

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2013

VIRGIL M. BENNETT and **LISSETTE C. BENNETT**,
Appellants,

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY, etc., et al.,
Appellees.

No. 4D12-2471

[August 7, 2013]

JOHNSON, LAURA, Associate Judge.

We reverse a final summary judgment of foreclosure because a material factual issue existed on a matter pertaining to standing.

Deutsche Bank filed a mortgage foreclosure action against Virgil and Lissette Bennett, alleging that it was “the current owner of or has the right to enforce the Note and Mortgage.” With the complaint, Deutsche Bank filed copies of the note with two allonges and the mortgage. The first allonge contained an undated endorsement from the original lender (H&R Block) to Option One Mortgage. The second allonge contained an undated endorsement in blank from Option One Mortgage. Both allonges were signed by the same individual, Elizabeth Causseaux.

The Bennetts filed an amended answer and affirmative defenses, alleging two affirmative defenses: (1) that Elizabeth Causseaux was not authorized to sign the allonges on behalf of one or both of the separate entities; and (2) that the Bank was not in possession of the original note.

Deutsche Bank moved for summary judgment and filed supporting affidavits. The Bank also filed the original loan documents, which were identical to the copies attached to the complaint. The trial court granted the Bank’s motion for summary judgment.

The Bennetts filed a motion for rehearing, raising a number of issues for the first time, along with those issues first raised in their affirmative defenses. Because the issues raised for the first time in the motion for rehearing were not properly preserved for appeal, they will not be

addressed here. See *Best v. Educ. Affiliates, Inc.*, 82 So. 3d 143, 146 (Fla. 4th DCA 2012).

As to the issues that were properly preserved for appeal, this court reviews the trial court's entry of summary judgment using the *de novo* standard of review. *McLean v. JP Morgan Chase Bank Nat'l Ass'n*, 79 So. 3d 170, 172 (Fla. 4th DCA 2012). Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. This court must examine the record in the light most favorable to the Bennetts, the non-moving party. *Id.*

"A crucial element in any mortgage foreclosure proceeding is that the party seeking foreclosure must demonstrate that it has standing to foreclose." *Rigby v. Wells Fargo Bank*, 84 So. 3d 1195, 1196 (Fla. 4th DCA 2012) (quoting *McLean v. JP Morgan Chase Bank Nat'l Ass'n*, 79 So. 3d 170, 173 (Fla. 4th DCA 2012)). We find that Deutsche Bank failed to prove the absence of any genuine issue of material fact regarding the authority of the person making the endorsements on the two allonges attached to the note.

Deutsche Bank relies on this court's opinion in *Riggs v. Aurora Loan Services, LLC*, 36 So. 3d 932 (Fla. 4th DCA 2010), holding that an endorsement on a note was self-authenticating pursuant to section 90.902(8), Florida Statutes (2008). In *Riggs*, this court affirmed the final summary judgment of foreclosure relying on the statutory presumption in section 673.3081(1), Florida Statutes (2008), which provides:

In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature.

§ 673.3081(1), Fla. Stat. (2008). In *Riggs*, there was no issue of authentication, and the court found that, "in an action with respect to an instrument, the authenticity of, and the authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings." *Id.* at 933 (quoting § 673.3081(1), Fla. Stat. (2008)).

In this case, the Bennetts put the validity of the signatures on both allonges at issue. In their amended answer and affirmative defenses, the Bennetts specifically allege that Elizabeth Causseaux was not an authorized agent of one or both entities. Appellants rely on the inference that the signatures were not authorized because they were made by the same person on behalf of two separate entities. Construing this evidence and resolving all reasonable inferences in the light most favorable to the non-moving party, the Bennetts, this pleading was sufficient to put the authenticity of the signatures at issue, thus creating a genuine issue of material fact. Because a genuine issue of material fact exists, summary judgment was improper.

Reversed and Remanded.

GROSS and MAY, JJ., concur.

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Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Diana Lewis, Judge; L.T. Case No. 502011CA007145 XXXXMB.

Thomas Erskine Ice of Ice Appellate, Royal Palm Beach, for appellants.

Kimberly Hopkins and Ronald M. Gache of Shapiro, Fishman & Gache, LLP, Tampa, for appellee Deutsche Bank National Trust Company.

Not final until disposition of timely filed motion for rehearing.