


**IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

**WILMINGTON SAVINGS FUND SOCIETY,  
FSB d/b/a CHRISTIANA TRUST, not  
individually but as Trustee for PRETIUM  
MORTGAGE ACQUISITION TRUST,**

Court of Appeals of New Mexico  
Filed 4/3/2023 9:29 AM



Mark Reynolds

Plaintiff-Appellee,

v.

**No. A-1-CA-39931**

**MELINDA L. KNOLL and KENNETH R.  
KNOLL,**

Defendants-Appellants,

and

**PAA-KO COMMUNITIES HOMEOWNERS  
ASSOCIATION, PAA-KO COMMUNITIES  
SEWER ASSOCIATION, and MORTGAGE  
ELECTRONIC REGISTRATION SYSTEMS,  
INC., as Nominee for COUNTRYWIDE BANK,  
FSB,**

Defendants,

and

**BANK OF AMERICA, N.A.,**

Third-Party Defendant.

**APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

**Daniel E. Ramczyk, District Court Judge**

1 Houser LLP  
2 Solomon S. Krotzer  
3 Albuquerque, NM

4 for Appellees

5  
6 Trujillo Law LLC  
7 Jeremy Trujillo  
8 Albuquerque, NM

9 for Appellants

10 **MEMORANDUM OPINION**

11 **ATTREP, Chief Judge.**

12 {1} Defendants appeal the district court’s orders granting Plaintiff’s motions for  
13 summary and default judgment. We issued a calendar notice proposing to affirm.  
14 Defendants have filed a memorandum in opposition, which we have duly  
15 considered. Unpersuaded, we affirm.

16 {2} Defendants continue to argue that Plaintiff did not have standing to enforce  
17 the note at issue. Specifically, in their memorandum in opposition, Defendants argue  
18 that the presumption in *Deutsche Bank National Trust Co. v. Johnston*, 2016-NMSC-  
19 013, 369 P.3d 1046, “regarding blank indorsements did not create a prima facie case”  
20 and that “the district court did not properly weigh the evidence regarding standing  
21 at [s]ummary [j]udgment.” [MIO 2] From this, Defendants assert that “filing a duly  
22 indorsed promissory note with a foreclosure complaint is only the first step in  
23 proving standing.” [MIO 2] Defendants maintain that “it is insufficient for Plaintiff

1 and other foreclosing [p]laintiffs to merely be in possession of a promissory note  
2 indorsed in blank. They likewise have to show that they are directly injured as well  
3 and show such at the time of filing.” [MIO 3]

4 {3} Although Defendants’ assertion regarding standing is not incorrect,  
5 Defendants have nevertheless failed to explain why the presumption from *Johnston*  
6 does not apply here. As we suggested in our notice of proposed disposition,  
7 Plaintiff’s predecessor, Bank of America, presented a note indorsed in blank with its  
8 initial complaint, thus entitling it to a presumption that it had standing to enforce the  
9 note as holder. [CN 4-5] *See Johnston*, 2016-NMSC-013, ¶ 25 (“If [the b]ank had  
10 presented a note indorsed in blank with its initial complaint, it would be entitled to  
11 a presumption that it could enforce the note at the time of filing and thereby establish  
12 standing.”); *see also* NMSA 1978, § 55-3-301 (1992) (stating that a “[p]erson  
13 entitled to enforce’ an instrument means (i) the holder of the instrument”).

14 {4} Turning to Defendants’ contention that “the district court failed to weigh the  
15 evidence and apply the standards for summary judgment in favor of the non[.]moving  
16 party[.]” we are unpersuaded. [MIO 4] Defendants maintain that “the record does  
17 not show that the [district c]ourt considered whether actual transfers occurred  
18 between the original lender and BAC Home Loans Servicing, LP pre-filing of the  
19 [c]omplaint; and between Bank of America to Pretium post-filing of the  
20 [c]omplaint[.]” and that the lack of evidence “created an issue as to whether the

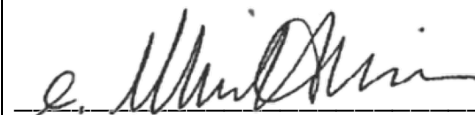
1 named Plaintiff-Appellee held all prior instruments and therefore was an injured  
2 party such that it had standing.” [MIO 4, 5] Defendants, however, have not cited any  
3 authority to support the proposition that a lender must show the actual transfers of  
4 the note and the mortgage to demonstrate that it has standing to enforce the note. *See*  
5 *Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 28, 320 P.3d 482 (“Where a party  
6 cites no authority to support an argument, we may assume no such authority  
7 exists.”); *see also Johnston*, 2016-NMSC-013, ¶ 25 (reiterating that if a lender  
8 presents a note indorsed in blank with its original complaint, it establishes a  
9 presumption that the bank may enforce the note). Furthermore, Defendants have  
10 failed to point to evidence in the record proper to demonstrate that Bank of America  
11 was not in possession of the note at the time it filed its complaint for foreclosure  
12 such that it would not have had standing to enforce the note. *See State v. Mondragon*,  
13 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that “[a] party  
14 responding to a summary calendar notice must come forward and specifically point  
15 out errors of law and fact” and the repetition of earlier arguments does not fulfill this  
16 requirement), *superseded by statute on other grounds as stated in State v. Harris*,  
17 2013-NMCA-031, ¶ 3, 297 P.3d 374; *Corona v. Corona*, 2014-NMCA-071, ¶ 26,  
18 329 P.3d 701 (“The appellate court presumes that the district court is correct, and  
19 the burden is on the appellant to clearly demonstrate that the district court erred.”).

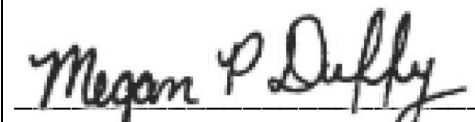
1 {5} For the reasons stated in our notice of proposed disposition and herein, we  
2 affirm the district court's grant of summary judgment in favor of Plaintiff.

3 {6} **IT IS SO ORDERED.**

4   
5 **JENNIFER L. ATTREP, Chief Judge**

6 **WE CONCUR:**

7   
8 **J. MILES HANISEE, Judge**

9   
10 **MEGAN P. DUFFY, Judge**