

## OKLAHOMA SUPREME COURT "STANDING" CASES

*Monica Wittrock, First American Title*

Case #	Date	Plaintiff	Defendant	P-Atty	D-Atty	County/Judge	Lower Court	Supreme Court / Justice Opinion	Comments
2012 OK 3	01/17/12	Deutsche Bank	Brumbaugh	Phillips Murrah	Phillip Taylor	Tulsa County Morrissey	Summary Judgment	Reversed & Remanded (Combs) <b>Published</b>	Endorsement in Blank No evidence in record that P was holder or had rights of holder prior to filing No standing = Reversed and Remanded to determine when P acquired interest in note <b>CASES CITED:</b> Doan, Hendrick, Fent. Lujan, Gill
2012 OK 4	01/17/12	Deutsche Bank	Byrams	Kivell Rayment	Phillip Taylor	Tulsa County Sellers	Summary Judgment	Reversed & Remanded (Combs)	No Endorsement. Assignment of Mortgage filed 1 month after filing Assignment of Mortgage is of no consequence; mortgage follows note No standing = Remanded to determine if P has "rights of a holder" <b>CASES CITED:</b> Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC
2012 OK 10	02/14/12	HSBC Bank	Lyon	Kivell Rayment	Phillip Taylor	Rogers County Post	Summary Judgment	Affirmed (Combs)	Endorsement in Blank (filed with 2 <sup>nd</sup> Amended Petition) Standing established because P provided evidence with 2 <sup>nd</sup> Amended Petition Affirmed = No contest to validity of note or default was raised <b>CASES CITED:</b> Doan, Hendrick, Fent. Lujan, Gill
2012 OK 14	02/28/12	Deutsche Bank	Matthews	Baer Timberlake	Pro Se	Creek County Parish	Summary Judgment	Reversed & Remanded (Combs)	Endorsement to P occurred 6 months after Petition, but attached to MSJ No standing = P did not establish holder statue prior to filing Petition Remanded with instructions to dismiss without prejudice Note: Gurich & Winchester dissent – issue is not standing but real party in interest <b>CASES CITED:</b> Doan, Hendrick, Fent. Lujan,

January 16, 2015

									Gill + Engle, BAC + Veal
2012 OK 15	02/28/12	Deutsche Bank	Richardson	Baer Timberlake	Delluomo Crow	Oklahoma County Dan Owens	Summary Judgment	Reversed & Remanded (Combs)	Endorsement in Blank attached to MSJ P must show "entitled to enforce" prior to filing action No standing = Reversed and Remanded to determine when P acquired interest in note Note: Gurich & Winchester dissent – standing may be established after filing of petition <b>CASES CITED:</b> Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal
2012 OK 22	03/06/12	CPT	Kham	Baer Timberlake	Phillip Taylor	Tulsa County Cantrell	Default Judgment	Reversed & Remanded (Combs)	MERS Discussion Endorsement in Blank Standing challenged on Motion to Vacate Judgment (after Sheriff's Sale) No standing = Plaintiff failed to present evidence that it was the holder (attorney had note on his person on Motion to Vacate, but did not present for record); Reversed and Remanded to determine whether P had rights of a holder prior to the filing of the petition Note: Gurich and Winchester dissent – standing must be challenged during proceedings; D waived standing since it was not questioned until after Sheriff's Sale; issue is real party in interest <b>CASES CITED:</b> Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal MERS CASES CITED: Landmark, Ward
2012 OK 23	03/06/12	Bank of America	Kabba	Kivell Rayment Baer Timberlake	J.R. Matthews	Cleveland County Lucas	Summary Judgment	Reversed & Remanded (Combs)	Endorsement in Blank – filed with MSJ P must show "entitled to enforce" prior to filing action No standing = Reversed and Remanded to determine when P acquired interest in note; if after petition filed, action should be dismissed without prejudice Note: Gurich & Winchester dissent – standing may be established after filing of petition; P should be allowed to amend <b>CASES CITED:</b> Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal

January 16, 2015

2012 OK 24	03/06/12	JP Morgan Chase	Eldridge	Baer Timberlake Phillips Murrah	Marygay LeBoeuf [David Eldridge – pro se]	Canadian County Miller	Summary Judgment	Reversed & Remanded (Combs)	Note (not Endorsed) and Assignment of Mortgage presented to court at pre-trial hearing Question as to merger of P entities Standing not raised until one year after judgment P must show “entitled to enforce” prior to filing action No standing = Reversed and Remanded to determine when P acquired interest in note; if after petition filed, action should be dismissed without prejudice Note: Gurich & Winchester dissent (in part) – standing may be established after filing of petition; P should be allowed to amend <b>CASES CITED:</b> Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal
2012 OK 25	04/03/12	BAC Home Loan Servicing, LP	Swanson	Baer Timberlake	Pro Se	Cert from CCA which affirmed trial court	Summary Judgment	Reversed & Remanded (Combs)	Endorsement in Blank – filed with Petition P must show “entitled to enforce” prior to filing action No standing = Reversed and Remanded to determine when P acquired interest in note; if after petition filed, action should be dismissed without prejudice Note: Gurich & Winchester dissent – standing may be established after filing of petition; P should be allowed to amend <b>CASES CITED:</b> Brumbaugh
2012 OK 26	04/03/12	NTEX Realty	Tacker	Charles Ward	Phillip Taylor	Rogers County Condren	Summary Judgment	Reversed & Remanded (Combs)	Endorsement in Blank undated – filed with MSJ P must show “entitled to enforce” prior to filing action No standing = Reversed and Remanded to determine when P acquired interest in note; if after petition filed, action should be dismissed without prejudice Note: Gurich & Winchester dissent – standing may be established after filing of petition; P should be allowed to amend <b>CASES CITED:</b> Brumbaugh, Gill
2012 OK 32	04/10/12	U.S. Bank	Moore	Kivell Rayment	Gary Blevins	Oklahoma County	Summary Judgment	Reversed & Remanded	MERS – Assignment to P was executed AFTER suit, but effective BEFORE

January 16, 2015

						Dixon		(Combs)	TC entered JE for P; D filed Chapter 7 and filed Petition to Vacate P must show "entitled to enforce" prior to filing action No standing = Reversed and Remanded Note: Gurich & Winchester dissent – standing may be established after filing of petition; P should be allowed to amend <b>CASES CITED:</b> Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal, Brumbaugh
2012 OK 43	05/01/12	U.S. Bank	Alexander	Baer Timberlake	Michael Warkentin	Cleveland County Lucas	Summary Judgment	Reversed & Remanded (Combs)	MERS – Assignment to P was executed AFTER suit, but effective 70 days BEFORE TC entered JE for P; D filed Chapter 7 and filed Petition to Vacate P must show "entitled to enforce" prior to filing action; MERS did not show it had authority to assigned No standing = Reversed and Remanded Note: Gurich & Winchester dissent – standing may be established after filing of petition; P should be allowed to amend <b>CASES CITED:</b> Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal, Brumbaugh
2012 OK 49	05/29/2012	Residential Funding	Adams	Baer Timberlake	Phillip Taylor		Summary Judgment	Reversed & Remanded (Combs)	Same standing and proof issues as above except Court finds that the "note" is not an instrument affecting real estate under 16 O.S. Sec . 93 (and does not require indorsement to be executed Pres or VP).
2012 OK 54	06/12/2012	Wells Fargo Bank	Heath	Kivell Rayment	Phillip Taylor	Tulsa County Cantrell	Summary Judgment	Reversed and Remanded (Combs)	Same standing and proof issues as above Alexander case. D filed Chapter 7 and filed Petition to Vacate. Court stated in its Conclusion "If a plaintiff claims it is the holder of the note and obtains an indorsement after the suit is filed, then it should initiate the procedure for curing this defect," footnoting the Lyan case where the court alloed the evidence to be attached to the second amended petition which "effectively cured any lack of standing in the initial filing."
2012 OK 55	06/12/2012	U.S. Bank	Baber	Phillips Murrah	MaryGaye LeBoeuf	Oklahoma County Parrish	Summary Judgment	Reversed & Remanded (Combs)	P filed a non-indorsed copy of the note at every step of the proceeding. Court found there was a question of fact as to when P acquired note and remanded back for determination as to if and when P

January 16, 2015

									because a "person entitled to enforce the note."
2012 OK CIV APP 15	11/7/2012	MidFirst Bank	Wilson	Baer Timberlake	Roland Combs	Oklahoma County Dixon	Summary Judgment	Reversed in Part, Vacated in Part and Remanded (Fischer)	Endorsement in Blank undated – filed with MSJ but not "certified or authenticated", i.e. no note was attached to the <u>Affidavit</u> in support of the MSJ by bank employee; Court found that note was not admissible as evidence. There was also no mortgage assignment in favor of MidFirst in the record. P's MSJ did not establish P was entitled to enforce the note and foreclose the mortgage under 12 O.S. 2056. Note: No dissent (3 person panel) <b>CASES CITED:</b> Brumbaugh
2014 OK CIV APP 52	5/1/2014	Bank of America, N.A.	Murzello	Kivell Rayment	Robert Green	Tulsa County Nightingale	Summary Judgment	Affirmed	P was successor by merger to original mortgagee. Petition alleges that D signed note "payable to the order of the Lender". P alleged facts of the merger, but did not attach merger documents, and alleged that it was the "person" to whom the note was payable. Court found that based upon the record, BANA was the original lender and payee, had continued possession, and therefore had standing when it filed the foreclosure action.
2014 OK CIV APP 91	9/24/14	Bank of America, N.A.	Morris	Baer Timberlake	Breathwit & Patton	Grady County Van Dyck	Denial of Motion to Vacate	Affirmed	Affidavit attached to MSJ stated that P "directly or through an agent, has possession of the Note". D argued that P failed to establish requisite possession of the Note. Court held that mere possession by an agent is possession by its principle.
2014 OK CIV APP 105	12/5/14	Bank of America, N.A.	Moody	Baer Timberlake	Legal Aid Services	Cleveland County Walkley	Summary Judgment	Affirmed	D questioned whether P had right to foreclose because there was a blank endorsement attached to the original mortgage, which also contained a special indorsement. Court held that presence of a blank copy does not prevent P from having the right to enforce the Note.
<b>OTHER CASES:</b>									
OK Ct App 107,258	CERT DENIED 02/16/2012	MERS	Wilson	Kivell Rayment	Derryberry & Neifeh	Oklahoma County Gurich	Summary Judgment	Affirmed by CCS Division 1 CERT DENIED	Appeal is from confirmation of sale and denial of motion to vacate, not from judgment of foreclosure; argument by D was that MERS lacked standing; Judgment in favor of MERS was procured by fraud

January 16, 2015

									(because MERS misrepresented its interest) Issue is "real party in interest" and can be waived; challenge was not raised timely and deemed waived; Issue of fraud by MERS was also not raised timely and deemed waived [Failure to raise the issue prior to judgment = admission of fact that MERS was holder of the note] 11/28/2011 SCt granted Writ of Cert 02/16/2012 SCt withdraws Order Granting Cert
2012 OK 34	04/16/12	Whitehall Homeowners Association	Appletree Enterprise, Inc.				Order Denying Appellee's Motion to Dismiss Appeal	Petition for rehearing granted	Failure to file Certificate of Service of Final Order - time to commence appeal starting when party received actual notice.

12A O.S. §3-301  
 Matter of the Estate of Doan, 1986 OK 15  
 Hendrick v. Walters, 1993 OK 162  
 Fent v. Contingency Review Board 2007 OK 27  
 Lujan v. Defenders of Wildlife 504 U.S. 555 (1992)  
 Gill v. First National Bank & Trust Co. of Oklahoma City, 1945 OK 181  
 Engle v. FNMA, 1956 OK 176  
 BAC Home Loans Servicing, L.P. v. White, 2011 OK CIV APP 35  
 In re Veal, 450 B.R. 897 (9<sup>th</sup> Cir. 2011)  
 Landmark National Bank v. Kesler 289 Kan 528 (2009)  
 Prudential Ins. Co. v. Ward, 1929 OK 71  
 Reserve Loan Life Ins. Co v. Simmons, 1298 OK 669  
 Premier Bank v. Cohen-Esrey Properties, Inc., 859 F. Supp. 1388 (1994) (Possession)  
 Sauls v. Whitman, 1935 OK 247 (Possession)

Dissent Cases:  
 Toxic Waste Impact Group v. Leavitt, 1994 OK 148 (Opala)