

U.S. BANK NATIONAL ASSOCIATION V. MARTINEZ

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**U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE FOR TBW MORTGAGE-BACKED
TRUST SERIES 2007-2, TBW MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES 2007-2,
Plaintiff-Appellee,
v.
MARGARET H. MARTINEZ,
Defendant-Appellant,
and
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC. (SOLELY AS NOMINEE FOR
LENDER AND LENDER'S SUCCESSORS AND
ASSIGNS); OCCUPANTS, WHOSE TRUE NAMES
ARE UNKNOWN, IF ANY; AND THE UNKNOWN
SPOUSE OF MARGARET H. MARTINEZ, IF ANY,
Defendants.**

No. 34,935

COURT OF APPEALS OF NEW MEXICO

February 2, 2016

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Beatrice J.
Brickhouse, District Judge

COUNSEL

JRSPC, LLC, Joshua R. Simms, Albuquerque, NM, for Appellant

Johnson Law Firm LC, Thomas L. Johnson, Albuquerque, NM, for Appellee

JUDGES

RODERICK T. KENNEDY, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge,
LINDA M. VANZI, Judge

AUTHOR: RODERICK T. KENNEDY

MEMORANDUM OPINION

KENNEDY, Judge.

{1} Defendant-Appellant Margaret H. Martinez (Homeowner) appeals from the district court's order denying her motion to reconsider the order approving the special master's report and sale, claiming that the underlying foreclosure judgment was void for lack of standing. In our notice of proposed summary disposition, we proposed to affirm. In response to this Court's notice, Homeowner filed an untimely memorandum in opposition, followed by a motion asking this Court to allow her to file an amended memorandum in opposition to the proposed summary disposition to correct the names of entities and to accept the amended memorandum in opposition as timely, which this Court granted. Plaintiff-Appellee U.S. Bank National Association, as Trustee for TBW Mortgage-Backed Trust Series 2007-2, TBW Mortgage Pass-Through Certificates, Series 2007-2 (U.S. Bank) filed a timely memorandum in support of our proposed summary disposition and a response opposing Homeowner's motion seeking to file the amended memorandum in opposition. We have duly considered the aforementioned pleadings. For the reasons stated in the notice of proposed disposition and below, we affirm.

{2} In our calendar notice, we noted that Homeowner had filed successive motions challenging U.S. Bank's standing to foreclose in this case and we suggested that successive motions challenging the same issue are disfavored. [CN 2-3] We also proposed to hold that U.S. Bank established that it was in possession of the note, indorsed in blank, prior to filing its complaint, and it had standing to foreclose at the time it filed its complaint. [CN 4-7] Accordingly, we proposed to affirm the district court's order denying Homeowner's motion to reconsider the order approving the special master's report and approving the sale. [CN 8]

{3} Homeowner's amended memorandum in opposition does not point to any specific errors in fact or in law in our calendar notice. [See *generally* Am. MIO] See *Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 ("Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law."). Nevertheless, she maintains that U.S. Bank lacked standing to foreclose. In support of this assertion, she claims that the affidavit submitted by Crystal Kearse, on behalf of U.S. Bank, was deficient because Kearse did not have personal knowledge of all the events alleged in her affidavit and "her allegations [were] hearsay without certified copies of the records she necessarily needed to refer to for her allegations to be fact." [Am. MIO 2-3; see *also* U.S. Bank's Response to Motion 2-4] These assertions, however, do not appear to be supported by the record. [See U.S. Bank's Response to Motion 2-4; 2 RP 528-32] Additionally, without citing any authority to support its argument, Homeowner argues that an indorsement in blank is inferior and seems to suggest that as a bearer instrument, it is unenforceable. [Am. MIO 4-6; see *also* U.S.

Bank's Response to Motion 4] See *Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 28, 320 P.3d 482 ("Where a party cites no authority to support an argument, we may assume no such authority exists."). We are not persuaded by Homeowner's arguments.

{4} Therefore, for the reasons stated here and in our notice of proposed summary disposition, we affirm.

{5} **IT IS SO ORDERED.**

RODERICK T. KENNEDY, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

LINDA M. VANZI, Judge