

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RUDOLF F. FRYZEL and	:	
RUTH E. FRYZEL,	:	
Plaintiffs,	:	
	:	
v.	:	CA 10-352 M
	:	
MORTGAGE ELECTRONIC	:	
REGISTRATION SYSTEMS, INC., alias,	:	
US BANK NATIONAL ASSOCIATION, AS	:	
TRUSTEE FOR MASTR ADJUSTABLE	:	
RATE MORTGAGES TRUST, 2006-OA1,	:	
MORTGAGE PASS-THROUGH CERTIFICATES,	:	
SERIES 2006-OA1, alias, and	:	
AMERICAN HOME MORTGAGE SERVICING,	:	
INC., alias,	:	
Defendants.	:	

REPORT AND RECOMMENDATION

David L. Martin, United States Magistrate Judge

Before the Court is a motion to dismiss (Docket ("Dkt.") #5) ("Motion to Dismiss" or "Motion") filed by Defendants Mortgage Electronic Registration Systems, Inc. ("MERS"), US Bank National Association, as Trustee for MASTR Adjustable Rate Mortgages Trust, 2006-OA1, Mortgage Pass-Through Certificates, Series 2006-OA1 ("U.S. Bank as Trustee for MASTR"), and American Home Mortgage Servicing, Inc. ("AHMSI") (collectively "Defendants"). The Motion is brought pursuant to Fed. R. Civ. P. 12(b)(1) and dismissal is sought for lack of subject matter jurisdiction. Defendants contend that Plaintiffs do not have standing to dispute AHMSI's power to

foreclose under the terms of a Pooling and Servicing Agreement ("PSA") and the assignments of their mortgage because Plaintiffs are neither parties to, nor third-party beneficiaries of, those instruments.

The Motion has been referred to me for preliminary review, findings, and recommended disposition pursuant to 28 U.S.C. § 636(b)(1)(B). After listening to the arguments presented, reviewing the memoranda and exhibits submitted, and performing independent research, I recommend that the Motion be treated as a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) and that it be granted.

I. Facts

On January 24,¹ 2006, Rudolf F. Fryzel and Ruth E. Fryzel ("Plaintiffs" or "Fryzels") executed a promissory note in favor of American Brokers Conduit² ("ABC") in the amount of \$935,000.00. See Verified Complaint for Declaratory Judgment, Temporary Restraining Order and Injunctive Relief Pursuant to the Provisions

¹ Although this date is stated in Plaintiffs' complaint as "January 4, 2006," Verified Complaint for Declaratory Judgment, Temporary Restraining Order and Injunctive Relief Pursuant to the Provisions of § 9-30-1, et. seq., of the General Laws of the State of Rhode Island ("Complaint") ¶ 9, the mortgage and promissory note both reflect that the date of execution was January 24, 2006, see id., Exhibit ("Ex.") D (Mortgage); see also Letter from Bodurtha to Martin, M.J., of 5/24/11, Enclosure (Promissory Note).

² American Brokers Conduit ("ABC") "is a registered fictitious name for American Home Mortgage Corp. ("AHMC")" Defendants' Supplemental Memorandum Regarding the Chain of Title for the Fryzel Loan (Docket ("Dkt.") #22) ("Defendants' Supp. Mem.") at 2.

of § 9-30-1, et. seq., of the General Laws of the State of Rhode Island ("Complaint") ¶ 9.³ On the same date Plaintiffs also executed a mortgage granting a security interest in real estate located at 5 Viking Drive, Bristol, Rhode Island, to MERS, as nominee for ABC and ABC's successors and assigns. See id.; see also id., Exhibit ("Ex.") D (Mortgage) at 3. Approximately nineteen months later, on or about August 6, 2007, ABC filed for bankruptcy in the United States Bankruptcy Court for the District of Delaware. See Complaint ¶ 18 k.

In July 2009 MERS, as nominee for ABC, executed two assignments, each assigning the mortgage to U.S. Bank National Association, as Trustee for the holders of MASTR Adjustable Rate Mortgages Trust 2006-OA1 ("U.S. Bank as Trustee for the Holders").⁴ See id. ¶ 16; see also id., Ex. C at 1, 4 (Assignments of Mortgage). Six months later, on January 7, 2010, MERS, as nominee for ABC, executed a third assignment of the mortgage to U.S. Bank

³ The State Court Record (Dkt. #4) filed by Defendants did not include pages 6 and 11 of Plaintiffs' Complaint. As the Complaint filed in the state superior court is a matter of which the Court may take judicial notice, this Report and Recommendation is based on Plaintiffs' entire pleading, including pages 6 and 11.

⁴ The two assignments are nearly identical. They appear to differ only in that the first assignment recites that it is effective July 2, 2009, and reflects signatures of Tywana Thomas and Linda Green on behalf of MERS, see Complaint, Ex. C at 1, while the second assignment recites that it is effective July 6, 2009, and reflects signatures of Tywana Thomas and Korell Harp on behalf of MERS, see id. at 4.

as Trustee for the Holders.⁵ See id. ¶ 16; see also id., Ex. C at 7 (Assignment of Mortgage). Slightly more than three months later, on April 21, 2010, U.S. Bank as Trustee for the Holders, acting through its attorney-in-fact, American Home Servicing, Inc., executed a fourth assignment, assigning the mortgage (together with the note) to:

U.S. Bank National Association, as Trustee for MASTR Adjustable Rate Mortgages Trust 2006-0A1, Mortgage Pass-Through Certificates, Series 2006-0A1,^[6] ["U.S. Bank as Trustee for MASTR"] c/o American Home Mortgage Servicing, Inc. ["AHMSI"], 4600 Regent Boulevard, Suite 200, Irving, TX 75063-1730, Its Successors and Assigns

Id., Ex. C at 7.

The foregoing assignments are summarized in the chart below:

⁵ This assignment was essentially identical to the previous two assignments except: (i) the effective date was stated as July 2, 2009; (ii) the address of MERS, as nominee for ABC, was stated as P.O. Box 2026, Flint, MI 48501-2026; (iii) the address of U.S. Bank National Association, as Trustee for the holders of MASTR Adjustable Rate Mortgages Trust 2006-0A1 ("U.S. Bank as Trustee for the Holders") was stated as "c/o American Home Mtg Servicing, Inc., 1525 S. Beltline Rd, Coppell, TX 75019;" and (iv) the assignment reflects signatures by Cynthia Stevens and Kathy Smith on behalf of MERS. Complaint, Ex. C at 7.

⁶ According to the Complaint:

Defendant, MASTR Adjustable Rate Mortgages Trust 2006-0A1, (MASTR 2006-0A1) of which US Bank National Association claims to be Trustee under a Pooling and Servicing Agreement dated as of March 1, 2006, claims to be a securitized trust pursuant to the Laws of the State of New York.

Complaint ¶ 2.

ASSIGNOR	ASSIGNEE	EXECUTED	EFFECTIVE
MERS, as nominee for ABC	U.S. Bank as Trustee for the Holders	7/7/09	7/2/09
MERS, as nominee for ABC	U.S. Bank as Trustee for the Holders	7/16/09	7/6/09
MERS, as nominee for ABC	U.S. Bank as Trustee for the Holders	1/7/10	7/2/09
U.S. Bank as Trustee for the Holders	U.S. Bank as Trustee for the MASTR	4/21/10	No date ⁷

The first three assignments implicitly, if not explicitly, also assigned the promissory note.⁸ The fourth assignment explicitly includes the promissory note: "Together with the note or notes therein described or referred to, the money due and to become due thereon with interest and all rights accrued or to accrue under said mortgage." Id., Ex. C at 8.

⁷ The fourth assignment, from U.S. Bank as Trustee for the Holders to U.S. Bank National Association, as Trustee for MASTR Adjustable Rate Mortgages Trust 2006-0A1, Mortgage Pass-Through Certificates, Series 2006-0A1 ("U.S. Bank as Trustee for MASTR") does not bear an effective date. Thus, it appears that it was effective the date that it was executed.

⁸ Each of the first three assignments stated that being assigned was:

the following described mortgage, securing the payment of a certain promissory note(s) for the sums listed below, together with all rights therein and thereto, all liens created or secured thereby, all obligations therein described, the money due and to become due thereon with interest, and all rights accrued or to accrue under such mortgage.

Complaint, Ex. C at 1, 4, 7.

Plaintiffs allege that AHMSI,⁹ on its own behalf, by its attorney Nicholas Barrett & Associates, "scheduled an illegal foreclosure sale on the Plaintiffs' property for July 22, 2010 at 10:00 AM"¹⁰ Complaint ¶ 10.¹¹

⁹ According to the Complaint, American Home Mortgage Servicing, Inc. ("AHMSI"), "claims to be a loan servicer for Defendant ... MASTR 2006-OA1." Complaint ¶ 3.

¹⁰ Defendants note that "Plaintiffs omit from their Complaint the fact that they defaulted on their loan in April of 2009 and have not made a payment since then." Memorandum of Law in Support of the Defendants' Motion to Dismiss ("Defendants' Mem.") at 7.

¹¹ In response to a request from the Court, Defendants provided the following account of the chain of title of the Fryzel loan:

As set forth in Plaintiffs' Complaint, Plaintiffs received a loan from [ABC] in the amount of \$985,000.00 on January 24, 2006, and granted a mortgage on property located at 5 Viking Drive, Bristol, Rhode Island[,] to ABC. Following this transaction, ABC endorsed the Fryzel Note in blank. ABC is a registered fictitious name for American Home Mortgage Corp. ("AHMC"), which name was filed with the Rhode Island Office of the Secretary of State on July 7, 1999. Plaintiffs' mortgage loan was sold and transferred by AHMC in accordance with a December 1, 2005 Master Loan Purchase and Servicing Agreement ("MLPSA") wherein AHMC agreed to sell certain mortgage loans to UBS Real Estate Securities, Inc. ("UBSRESI") for the purpose of UBSRESI selling some or all of the loans to one or more purchasers to be deposited into a mortgage-backed securities trust. AHMC sold the Fryzel mortgage loan to UBSRESI in accordance with the MLPSA.

On March 1, 2006, UBSRESI sold the Fryzel loan to Mortgage Assets Securitization Transactions Inc. ("MASTI"), pursuant to a Mortgage Loan Purchase Agreement ("MLPA") between these parties. On April 20, 2006, the Closing Date, MASTI deposited the loan into MASTR Adjustable Rate Mortgages Trust 2006-OA1, Mortgage Pass-Through Certificates, Series 2006-OA1 (the "Trust") pursuant to the Pooling and Servicing Agreement ("PSA") dated March 1, 2006. On April 20, 2006, the Custodian of the Trust, Wells Fargo Bank, N.A. executed an Initial Certification of Custodian letter to MASTI and U.S. Bank National Association, as Trustee for MASTR Adjustable Rate Mortgages Trust 2006-OA1, Mortgage Pass-Through Certificates Series 2006-OA1, stating that it had received the

II. Plaintiffs' Contentions

Plaintiffs allege in their Complaint that the assignments are invalid for multiple reasons, although to some extent their pleading tends to blur those reasons together.¹² See Complaint ¶¶ 16, 18-21. As best the Court can discern, in ¶ 16 Plaintiffs challenge the validity of the assignments on four grounds. First, Plaintiffs contend that MERS, as nominee for ABC, did not have authority to assign the note and mortgage in 2009 and 2010 because the mortgage had allegedly already been sold to UBS Real Estate Securities, Inc. ("UBSRESI"), in 2006, and, thus, any subsequent assignment by MERS was invalid because MERS no longer held the

original Note and a duly executed Assignment of Mortgage for each Mortgage Loan listed in the Mortgage Loan Schedule to the PSA. The Fryzel mortgage loan was listed in the Mortgage Loan Schedule to the PSA.

Thus, as outlined above, the Fryzel loan originated with ABC/AHMC, was sold and assigned from AHMC to UBSRESI, USBRESI then sold and conveyed the loan to MASTI, which then deposited the Fryzel loan into the MASTR Adjustable Rate Mortgages Trust 2006-OA1, Mortgage Pass-Through Certificates, Series 2006-OA1 on April 20, 2006. The original Note and Mortgage were conveyed, transferred and assigned to the Trust, and are currently being held by Defendants' counsel as bailee for the Trust.

Defendants' Supp. Mem. at 2-3. Defendants objected to providing this information on the ground that "the information requested is not relevant to the Rule 12(b)(1) threshold issue of whether or not the Fryzels have the requisite standing to assert the claims set forth in their complaint." *Id.* at 1. While the Court agrees that the Fryzels' standing is a threshold issue, the information provides helpful background.

¹² The Complaint is largely single-spaced and eighteen pages in length. A more succinct statement of Plaintiffs' contentions may be found at pages 2-3 of Plaintiffs' memorandum of law. See Memorandum of Law ("Plaintiffs' Mem.") at 2-3.

mortgage. See id. ¶ 16. Second, Plaintiffs claim that MERS “never held the note on any date,” id., and, thus, could not assign the note, see id.¹³ Third, the assignments were allegedly “outside the time specified by the Terms of the Trust and the purchase date as reflected in the Mortgage Loan Purchase Agreement that the Trustee for the Defendant MASTR 2006-OA1 was allowed to accept.” Id. Fourth, the assignments were not executed by MERS “as any execution by MERS was made without reference to its alleged status as a nominee without being first assigned to the Seller or the Depositor.” Id.

In ¶ 18, Plaintiffs claim the assignments are defective because the persons executing them were not employees of MERS or ABC (for whom they purported to act), nor did they hold the positions stated in the assignments. Complaint ¶ 18. In support of this claim, Plaintiffs additionally allege that:

Any alleged corporate resolution, naming [such person] as [Assistant Secretary, Vice-President, or Assistant Vice-President] of [MERS] was not made pursuant to a corporate resolution from [ABC], the originating MERS Member lender and was not authorized pursuant to purported MERS regulations, alleged to be in effect at the time of the execution of the alleged assignment.

Id. ¶ 18 f.-j. Plaintiffs further allege that any alleged appointment of these persons as “MERS authorizing officers w[as]

¹³ Plaintiffs amplify this allegation in ¶ 18 j: “The original mortgage on this property was held by MERS as Nominee for [ABC], which held the note. Thus, MERS, which never held the note, did not have the authority or ability to assign it with the mortgage.” Complaint ¶ 18 j.

void because such [appointments] were not done in conformity with the bylaws of MERS" Id. ¶ 18 l.

Plaintiffs also claim that the signatures on the assignments are not authentic and support this claim as to the first and second assignments by citing exhibits to the Complaint which "contain[] alternate signatures of a person who purports to be [the signatory on the assignment]." Id. ¶ 18 o.-q. With regard to the third and fourth assignments, Plaintiffs rely solely "[o]n information and belief," id. ¶ 18 r.-s., to support their contention that the signatures on those documents are not authentic signatures, although Plaintiffs state that "[t]he State of Florida and the Office of the United States Attorney are investigating DOCX and Lender Processing Servicing, Inc., of Jacksonville, Florida, for document fraud and fake assignment preparation." Id. ¶ 18 t.

Citing the fact that ABC filed bankruptcy in August 2007, Plaintiffs additionally claim that the assignments executed by MERS as nominee for ABC were invalid because ABC, by virtue of its bankruptcy, had lost the capacity to have any nominee on its behalf other than the Bankruptcy Trustee after August 6, 2007. Id. ¶ 18 k. Plaintiffs conclude ¶ 18 by asserting that "[a]s a result of these void and unauthorized documents purporting to be assignments, the Defendants lacked any standing, are not the real party in interest and were not a proper party to foreclose or enforce the original mortgage or note." Id. ¶ 18 (unlettered final paragraph).

In ¶¶ 19-21, Plaintiffs assert additional reasons why Defendants lack “standing or authority to assign or foreclose on the original mortgage or to take any action to enforce the original note.” Id. ¶ 21 (unlettered final paragraph on page 13). Paragraphs 19-20 allege, in essence, that “Defendant, MASTR 2006-OA1, as a securitized trust, does not have the power or authority to receive mortgages or notes more than ninety days after the closing date specified in the Trust agreement, which was April 20, 2006,” id. ¶ 19, and that “Defendant, MASTR 2006-OA1, which AHMSI claims to be the current holder of the note and mortgage, ... did not have the legal authority or capacity to receive this mortgage note or mortgage deed on July 7, 2009, July 16, 2009, January 24, 2010,^[14] and April 21, 2010, or at any time directly from the originating lender or the original mortgage holder,” id. ¶ 20. Paragraph 21 alleges that “[a]fter the execution of the Trust agreement, if the Plaintiffs’ loan was included in the PSA, the only party with any authority to assign the mortgage deed or to transfer the mortgage note to Defendant, MASTR 2006-OA1 was the Depositor, Mortgage Asset Securitization Transactions, Inc.” Id. ¶ 21. Thereafter, Plaintiffs quote five pages of the PSA as support for these allegations.¹⁵ Id. at pages 9-13.

¹⁴ The significance of “January 24, 2010,” Complaint ¶ 20, is unclear. The other dates cited are dates that the mortgage was assigned.

¹⁵ Plaintiffs omit without signal approximately one half page of text from the PSA. The omitted text should have been included (or the omission signaled) after subparagraph (G) which appears on page 11 of the

Lastly,¹⁶ Plaintiffs also claim that they “never received any default letter from the holder of the note and the mortgage and any alleged foreclosure proceedings were invalid because no notice was sent to the Plaintiffs pursuant to law and to the terms of the mortgage.” Id. ¶ 17. Plaintiffs posit that “Rhode Island mandates that prior to commencing a foreclosure by a default letter and power of sale, a party actually hold the note and the mortgage by way of transfer and/or assignment.” Id.

III. The Complaint

A. Counts

In Count I Plaintiffs essentially recite the factual allegations underlying their claim. Count II differs from Count I only by the addition of ¶ 23 which alleges that “Defendants lacked standing to foreclose, to assign the mortgage, to transfer the note_(,) or otherwise enforce the note or the mortgage.” Id. ¶ 23. Count III alleges that “Defendants have the burden of proof of establishing possession and ownership of the note and the mortgage in addition to proving that the mortgage and note were transferred pursuant to the law and the terms of the Trust agreement.” Id. ¶ 25. Count III then asserts that Defendants have failed to do this, see id. ¶ 25, and repeats that Defendants lack standing to enforce

Complaint. Compare Complaint at 11-12 with id., Ex. A (PSA), Section 3.01 at 52-53.

¹⁶ Although the Court chooses to list this allegation last, it is found in the middle of the Complaint. See Complaint ¶ 17.

the note or the mortgage, see id. ¶ 27. Count IV seeks a mandatory injunction, preliminary injunction, and temporary restraining order against all Defendants to prohibit an "illegal foreclosure action" Id. ¶ 29. Count V alleges that "there is no default in relation to payments allegedly due to MASTR 2006-OA1, if the Plaintiffs' loan is in the Trust's loan pool, and it has been paid in full." Id. ¶ 34. Count VI appears to allege that Plaintiffs' obligations on the promissory note have already been paid in full by mortgage insurance and credit default swaps and that "no default existed as to the actual holder of the note and or the mortgage, which would authorize the note to be accelerated or which would authorize foreclosure of the mortgage." Id. ¶ 37.

B. Prayer for Relief

In their prayer for relief, Plaintiffs request a declaratory judgment determining: a) that the note and mortgage are not vested in Defendants; b) that pursuant to the terms of the PSA and 26 U.S.C. § 860G¹⁷ there can be no direct assignment of the mortgage or transfer of the note from MERS as nominee for ABC directly to MASTR 2006-OA1 Trust; c) that any assignment from MERS as nominee for ABC to MASTR 2006-OA1 Trust is invalid and void as a matter of

¹⁷ The Complaint identifies this statute as "26 USC 860(G)," Complaint, Prayer for Relief ¶¶ B., M.; see also Complaint ¶ 19. The Court assumes that the intended reference is to 26 U.S.C. § 860G because Real Estate Mortgage Investment Conduit ("REMIC") trusts are governed by 26 U.S.C. § 860A-G, see In re Cyrus II P'shp, Bankruptcy No. 05-39857, 2008 WL 4371670, at *4 (S.D. Tex. Sept. 11, 2008), and Plaintiffs appear to allege that MASTR Adjustable Rate Mortgages Trust 2006-OA1 is such a trust, see Complaint ¶¶ 2, 11-16, 19-21.

law; d) that Defendants do not own or hold a secured claim on the property and do not own or hold the promissory note; e) that any foreclosure proceedings previously conducted against Plaintiffs are invalid; f) that Plaintiffs are entitled to recoupment as to any proceeds paid to Defendant; g) that the loan executed by Plaintiffs to ABC was not a qualified mortgage pursuant to the PSA and 26 U.S.C. 860G and that MASTR 2006-OA1 was not capable of accepting said loan or mortgage at any time more than 90 days after April 20, 2006; and h) that the assignment of the mortgage was not made by corporate officers with requisite corporate authority pursuant to law. Complaint, Prayer for Relief ¶¶ A.-F., H., M.-N.

Plaintiffs additionally seek an order: a) requiring AHMSI and MASTR 2006-OA1 to return any mortgage payments made by Plaintiff since securitization of the loan; and b) quieting the title of the Plaintiffs by holding that the mortgage executed to MERS as nominee for ABC is void and discharged. Id., Prayer for Relief ¶¶ G., K. Plaintiffs also seek to have Defendants preliminarily and permanently enjoined from commencing any further eviction or collection actions against the Plaintiffs, id., Prayer for Relief ¶¶ I.-J., and executing any further assignments of the original mortgage, see id., Prayer for Relief ¶ L. Lastly, Plaintiffs pray for an award of compensatory and punitive damages, attorney's fees, and costs against all Defendants for wrongful foreclosure. Id., Prayer for Relief ¶ O.

IV. Travel

Plaintiffs filed the instant action on or about July 21, 2010, in the Providence County Superior Court. See State Court Record (Dkt. #4) at 1 (Civil Docket Sheet). Defendants removed the action to this Court on August 23, 2010, on the basis of diversity of citizenship.¹⁸ See Notice of Removal (Dkt. #1) ¶ 11. The instant Motion to Dismiss was filed on September 29, 2010. Plaintiffs filed an objection to the Motion on November 10, 2010. See Objection to Motion to Dismiss ("Objection") (Dkt. #11).

A hearing on the Motion was held initially on December 6, 2010. At the start of the hearing, the Court asked Defendants' counsel about exhibits referenced in the Complaint which the Court had not been able to locate. She expressed the belief that the exhibits had been filed. Plaintiffs' counsel opined that the hearing should be continued if the Court had not seen the exhibits. After hearing this, the Court stated that it would continue the hearing to December 17, 2010, and directed Defendants' counsel to verify with the Clerk's Office that the exhibits had been filed.

The Court also questioned Defendants' counsel about a portion

¹⁸ Plaintiffs are residents of Rhode Island. See Complaint ¶ 1. Defendant MERS is a Delaware corporation with a principal place of business in Virginia. See id. ¶ 4. Defendant U.S. Bank as Trustee for MASTR is a trust organized under the laws of New York. See id. ¶ 2. Defendant AHMSI is an out of state corporation. See id. ¶ 3; see also Eckerle v. Deutsche Bank Nat'l Trust, Civ. No. 10-00474 SOM-BMK, 2010 WL 3984687, at *1 (D. Haw. Sept. 17, 2010) ("AHMSI is a foreign profit corporation incorporated in Delaware and has its principal place of business in Texas.").

of the memorandum which Defendants had filed in support of the motion to dismiss. The Court indicated that it was unclear how Plaintiffs' mortgage loan was transferred from ABC (or MERS) to "U.S. Bank [as Trustee for MASTR],"¹⁹ Memorandum of Law in Support of the Defendants' Motion to Dismiss ("Defendants' Mem.") at 2, and asked Defendants' counsel to file a brief, supplemental memorandum explaining how the mortgage loan moved from ABC to Defendants. Defendants' counsel indicated that she would do so but indicated that she did not feel it was relevant in the context of the Motion because Defendants took the allegations of Plaintiffs' Complaint as

¹⁹ The account provided by Defendants in their initial memorandum is reproduced below:

On January 24, 2006, Rudolf F. Fryzel obtained a loan from [ABC], in the amount of \$985,000 in exchange for a promissory note. The note was secured by a mortgage executed by the Plaintiffs in favor of ABC, as lender, and MERS as nominee for ABC, as ABC's successor and assign, and as the mortgagee under the mortgage agreement. The Plaintiffs' mortgage loan was conveyed to U.S. Bank [as Trustee for MASTR] through the PSA. The parties to the PSA were Mortgage Asset Securitization Transactions, Inc., the Depositor, UBS Real Estate Securities Inc., the Transferor, Wells Fargo Bank, N.A., the Master Servicer, Trust Administrator and Custodian, and U.S. Bank National Association, the Trustee. Through an acquisition with American Home Mortgage Investment Corp. and several of its affiliates (collectively, "American Home"), AHMSI purchased substantially all of the servicing assets from American Home including the servicing rights for the Plaintiffs' loan through a Master Loan Purchase and Servicing Agreement ("MLPSA") dated as of December 1, 2005. The parties to the MLPSA were American Home Mortgage Corp., the Seller, AHM SV, Inc. formally known as American Home Mortgage Servicing, Inc., the Servicer, and UBS Real Estate Securities Inc., the Initial Purchaser.

Memorandum of Law in Support of the Defendants' Motion to Dismiss ("Defendants' Mem.") at 2 (citations and footnote omitted).

true. Plaintiffs' counsel then requested the opportunity to file a reply to Defendants' supplemental memorandum, which request the Court granted.

After receiving two extensions, Defendants filed their supplemental memorandum on January 24, 2011. See Defendants' Supplemental Memorandum Regarding the Chain of Title for the Fryzel Loan (Dkt. #22) ("Defendants' Supp. Mem."). On February 7, 2011, Plaintiffs filed their reply. See Plaintiffs' Reply Memorandum of Law (Dkt. #23) ("Plaintiffs' Reply"). A further hearing on the Motion was held on February 10, 2011. Thereafter, the Court took the matter under advisement.

V. Jurisdiction

A. Burden of Establishing Jurisdiction

Defendants have moved to dismiss for lack of subject matter jurisdiction because they contend that Plaintiffs do not have standing and that, therefore, the necessary requirement of a "case[] and controvers[y]" for the exercise of federal court jurisdiction is not satisfied.²⁰ Defendants' Mem. at 5 (citing

²⁰ Defendants explicitly state that they are moving "to dismiss the complaint ... for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1)." Defendants' Mem. at 1. However, they appear to modify this position in their reply memorandum: "The Defendants' motion to dismiss does not dispute this Court's exercise of jurisdiction over this case but challenges whether these Plaintiffs have a legal right to assert the causes of action in their complaint against these Defendants." Reply of the Defendants to the Plaintiffs' Opposition to the Motion to Dismiss (Dkt. #14) ("Defendants' Reply") at 2. Defendants additionally state that in this jurisdiction courts have determined that the appropriate rule of procedure for Defendants' challenge to Plaintiffs' standing is a motion filed under Rule 12(b)(1)

Lujan v. Defenders of Wildlife, 504 U.S. 555, 559-60, 112 S.Ct. 2130 (1992)); see also Davis v. Fed. Election Comm'n, 554 U.S. 724, 732, 128 S.Ct. 2759 (2008) ("Article III restricts federal courts to the resolution of cases and controversies."); United States Nat'l Bank of Oregon v. Indep. Ins. Agents of Am., 508 U.S. 439, 446, 113 S.Ct. 2173 (1993) ("The exercise of judicial power under Art. III of the Constitution depends on the existence of a case or controversy"); Simon v. E. Kentucky Welfare Rights Org., 426 U.S. 26, 37, 96 S.Ct. 1917 (1976) ("No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies."). Defendants assert that "Plaintiffs bear the burden of establishing that they have standing to sue." Defendants Mem. at 5 (citing Lujan, 504 U.S. at 561). However, in making this assertion Defendants overlook that in Lujan and other cases the Supreme Court has made clear that the party invoking federal jurisdiction bears the burden of establishing it. See Lujan, 504 U.S. at 561 ("The party invoking federal jurisdiction bears the burden of establishing [standing]."); see also Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 104, 118 S.Ct. 1003 (1998) ("the party invoking federal jurisdiction bears the burden of

for lack of subject matter jurisdiction. Id. at 2. However, the two cases cited by Defendants as authority for this proposition, Valentin v. Hospital Bella Vista, 254 F.3d 358, 362-63 (1st Cir. 2001), and Casey v. Lifespan Corp., 62 F.Supp.2d 471, 474 (D.R.I. 1999), provide minimal or no support for it.

establishing its existence"); FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 231, 110 S.Ct. 596 (1990) ("[Standing] is the burden of the 'party who seeks the exercise of jurisdiction in his favor'" (quoting McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178, 189, 56 S.Ct. 780 (1936))); cf. Davis, 554 U.S. at 732 ("the party invoking federal jurisdiction [must] have standing—the personal interest that must exist at the commencement of the litigation") (internal quotation marks omitted).

Here Defendants removed the action to this Court. Therefore, they are the parties invoking federal jurisdiction. Cf. DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 342 n.3, 126 S.Ct. 1854 (2006) ("Because defendants removed the case from state court to District Court, plaintiffs were not initially the parties that invoked federal jurisdiction."). Thus, the burden of demonstrating standing for purposes of federal jurisdiction is on Defendants. See Council of Ins. Agents & Brokers v. Juarbe-Jiménez, 443 F.3d 103, 108 (1st Cir. 2006) ("burden of establishing elements of standing is on party invoking federal jurisdiction") (citing Lujan, 504 U.S. at 561); Ramírez v. Sánchez Ramos, 438 F.3d 92, 100 (1st Cir. 2006) ("the party invoking federal jurisdiction bears the burden of proving that she has standing"); Mangual v. Rotger-Sabat, 317 F.3d 45, 56 (1st Cir. 2003) ("The burden to establish standing lies with the party invoking federal jurisdiction."); As You Sow v. Sherwin-Williams Co., No. C-93-3577-VRW, 1993 WL 560086, at *1

(N.D. Cal. Dec. 21, 1993) ("the burden of proving that plaintiff has Article III standing is with the removing defendants"); see also Amoche v. Guarantee Trust Life Ins. Co., 556 F.3d 41, 48 (1st Cir. 2009) ("The party invoking federal jurisdiction has the burden of establishing that the court has subject matter jurisdiction over the case."); Danca v. Private Health Care Sys., Inc., 185 F.3d 1, 4 (1st Cir. 1999) ("[Removing] defendants have the burden of showing the federal court's jurisdiction."); Murphy v. United States, 45 F.3d 520, 522 (1st Cir. 1995) ("the party invoking the jurisdiction of a federal court carries the burden of proving its existence"); cf. Flast v. Cohen, 392 U.S. 83, 101, 88 S.Ct. 1942 (1968) ("[I]n terms of Article III limitations on federal court jurisdiction, the question of standing is related only to whether the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution. It is for that reason that the emphasis in standing problems is on whether **the party invoking federal court jurisdiction** has a 'personal stake in the outcome of the controversy.'" (quoting Baker v. Carr, 369 U.S. 186, 204, 82 S.Ct. 691 (1962)) (bold added); McNutt, 298 U.S. at 189 ("In the nature of things, the authorized inquiry is primarily directed to the one who claims that the power of the court should be exerted in his behalf. As he is seeking relief subject to this supervision, it follows that he must carry throughout the litigation the burden of showing that he is properly

in court.”).

Accordingly, to the extent Defendants contend that Plaintiffs bear the burden of establishing they have standing to sue for purposes of demonstrating that Article III’s case or controversy requirement is satisfied, the Court rejects such contention. Defendants as the parties invoking this Court’s jurisdiction bear the burden of establishing it. See Amoche, 556 F.3d at 48; Danca, 185 F.3d at 4.

B. Finding Re Jurisdiction

Defendants have invoked the jurisdiction of the Court, and Plaintiffs have not disputed that jurisdiction exists. However, the Court has an independent duty to satisfy itself that subject matter jurisdiction exists. See Fafel v. DiPaola, 399 F.3d 403, 410 (1st Cir. 2005) (“The existence of subject-matter jurisdiction is never presumed. Rather, federal courts ... must satisfy themselves that subject-matter jurisdiction has been established.”) (internal quotation marks and citations omitted); In re Boston Herald, Inc., 321 F.3d 174, 177 (1st Cir. 2003) (“A federal court must satisfy itself of its jurisdiction over a case”); El Dia, Inc. v Hernandez Colon, 963 F.2d 488, 498 n.11 (1st Cir. 1992) (“a federal court must independently satisfy itself about basic concerns such as subject matter jurisdiction”).

The Court is satisfied from its examination of the Complaint and the Notice of Removal that diversity jurisdiction exists. See

Complaint ¶¶ 1-4 (alleging that plaintiffs are “residents”²¹ of Rhode Island and that Defendants are out-of-state corporations); id. ¶ 9 (alleging that the amount of the promissory note underlying this controversy is \$935,000); see also Notice of Removal ¶¶ 5-11. The Court is also satisfied that Defendants have standing for purposes of Article III, Section 2 of the Constitution. See Pagán v. Calderón, 448 F.3d 16, 27 (1st Cir. 2006) (“The Constitution confines federal courts to the adjudication of actual cases and controversies.”) (citing U.S. Const. art. III, § 2, cl. 1; Allen v. Wright, 468 U.S. 737, 750, 104 S.Ct. 3315 (1984)). “An actual case or controversy exists when the party seeking to invoke the court’s jurisdiction ... has a ‘personal stake in the outcome’ of the claim asserted.” Pagán, 448 F.3d at 27 (quoting Baker v. Carr, 369 U.S. 186, 204, 82 S.Ct. 691 (1962)). Here, Defendants have a “personal stake in the outcome” of the claims asserted because Plaintiffs are seeking, among other relief, a declaratory judgment that the mortgage and note are not vested in or held by Defendants and also “compensatory and punitive [d]amages, attorney fees, and costs against all defendants jointly and severally for wrongful foreclosure.” Complaint, Prayer for Relief. Accordingly, the

²¹ The Complaint alleges that Plaintiffs are “residents,” Complaint ¶ 1, not citizens, of Rhode Island. The First Circuit has noted that, “[j]urisdictionally speaking, residency and citizenship are not interchangeable.” Valentin v. Hosp. Bella Vista, 254 F.3d 358, 361 n.1 (1st Cir. 2001). However, this Court emulates the First Circuit in Valentin and assumes that Plaintiffs meant citizens of Rhode Island when they said “residents.” Id.

Court finds that subject-matter jurisdiction exists.

VI. Treatment of the Instant Motion

Although subject-matter jurisdiction exists, this determination does not end the matter. The standing argument advanced by Defendants is more properly treated as a motion to dismiss pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. See Harold H. Huggins Realty, Inc. v. FNC, Inc., 634 F.3d 787, 795 n.2 (5th Cir. 2011) ("Unlike a dismissal for lack of constitutional standing, which should be granted under Rule 12(b)(1), a dismissal for lack of prudential or statutory standing is properly granted under Rule 12(b)(6).") (citing Blanchard 1986, Ltd. v. Park Plantation, LLC, 553 F.3d 405, 409 (5th Cir. 2008));²² Ctr. for Comty. Justice & Advocacy v. RBS Citizens, N.A., Case No. 10- cv-10011, ___ F.Supp.2d ___, 2011 WL 824763, at *8 n.4 (E.D. Mich. Mar. 7, 2011) ("Although dismissal for lack of

²² In Blanchard 1986, Ltd. v. Park Plantation, LLC, 553 F.3d 405 (5th Cir. 2008), the court explained:

This question of whether or not a particular cause of action authorizes an injured plaintiff to sue is a merits question, affecting statutory standing, not a jurisdictional question, affecting constitutional standing. In the words of the Supreme Court, once a plaintiff has suffered sufficient injury to satisfy the "case and controversy" requirement of Article III, "jurisdiction is not defeated by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover." Thus, the district court dismissed the rescission claim under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted, and not Fed. R. Civ. P. 12(b)(1) for lack of subject-matter jurisdiction.

Id. at 409 (footnote omitted).

subject matter jurisdiction is properly brought under Rule 12(b)(1), dismissal for lack of standing is properly brought under either Rule 12(b)(1) or Rule 12(b)(6)."); Bridge v. Aames Capital Corp., No. 1:09 CV 2947, 2010 WL 3834059, at *2 (N.D. Ohio Sept. 29, 2010) (construing defendants' Rule 12(b)(1) as a motion to dismiss for failure to state a claim); see also McInnis-Misenor v. Maine Med. Ctr., 319 F.3d 63, 67 (1st Cir. 2003) (reviewing dismissal pursuant to Rule 12(b)(6) for lack of standing and noting that "[n]ormally on a Rule 12(b)(6) motion to dismiss, only the complaint is reviewed. However, where standing is at issue, it is within the trial court's power to allow or to require the plaintiff to provide by affidavit or amended complaint 'further particularized allegations of fact deemed supportive of plaintiff's standing'") (quoting Warth v. Seldin, 422 U.S. 490, 501, 95 S.Ct. 2197 (1975)); Thompson v. Cnty. of Franklin, 15 F.3d 245, 247 (2nd Cir. 1994) ("dismissals for lack of standing may be made pursuant to Fed. R. Civ. P. 12(b)(6) rather than 12(b)(1)"); United States v. AVX Corp., 962 F.2d 108, 114 n.6 (1st Cir. 1992) (noting that "Courts have often treated motions to dismiss for want of standing as motions to dismiss for failure to state a claim, thus bringing them under the rubric of Rule 12(b)(6)");²³ In re Cousins, 404 B.R. 281,

²³ After making this observation, the AVX Corporation court stated: "Nevertheless, we leave the ultimate choice between Rules 12(b)(6) and 12(b)(1) for another day." United States v. AVX Corp., 962 F.2d 108, 114 n.6 (1st Cir. 1992). As far as this Magistrate Judge has been able to determine, the First Circuit has not yet ruled definitively with respect to this question.

285 n.4 (S.D. Ohio 2009) ("Dismissal for lack of standing is proper under Rule 12(b)(1) or 12(b)(6)."). But see Edelkind v. Fairmont Funding, Ltd., 539 F.Supp.2d 449, 453 (D. Mass. 2008) ("A motion to dismiss for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) is appropriate when the plaintiff lacks standing to bring the claim.");²⁴ Provencio v. Def. Tech. Corp. of Am., No. 1:07-CV-0651 AW1 DLB, 2007 WL 2177800, at *1 (E.D. Cal. July 27, 2007) ("Because standing is jurisdictional, it is properly raised through Rule 12(b)(1) and not through Rule 12(b)(6).") (citing White v. Lee, 227 F.3d 1214, 1242 (9th Cir. 2000)); Ross-Randolph v. Allstate Ins. Co., Civil Action No. DKC 99-3344, 2001 WL 36042162, at *2 (D. Md. May 11, 2001) ("According to the Second Circuit, the standing inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise, and thus should be analyzed under 12(b)(1).") (citing Thompson v. Cnty. of Franklin, 15 F.3d at 247) (internal quotation marks omitted).

²⁴ As support for this statement, the Edelkind court cited Faibisch v. University of Minnesota, 304 F.3d 797, 801 (8th Cir. 2002), and Valentin, 254 F.3d at 363. While the Faibisch opinion provides some support for the proposition that a challenge to a plaintiff's standing should be made pursuant to Rule 12(b)(1), see Faibisch, 304 F.3d at 801 ("We have held ... that if a plaintiff lacks standing, the district court has no subject matter jurisdiction. Therefore, a standing argument implicates Rule 12(b)(1).") (internal citation omitted), the Valentin opinion does not mention the word "standing." Thus, this Magistrate Judge does not find that Valentin answers the question of whether in the First Circuit a challenge to a plaintiff's standing on the ground raised by Defendants here should be made pursuant to Rule 12(b)(1) or 12(b)(6).

VII. Standard

For purposes of ruling on a motion for want of standing, the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party. United States v. AVX Corp., 962 F.2d at 114 (citing Warth, 422 U.S. at 501). In practical effect, the standard is much the same as that traditionally applied to motions to dismiss made under Fed. R. Civ. P. 12(b)(6). Id.; see also New Hampshire Right to Life Political Action Comm. v. Gardner, 99 F.3d 8, 12 (1st Cir. 1996) ("crediting the plaintiff's factual allegations to the extent that they are material and construing those alleged facts, together with the reasonable inferences therefrom, in favor of the plaintiff").

VIII. Basis for Motion

In a nutshell, Plaintiffs seek to enjoin Defendants from foreclosing on Plaintiffs' property by challenging the validity of the assignments of mortgage and claiming that AHMSI is not entitled to foreclose pursuant to the terms of the PSA.²⁵ See Defendants' Mem. at 7. Defendants seek dismissal on the ground that Plaintiffs

²⁵ Plaintiffs allege that they "never received any default letter from the holder of the note and the mortgage" Complaint ¶ 17. The apparent basis for this statement is Plaintiffs' contention that because of the alleged defects and deficiencies in the assignments and noncompliance with the PSA, any default letter Plaintiffs received was not from the holder of the note and the mortgage. Defendants so interpret the Complaint and Plaintiffs have not disputed this interpretation in their filings.

have no standing to challenge the validity of the assignments and the right to foreclose upon Plaintiffs' default. See id. at 5. Citing the fact that Plaintiffs were neither parties to, nor intended beneficiaries of, the PSA or the assignments, Defendants contend that as a matter of law Plaintiffs do not have standing to challenge the validity of the transfer and assignments of their mortgage to enjoin foreclosure. Id. at 7.

IX. Law re Standing

A. General

One of the prudential aspects of standing is "the general prohibition on a litigant's raising another person's legal rights" Osediacz v. City of Cranston, 414 F.3d 136, 139 (1st Cir. 2005) (quoting Allen v. Wright, 468 U.S. 737, 750, 104 S.Ct. 3315 (1984)). Even when a plaintiff has alleged injury sufficient to meet the "case or controversy" requirement, the Supreme Court has held that the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties. Warth, 422 U.S. at 499; Pagán v. Calderón, 448 F.3d 16, 27 (1st Cir. 2006); see also Warth, 422 U.S. 490 at 500 ("standing in no way depends on the merits of plaintiff's contention that particular conduct is illegal");; Bowen v. Mollis, 945 A.2d 314, 317 (R.I. 2008) ("A standing inquiry focuses on the party who is advancing the claim rather than on the issue the party seeks to have adjudicated.").

B. Rhode Island Law

Since the basis for this Court's jurisdiction is diversity jurisdiction, Plaintiffs' claims are governed by Rhode Island law.²⁶ Miree v. DeKalb Cnty, Georgia, 433 U.S. 25, 28, 97 S.Ct. 2490 (1977); Barton v. Clancy, 632 F.3d 9, 17 (1st Cir. 2011) ("A federal court sitting in diversity ... must apply state substantive law."). Under Rhode Island law, only parties to a contract may seek to have rights declared under a contract. See Brough v. Foley, 525 A.2d 919, 921 (R.I. 1987) (holding that the "sole right that plaintiffs had in respect to the subject real estate is set forth in the sales agreement that they entered into with [the executor] This agreement gave no right to plaintiffs to second-guess the validity of the right of first refusal, nor did it give plaintiffs the right to supervise or pass upon the effectiveness of the assignment to [the assignor]'s nominee, or the nominee's exercise of that assignment."); id. at 922 ("The plaintiffs were, in substance, strangers to those transactions and were given no rights under the

²⁶ In determining state substantive law, a federal court:

"look[s] to the pronouncements of a state's highest court in order to discern the contours of that state's law." González Figueroa v. J.C. Penney P.R., Inc., 568 F.3d 313, 318 (1st Cir. 2009). If the highest court has not spoken directly on the question at issue, [the federal court] predict[s] "how that court likely would decide the issue," looking to the relevant statutory language, analogous decisions of the state supreme court, decisions of the lower state courts, and other reliable sources of authority. Id. at 318-19.

Barton v. Clancy, 632 F.3d 9, 17 (1st Cir. 2011); see also Douglas v. York County, 433 F.3d 143, 149 (1st Cir. 2005).

contract to challenge the transactions."); State v. Med. Malpractice Joint Underwriting Ass'n, No. 03-0743, 2005 WL 1377493, at *2 (R.I. Super. Ct. June 7, 2005) ("Only parties to the contract or intended third party beneficiaries may seek to have rights declared under a contract.") (citing Forcier v. Cardello, 173 B.R. 973, 984-85 (D.R.I. 1994)); Baxendale v. Martin, No. 94-2303, 1997 WL 1051072, at *2, (R.I. Super. Ct. Aug. 14, 1997) ("one who is not a party and has no right to enforce a contract lacks standing to seek a declaration of rights under that contract"); id. at *3 (declining to grant declaratory relief on the ground that plaintiff lacked standing to bring declaratory action); see also Forcier, 173 B.R. at 984 ("The Rhode Island Supreme Court recognizes the general rule that only intended, and not incidental, third party beneficiaries can maintain an action for damages resulting from a breach of contract between two other contracting parties.") (citing Davis v. New England Pest Control Co., 576 A.2d 1240, 1242 (R.I. 1990); Finch v. Rhode Island Grocers Ass'n, 175 A.2d 177, 184 (R.I. 1961)); cf. Meyer v. City of Newport, 844 A.2d 148, 151 (R.I. 2004) ("In Sousa v. Town of Coventry, 774 A.2d 812, 815 n.4 (R.I. 2001) (per curiam), this Court held that even accepting plaintiffs' argument that a town manager lacked the authority to execute a lease of town property, people who were not a party to the agreement did not have standing to challenge its validity."); id. (refusing to allow "exception to the standing requirement" and

affirming dismissal of plaintiff's lawsuit seeking declaratory and injunctive relief).

When confronted with a request for declaratory relief, a trial justice must first determine whether a party has standing to sue. Bowen v. Mollis, 945 A.2d at 317; Depetrillo v. Belo Holdings, Inc., No. PB 09-3367, 2009 WL 3794902, at *1 (R.I. Super. Ct. Nov. 6, 2009) (citing Bowen). The most fundamental characteristic of standing is that it focuses on the party seeking to have a claim entertained and not on the issues he wishes to have adjudicated. McKenna v. Williams, 874 A.2d 217, 225 (R.I. 2005). "Thus, when standing is at issue, the focal point shifts to the claimant, not the claim, and a court must determine if the plaintiff whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable." Id. (internal quotation marks omitted).

X. Application

In this case, Plaintiffs' Complaint disputes AHMSI's power to foreclose by challenging the validity of the assignments of their mortgage and by claiming that AHMSI is not entitled to foreclose under the terms of the PSA. However, it is undisputed that Plaintiffs are not parties to the assignment agreements or to the PSA. Thus, Plaintiffs do not have standing to assert legal rights based on these documents. Brough, 525 A.2d at 921-22; see also Livonia Props. Holdings, L.L.C. v. 12840-12976 Farmington Rd.

Holdings, 717 F.Supp.2d 724, 747 (E.D. Mich. 2010) (holding that a borrower who is a non-party to assignments lacks standing to dispute their validity); id. at 736-37 (“[F]or over a century, state and federal courts around the country have applied similar reasoning to hold that a litigant who is not a party to an assignment lacks standing to challenge that assignment.”); id. at 747 (“[R]egardless of what contracts exist between which entities, [p]laintiff was not and is not a party to *any* of those contracts (including the assignments), and lacks standing to challenge their validity or the parties’ compliance with those contracts here.”); id. at 749 (“Plaintiff seeks to challenge whether each and every entity that ever held an interest in [p]laintiff’s Note and Mortgage complied to the letter with the terms of each and every contract between it and its successor. These are *exactly* the types of challenges that Plaintiff, as a stranger to those contracts, lacks standing to assert.”); see also id. at 736 (“A debtor, for example, cannot raise alleged acts of fraud, or question the motive or purpose underlying an assignment.”).

The principle that a party to a contract does not have standing to challenge the contract’s subsequent assignment is well established. Livonia Props. Holdings, LLC v. 12840-12976 Farmington Rd. Holdings, LLC, 399 F. App’x 97, 102 (6th Cir. 2010) (“There is ample authority to support the proposition that a litigant who is not a party to an assignment lacks standing to

challenge that assignment.") (internal quotation marks omitted); Liu v. T & H Mach., Inc., 191 F.3d 790, 797 (7th Cir. 1999) (holding that "[defendant] lacks standing to attack any problems with the reassignment" of rights under a contract); Turner v. Lerner, Sampson & Rothfuss, No. 1:11-CV-00056, 2011 WL 1357451, at *2 (N.D. Ohio Apr. 11, 2011) ("[I]t is generally accepted law that 'a litigant who is not a party to an assignment lacks standing to challenge [] assignment' of a note.") (quoting Livonia Props. Holdings, LLC, 399 F. App'x at 102) (alteration in original); Bridge v. Ames Capital Corp., No. 1:09 CV 2947, 2010 WL 3834059, at *3 ("Courts have routinely found that a debtor may not challenge an assignment between an assignor and assignee."). As the court in Ifert v. Miller, 138 B.R. 159 (E.D. Pa. 1992), explained:

[W]hile the law permits the obligor to raise as a defense against the assignee the fact that the assignment contract between the assignor and the assignee was void, it does not permit the obligor to raise, as a defense, the claim that the assignment contract between the assignor and the assignee is voidable: Voidability (based on fraud, for example) can be raised only "at the option of the injured party." 6A C.J.S. § 58; see also [Samuel] Williston, [A Treatise on the Law of Contracts] § 432 [3d ed. 1960] ("If, however, the objection to the validity of an assignment is not that it is void but voidable only at the option of the assignor ... the debtor has no legal defense whether or not action is brought in the assignee's name, for it cannot be assumed that the assignor is desirous of avoiding the assignment").

Id. at 166 (sixth alteration in original); see also Jarbo v. BAC Home Loan Serv., No. 10-12632, 2010 WL 5173825, at *8-*9 (E.D. Mich. Dec. 15, 2010) (rejecting borrower's claim that defective

assignment destroys record chain of title and divests mortgage holder of standing to foreclose).

To be clear, the question of whether for standing purposes a non-party to a contract has a legally enforceable right therein is a matter of state law, Bochese v. Town of Ponce Inlet, 405 F.3d 964, 981 (11th Cir. 2005), and this Court has applied Rhode Island law in finding that Plaintiffs do not have standing,²⁷ see Law re Standing, Section IX. B. supra at 27-29. The Court has cited cases from other jurisdictions only for the purpose of showing that the principle adopted by the Rhode Island Supreme Court is well established in the law.

XI. Plaintiffs' Arguments

Plaintiffs cite Eisenberg v. Gallagher, 79 A. 941 (R.I. 1911) as supporting their contention that in Rhode Island they have "the right to challenge the validity of an assignment of a mortgage ... because a mortgage is an estate in land and the mortgagee and the mortgagor are parties to that transaction." Memorandum of Law

²⁷ Thus, the Court agrees with Plaintiffs that "Michigan law ... does not apply to this case." Plaintiffs' Mem. at 21. Similarly, Massachusetts law (and the law of other states) also does not apply. Therefore, the Court finds it unnecessary to discuss U.S. Bank Nat'l Ass'n v. Ibanez, Nos. 08 MISC 384283(KCL), 08 MISC 386755(KCL), 2009 WL 3297551 (Mass. Land Ct. Oct. 14, 2009), a case which Plaintiffs analyze at length, see Plaintiffs' Reply Memorandum of Law (Dkt. #23) ("Plaintiffs' Reply") at 6-13, or the cases from other jurisdictions which Plaintiffs cite. The Court notes, however, that none of these cases provide support for Plaintiffs' claim of standing to challenge the validity of the assignments of their mortgage. Nor do any of them hold that a plaintiff has standing to sue based upon the legal rights and obligations contained within agreements to which that plaintiff was not a party.

("Plaintiffs' Mem.") at 21; see also id. at 7-8 (arguing that Plaintiffs can "challenge an illegal and fraudulent assignment"). To the extent that Plaintiffs contend that the holding in Eisenberg gives them standing to challenge the assignments or compliance with the PSA, the Court is not so persuaded. The 100 year old Eisenberg opinion is little more than one page in length, and it does not discuss or even mention standing. To the extent that it implicates standing, it illustrates that a mortgagor has standing to contest a foreclosure proceeding which is not in accordance with the conditions contained in the mortgage because he is a party to that agreement. See Eisenberg, 79 A.2d at 942.

Plaintiffs here do not base their challenge to foreclosure on alleged non-compliance with the mortgage agreement to which they are parties. Rather, Plaintiffs argue that Defendants do not have authority to foreclose by challenging the validity of the assignments of their mortgage. See Complaint ¶¶ 16-21; Plaintiffs' Mem. at 4-7. Plaintiffs seemingly take issue with the statement that they are "seeking to enforce the PSA and other agreements." Plaintiffs' Mem. at 10. However, their arguments that Defendants lack capacity and authority to accept the mortgage and the note if not conveyed pursuant to the terms of the PSA, that the four corners of the PSA bind the Trust to the only actions which lawfully can be taken with respect to the administration of the Trust's assets, and that the inquiry in this case is whether the

Trust could accept the Plaintiffs' note or mortgage on the four dates noted in the assignments of their mortgage, see id. at 8-12, undermine this contention. Plaintiffs are clearly attempting to invoke rights under agreements to which they are not parties. Thus, Eisenberg is distinguishable.

Plaintiffs also appear to argue that "the law applicable to title clearing cases under R.I.G.L. 34-16-4^[28] . . .," Plaintiffs' Mem. at 18, provides them with standing, see id. at 18-21.²⁹ The

²⁸ R.I. Gen. Laws § 34-16-4 provides:

Any person or persons claiming title to real estate, or any interest or estate, legal or equitable, in real estate, including any warrantor in any deed or other instrument in the chain of title to the real estate, which title, interest, or estate is based upon, or has come through, a deed, grant, conveyance, devise, or inheritance, purporting to vest in the person or persons or his, her, or their predecessors in title the whole title to such real estate, or any fractional part thereof or any interest or estate therein, may bring a civil action against all persons claiming, or who may claim, and against all persons appearing to have of record any adverse interest therein, to determine the validity of his, her, or their title or estate therein, to remove any cloud thereon, and to affirm and quiet his, her, or their title to the real estate. The action may be brought under the provisions of this section whether the plaintiff may be in or out of possession and whether or not the action might be brought under the provisions of § 34-16-1 or under the provisions of any other statute.

R.I. Gen. Laws § 34-16-4 (1995 Reenactment).

²⁹ Plaintiffs also cite to several other Rhode Island statutes regarding conveyances of property, assignments of mortgage, the statutory power of sale, procedures by mortgagees to sell by advertisement, procedures for mortgagees to provide discharges and receipts, procedures through which mortgagees can bid at a foreclosure sale, procedures through which mortgagees may be required to pay taxes and interest, and the penalty statute for a mortgagee's failure to discharge a mortgage deed. See Plaintiffs' Mem. at 18-20. The Court finds these statutes to be, at most, of marginal relevance. They certainly do not support Plaintiffs' claim that they have the right to challenge the validity of

statute, however, does not provide Plaintiffs with standing to sue but only serves as the legal basis for a plaintiff who already has standing to obtain declaratory relief. "[W]hen confronted with a request for declaratory relief, a trial justice must first determine whether a party has standing to sue." DePetrillo, 2009 WL 3794902, at *2. Rhode Island's title clearing statute presents a vehicle through which Plaintiffs can affirm title to their real estate, but this declaratory judgment statute does not provide the Plaintiffs with standing to challenge AHMSI's power to foreclose. The title clearing statute does not excuse the requirement that Plaintiffs demonstrate standing in order for this Court to adjudicate this action for declaratory relief. As Defendants accurately point out, "Plaintiffs have not demonstrated standing in this declaratory action because they have not asserted their own legal rights in disputing AHMSI's power to foreclose." Reply of the Defendants to the Plaintiffs' Opposition to the Motion to Dismiss (Dkt. #14) ("Defendants' Reply") at 10.

Plaintiffs argue that they will suffer a real injury "if a party foreclosures on them contrary to the provisions of Rhode Island Law, without holding the mortgage and the note at the time ... the foreclosure is commenced." Plaintiffs' Reply at 3.

an assignment of their mortgage when they are strangers to the assignment. See Plaintiffs' Mem. at 21 (asserting that "[i]n Rhode Island, a title theory state, a mortgagor does have the right to challenge the validity of an assignment of a mortgage ... because a mortgage is an estate in land and the mortgagee and the mortgagor are parties to that transaction.").

However, Plaintiffs' contention that AHMSI is not the holder of the mortgage and the note (or an authorized agent or representative of the holder) is based on Plaintiffs' claims that the assignments are fraudulent and/or invalid and that the requirements of the PSA have not been followed or have been violated. Plaintiffs as non-parties to the assignments and PSA do not have standing to challenge the assignments or compliance with the PSA.

Lastly, Plaintiffs suggest that if the Court accepts Defendants' argument regarding standing, it "will destroy the fabric of American jurisprudence by allowing fraud to go unchecked and undefended" Plaintiffs' Reply at 21. Plaintiffs characterize Defendants' position as "abhorrent," *id.*, and assert that Plaintiffs "are defending themselves from strangers to the title of their home[], who manufacture fraudulent documents to create standing for themselves," *id.* at 22. Totally absent from Plaintiffs' filings is any acknowledgment of the apparently undisputed fact that they have been in default since April 2009 on the \$985,000 loan which they obtained to purchase their residence, a residence which, as far as the Court is aware, they continue to occupy. Given these circumstances, Plaintiffs' castigation of Defendants' position as "abhorrent" strikes the Court as a case of the pot calling the kettle black.

XII. Summary

The burden of demonstrating standing for purposes of federal

jurisdiction is on Defendants because they are the parties invoking federal jurisdiction. However, Plaintiffs have not disputed subject matter jurisdiction, and the Court is satisfied from its review of the Complaint and Notice of Removal that diversity jurisdiction exists. The instant Motion, which is based on Defendants' argument that Plaintiffs lack standing to assert their claims, is more properly treated as a motion to dismiss pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted rather than as a motion pursuant to Rule 12(b)(1). This Magistrate Judge recommends that it be treated as such.

Since the basis for this Court's jurisdiction is diversity jurisdiction, Plaintiffs' claims are governed by Rhode Island law. Under Rhode Island law, when confronted with a request for declaratory relief, a trial justice must first determine whether a party has standing to sue. Also under Rhode Island law plaintiffs have no standing to challenge the validity of assignments or agreements to which they are not parties. Because Plaintiffs here were not parties to the assignments or the PSA, they have no standing to challenge the validity of those assignments or compliance with the terms of the PSA. Accordingly, the Motion, which the Court treats as a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6), should be granted. I so recommend.

XIII. Conclusion

Accordingly, for the reasons stated above, I recommend that the Motion to Dismiss be granted. Any objections to this Report and Recommendation must be specific and must be filed with the Clerk of Court within fourteen (14) days of its receipt. See Fed. R. Civ. P. 72(b); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district court and of the right to appeal the district court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ David L. Martin
DAVID L. MARTIN
United States Magistrate Judge
June 10, 2011