THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Strafford Superior Court
259 County Farm Road, Suite 301
Dover NH 03820

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
http://www.courts.state.nh.us

NOTICE OF DECISION

Richard Donald Gaudreau, ESQ
Attorney At Law PC
395 Main Street
PO Box 1359
Salem NH 03079

Case Name: **National Collegiate Student Loan Trust 2006-1 v Scott R Glynn**
Case Number: **219-2015-CV-00209** ***219-2015-CV-00219***

Enclosed please find a copy of the court's order of January 08, 2016 relative to:

Order on Defefndant's Motion to Dismiss

January 13, 2016

Kimberly T. Myers
Clerk of Court

(277)

C: Erin M Reczek, ESQ

STATE OF NEW HAMPSHIRE

STRAFFORD COUNTY SUPERIOR COURT

National Collegiate Student Loans Trust 2006-1

v.

Scott R. Glynn

Docket No.: 219-2015-CV-00209

ORDER ON DEFENDANT'S MOTION TO DISMISS

The plaintiff, National Collegiate Student Loan Trust 2006-1 ("NCSLT"), brings this action against the defendant, Scott Glynn ("Glynn"), to collect on a private student loan. Glynn now moves to dismiss the action, asserting that NCSLT lacks standing to enforce the promissory note. (Court index #5.) Although it did not file a written objection, NCSLT objected to Glynn's motion at a hearing on the matter, which the court held on November 24, 2015.[1] After considering the parties' arguments, the factual circumstances of the case, and the applicable law, the court takes the motion up on its merits and finds and rules as follows.

Factual Background[2]

The following facts are based upon evidence adduced at the November 24, 2015 hearing, or are otherwise agreed upon by the parties. On July 30, 2005, Glynn executed a loan agreement (the "loan agreement") in favor of Citizens Bank of Rhode Island ("Citizens") in exchange for a $10,000.00 loan for the purpose of attending the University of New Hampshire. (Pl.'s Ex. 1 at 1.) A section of the agreement labeled "LOAN PROGRAM INFORMATION" identifies the loan as a "TERI Undergraduate Loan." (Id.)

[1] Although the cases have not been consolidated for other purposes, the court consolidated this case with Docket No. 219-2015-CV-219 for purposes of the hearing, and at hearing accepted consolidated offers of proof, exhibits, and argument from the parties.

[2] Glynn's motion challenges NCSLT's standing to bring this action. Thus, the court need not assume all facts as pled in the complaint are true; instead, it "look[s] beyond the allegations and determine[s], based upon the facts, whether [NCSLT has] sufficiently demonstrated a right to claim relief." See, e.g., In Matter of P.B., 167 N.H. 627, 629 (2015).

12.

On March 9, 2006, Citizens and The First Marblehead Corporation ("FMC") executed a pool supplement (the "2006 pool supplement"), which supplemented a prior note purchase agreement between the two entities. (Id. at 15.) The 2006 pool supplement assigned Citizens' interest in certain loans to The National Collegiate Funding LLC ("NCF"). (Id.) Specifically, it assigned loans listed in an attached schedule which was entitled Schedule 2. (Id.) The 2006 pool agreement recognized that NCF would then sell these loans to NCSLT.[3] (Id.) Although the 2006 pool agreement indicates that Schedule 2 is attached, no copy of the schedule has been provided to the court.[4] (See id. at 15-20.)

Also on March 9, 2006, NCF and NCSLT executed a deposit and sale agreement (the "2006 deposit and sale agreement"), which assigned certain loans to NCSLT. (Id. at 26.) Specifically, the agreement assigned, among others, loans listed on Schedule 2 of each pool supplement listed in an attached schedule Schedule A. (Id.) Schedule A listed, among other pool supplements: "Citizens Bank of Rhode Island, dated March 9, 2006, for loans that were originated under Citizens Bank of Rhode Island's Compass Bank Loan Program, DTC Loan Program, Navy Federal Referral Loan Program[,] and Xanthus Loan Program." (Id. at 35.)

Sometime thereafter, Glynn defaulted on the loan. This action followed.

Analysis

Generally, when ruling upon a motion to dismiss, the court must discern whether the allegations stated in the plaintiff's complaint "are reasonably susceptible of a construction that would permit recovery." Plourde Sand & Gravel Co. v. JGI E., Inc., 154 N.H. 791, 793 (2007) (quotation omitted). However, "[w]hen the motion to dismiss does not challenge the sufficiency

[3] NCSLT also provided the court with a copy of another pool supplement, dated October 12, 2005 (the "2005 pool supplement, which was also entered into by Citizens and FMC. (Pl.'s Ex. 1 at 21.) The 2005 pool supplement also assigned Citizens' interest in certain loans to NCF. (Id.) However, it recognized that NCF would sell these loans to another trust, not to NCSLT. (Id.) Accordingly, the parties agreed at the hearing that this pool supplement is inapplicable to the instant action.

[4] At the hearing, plaintiff's counsel indicated to the effect that the plaintiff had produced a redacted copy of Schedule 2 in discovery and to the court. However, no Schedule 2 is in evidence. It could be that NCSLT is referring to a single page of an exhibit it produced at the hearing. (Pl.'s Ex. 1 at 25.) While this page contains information that appears to refer to the loan in question, it is not entitled "Schedule 2" and it fails to otherwise indicate that it relates to the 2006 pool supplement. (See id. (listing only lender name, marketer, description of loan, Glynn's semi-redacted social security number, principal amount owed, borrower margin, and interest owed).) Moreover, it appears in the exhibit immediately after the 2005 pool supplement, which the parties agree is irrelevant here.

of the plaintiff's legal claim but, instead, raises certain defenses, the trial court must look beyond the plaintiff's unsubstantiated allegations and determine, based on the facts, whether the plaintiff has sufficiently demonstrated his right to claim relief." Birch Broad., Inc. v. Capitol Broad. Corp., 161 N.H. 192, 199 (2010) (quoting Baer v. N.H. Dep't of Educ., 160 N.H. 727, 729 (2010)). "A jurisdictional challenge based upon lack of standing is one such defense." Id. (citation omitted).

In his motion to dismiss, Glynn challenges NCSLT's standing to enforce the loan agreement. As this court (Tucker, J.) has previously noted, in order to show it has standing to pursue this action, NCSLT must provide evidence that it owns the debt. (Court index #6); see also Super. Ct. Civ. R. 44; In re Melillo, 392 B.R. 1, 5 (B.A.P. 1st Cir. 2008) (in order to collect a debt, "an assignee must prove that it owns the account in question"). NCSLT asserts that the documents provided to the court sufficiently establish that it owns Glynn's debt. Glynn disagrees, arguing, among other things, that NCSLT failed to provide the court with a copy of Schedule 2 to the 2006 pool supplement. He contends that, without Schedule 2, NCSLT cannot prove that his loan was among those assigned to NCF.

The court determines that the evidence presented is insufficient to demonstrate that the plaintiff owns the debt. As noted above, the 2006 pool supplement assigned certain loans to NCF—namely, the loans listed on Schedule 2. However, NSCLT has no provided the court with a copy of Schedule 2. (See Pl.'s Ex. 1 at 15–20.) Without Schedule 2, the court cannot determine which loans Citizens assigned to NCF. It cannot, therefore, conclude that NCF owned the debt at the time it executed the 2006 deposit and sale agreement transferring certain loans to NCSLT. Thus, the court determines that NCSLT has failed to establish that it owns Glynn's debt. See In re Melillo, 392 B.R. at 5.

Accordingly, Glynn's motion to dismiss is granted for lack of standing.

Conclusion

For the foregoing reasons, Glynn's motion to dismiss is granted.

So Ordered.

January 8, 2016

Steven M. Houran
Presiding Justice

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Strafford Superior Court
259 County Farm Road, Suite 301
Dover NH 03820

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
http://www.courts.state.nh.us

NOTICE OF DECISION

Richard Donald Gaudreau, ESQ
Attorney At Law PC
395 Main Street
PO Box 1359
Salem NH 03079

Case Name: **National Collegiate Student Loan Trust 2007-4 v Scott Glynn**
Case Number: **219-2015-CV-00219** ***219-2015-CV-00209***

Enclosed please find a copy of the court's order of January 08, 2016 relative to:

Order on Defendant's Motion to Dismiss

January 13, 2016

Kimberly T. Myers
Clerk of Court

(277)

C: Erin M Reczek, ESQ

On September 20, 2007, Bank of America and The First Marblehead Corporation ("FMC") executed a pool supplement (the "2007 pool supplement"), which supplemented a prior note purchase agreement between the two entities. (Id. at 16.) The 2007 pool supplement assigned Bank of America's interest in certain loans to The National Collegiate Funding LLC ("NCF"). (Id.) Specifically, it assigned loans listed in an attached schedule entitled Schedule 1. (Id.) The 2007 pool agreement recognized that NCF would then sell these loans to a purchasing trust. (Id.) Although the 2007 pool agreement indicates that Schedule 1 is attached, no copy of the schedule has been provided to the court.[3] (See id. at 15-20.)

Also on September 20, 2007, NCF and NCSLT executed a deposit and sale agreement (the "2007 deposit and sale agreement"), which assigned certain loans to NCSLT. (Id. at 22.) Specifically, the agreement assigned, among others, loans listed on Schedule 1 of each pool supplement listed in an attached schedule Schedule A. (Id.) Schedule A listed, among other pool supplements: "Bank of America, N.A., dated September 20, 2007, for loans that were originated under Bank of America's Direct to Consumer Loan Program . . . and Bank of America's Private Loan Program, TERI (School Channel) Loan Program and TERI ISLP Loan Program." (Id. at 28.)

Sometime thereafter, Glynn defaulted on the loan. This action followed.

Analysis

Generally, when ruling upon a motion to dismiss, the court must discern whether the allegations stated in the plaintiff's complaint "are reasonably susceptible of a construction that would permit recovery." Plourde Sand & Gravel Co. v. JGI E., Inc., 154 N.H. 791, 793 (2007) (quotation omitted). However, "[w]hen the motion to dismiss does not challenge the sufficiency of the plaintiff's legal claim but, instead, raises certain defenses, the trial court must look beyond the plaintiff's unsubstantiated allegations and determine, based on the facts, whether the plaintiff

[3] At the hearing, plaintiff's counsel indicated to the effect that the plaintiff had produced a redacted copy of Schedule 1 in discovery and to the court. However, no Schedule 1 is in evidence. It could be that NCSLT is referring to a single page of an exhibit it produced at the hearing. (Pl.'s Ex. 2 at 21.) However, the quality of this page of the exhibit is so poor that the court is unable to fully discern the substance of its contents. (See id.) Moreover, while this page contains information that appears to refer to the loan in question, it is not entitled "Schedule 1" and it fails to otherwise indicate that it relates to the 2007 pool supplement. (See id. (displaying NCSLT's name at the top of the document, and listing the lender name and Glynn's semi-redacted social security number, but making no reference to a pool supplement).)

has sufficiently demonstrated his right to claim relief." Birch Broad., Inc. v. Capitol Broad. Corp., 161 N.H. 192, 199 (2010) (quoting Baer v. N.H. Dep't of Educ., 160 N.H. 727, 729 (2010)). "A jurisdictional challenge based upon lack of standing is one such defense." Id. (citation omitted).

In his motion to dismiss, Glynn challenges NCSLT's standing to enforce the loan agreement. As this court (Tucker, J.) has previously noted, in order to show it has standing to pursue this action, NCSLT must provide evidence that it owns the debt. (Court index #6); see also Super. Ct. Civ. R. 44; In re Melillo, 392 B.R. 1, 5 (B.A.P. 1st Cir. 2008) (in order to collect a debt, "an assignee must prove that it owns the account in question"). NCSLT asserts that the documents provided to the court sufficiently establish that it owns Glynn's debt. Glynn disagrees, arguing, among other things, that NCSLT failed to provide the court with a copy of Schedule 1 to the 2007 pool supplement. He contends that, without Schedule 1, NCSLT cannot prove that his loan was among those assigned to NCF.

The court determines that the evidence presented is insufficient to demonstrate that the plaintiff owns the debt. As noted above, the 2007 pool supplement assigned certain loans to NCF ~~namely~~, the loans listed on Schedule 1. However, NSCLT has failed to provide the court with a copy of Schedule 1. (See Pl.'s Ex. 2 at 16~~22~~.) Without Schedule 1, the court cannot determine which loans Bank of America assigned to NCF. It cannot, therefore, conclude that NCF owned the debt at the time it executed the 2007 deposit and sale agreement transferring certain loans to NCSLT. Thus, the court determines that NCSLT has failed to establish that it owns Glynn's debt. See In re Melillo, 392 B.R. at 5.

Accordingly, Glynn's motion to dismiss is granted for lack of standing.

Conclusion

For the foregoing reasons, Glynn's motion to dismiss is granted.

So Ordered.

January 8, 2016

Steven M. Houran
Presiding Justice