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DISTRICT II

July 2, 2014

To:

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You are hereby notified that the Court has entered the following opinion and order:

2013AP2593

Wells Fargo Bank NA v. Shirley J. Jankowski (L.C. #2013CV126)

Before Brown, C.J., Reilly, and Gundrum, JJ.

Shirley and Denis Jankowski appeal pro se from a summary judgment for foreclosure.¹ They argue that Wells Fargo Bank did not establish that it was the holder of the note and that the assignment of the mortgage to Wells Fargo was invalid. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).² We affirm the judgment.

¹ A default judgment was also entered against Denis Jankowski.

² All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

In 2004, the Jankowskis signed a promissory note to Franklin American Mortgage Company and an accompanying mortgage to Mortgage Electronic Registration System, Inc. (MERS), as nominee for Franklin and its successors and assigns. The note was endorsed to Wells Fargo. In late 2012, the Jankowskis defaulted on payments. MERS assigned the mortgage to Wells Fargo. This action followed and Wells Fargo moved for summary judgment.

We review a summary judgment determination de novo, applying the standard found in WIS. STAT. § 802.08, the same methodology that the circuit court uses. *Sonday v. Dave Kohel Agency, Inc.*, 2006 WI 92, ¶20, 293 Wis. 2d 458, 718 N.W.2d 631. We affirm summary judgment when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Sec. 802.08(2).

The Jankowskis argue that Wells Fargo did not establish that the note had been assigned to it and that it had the right to enforce it. In Wisconsin, a person entitled to enforce a negotiable instrument—here, the note—includes the “holder” of the instrument. WIS. STAT. § 403.301. A holder generally is the person in possession of the negotiable instrument. WIS. STAT. § 401.201(2)(km)1.

In support of its motion, Wells Fargo filed two affidavits. One included a copy of the promissory note and demonstrated that the note had been endorsed over to Wells Fargo and then endorsed in blank by Wells Fargo. A second affidavit established that Wells Fargo had possession of the original note. The Jankowskis did not submit any evidentiary affidavit that

Wells Fargo was not in possession of the note.³ Thus, Wells Fargo established it was a holder of the note and entitled to enforce its provisions.

The Jankowskis' claim that the mortgage was not properly assigned from MERS to Wells Fargo has no legitimate basis. An executed and recorded assignment of the mortgage is in the record. Moreover, assignment of the mortgage was not necessary to permit Wells Fargo to foreclose on it. Wells Fargo held the note and the right to enforce the mortgage follows by operation of law. *See Kornitz v. Commonwealth Land Title Ins. Co.*, 81 Wis. 2d 322, 327, 260 N.W.2d 680 (1978) (when a note is transferred or assigned, the equitable interests in the mortgage follow).

Upon the foregoing reasons,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

³ The Jankowskis submitted a lengthy affidavit of Peter J. Ancona, a purported expert in the field of mortgage foreclosure litigation and the secondary mortgage market. In apparent reliance on the Ancona affidavit, the Jankowskis argued that “[i]f the original note has been sold ... to a ‘Trust’ under the terms of a ‘Pooling and Service Agreement,’ and the Trust has, in turn, created and sold several classes of securities to investors in mortgaged backed securities,” then only the “Trust” or investors could initiate the foreclosure action. The Ancona affidavit is opinion evidence that Wells Fargo’s standing in this case is “not authentic” based on review of documents not included with the affidavit. The affidavit may be disregarded because it does not contain evidentiary facts. *See* WIS. STAT. § 802.08(3).