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Clarifying the legal landscape: The Connecticut Supreme Court strikes a blow to foreclosure standing claims

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In a time when public sentiment and judicial decisions have been less than positive for banks and financial institutions, the Connecticut Supreme Court's recent decision in *RMS Residential Properties, LLC v. Anna Miller et al* has to qualify as a big win. In a decision lacking any dissent, the Court concluded that as the holder of a promissory note, a Mortgagee is entitled to the presumption that it was the owner of the debt and unless the borrower rebuts this presumption, the Mortgagee is authorized by statute to commence the foreclosure action. The Court decided that *RMS Residential Properties, LLC*, with an assignment from Mortgage Electronic Registration Systems, Inc. (MERS), had standing to foreclose after the borrower defaulted, and that MERS was a valid mortgagee at the origination of the loan, as the nominee for the original lender. This decision confirms that possession of a note raises a rebuttable presumption that a holder of a note is the owner of the debt and that Connecticut General Statutes Section 49-17 confers standing to foreclose a mortgage on a holder of a note.

While many practitioners never saw any tenable claim to the contrary, the decision appears to conclusively put to rest a significant - and previously unresolved - legal dispute in foreclosure circles. In the initial matter before the New Haven Superior Court, the plaintiff mortgagee, *RMS*, sought to foreclose against the defendant mortgagor. When the trial court denied the mortgagor's motion to dismiss, granted the mortgagee's motion for summary judgment, and rendered judgment of foreclosure by sale, the mortgagor appealed on the basis of standing because, as a mere holder of the promissory note the plaintiff did not own the underlying debt.

The Supreme Court held that *RMS* had standing, under Conn. Gen. Stat. Â§ 49-17, because under the Uniform Commercial Code, as adopted by the Connecticut legislature, (1) an instrument's holder could enforce it, (2) the original lender endorsed the note in blank, so, also under the Uniform Commercial Code, the mortgagee's possession of it allowed the mortgagee to enforce it, (3) the mortgagor did not rebut a presumption that the mortgagee, as note holder, owned the underlying debt, and, (4) as a matter of law, the mortgage followed the note.

The Court also held that the affidavit stating that that *RMS*, through its attorney, was the holder of the promissory note, was valid. Significantly, the role of MERS, while likely still prone to other avenues of attack, was ratified by the Court by virtue of its finding that it was validly named as the lender's nominee, with full disclosure, and thus, the mortgage was not void ab initio.

Before *RMS Residential Properties, LLC v. Anna M. Miller et al* came before it, the Supreme Court

had not dealt with the question of whether Â§ 49-17 provided a holder of a note secured by a mortgage with standing to bring a foreclosure action. Although the Appellate Court has, however, consistently answered this question in the affirmative. See, e.g., HSBC Bank USA, N.A. v. Navin, 129 Conn. App. 707, 22 A.3d 647 (2011), the Supreme Court's clear ratification of its interpretation of the statute is good news for lenders, and one less arrow in the quiver of foreclosure defendants seeking to assert standing claims as to foreclosing lenders.

Of course, borrowers can take solace that, given the volume of litigated foreclosures, judicially forced mediations, evidentiary hearings and lender liability claims, they will also likely have reason to celebrate in the future, and, as anyone who has recently stepped into a courtroom with foreclosure actions pending knows, the courts will continue to have ample opportunity to clarify a host of other unresolved issues.

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