroded to the point that foreclosure action defendants are not entitled in the Connecticut judicial system to a trial or an evidentiary hearing. At short calendar administrative hearings defendants are not entitled to cross examine adversarial witnesses (usually Affiants not in attendance) or schedule expert witnesses in their defense. Whether the judicial officials are unbiased is questionable, they push through the docket as if it was an assembly line. These courts rarely prepare written findings of the facts submitted by the defendants or reasons beyond that the court saw

the mortgage and note therefore that was *prima facie* evidence to warrant foreclosure. When defendant Siladi raised the issue of the Deutsche Bank's standing the court's response was Deutsche Bank's possession of the note and mortgage was sufficient to establish standing to pursue foreclosure on Siladi's home.

When, as in this instant case, an appeal is taken by the defendant the appellate court rubber stamps the lower court's judgments and decisions often denying the appeal as lacking a final judgment or as frivolous, regardless of the merits and factual evidence submitted by the appellant, without written findings of the facts or reasons for the decision.

Deutsche Bank motioned for three protection orders over a three month period, the superior court (lower court) issued two. Both severely restricting Siladi pursuing discovery as to Deutsche Bank's standing to pursue foreclosure of his home. Deutsche Bank also filed two motions objecting to interrogatories and requests for production further hindering the discovery process. Deutsche Bank and their attorneys knew that discovery would reveal the serious issue of the assignor (CHASE) of the subject mortgage admitting in State and Federal District courts they never acquired the subject mortgage in the acquisition of WAMU assets from the FDIC. See Siladi's Memorandum of Law Opposing Plaintiff's Motion for Summary Judgement Appendix 11. In the instant case that was a serious dilemma because the Siladi Note was discharged months before they had initiated this foreclosure and therefore

Deutsche Bank could only enforce the lien on the Siladi property not the discharged note.

The key, as stated in the Levitan treatise cited above is in securitized mortgages is determining who has standing to foreclose the subject mortgage and note. The protection orders granted to Deutsche Bank forbade Siladi from pursuing his procedural due process rights as guaranteed by the 5th and 14th amendments to the United States Constitution.

CONCLUSION

The questions raised by the petitioner are of fundamental importance to the procedural due process rights of homeowners that are unfortunately involved in foreclosure actions. Petitioner respectfully requests this honorable court to grant this Writ of Certiorari.

Respectfully submitted,

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App. 1

[SEAL]

SUPREME COURT
STATE OF CONNECTICUT

PSC-210401

DEUTSCHE BANK NATIONAL TRUST COMPANY

v.

PAUL SILADI

**ORDER ON PETITION FOR
CERTIFICATION TO APPEAL**

The defendant's petition for certification for appeal from the Appellate Court (AC 45086) is denied.

ALEXANDER, J., did not participate in the consideration of or the decision on this petition.

Paul Siladi, self-represented, in support of the petition.
Pierre-Yves Kolakowski, in opposition.

Decided May 17, 2022

By the Court,

/s/

Cory M. Daige
Assistant Clerk - Appellate

App. 2

Notice Sent: May 17, 2022
Petition Filed: April 19, 2022
Hon. Anthony V. Avallone
Clerk, Superior Court, NNH-CV13-6037510-S
Clerk, Appellate Court
Reporter of Judicial Decisions
Staff Attorneys' Office
Counsel of Record

App. 3

[SEAL]

SUPREME COURT
STATE OF CONNECTICUT

PSC-210401

DEUTSCHE BANK NATIONAL TRUST COMPANY

v.

PAUL SILADI

**CORRECTED* ORDER ON PETITION
FOR CERTIFICATION TO APPEAL**

The defendant's petition for certification for appeal from the Appellate Court (AC 45086) is denied.

ECKER, J. and ALEXANDER, J., did not participate in the consideration of or the decision on this petition.

Paul Siladi, self-represented, in support of the petition.
Pierre-Yves Kolakowski, in opposition.

Decided May 17, 2022

By the Court,

/s/

Cory M. Daige
Assistant Clerk - Appellate

* Corrected to add Justice Ecker as not participating in the consideration of or the decision on this petition.

App. 4

Notice Sent: May 17, 2022
Petition Filed: April 19, 2022
Hon. Anthony V. Avallone
Clerk, Superior Court, NNH-CV13-6037510-S
Clerk, Appellate Court
Reporter of Judicial Decisions
Staff Attorneys' Office
Counsel of Record

App. 5

[CONNECTICUT SUPREME COURT]

**Order On Motion to Stay Pending Decision by
U.S. Supreme Court (P.B. § 71-7) AC 213733**

Docket Number: AC45086
Issue Date: 6/17/2022
Sent By: Supreme/Appellate

**Order On Motion to Stay Pending Decision by
U.S. Supreme Court (P.B. § 71-7) AC 213733**

AC45086 DEUTSCHE BANK NATIONAL TRUST
COMPANY v. PAUL SILADI

Notice Issued: 6/17/2022 12:54:48 PM

Notice Content:

Motion Filed: 6/6/2022
Motion Filed By: Paul A Siladi
Order Date: 06/17/2022

Order: Denied

By the Court
Daige, Cory M

Notice sent to Counsel of Record
Hon. Anthony V. Avallone
Clerk, Superior Court, NNHCV136037510S

App. 6

[CONNECTICUT APPELLATE COURT]

Order On Motion for Reconsideration En Banc
AC 213121

Docket Number: AC45086

Issue Date: 3/16/2022

Sent By: Supreme/Appellate

Order On Motion for Reconsideration En Banc
AC 213121

AC45086 DEUTSCHE BANK NATIONAL TRUST
COMPANY v. PAUL SILADI

Notice Issued: 3/16/2022 2:10:26 PM

Notice Content:

Motion Filed: 2/2/2022

Motion Filed By: Paul A Siladi

Order Date: 03/16/2022

Order: Denied

Clark, J., did not participate in the consideration of or
decision on this motion.

By the Court

Daige, Cory M

Notice sent to Counsel of Record

Hon. Anthony V. Avallone

Clerk, Superior Court, NNHCV136037510S

App. 7

[SEAL]

APPELLATE COURT
STATE OF CONNECTICUT

AC 45086

DEUTSCHE BANK NATIONAL TRUST COMPANY

v.

PAUL SILADI

January 5, 2022

ORDER

The motion of the defendant-appellant, filed January 3, 2022, for review of decision on motion for articulation, having been presented to the Court, it is hereby **ORDERED** that no action is necessary.

By the Court,

/s/

Cory M. Daige
Assistant Clerk-Appellate

Notice Sent: January 5, 2022
Hon. Anthony V. Avallone
Counsel of Record
Clerk, Superior Court NNH-CV13-6037510-S

212946

App. 8

[SEAL]

APPELLATE COURT
STATE OF CONNECTICUT

AC 45086

DEUTSCHE BANK NATIONAL TRUST COMPANY

v.

PAUL SILADI

January 5, 2022

ORDER

The motion of the plaintiff-appellee, filed November 12, 2021, to dismiss, having been presented to the Court, it is hereby **ORDERED** granted as the appeal is frivolous.

By the Court,

/S/

Cory M. Daige
Assistant Clerk-Appellate

Notice Sent: January 5, 2022
Hon. Anthony V. Avallone
Counsel of Record
Clerk, Superior Court NNH-CV13-6037510-S

212639

App. 9

[SEAL]

APPELLATE COURT
STATE OF CONNECTICUT

AC 45086

DEUTSCHE BANK NATIONAL TRUST COMPANY

v.

PAUL SILADI

January 5, 2022

ORDER

The motion of the plaintiff-appellee, filed November 12, 2021, for sanctions and request for a prohibitory order, having been presented to the Court, it is hereby **ORDERED** denied.

By the Court,

/S/

Cory M. Daige
Assistant Clerk-Appellate

Notice Sent: January 5, 2022
Counsel of Record

212640

App. 10

[SUPERIOR COURT]

Order a Motion for Articulation

Motion denied.

By the Court (Avallone, JTR)
(CMD, Deputy Check Clerk)

Date: 12/21/2021

App. 11

**APPELLATE COURT
STATE OF CONNECTICUT**

AC 40328

DEUTSCHE BANK NATIONAL TRUST COMPANY

v.

PAUL SILADI

June 7, 2017

ORDER

(Filed Jun. 13, 2017)

THE MOTION OF THE PLAINTIFF-APPELLEE, FILED APRIL 20, 2017, TO DISMISS, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED GRANTED FOR LACK OF A FINAL JUDGMENT.

BY THE COURT,

/S/
JENNIFER L. CIOFFI
ASSISTANT CLERK-APPELLATE

NOTICE SENT: JUNE 7, 2017
HON. ANTHONY V. AVALLONE
COUNSEL OF RECORD
CLERK, SUPERIOR COURT, NNH CV13-6037510-S
PAC

163988

App. 12

**APPELLATE COURT
STATE OF CONNECTICUT**

AC 39165

DEUTSCHE BANK NATIONAL TRUST COMPANY
AS TRUSTEE FOR WAMU MORTGAGE PASS-
THROUGH CERTIFICATE SERIES 2005-AR6

V.

PAUL SILADI

JUNE 8, 2016

ORDER

(Filed Jun. 10, 2016)

THE MOTION OF THE PLAINTIFF-APPELLEE,
FILED MAY 9, 2016, TO DISMISS APPEAL, HAVING
BEEN PRESENTED TO THE COURT, IT IS HEREBY
ORDERED GRANTED FOR LACK OF A FINAL
JUDGMENT

BY THE COURT,

/S/

ALAN M. GANNUSCIO
ASSISTANT CLERK-APPELLATE

NOTICE SENT: 6.8.16
COUNSEL OF RECORD
HON. ANTHONY V. AVALLONE
CLERK, NEW HAVEN J.D., CV13 6037510S
TOPAC

15-3523

pd

App. 13

DOCKET NO: : SUPERIOR COURT :
NNH-CV-13-6037510-S : J.D. OF NEW HAVEN :
DEUTSCHE BANK
NATIONAL TRUST
COMPANY AS TRUSTEE
FOR WAMU MORTGAGE
PASS-THROUGH
CERTIFICATE
SERIES 2005-AR6
VS. : AT NEW HAVEN
SILADI, PAUL, ET AL : November 30, 2016

DEFENDANT'S OBJECTION TO
MOTION FOR SUMMARY JUDGMENT
MEMORANDUM OF LAW

The Defendant objects to the Plaintiff's Motion for Summary Judgment. The law is well settled that Summary Judgment should only be issued "if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Practice Book Section 17-49; Burns v. Hartford Hospital, 192 Conn. 451, 455 (1984).

The Defendant disputes The Plaintiff's assertion that as alleged in the Complaint "he has demonstrated *prima facie* that there is no genuine issue of material fact remaining between the parties regarding Defendant's liability on the Note and Mortgage" and is prepared pursuant to Practice Book Section 10-50 to show that certain statement of facts made by the Plaintiff regarding the Note and Mortgage are untrue, and

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further that the Plaintiff has no cause of action and the Defendant's claims are equitable defenses attacking the making, validity and enforcement of the Note and Mortgage.

MATERIAL FACTS ARE IN DISPUTE

Critical issues of material fact are in dispute relating to the validity of the purported assignments of the mortgage and notes to the Plaintiff, the proper endorsement and assignments of the Open-ended Mortgage Deed Note in compliance with C.G.S. Section 42a-3-104, and the "fatal" break in the chain of title including the defect in the Open-End Mortgage Deed as to the property located at 66 Augusta Drive, Milford, New Haven County, Connecticut.

In its Memorandum of Law in Support of the Motion for Summary Judgment the Plaintiff alleges it is the holder of the mortgage by virtue of an assignment from JP Morgan Chase National Association ("Chase") dated November 8, 2012 and recorded on December 19, 2012, on the Milford Land Records. The purported assignment is included in the Complaint as Plaintiff's Exhibit C.

On July 13, 2012 Defendant filed Six Special Defenses to the foreclosure action. As to the Sixth Special Defense questioning the validity of the assignment the Plaintiff stated: "In response, Plaintiff refers to (his) Exhibit D Affidavit Re: Acquisition Of Washington Mutual Bank By JR Morgan Chase, National Association which more fully outlines and verifies JP Morgan

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Chase's acquisition of assets from Washington Mutual. Exhibit D contains an affidavit of the Federal Deposit Insurance Corporation (FDIC) which fully outlines the transfer of assets from Washington Mutual to JP Morgan Chase Bank, NA. For the following reasons, summary judgment should be awarded to the Plaintiff notwithstanding Defendant's Sixth Special Defense."

Whether this transfer of assets is a legitimate assignment of the subject mortgage is a material fact which should be tried by the court. The alleged assignee JPMorgan Chase Bank National Association (Chase) in previous foreclosure actions has misrepresented to the courts that it is the mortgagee pursuant to the Purchase and Assumption Agreement dated September 25, 2008, between Chase and FDIC.

See JP Morgan Chase Bank v. Butler, Superior Court of the State of New York, Kings County 2013 NY Slip Op 51050 (U) docket number168/10 (7-5-2013).

In this case JP Morgan Chase Bank alleged it was the owner of the Butler note and mortgage having acquired the rights by a September 25, 2008 Purchase and Assumption Agreement from the Federal Deposit Insurance Corporation (FDIC) when Washington Mutual Bank, FA failed. The trial court after hearing all the evidence made the following findings:

"This case is troubling because various counsel for CHASE falsely claimed for nearly two years, from January 20, 2010 until December 2011, that CHASE was the owner of mortgage and note. Ultimately in late 2011, after the subject mortgage

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had been satisfied, Plaintiff CHASES's council admitted, in opposition to Defendant BUTLER's October 26, 2011 order to show cause, that plaintiff CHASE did not own the Butler mortgage and note . . . "Ultimately in late 2011, after the subject mortgage had been satisfied, Plaintiff Chase's council admitted, in opposition to Defendant BUTLER's October 26, 2011, Order to show cause, that Plaintiff CHASE did not own the BUTLER Mortgage or Note" . . .

The trial court ruled on the September 25, 2008 documents which are undoubtedly the same in this instant action as there was only one final Purchase and Assumption Agreement as to the acquisition by Chase of Washington Mutual's assets upon its failure on September 25, 2008. See Deutsche Bank National Trust Company v. Federal Deposit Insurance Company, et al, United States District Court for the District of Columbia, Civil action No. 09-1656 (RMC) (June 17, 2015)-page 10 paragraph 2.

. . . "what would ultimately become the September 25, 2008 P& A Agreement at issue here." . . .

See Juan C. Chavez v. JPMorgan Chase Bank,NA, United States District Court for the District of Massachusetts Civil Action No. 12-cv-10691-WGY (July,2014).

In this case regarding a claim by the Plaintiff Juan C. Chavez JPMorgan Chase Bank, N.A. (Chase) filed a Motion Of JPMorgan Chase Bank, N.A. For Leave To File Amended Counterclaim In its original pleadings

Chase alleged that “Chase had acquired the Plaintiff’s Mortgage Loan as part of the asset sale from the FDIC . . . **In the course of further investigation of the Plaintiff’s Mortgage Loan it was revealed that the above quoted allegations are factually inaccurate. Chase did not acquire the Mortgage Loan as part of the sale from the FDIC**” Further, in the same paragraph of the pleadings Chase states that “On September 25, 2008 the Office Of Thrift Supervision (“OTS”) declared WAMU to be insolvent and appointed the Federal Deposit Insurance Corporation as receiver for WAMU. The FDIC accepted the appointment as Receiver on September 25, 2008” Id at paragraph 5.”On the same day that the FDIC was appointed Receiver of WAMU, it sold assets and certain liabilities to Chase pursuant to a written Purchase and Assumption Agreement.”

The Purchase and Assumption Agreement referenced in the cited cases, JPMorgan Chase Bank v. Butler, and Juan C. Chavez v. JPMorgan Chase Bank, NA, is attached as Defendant’s Exhibit B.

Also see JPMorgan Chase, National Association v. Michael Porzio, et al., Superior Court Docket No. FST CV09-501388 S (October 26, 2013, *Tierney, J.T.R.*)

In this Memorandum Of Decision On Plaintiff’s Motion For Summary Judgment Judge Tierney states:

“11. The court has examined the September 25, 2008 Purchase and Assumption Agreement

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Ex 5¹. There is no specific chronological date for the closing. Bank closing is defined on page 2 as “ the close of business of the Failed Bank on date which the Chartering Authority closed such institution.” The date of that event closing the institution had to have been known prior to September 25, 2008, the date of the Purchase and Assumption Agreement, and must have Occurred prior to September 25, 2008. Despite the fact that the Bank Closing Date was known, no chronological Bank Closing date is contained in the Purchase and Assumption Agreement. “Settlement Date” is defined on page 7 As ‘the first Business Day immediately prior to the day which is one hundred Eighty days after Bank Closing, or such other date prior thereto as may be agreed by the Receiver and the Assuming Bank. The Receiver, in its discretion may extend the Settlement Date.” This creates a material issue of fact as to whether, If ever, the transaction set forth in the Purchase and Assumption Agreement ever closed and title to whatever assets existed passes to JP Morgan Chase Bank, National Association.

- 12 The court notes that there is no exhibit or schedule attached to the Purchase and Assumption Agreement in which any asset of Washington Mutual Bank is set for forth. . . . There is no place for any specific investment or mortgage asset to be Included as an Exhibit or Schedule within the body of the Purchase

¹ Ex. 5 is the September 25, 2008 Purchase and Assumption Agreement Defendant's Exhibit C

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and Assumption Agreement. There is no computer printout, listing Quicken type Program, or spreadsheet attached to the Purchase and Assumption Agreement. There is no specific description or nature of assets that are being sold and Conveyed. Certain assets were to be listed in Schedule 3.1a. There is no such Schedule 3.1a. Ex. 5, page 9, paragraph 3.1. The only assets sold were the "right, Title and interests of the Receiver," which assets are not further described in the Purchase and Assumption Agreements, Ex. 5, page 9 paragraph 3.1.,,,,

- 13 The court is disturbed by the limited information that it has in this file concerning Washington Mutual Bank, FA its change of name from and to Washington Mutual Bank Bank, the receivership by FDIC, the takeover thereafter by JP Morgan Chase, National Association, and the effect of the Purchase and Assumption Agreement, Judge Schack expressed these concerns, more vocally. A trial is the opportunity for all the facts to be presented to a court. This court Believes that the light of day should shine on every single fact. This matter should be tried The court believes that the errors that have been made by the plaintiff, its predecessors in title, and its litigation team are sufficient to qualify As a material issue of fact in addition to the other material issues of fact already found by this court, The plaintiff's Motion for Summary Judgment dated October 26, 2012 (#239.00) is hereby denied.."

In his Complaint Plaintiff's counsel states that as the holder of a negotiable instrument Plaintiff is entitled to enforce the alleged promissory note. The alleged Adjustable Rate Note Plaintiff's Exhibit A-1, the Open- End Mortgage Deed, and the Adjustable Rate Rider Plaintiff's Exhibit B are "Pick a Payment" documents enabling mortgagor to make or not make principal payments as he chooses over the course of the loan. The Open -End Mortgage Deed and the Adjustable Rate Note state "that the borrower owes \$480,000.00, whereas, the Adjustable Rate Rider due to rate increases or borrowers choice not to make principal payments can increase the balance of the note to \$600,000.00." This option for the borrower to choose the amount he pays at any given time makes the note conditional as to the balance owed and is a violation of Connecticut General Statutes Section 42a-3-104 which provides:

(a) Except as provided in subsections (c) and (d), "negotiable instrument" means an Unconditional promise or order to pay a **fixed amount of money**, with or without Interest or other charges described in the promise or order, if it:

- (1) is payable to bearer or to order at the time it is issued or first comes into possession Of a holder;
- (2) is payable on demand or at a definite time; and
- (3) **Does not state any other undertaking or instruction by the person promising Or ordering payment to do any other act in addition to the payment of money**, But the

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promise or order may6 contain (i) an undertaking or power to give, maintain, or Or protect collateral to secure payment, (ii) an authorization or power to the holder to Confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of Any law intended for the advantage or protection of an obligor.

- (b) Instrument means a negotiable instrument.
- (c) an order that meets all the requirements of subsection (a), except paragraph (1) And otherwise falls within the definition of check in subsection (f) is a negotiable Instrument and a check.
- (d) a promise or order other than a check is not an instrument if, at any time it is Issued or first comes into possession of a holder , it contains a conspicuous statement, However expressed, to the effect that the promise or orderin not negotiable or is not An instrument governed by this article

The Open-End Mortgage Deed, exhibit B in the Plaintiff's Complaint was filed on the Milford Land Records on May 31, 2011. The lender is identified as Washington Mutual Bank, FA, a federal association, lender is a Bank organized and existing under the laws of the United States of America." According to the public record's Washington Mutual. FA, ceased to exist on April 6, 2005. Further, according to this Affidavit of the Federal Deposit Insurance Corporation submitted as Exhibit D by Plaintiff in the Complaint, "On September 25, 2008, Washington Mutual Bank, formerly known as Washington Mutual Bank, FA was closed by the Office of Thrift Supervision(OTS) the FDIC was names receiver."

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In the filing of May 31, 2011 there is no notice of any assignment of the mortgage or note which is an issue of material fact because Washington Mutual Bank, FA no longer existed, even if it did, it had been closed by the OTS, and FDIC had been appointed receiver.

By some means the initial alleged mortgage dated January 19, 2005 between Paul Siladi and Washington Mutual Bank National Trust Company FA got conveyed to Deutsch Bank National Trust Company Trustee from WAMU Mortgage Pass- Through Certificate Series 2005-AR6. The document that purportedly accomplished that is the Pooling and Servicing Agreement. This document is not in evidence, nor is there any record on the Milford Connecticut Land Records assigning the Mortgage and Note from Washington Mutual Bank, FA to any pool of mortgages, or any appointment of a Trustee for The subject property located at 66 Augusta Drive, Milford, Connecticut, conveyed to Paul Siladi by River Golf Estate LLC on July 6, 2001.

Plaintiff in his Complaint submitted as Exhibit D as Affidavit "Acquisition of Washington Mutual Bank By JP Morgan Chase Bank, National Association" Attested to by a paralegal in the Law Firm Bendett & McHugh on the 2nd of October, 2008, Prepared in Farmington, Connecticut and filed (apparently) on the Essex Connecticut Land Records on October 3, 2008. Its relevance to this foreclosure action is troubling in that it obviously has no relevance to the subject property located in Milford, Connecticut and may be a violation of Practice Book Section 17-48. Defendant

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submits a recent Title Search Report as Exhibit A. According to this report no documents are on the Milford Land Records regarding the transfer of assets from Washington Mutual Bank, FA to the Federal Deposit Insurance Company.

Plaintiff has submitted in his Motion for Summary Judgment an Adjustable Rate Note signed in blank, undated by Washington Mutual Bank, FA, an institution that has not been in existence since April 6, 2005 with no intervening endorsements, and thus does not evidence a valid chain of title and perfect sequence of endorsements from the purported original "Lender Washington Mutual Bank, FA to the Plaintiff Deutsche National Bank as trustee for WAMU Mortgage Pass-Through Certificate Series 2005- AR6. Supplemented by an Adjustable Rate Rider that amends the original Note allowing the borrower to not make due interest and principal payments at his discretion possibly increasing the mortgage from \$480,000 to \$600,000. Plaintiff also submitted as Exhibit C in his Complaint a photocopy of a purported assignment of mortgage dated November 8, 2012 6 years after the alleged initial mortgage stating that "JP Morgan Chase Bank, National Association (Chase) in interest by purchase from the FDIC as Receiver of Washington Mutual Bank f/k/a Washington Mutual Bank, does hereby grant, bargain, sell, assign, transfer and setover to Deutsche Bank National Trust Company as Trustee for WAMU Mortgage Pass-Through Certificate Series 2005-Ar6."

Chase has admitted and filed pleadings in previous foreclosure proceedings (see Defendant's citing's of: JP Morgan Chase Bank v. Butler and, Juan C. Chavez V. JP Morgan Chase Bank, NA) it is not the mortgagee by virtue of the purchase of assets from the FDIC on September 25, 2008.

CONCLUSION

Defendant quotes the Plaintiff's articulation of the Summary Judgement requirements in his complaint, as follows:

“The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact. *Dougherty v Graham*, 161 Conn. 248, 250 (1971). “To satisfy his burden, the movant must make a showing that is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact.” *Plouff v. New York, New Haven and H.R. Company*, 160 Conn. 482, 488 (1971), quoting 6 Moore, Federal Practice ¶56.15[3] (2ed). In ruling on a summary judgment motion, the Court should not decide issues of material fact, only determine whether any such issues exist. *Nolan v. Borkowski*, 206 Conn. 495, 500 (1988).”

The Plaintiff's Motion for Summary Judgment should be denied in that there are material issues regarding the validity, making and enforcement of the subject Note and Mortgage. The Plaintiff has not demonstrated it is entitled to Summary Judgment as

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a matter of law and the Motion for Summary Judgment should be dismissed.

THE DEFENDANT

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CERTIFICATION

This is to certify that the foregoing was mailed to all counsel and/or parties of record, by first class United States mail, postage prepaid, electronic mail and/or facsimile on November 2016, as follows:

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