Third District Court of Appeal

State of Florida

Opinion filed October 2, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1839
Lower Tribunal No. 16-4453

Henry Roif, et al.,
Appellants,

vs.

JP Morgan Chase Bank,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Mavel Ruiz, Judge.

Neustein Law Group P.A. and Nicole R. Moskowitz, for appellants.

Kula & Associates, P.A. and Elliot B. Kula and William D. Mueller, for appellee.

Before LINDSEY, HENDON, and MILLER, JJ.

MILLER, J.

Appellants, Henry Roif and Consultant Capital Group, Inc.,[1] challenge the final judgment of residential foreclosure entered in favor of appellee, JP Morgan Chase Bank, as the Successor in Interest by Purchase from the [Federal Deposit Insurance Corporation] ("FDIC") as Receiver of Washington Mutual Bank ("the Bank"), following a non-jury trial. At trial, the Bank established physical possession of the original note, reflecting a blank indorsement, antedating the filing of the complaint. Intersecting lines in the shape of the letter "X" appeared over the blank indorsement. On appeal, appellants contend the presence of the "X" necessarily invalidated the indorsement, thus, the lower tribunal erred in entering judgment in favor of the Bank. For the reasons set forth below, we find no error and affirm.

On September 10, 2007, Roif signed a promissory note, promising to pay one million dollars plus interest to Washington Mutual Bank, F.A. ("Washington Mutual"). In conjunction with the transaction, Roif executed a mortgage upon his real property in order to secure the note. In 2008, the FDIC was appointed to serve as the receiver of Washington Mutual. Thereafter, Washington Mutual's assets, including the instant mortgage and note, were transferred to the Bank pursuant to an acquisition sale.

[1] While the instant case was pending, in a separately filed lawsuit, Roif's condominium association, Ocean Four Condominium Association, Inc., foreclosed a subordinate lien. Consultant Capital Group, Inc. acquired title to the property through the ensuing court-ordered foreclosure sale.

By 2011, Roif had defaulted under the terms of the note by failing to present his requisite monthly installment payments. On February 23, 2016, after mailing Roif a default letter, the Bank filed a one-count mortgage foreclosure complaint against appellants. Appended to the complaint was a copy of the note, reflecting a blank indorsement, and a copy of the mortgage. Roif and Consultant Capital Group, Inc. answered and raised various affirmative defenses.

The instant case eventually proceeded to a non-jury trial, at which time the Bank produced the original note and mortgage. Although the note reflected a blank indorsement, bisecting lines, forming the shape of the letter "X," appeared on top of the indorsement.

Ron Mulholland, the senior operations specialist employed by appellee, testified that "there was nothing indicat[ing] any reason as to why" the lines appeared on the indorsement, and "[n]othing indicating that the [i]ndorsement wouldn't be valid." He further acknowledged that the business records were devoid of any indication that the note was no longer "negotiable . . . as a result of that X mark."

The note and mortgage, along with a note certification and bailee letter, evidencing that a law firm held the original note prior to the filing of the lawsuit, payment history, and the default letter were admitted into evidence. The lower tribunal entered judgment in favor of the Bank. The instant appeal ensued.

"Whether a party is the proper party with standing to bring an action is a question of law to be reviewed de novo." Westport Recovery Corp. v. Midas, 954 So. 2d 750, 752 (Fla. 4th DCA 2007). However, where "the trial court's standing determination involves factual findings, we uphold such findings only if supported by competent, substantial evidence." Citibank, N.A. v. Olsak, 208 So. 3d 227, 229 (Fla. 3d DCA 2016) (citation omitted).

"A crucial element in any mortgage foreclosure proceeding is that the party seeking foreclosure must demonstrate that it has standing to foreclose." McLean v. JP Morgan Chase Bank Nat'l Ass'n, 79 So. 3d 170, 173 (Fla. 4th DCA 2012) (citing Lizio v. McCullom, 36 So. 3d 927, 929 (Fla. 4th DCA 2010); Verizzo v. Bank of N.Y., 28 So. 3d 976, 978 (Fla. 2d DCA 2010); Philogene v. ABN Amro Mortg. Grp. Inc., 948 So. 2d 45, 46 (Fla. 4th DCA 2006)). "[S]tanding may be established from a plaintiff's status as the note holder, regardless of any recorded assignments." Id. (citing Harvey v. Deutsche Bank Nat'l Tr. Co., 69 So. 3d 300, 304 (Fla. 4th DCA 2011)). "[W]ith bearer notes, possession of the note is the significant core element to be analyzed." Rodriguez v. Wells Fargo Bank, N.A., 178 So. 3d 62, 65 (Fla. 4th DCA 2015) (Conner, J., concurring).

Here, although the note bore a partially obscured indorsement, Mulholland testified, without contradiction, that the Bank maintained the exclusive right to enforce the note, and the business records contained no evidence of "revocation of

the assignment." McCann v. U.S. Bank, N.A., 873 F. Supp. 2d 823, 830 (E.D. Mich. 2012) (rejecting a cancellation argument where "there is a line partially bisecting the [i]ndorsement"); see Servedio v. U.S. Bank Nat'l Ass'n, 46 So. 3d 1105, 1106-07 (Fla. 4th DCA 2010); Riggs v. Aurora Loan Servs., LLC, 36 So. 3d 932, 933 (Fla. 4th DCA 2010). Considering this testimony, and the accompanying evidentiary exhibits, the Bank sufficiently established standing as it demonstrated "physical possession of the original note and an [i]ndorsement . . . in blank," executed prior to trial. Eagles Master Ass'n, Inc. v. Bank of Am., N.A., 198 So. 3d 12, 14 (Fla. 2d DCA 2015). Accordingly, we affirm the final judgment of foreclosure under review.

Affirmed.