
The “officially released” date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the “officially released” date appearing in the opinion.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the advance release version of an opinion and the latest version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest version is to be considered authoritative.

The syllabus and procedural history accompanying the opinion as it appears in the Connecticut Law Journal and bound volumes of official reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

DEUTSCHE BANK NATIONAL TRUST COMPANY,
TRUSTEE v. ANASTASIA AMELIO ET AL.
(AC 45036)

Elgo, Suarez and Clark, Js.

Syllabus

The defendant C appealed to this court from the trial court's judgment of strict foreclosure for the plaintiff. Prior to the start of the foreclosure trial, C, who was self-represented at that time, filed a motion to dismiss that, inter alia, challenged the plaintiff's standing to bring the action. During argument on C's motion to dismiss in February, 2020, the plaintiff's counsel produced what he asserted was the original note, along with a redacted copy of the note. C objected to the authenticity of the note and articulated his concern that the note was fabricated. After examining the note and hearing C's argument, the court overruled C's objection, accepted the authenticity of the note, and admitted the copy of the note into evidence as a full exhibit. Thereafter, the court denied C's motion to dismiss and proceeded with trial. After a lengthy delay due to the foreclosure moratorium precipitated by the COVID-19 pandemic, the trial resumed in April, 2021, via videoconference, at which C was represented by counsel. During the direct examination of the mortgage servicer, the plaintiff's counsel referred to the copy of the original note without objection from C and held the original note up to the videoconferencing camera. Prior to conducting his cross-examination of the mortgage servicer, C's counsel made a request on the record to inspect the original note. The plaintiff's counsel objected, arguing that the time for discovery had passed. The court reserved ruling on C's request until the next trial session. Two days prior to the third trial session, in July, 2021, C attempted to serve a subpoena on the plaintiff's counsel, seeking to have the plaintiff produce a witness for the resumption of trial to provide testimony on the history of the transfer of ownership of the original note and any and all transfers of possession of the original note. In his subpoena, C also requested, inter alia, that the plaintiff produce the original note in court for inspection. In response, the plaintiff filed a motion to quash C's subpoena. The plaintiff argued that the original note had previously been provided to the court and that the plaintiff had established at trial that it was the holder of the note, and, therefore, the plaintiff was not required to produce a history of the note transfers. The court granted the plaintiff's motion to quash on the grounds of improper service and lack of relevance regarding the request for a historical recitation of the note transfers. After the court granted the plaintiff's motion to quash, it addressed C's April, 2021 midtrial request to inspect the original note, on which the court had previously reserved its ruling. C's counsel then further argued for the ability to inspect the note, notifying the court that C was prepared to retain an expert to testify regarding the authenticity of the note, although C had yet to retain such an expert for the July, 2021 trial session. The court denied C's request to inspect the note after equating it to an informal discovery request and, again, emphasized that the court had already decided the standing issue on the first day of trial in February, 2020. Thereafter, C declined to present evidence and the trial concluded. In August, 2021, the plaintiff filed a motion for a judgment of strict foreclosure, and the day before the hearing on the motion in September, 2021, C filed a motion for order to allow inspection of the original promissory note. The court denied C's motion, again reiterating that the authenticity of the original note had already been decided by the court in February, 2020. The court thereafter granted the plaintiff's motion for judgment of strict foreclosure. *Held* that the trial court did not abuse its discretion in denying C's motion for order to allow inspection of the original promissory note: the court had afforded C the opportunity to inspect the original note during trial, it also examined the note and heard C's repeated arguments regarding the authenticity of the note, and, after it found the note to be authentic, the court reiterated throughout the course of the trial that the authenticity of the original note had been

established on the first day of trial and that the court had decided the issue of standing at that time; moreover, when the court denied C's midtrial request to inspect the note, the court afforded C the opportunity to argue why the court should allow a midtrial discovery request, it considered the length of the trial, which had spanned one year and five months from the date it began, and the fact that C had the opportunity to confer with the plaintiff and request to inspect the note but, instead, chose to subpoena the plaintiff to inspect the note days before the resumption of trial; furthermore, the court also considered it to be significant that C did not retain an expert to inspect the note in preparation for trial despite an ample amount of time to do so and did not present any evidence to rebut the plaintiff's prima facie case.

Argued January 4—officially released August 29, 2023

Procedural History

Action to foreclose a mortgage on certain real property owned by the named defendant et al., and for other relief, brought to the Superior Court in the judicial district of Litchfield, where the court, *J. Moore, J.*, denied the motion for order to allow inspection of the original note securing the mortgage filed by the defendant Carmine Amelio; thereafter, the court, *J. Moore, J.*, granted the plaintiff's motion for judgment of strict foreclosure and rendered judgment thereon, from which the defendant Carmine Amelio appealed to this court. *Affirmed.*

Thomas P. Willcutts, for the appellant (defendant Carmine Amelio).

Jeffrey M. Knickerbocker, for the appellee (plaintiff).

Opinion

ELGO, J. The defendant Carmine Amelio¹ appeals from the judgment of strict foreclosure rendered by the trial court in favor of the plaintiff, Deutsche Bank National Trust Company, as Trustee for Residential Asset Securitization Trust 2007-A6 Mortgage Pass-Through Certificates Series 2007-F. On appeal, the defendant claims that the court improperly denied his motion for an order to allow inspection of the original promissory note in accordance with Practice Book § 23-18.² We affirm the judgment of the trial court.

The following facts, as found by the trial court, and procedural history are relevant to the resolution of this appeal. On or about February 8, 2007, Anastasia Amelio executed a note promising to repay \$464,000 to Quicken Loans, Inc. To secure the note, Anastasia Amelio and the defendant executed a mortgage on February 8, 2007, for property located at 32 Main Street in New Milford (property). The mortgage deed was recorded on the New Milford land records on February 8, 2007. It is undisputed that Anastasia Amelio has been in default of the note due to nonpayment of principal and interest since January 1, 2014. Although proper notice of the arrearages was sent to the defendant and Anastasia Amelio in accordance with the terms of the mortgage, they did not cure the default.

On January 7, 2015, the plaintiff filed its summons and complaint against the defendant to foreclose on the property. In its complaint, the plaintiff alleged that, “[o]n or before July 11, 2014, the plaintiff became and at all times since then has been the party entitled to collect the debt evidenced by said note and is the party entitled to enforce said mortgage.” On September 18, 2015, the self-represented defendant filed his answer, alleging seven special defenses and four counterclaims. The plaintiff subsequently filed an answer and three special defenses to the defendant’s counterclaims.

When the defendant failed to file a response to those special defenses, the plaintiff filed a motion for a judgment of nonsuit against the defendant. By order dated December 2, 2019, the court granted the plaintiff’s motion. In so doing, the court expressly found that “[t]he actions of the defendant . . . demonstrate that the defendant’s strategy in this case is to delay.” The court thus ordered the plaintiff to file a case flow request to schedule “a trial date in this matter to take place within the next two months.”

Approximately one week before the start of trial, the defendant filed a motion to dismiss on February 18, 2020, which, *inter alia*, presented a challenge to the plaintiff’s standing but contained no reference as to whether the plaintiff was in possession of the original note. The court heard argument on the defendant’s motion to dismiss when trial commenced on February

26, 2020. At that time, the plaintiff's counsel produced both what he asserted was the original note and a copy of the note. The defendant objected to the authenticity of the note and articulated his concern that the note was fabricated. The court overruled the defendant's objection. In so doing, the court accepted the authenticity of the note and admitted the copy of the note into evidence as a full exhibit labeled exhibit 2. The court further stated for the record that it found exhibit 2 to be a copy of the original note. When the defendant continued to argue that the note was not authentic, the court expressly found that "[t]he plaintiff has presented the original note to the court in this case." Upon additional and persistent argument by the defendant, the court reiterated that "the plaintiff had brought to court and presented before the court the original note in this case and a copy of it has been made a court exhibit, which the court finds to be an identical copy except for the redaction of personal identifying information." Thereafter, the court denied the defendant's motion to dismiss and proceeded with trial.

After a lengthy delay due to the foreclosure moratorium precipitated by the COVID-19 pandemic, the trial resumed on April 30, 2021, via videoconference, at which the defendant was represented by legal counsel. During the direct examination of the mortgage servicer, the plaintiff's counsel referred to the copy of the original note without objection from the defendant, which copy previously had been admitted into evidence as exhibit 2. At that time, the plaintiff's counsel stated: "I would ask the court to look at the original, but we're doing this via teleconference." The record reflects that the plaintiff's counsel then held the original note up to the videoconferencing camera for the court to view.

Prior to conducting his cross-examination of the mortgage servicer, the defendant's counsel made a request on the record to inspect the original note that the plaintiff's counsel held up during the direct examination. The plaintiff's counsel objected, arguing that "[t]he time for discovery has come and gone. . . . Today's the day of trial." The defendant's counsel responded that, "[b]ut for us being on a videoconference . . . that exhibit would be in court today and we would all be in court, and I would have the ability to then examine it in court, and it's just the peculiarity of our accommodating world circumstances that I don't have that opportunity. So that's the nature of my request." The court reserved ruling on the defendant's request and suspended any further argument on the issue of the note at that time. The court then suspended trial until the next session and ordered the parties to confer to determine if they could stipulate to any facts.

The trial resumed on July 16, 2021. At that time, the defendant's counsel notified the court that the defendant had agreed to withdraw his special defenses and

counterclaims, thereby narrowing the issues in the dispute on liability to the defendant's challenge to the plaintiff's standing.

Two days prior to the July 16 resumption of trial, the defendant attempted to serve a subpoena on the plaintiff's counsel seeking to have the plaintiff produce a witness for the resumption of trial to provide testimony on the history of (1) the transfer of ownership of the original note and (2) any and all transfers of possession of the original note. In his subpoena, the defendant also requested, *inter alia*, that the plaintiff produce the original note in court for inspection. In response, the plaintiff filed a motion to quash the defendant's subpoena, alleging that the defendant "did not do any discovery with respect to this case and has not produced any evidence to call the plaintiff's standing into question" The plaintiff further argued that the note previously was provided to the court and that the plaintiff had established at trial that it was the holder of the note, and, therefore, the plaintiff was not required to produce a history of the note transfers. When trial resumed, the court granted the plaintiff's motion to quash on the grounds of improper service and lack of relevance regarding the request for a historical recitation of the note transfers.

After the court granted the plaintiff's motion to quash, it addressed the defendant's April 30, 2021 midtrial request to inspect the original note, on which the court had previously reserved its ruling. The defendant's counsel then further argued for the ability to inspect the note, notifying the court that the defendant was prepared to retain an expert to testify regarding the authenticity of the note, although the defendant had yet to retain said expert for the July 16 trial session.³ The court then denied the defendant's request to inspect the note after equating it to an informal discovery request and, again, emphasizing that the court had already decided the standing issue on the first day of trial on February 26, 2020. Thereafter, the defendant declined to present evidence and the trial concluded. On August 17, 2021, the plaintiff filed a motion for a judgment of strict foreclosure.

On September 21, 2021, the court issued a memorandum of decision, in which it concluded that "the plaintiff has established, by a preponderance of the evidence, a *prima facie* case for foreclosure by showing that it is the present owner of the note and mortgage, that [the defendant and Anastasia Amelio] defaulted on the note and that the conditions precedent to foreclosure, as set forth in the note and mortgage, have been satisfied. Although [the defendant] filed a special defense of lack of standing, said defendant did not put forward any persuasive testimony in support of that defense. . . . Further, the court previously denied, on the record on the first day of trial, [the defendant's] motion to dismiss

for lack of standing. The court also affirmatively found that day that the plaintiff had standing to proceed. . . . The plaintiff has, therefore, established a prima facie case of foreclosure against [the defendant and Anastasia Amelio] [They] did not rebut any aspect of this prima facie case at trial.” (Citations omitted.) Accordingly, the court scheduled a hearing on the plaintiff’s motion for judgment of strict foreclosure for September 24, 2021.

On September 23, 2021, the defendant filed a motion for an order to allow inspection of the original note. The court denied the defendant’s motion, stating “[f]or the reasons set forth on the record, the authenticity of the original note had already been decided by the court on the first day of trial on [February 26, 2020] at approximately 11:30 and shortly thereafter. The defendant had raised the same issues contemplated by this motion to review the original note in other filings, including [the February 18, 2020] motion to dismiss . . . which the court denied on [February 26, 2020]. The defendant was aware that [the February 18, 2020 motion to dismiss] had to be taken up by the court before proceeding further, in that it raised issues of subject matter jurisdiction, and yet retained no expert to appear in court that day. The defendant got to examine the note and make arguments about why he believed it was not authentic. The court also examined the note and denied the defendant’s motion.

“The Administrative Judge of the Civil Division, based upon legal advice to the [Judicial] Branch, has permitted uploaded copies of notes in a remote proceeding, such as exhibit 2 in this case, to satisfy the ‘original note’ requirement of [§] 23-18 of the Practice Book in hearings considering motions for foreclosure since December, 2020.” The court thereafter granted the plaintiff’s motion for judgment of strict foreclosure on September 24, 2021, and set the law days to begin on January 31, 2022. From that judgment, the defendant now appeals.

On appeal, the defendant claims that the court improperly denied his motion for an order to inspect the original note pursuant to Practice Book § 23-18.⁴ We disagree.

As a preliminary matter, we note our agreement with the court’s well reasoned finding that the defendant’s April 30, 2021 request on the record for the court to order inspection of the original note was a discovery request made in the middle of the second day of the trial. Specifically, the court stated that, “I do see this as a discovery request. . . . You’re looking for additional information to pursue a defense” In his September 23, 2021 motion for order to allow inspection of the original note, the defendant once again made the same discovery request that he originally advanced during trial. The defendant now challenges the propriety of the court’s denial of that motion.

“We have long recognized that the granting or denial of a discovery request rests in the sound discretion of the [trial] court, and is subject to reversal only if such an order constitutes an abuse of that discretion.” (Internal quotation marks omitted.) *CIT Bank, N.A. v. Francis*, 214 Conn. App. 332, 340, 280 A.3d 485 (2022). “In our review of the trial court’s exercise of its discretion, we make ‘every reasonable presumption . . . in favor of the correctness of its ruling.’” *Southbridge Associates, LLC v. Garofalo*, 53 Conn. App. 11, 22, 728 A.2d 1114, cert. denied, 249 Conn. 919, 733 A.2d 229 (1999).

After a careful review of the record, we cannot conclude that the court abused its discretion in denying the defendant’s motion for order to allow inspection of the original note. As we previously recited, the court ruled on the authenticity of the original note during trial on February 26, 2020, at which time it considered the defendant’s motion to dismiss on the grounds of standing and subject matter jurisdiction. At that time, the court afforded the defendant the opportunity to inspect the original note. The court also examined the note and heard the defendant’s repeated arguments regarding the authenticity of the note. The court thereafter found the note to be authentic and denied the defendant’s motion to dismiss. Moreover, the record reflects that, throughout the course of the three trial dates, the court reiterated that the authenticity of the original note was established in February, 2020, and that the court had decided the issue of standing at that time.

Additionally, on July 16, 2021, when the court denied the defendant’s April 30, 2021 request to inspect the note, the court afforded the defendant the opportunity to argue why the court should allow a midtrial discovery request, in which the defendant reasserted the issue of standing. In denying the defendant’s discovery request, the court again stated that the issue of standing had already been decided in February, 2020. The court also specifically considered the length of the trial, which had spanned one year and five months from the date it began, and the fact that the defendant had the opportunity to confer with the plaintiff and request to inspect the note but, instead, chose to subpoena the plaintiff to inspect the note days before trial. The court also considered it to be significant that the defendant did not retain an expert to inspect the note in preparation for trial despite the ample amount of time to do so and did not present any evidence to rebut the plaintiff’s prima facie case. The court subsequently relied on this very reasoning when it denied the defendant’s September 23, 2021 motion for order to allow inspection of the note.

In light of the foregoing, we conclude that the court did not abuse its discretion in denying the defendant’s motion for order to allow inspection of the original note.

The judgment is affirmed and the case is remanded for the purpose of setting new law days.

In this opinion the other judges concurred.

¹ When the subject mortgage was executed in 2007, the defendant was married to the nonappearing codefendant Anastasia Amelio. The couple has since divorced, and Anastasia Amelio has no current interest in the subject property. The other codefendants, Russell Boon Rhea and OneWest Bank, N.A., are not participating in this appeal. For clarity, we refer to Carmine Amelio as the defendant in this opinion.

² In his principal appellate brief, the defendant frames his claim as follows: “Given that a proper adjudication of the defendant’s challenge directed to the plaintiff’s standing required inspection of the original mortgage note by a document expert, the trial court erred in failing and refusing to arrange and/or order that such an inspection be had by the defendant.” We interpret the defendant’s claim as challenging only the court’s denial of his motion for an order to allow inspection of the original note. Significantly, the defendant has not appealed from the judgment of the trial court denying his February 18, 2020 motion to dismiss, in which the court expressly found that the plaintiff had standing to maintain this foreclosure action. Instead, the defendant merely references in his appellate brief a prospective intention to challenge standing had his motion been granted. As such, the defendant has neither distinctly raised nor adequately briefed such a claim on appeal. See *C. B. v. S. B.*, 211 Conn. App. 628, 630, 273 A.3d 271 (2022) (“We repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [When] a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned. . . . For a reviewing court to judiciously and efficiently . . . consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs.” (Internal quotation marks omitted.)). Therefore, the only issue properly before us in this appeal is whether the court improperly denied the defendant’s motion for an order to allow inspection of the original note.

³ The record reflects that, at the April 30, 2021 trial session, the plaintiff rested its case-in-chief and the defendant requested more time to gather witnesses in preparation for the July 16, 2021 trial session.

⁴ Practice Book § 23-18 provides in relevant part: “(a) In any action to foreclose a mortgage where no defense as to the amount of the mortgage debt is interposed, such debt may be proved by presenting to the judicial authority the original note and mortgage, together with the affidavit of the plaintiff or other person familiar with the indebtedness, stating what amount, including interest to the date of the hearing, is due, and that there is no setoff or counterclaim thereto. . . .”
