

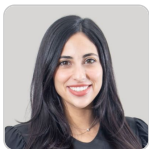


## But Who Can Unlearn All the Facts That I've Learned: Facts Matter for Summary Judgment

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In a recent foreclosure action, Plaintiff Lakeview Loan Servicing, LLC ("Lakeview") sought summary judgment against Defendant Andrew Branley ("Branley"). Lakeview claimed that Branley executed a Note to JPMorgan Chase Bank, N.A. ("Chase") on June 12, 2013, in the principal amount of \$317,091.00, secured by a mortgage and a Consolidation, Extension and Modification Agreement ("CEMA") of the same date. The mortgage and CEMA were recorded in August 2013. Lakeview asserted that the Note was endorsed in blank, transferred to Lakeview and that an Assignment of Mortgage from Chase, dated February 6, 2019, was recorded shortly thereafter. Lakeview maintained it had physical possession of the original Note prior to commencing the action in June, 2023 and that Branley had been in default since April 1, 2020.

Branley opposed, arguing that Lakeview failed to prove it held the Note at commencement of the foreclosure action. He challenged the affidavit from Lakeview's servicer, Flagstar Bank, for not confirming review of Lakeview's own records, for omitting any statement that the original Note was examined and for lacking supporting business records. He also disputed the amount owed, claiming he borrowed only \$6,001.67 under the CEMA and asserted that the 2019 Assignment of Mortgage referenced only the original 2010 mortgage, not the Consolidated Mortgage or Consolidated Note, raising questions about Lakeview's ownership.

Lakeview responded by producing the Consolidated Note, endorsed in blank and the CEMA, contending that possession of the Note was sufficient to establish standing. It argued that Branley's debt was consolidated into the \$317,091.00 obligation, that all rights were merged into a single lien and that Branley had not submitted admissible evidence to create a factual dispute.

The Court agreed that Lakeview demonstrated the existence of the mortgage, unpaid Note, default and standing, satisfying its initial burden. Branley's argument that Chase lacked ownership at the time of the CEMA was rejected; the Court found that MERS, Inc. had assigned the Mortgage to Chase prior to the CEMA and that the unrecorded Assignment was referenced in the agreement.

However, the Court identified a critical factual dispute: the February 6, 2019 Assignment of Mortgage from Chase to Lakeview appeared to transfer only the original 2010 mortgage, which had been merged into the Consolidated Mortgage and did not expressly reference the Consolidated Mortgage or Consolidated Note. This uncertainty as to whether the operative mortgage was assigned precluded summary judgment.

The Court denied Lakeview's motion for summary judgment. This case highlights the importance of ensuring that Assignments of Mortgage clearly encompass the operative Consolidated Mortgage and Note in foreclosure proceedings.