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OKLAHOMA SUPREME COURT "STANDING" CASES (2012)

Monica Wittrock, First American Title

Tab #	Case #	Date	Plaintiff	Defendant	P-Atty	D-Atty	County/Judge	Lower Court	Supreme Court / Justice Opinion	Comments
1	2012 OK 3	01/17/12	Deutsche Bank	Brumbaugh	Phillips Murrah	Phillip Taylor	Tulsa County Morrissey	Summary Judgment	Reversed & Remanded (Combs) Published	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 CASES CITED: Doan, Hendrick, Fent. Lujan, Gill
2	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" CASES CITED: Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC
3	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 nd Amended Petition) Standing established because P provided evidence with 2 nd Amended Petition Affirmed = No contest to validity of note or default was raised CASES CITED: Doan, Hendrick, Fent. Lujan, Gill
4	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

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										Remanded with instructions to dismiss without prejudice Note: Gurich & Winchester dissent – issue is not standing but real party in interest CASES CITED: Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal
5	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 CASES CITED: Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal
6	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 CASES CITED: Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal MERS CASES CITED: Landmark, Ward

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7	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 CASES CITED: Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal
8	2012 OK 24	03/06/12	JP Morgan Chase	Eldridge	Baer Timberlake Phillips Murrell	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 CASES CITED: Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal
9	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

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										– standing may be established after filing of petition; P should be allowed to amend CASES CITED: Brumbaugh
10	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 CASES CITED: Brumbaugh, Gill
11	2012 OK 32	04/10/12	U.S. Bank	Moore	Kivell Rayment	Gary Blevins	Oklahoma County Dixon	Summary Judgment	Reversed & Remanded (Combs)	MERS – Assignment to P was executed AFTER suit, but effective 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 No standing = Reversed and Remanded Note: Gurich & Winchester dissent – standing may be established after filing of petition; P should be allowed to amend CASES CITED: Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal, Brumbaugh
12	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

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										Remanded Note: Gurich & Winchester dissent – standing may be established after filing of petition; P should be allowed to amend CASES CITED: Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal, Brumbaugh
13	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).
14	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."
15	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 because a "person entitled to enforce the note."
	OTHER CASES:									
16	OK Ct App 107,258	CERT DENIED	MERS	Wilson	Kivell Rayment	Derryberry & Neifeh	Oklahoma County	Summary Judgment	Affirmed by CCS Division 1	Appeal is from confirmation of sale and denial of motion to vacate, not

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		02/16/2012					Gurich		CERT DENIED	<p>from judgment of foreclosure; argument by D was that MERS lacked standing; Judgment in favor of MERS was procured by fraud (because MERS misrepresented its interest)</p> <p>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]</p> <p>11/28/2011 SCt granted Writ of Cert</p> <p>02/16/2012 SCt withdraws Order Granting Cert</p>
17	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.