

**IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA**

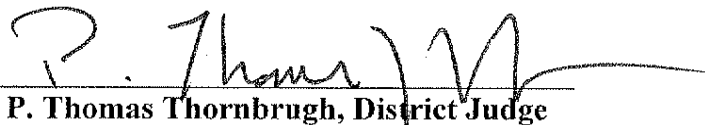
**DISTRICT COURT  
FILED**

MAY 18 2011

SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA. TULSA COUNTY

**MINUTE ORDER**

On this 18<sup>th</sup> day of May, 2011, the following matters in the designated case came on for decision, pursuant to the Rules of the District Court for Tulsa County. The Clerk of the Court is directed to notify counsel of record of the indicated decision by mailing a copy of this Order/Notice to them and to file a copy of this Order/Notice in this case.

  
P. Thomas Thornbrugh, District Judge

**CJ-2010-399**

**MIDLAND FUNDING, LLC**

**VS**

**ROBERT WERNER**

Now, on this 18<sup>th</sup> day of May, 2011, the Court has for consideration the Plaintiff, Midland Funding, LLC's, Motion for Summary Judgment filed February 11, 2011.

Defendant Robert Werner admits that he is in default in the payments due under the terms of the note and mortgage with Washington Bank but denies that Plaintiff, Midland Funding, has standing to bring this action as owner of the note and mortgage.

Defendant is correct, Plaintiff's evidentiary materials tendered pursuant to Rule 13 of the Rules for the District Courts are not sufficient to establish that Plaintiff is the owner by sale or assignment of the note and mortgage at issue.

The Affidavit of Cynthia Schaefer to the effect that she is a legal specialist employed by Midland Credit Management, Inc. (MCM) and there are records which establish legal ownership of the note and mortgage at issue is insufficient. The assertion is not supported by any other evidence.

When considering a motion for summary judgment, a Court has a duty to insure the motion is meritorious by examining the evidentiary materials supporting the motion and to test the evidentiary materials tendered in the summary process for their legal sufficiency to support the relief requested by the movent. *Copeland v. The Lodge Enterprises, Inc.*, 2000 OK 36, ¶ 8, 4 P.3d 695, 699, and *State Ex Rel. Macy v. Thirty Thousand Seven Hundred Eighty One Dollars and No/100*, 1993 OK CIV APP 170, 865 P.2d 1262.

In Oklahoma, ownership of the note is controlling and assignment of the note necessarily carries with it assignment of the mortgage. See *BAC Home Loans Servicing, L.P. v. White*, 2011 OK CIV APP 35, \_\_\_\_\_ P.3d \_\_\_\_\_, quoting *Gill v. First Nat. Bank & Trust Co.*, 1945 OK 181, 159 P.2d 717.

Plaintiff's evidentiary materials and the admitted Requests for Admission do not establish ownership of the note.

IT IS THEREFORE ORDERED by the Court that Plaintiff's Motion for Summary Judgment filed February 11, 2011, is overruled.

**Notice to:**

William L. Nixon, Jr.  
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**Affidavit of Mailing**

I, Sally Howe Smith, Court Clerk for Tulsa County, hereby certify that on the 18<sup>th</sup> day of May, 2011, a true and correct copy of the foregoing Order was mailed/faxed to each of the attorneys listed above and a true and correct copy of the foregoing Order was filed in the foregoing case.

SALLY HOWE SMITH, COURT CLERK



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Sue Faris, Deputy Court Clerk