

Third District Court of Appeal

State of Florida

Opinion filed June 5, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1480
Lower Tribunal No. 14-15968

Gary Goodenow and Mary Goodenow,
Appellants,

vs.

Nationstar Mortgage LLC,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Dennis J. Murphy,
Judge.

Pomeranz & Associates, P.A., and Mark L. Pomeranz (Hallandale), for
appellants.

Akerman, LLP, and Nancy M. Wallace (Tallahassee), and William P. Heller,
(Ft. Lauderdale), and Jeffrey S. Robin, for appellee.

Before **SALTER, FERNANDEZ, and LINDSEY, JJ.**

PER CURIAM.

The Goodenows appeal a final judgment of foreclosure entered against them after a bench trial, alleging the trial court erred in denying their motion to strike the jury trial waiver. Specifically, the Goodenows assert that Nationstar cannot enforce the jury trial waiver because it is not a party to or assignee of the underlying mortgage. We disagree.

Competent substantial evidence introduced at trial established that Nationstar is the loan servicer, the loan owner's agent and the holder of the note. This evidence provided a sufficient legal basis for the trial court to enforce the jury trial waiver. See Kinney v. Countrywide Home Loans Servicing, L.P., 165 So. 3d 691, 694 (Fla. 4th DCA 2015) (enforcing jury trial waiver and holding that "the Bank was the holder of the note and mortgage by virtue of an endorsement. See Riggs v. Aurora Loan Servs., LLC, 36 So. 3d 932, 934 (Fla. 4th DCA 2010) (holding that bank's submission of 'the original note with a blank endorsement . . . supported its claim that it was the proper holder of the note and mortgage.'"); see also Greer v. O'Dell, 305 F.3d 1297, 1302 (11th Cir. 2002) ("A servicer is a party in interest in proceedings involving loans which it services."); Traver v. Wells Fargo Bank, N.A., No. 3:14-CV-895-J-32MCR, 2016 WL 7666125 (M.D. Fla. July 26, 2016) (determining loan servicer was entitled to enforce jury trial waiver in mortgage on breach of contract claim); Charles v. Deutsche Bank Nat'l Tr. Co., No. 1:15-CV-21826-KMM, 2016 WL 950968, at *4 (S.D. Fla. Mar. 14, 2016) ("[S]ince SPS

would be able to enforce the mortgage's jury trial waiver given its relationship with Deutsche Bank, by extension, SPS can also enforce the mortgage's notice and cure provision." (footnote omitted); Martorella v. Deutsche Bank Nat'l Tr. Co., No. 12-80372-CIV, 2013 WL 1136444 (S.D. Fla. March 18, 2013) (applying mortgage waiver to servicer and trustee); Hancock v. Deutsche Bank Nat'l Tr. Co., No. 8:06-CV-1724-T-27EAJ, 2006 WL 6319816 (M.D. Fla. Oct. 24, 2006) (holding assignees of the original lender could enforce a jury trial waiver).

Affirmed.