COURT OF APPEALS
DECISION
DATED AND FILED

February 5, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP661 **Cir. Ct. No. 2011CV67**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

CHASE HOME FINANCE, LLC,

PLAINTIFF-RESPONDENT,

V.

JASON A. NASMAN AND ROBIN L. NASMAN,

DEFENDANTS-APPELLANTS,

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,

DEFENDANT.

APPEAL from a judgment of the circuit court for St. Croix County: HOWARD W. CAMERON, JR., Judge. *Affirmed.*

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Jason and Robin Nasman, pro se, appeal a summary judgment of foreclosure in favor of Chase Home Finance, LLC. We affirm.

¶2 On July 11, 2003, the Nasmans received a $162,000 loan. They executed a note and mortgage naming Centennial Mortgage and Funding, Inc., as lender. The note is secured by the mortgage dated the same date as the note.[1] The note and the mortgage indicate that each may be transferred and assigned.

¶3 The note states on its face that "[t]he note holder may enforce its rights under this Note against each person individually or against all of us [Nasmans] together." The mortgage also indicates that Mortgage Electronic Registration Systems, Inc. ("MERS")[2] is acting for lender and lender's successors and assigns, and that the note or a partial interest in it can be sold one or more times without prior notice to borrower.

¶4 The note was endorsed twice: first by Centennial to Ohio Savings Bank, and Ohio Savings Bank subsequently endorsed the note in blank. On

[1] The mortgage secures "(i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note." The mortgage defines the "Loan" as "the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this [mortgage], plus interest." The note is defined in the mortgage to mean "the promissory note signed by Borrower and dated July 11, 2003." In the mortgage, the Nasmans also "mortgage[d], grant[ed] and convey[ed] to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS …." the mortgaged property.

[2] MERS is an electronic registration system created in the aftermath of the 1993 savings and loan crisis.

January 14, 2011, MERS executed, certified and filed an assignment of mortgage which assigned the mortgage to Chase.[3]

¶5 The Nasmans failed to make payments under the terms of the note and mortgage. On January 19, 2011, Chase commenced an action for foreclosure and sale of the mortgaged premises. The circuit court granted summary judgment and entered a judgment of foreclosure in favor of Chase. The Nasmans now appeal.

¶6 Summary judgment methodology is well established and will not be fully repeated here. A party is entitled to summary judgment when there are no genuine issues of material fact and that party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).[4] On summary judgment, the party submitting affidavits need not submit evidence to conclusively demonstrate the admissibility of the evidence it relies upon in the affidavit. *See* ***Gross v. Woodman's Food Mkt., Inc.***, 2002 WI App 295, ¶31, 259 Wis. 2d 181, 655 N.W.2d 718. That party need only make a prima facie showing that the evidence would be admissible at trial. ***Id.*** The burden then shifts to the opposing party to show that the evidence is inadmissible or to show facts which put the evidence at issue. ***Id.***

¶7 Here, the Nasmans concede they signed the note and mortgage. They neither dispute the payment terms of the note, nor their default under the terms of the note and mortgage. Nevertheless, the Nasmans argue that the note

[3] Chase Home Finance, LLC, merged with JP Morgan Chase Bank, National Association effective May 1, 2011.

[4] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

does not name Chase as the lender and therefore contradicts the allegations of the complaint. We are not persuaded.

¶8 The note was endorsed in blank and Chase submitted an affidavit averring that it is currently in possession of the note. An endorsement in blank is payable to its bearer. *See* WIS. STAT. § 401.201(2)(km)1. A person in possession of an instrument payable to its bearer is a holder of the instrument and entitled to enforce its provisions. *See* WIS. STAT. §§ 403.301, 403.205(2).

¶9 As current holder of the note, and owner of the mortgage as evidenced by the assignment, Chase has a legal interest in the debt secured by the note and a security interest under the mortgage. It thus has standing to pursue the remedy of foreclosure. *See* WIS. STAT. § 403.205(2). It was not necessary that Chase be specifically named as the "lender" to enforce the note. The note endorsed in blank does not contradict the allegations in the complaint.

¶10 The Nasmans argue the assignment to Chase was ineffectual because MERS's status as nominee for Centennial did not confer MERS with authority to transfer the mortgage, and thus the note and mortgage were "split." However, it is well established that the transfer of a note carries with it all security without any formal assignment or delivery, or even mention of the latter. *See* ***Tidioute Sav. Bank v. Libbey***, 101 Wis. 193, 196, 77 N.W. 182 (1898). Accordingly, the mortgage signed by the Nasmans is not "split" from the note they admittedly executed in favor of the original lender on the same day.

¶11 The circuit court also properly found that Chase's evidence was admissible. Contrary to the Nasmans' objections, the mortgage, note and assignment were not offered in evidence to prove the truth of the matter asserted.

See WIS. STAT. § 908.01(3). Rather, Chase offered the documents to show the legal effect of each and, therefore, they do not constitute hearsay.

¶12 To prove the amount of delinquency under the note, Chase offered the payment ledger history for the Nasmans' mortgage loan account. The payment ledger is a computer-generated record that does not meet the definition of hearsay. *See* ***State v. Zivcic***, 229 Wis. 2d 119, 131, 598 N.W.2d 565 (Ct. App. 1999). In addition, the certified copy of the assignment is self-authenticating, as well as the signatures evidencing the endorsements. *See* WIS. STAT. §§ 909.02(4), (9).

¶13 The circuit court also properly found that the basis for personal knowledge of affiant Donna Gilkerson for the loan documents was sufficient, given her role as Vice President and Operations Senior Specialist at Chase. The Gilkerson affidavit also sufficiently describes the process used to produce the computer-generated payment history ledger, and how this process ensures the accuracy of the records. There is also no dispute regarding the existence and recording of the mortgage attached to the property.

¶14 Chase submitted sufficient documentary evidence to support a prima facie case for summary judgment. The Nasmans failed to create disputed issues of material fact.[5] Thus, Chase was entitled to judgment as a matter of law.

[5] The Nasmans' claims of "fraudulent," "felonious" or "bad faith" are vague and lack specificity sufficient to create a genuine dispute of material fact regarding Chase's status as holder of the note and mortgage.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.