

citations [*230] omitted). And, it constitutes reversible error for a trial judge to rely upon expert testimony to determine questions of law. *Devin v. City of Hollywood*, 351 So. 2d 1022, 1026 (Fla. 4th DCA 1976).

Kahn's testimony was devoid of facts to assist the trial court in making its own legal conclusions regarding the Trust's standing. Rather, Kahn simply provided legal opinions -- often of dubious relevance and in conclusory fashion -- related to the Trust's operating documents and the IRS tax code's treatment of REMICs. Interestingly, when Kahn was asked on cross-examination if an endorsed-in-blank note is a transferrable instrument, the trial court sustained Olsak's [*6] objection that the question called for a legal conclusion.

We are compelled to reverse the trial court's determination that the Trust lacked standing, because the trial court based its standing conclusion exclusively on Kahn's legal opinions regarding matters of questionable relevance.

Furthermore, Kahn testified that the Trust documents did not allow for inclusion of notes that had been endorsed in blank. Olsak, however, is not a party to those Trust documents and therefore, lacks standing to challenge same. *Castillo v. Deutsche Bank Nat'l Trust Co.*, 89 So. 3d 1069 (Fla. 3d DCA 2012) (Mem). [HN4] Florida courts have repeatedly held that borrowers cannot defeat a foreclosure plaintiff's standing by relying upon trust documents to which the borrower is not a party. *Id.*

Similarly, Kahn testified that certain IRS and banking provisions would have precluded the Trust from receiving favorable tax treatment if the Trust owned the Olsak loan. Absent a relevant factual basis, however, this legal opinion, while certainly interesting, has questionable probative value on the dispositive issue in this case: whether the Trust actually held the Olsak Note at the inception of the case.

On remand, the trial court must determine, along with any other contested issues, whether the Trust [**7] had standing to bring the action at the case's inception. *McLean*, 79 So. 3d at 173. In making this determination, any facts upon which the trial court relies should be supported by competent, substantial, relevant evidence, and not merely legal conclusions of a party's expert.

IV. Conclusion

Because the record on appeal reflects that the trial court impermissibly relied upon Appellees' expert's legal conclusions, we reverse the trial court's final order involuntarily dismissing the Trust's claim, and remand for further proceedings consistent with this opinion.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
(Central Islip)

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