

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

**DEUTSCHE BANK NATIONAL TRUST
COMPANY,
Plaintiff,**

v.

Case No. 2011CA91NC

**WOODROW A. STEWART, et. al.,
Defendants.**

**ORDER GRANTING MOTION TO DISMISS AND
REQUIRING MORE DEFINITE STATEMENT**

THIS CAUSE came before the court February 22, 2012, upon defendant Stewart's motion to dismiss the amended complaint.

A review of the Amended Complaint indicates :

1. That the Verification is signed on behalf of plaintiff "as attorney in fact" by Josh Tussel, "its Vice President." On the face of the pleading this is sufficient for purposes of overcoming a motion to dismiss. Consequently, to the extent the motion is based on improper verification, it is **DENIED**. However, Tussel's status as a proper person to verify the complaint is an issue that may be determined through discovery.
2. The copy of the note attached to the Amended Complaint bears an endorsement in blank by American Brokers Conduit, the originating lender, by Danielle Sterling, Asst. Secretary. The copy of the note attached to the original complaint bore no endorsement. This raises an issue as to when the endorsement was executed.
3. There is an insufficient allegation supporting standing. Plaintiff's basis for standing is unclear in the Amended Complaint. The pleading does not allege Deutsche Bank owns and holds the note, or that it is otherwise entitled to enforce the note. See section 671.201(21), Florida Statutes, for definition of a holder, and Form 1.944, Supreme Court form for mortgage foreclosure. A party's standing must exist when the action is filed and the status should be apparent on the face of the complaint.

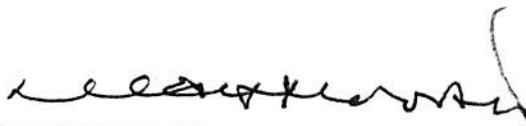
Standing cannot be obtained retroactively, and should it appear that the endorsement on the note occurred after the original complaint was filed, the action would be subject to dismissal with leave for plaintiff to file a new case. See *Feltus v. U.S. Bank Nat. Ass'n*, 2D10-3727, 2012 WL 246464 (Fla. 2d DCA Jan. 27, 2012), (party holding a blank endorsement must show it acquired note before suit was filed; FN 2, "A cause of action must be complete before a party files a lawsuit. See *Trawick, Fla. Prac. and Proc.*, § 14:8 (2010 ed.); see also § 95.031(1), Fla. Stat. (2009). Thus, even if U.S. Bank had properly amended its complaint to travel on the original

note endorsed in blank, it would have needed to prove the endorsement in blank was effectuated before the lawsuit was filed;” *JP Morgan Chase Bank N.A., v. McLean*, (4th DCA 2011) Case No. 4D10-3429; *Venture Holdings & Acquisitions Group, LLC v. A.I.M. Funding Group LLC*, 75 So.3d 773 (Fla. 4th DCA 2011); *BAC Funding Consortium Inc. ISAOA/ATIMA v. Jean-Jacques*, 28 So.3d 936 (Fla. 2 DCA, 2010).

NOW, THEREFORE, IT IS ORDERED that the motion to dismiss be **GRANTED**. Plaintiff shall have 20 days to file its Second Verified Amended Complaint.

IT IS FURTHER ORDERED, that plaintiff make a more definite statement and clearly plead in the next verified amended complaint its basis for standing, including the date the endorsement appearing on the face of the note was made by Danielle Sterling.

DONE AND ORDERED THIS 22d DAY OF FEBRUARY, 2012, IN SARASOTA, SARASOTA COUNTY, FLORIDA.



LEE E. HAWORTH, CIRCUIT JUDGE

cc:

Jerrold J. Golson, Esq.
Attorney for Plaintiff

Mark P. Stopa, Esq.
Attorney for defendants Stewart