

**IN THE COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL ACTION**

LSF9 MASTER PARTICIPATION TRUST,)	
Plaintiff)	No. C-48-CV-2015-7738
)	
v.)	
)	
ANDREW E. LARSEN and)	
MARIA A. LARSEN,)	
Defendants)	

ORDER OF COURT

AND NOW, this 4th day of August, 2016, "Defendants' Preliminary Objections to Plaintiff's Complaint in Mortgage Foreclosure," filed on April 18, 2016, are hereby **OVERRULED**. Defendants shall file an answer to Plaintiff's Complaint within twenty (20) days.

STATEMENT OF REASONS

On August 25, 2015, Plaintiff filed a "Complaint in Mortgage Foreclosure" against Defendants. On March 30, 2016, the Court entered an Order requiring Defendants to file a response to the Complaint within twenty days. On April 18, 2016, Defendants filed the instant Preliminary

Objections. On May 2, 2016, Plaintiff filed a Response to the Preliminary Objections. Briefs have been submitted, and the case was submitted to the Court at Argument Court on July 26, 2016.

Defendants assert preliminary objections on four grounds.¹ First, Defendants assert that Plaintiff's Complaint fails "to conform to law or rule of court." Pa.R.C.P. No. 1028(a)(2). In this regard, Defendants allege two deficiencies. First, Defendants argue that Plaintiff's Complaint fails to contain an itemized statement of the amount due, as required by Pennsylvania Rule of Civil Procedure 1147(a)(5). In paragraph ten of its Complaint, Plaintiff sufficiently itemizes the amount due. Thus, Defendants' first argument is misplaced. Second, Defendants contend that Plaintiff failed to attach a copy of the note to the Complaint, allegedly violating Pennsylvania Rule of Civil Procedure 1019(i). Once again, Defendants' argument is misplaced, as Rule 1147 governs the pleading requirements in a mortgage foreclosure case, not Rule 1119(i). Rule 1147 does not require a note to be attached to a mortgage foreclosure complaint. See Pa.R.C.P. No. 1147; *Bank of New York Mellon v. Johnson*, 121 A.3d 1056, 1063 (Pa. Super. 2015). For all of the above reasons, Defendants' first preliminary objection is without merit.

¹ Although Defendants' Preliminary Objections contain three "counts," the second "count" contains two separate objections.

Next, Defendants assert a demurrer to the Complaint. Any party may file preliminary objections alleging “legal insufficiency of a pleading (demurrer).” Pa.R.C.P. No. 1028(a)(4). To sustain a demurrer, a court must be certain that the law will not permit recovery. *Commw., Pa. Game Comm’n v. Seneca Res. Corp.*, 84 A.3d 1098, 1103 (Pa. Commw. 2014). Any doubt as to whether the demurrer should be sustained must be resolved in favor of overruling it. *McCord v. Pennsylvanians for Union Reform*, 100 A.3d 755, 758 (Pa. Commw. 2014). In ruling on a demurrer, a trial court must accept all material factual averments in a complaint as true, as well as all inferences reasonably deducible therefrom. *Weiley v. Albert Einstein Med. Ctr.*, 51 A.3d 202, 208 (Pa. Super. 2012). “Preliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by the demurrer.” *Hess v. Fox Rothschild, LLP*, 925 A.2d 798, 805 (Pa. Super. 2007) (quoting *Cardenas v. Schober*, 783 A.2d 317, 321-22 (Pa. Super. 2001)).

The sole basis for Defendants’ demurrer is their argument that Plaintiff’s failure to attach a copy of the note to the Complaint renders the Complaint legally insufficient, requiring the Court to dismiss it. As noted above, because the note is not required to be attached to the Complaint,

and because the Complaint sufficiently states a claim for foreclosure, Defendants' demurrer must be overruled.

Next, Defendants argue that Plaintiff's Complaint is insufficiently specific. Any party may file preliminary objections based on "insufficient specificity in a pleading." Pa.R.C.P. No. 1028(a)(3). The relevant question in ruling on such an objection is whether the plaintiff's complaint is adequately clear to allow the defendant to set up its defense, or whether the complaint informs the defendant, with precision, of the basis on which recovery is sought so that the defendant may know, without question, the grounds upon which to assert its defense. *Podolak v. Tobyhanna Twp. Bd. of Supervisors*, 37 A.3d 1283, 1288 (Pa. Commw. 2012). In determining whether a particular paragraph is stated with the necessary specificity, that paragraph must be read in the context of all of the allegations made in the complaint. *Unified Sportsmen of Pa. v. Pa. Game Comm'n (PGC)*, 950 A.2d 1120, 1134 (Pa. Commw. 2008).

Defendants claim that Plaintiff's Complaint is insufficiently specific for two reasons. First, Defendants contend that Plaintiff has not sufficiently itemized the amount due. As noted above, paragraph ten of the Complaint sufficiently itemizes Plaintiff's claim, and further evidence concerning the same may be obtained in discovery. Second, Defendants argue that Plaintiff "has failed to produce any evidence that Defendants received" the notices required by Acts 6 and 91. (Prelim. Objections ¶ 35.) A plaintiff is not

required to plead evidence and, in fact, should not do so. See *Baker v. Rangos*, 324 A.2d 498, 505 (Pa. Super. 1974). More importantly, a plaintiff in a mortgage foreclosure action is not required to attach such notices to its complaint but may merely plead compliance with any statutory notice provisions. See Pa.R.C.P. No. 1147 Note. Plaintiff has pleaded such compliance in paragraph eleven of its Complaint. For all of the above reasons, Defendants' third preliminary objection is without merit.

In their final objection, advanced pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(5), Defendants argue that Plaintiff lacks capacity to sue. In this regard, Defendants argue that because Plaintiff has failed to attach the note to its Complaint, it is has not established that it is the real party in interest. Defendants contend that only the real party in interest has capacity to sue, requiring the Court to dismiss Plaintiff's Complaint. The Court interprets Defendants' objection as being made pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(2) for failure to conform to Pennsylvania Rule of Civil Procedure 2002.²

²

In a general sense, capacity to sue refers to the legal ability of a person to come into court, and "[w]ant of capacity to sue has reference to or involves only a general legal disability, . . . such as infancy, lunacy, idiocy, coverture, want of authority, or a want of title in plaintiff in the character in which he or she sues." 67A C.J.S. *Parties* § 11 (emphasis added). The quintessential example of someone who lacks capacity to sue or be sued is a deceased person, as capacity only exists in living persons. *Id.*

In re Estate of Sauers, 32 A.3d 1241, 1248-49 (Pa. 2011). Because Defendants do not actually question Plaintiff's capacity to sue, their final objection is not made pursuant to Rule 1028(a)(5).

Pennsylvania Rule of Civil Procedure 2002 provides, “[e]xcept as otherwise provided . . . all actions shall be prosecuted by and in the name of the real party in interest” Pa.R.C.P. 2002(a); *see also J.P. Morgan Chase Bank, N.A. v. Murray*, 63 A.3d 1258, 1258 (Pa. Super. 2013) (finding a debtor’s claim that appellee bank was not a real party in interest to bring foreclosure action was a challenge to appellee’s standing). “[A] real party in interest is a [p]erson who will be entitled to benefits of an action if successful. . . . [A] party is a real party in interest if it has the legal right under the applicable substantive law to enforce the claim in question.” *U.S. Bank, N.A. v. Mallory*, 982 A.2d 986, 993–994 (Pa. Super. 2009) (citation and quotation marks omitted; some brackets in original).

In a mortgage foreclosure action, the mortgagee is the real party in interest. *See Wells Fargo Bank, N.A. v. Lupori*, 8 A.3d 919, 922 n.3 (Pa. Super. 2010).

CitiMortgage, Inc. v. Barbezat, 131 A.3d 65, 68 (Pa. Super. 2016).

In its Complaint, Plaintiff alleges that Defendants’ mortgage was assigned to it on June 29, 2015, and that the assignment is recorded in the Office of the Recorder of Deeds of Northampton County in Mortgage Book 2015-1, Page 132241. Accordingly, Plaintiff is the real party in interest, has standing, and has capacity to sue. Therefore, Defendants’ final preliminary objection is likewise without merit.

BY THE COURT:

Anthony S. Beltrami
ANTHONY S. BELTRAMI, J.