OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I/IV

July 14, 2014

To:

Hon. David A. Hansher
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room G-8
901 N. 9th Street
Milwaukee, WI 53233

Shawn R. Hillmann
Bass & Moglowsky, S.C.
501 W. Northshore Drive, Suite 300
Milwaukee, WI 53217

Rudolph J. Kuss
Stevens & Kuss S.C.
14380 W. Capitol Dr.
Brookfield, WI 53005-2323

Emily Elizabeth Thoms
Bass & Moglowsky, S.C.
501 West Northshore Dr., Ste. 300
Milwaukee, WI 53217

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

2013AP2219 Wisconsin Housing and Economic Development Authority v. Andreas Rydland and Nicole L. Rydland (L.C. # 2013CV2760)

Before Blanchard, P.J., Lundsten and Sherman, JJ.

Andreas Rydland and Nicole Rydland appeal a judgment of foreclosure. 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).[1] We affirm.

The Rydlands argue that plaintiff Wisconsin Housing and Economic Development Authority (WHEDA) failed to make a prima facie case for summary judgment because WHEDA

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

did not sufficiently show that it had the original note or a true and correct copy of the note. More specifically, the Rydlands argue that the original note presented to the circuit court was insufficient because the note was not authenticated by a witness with knowledge that the note was indeed what it was claimed to be, under WIS. STAT. §§ 909.01 and 909.015(1).

We conclude that this argument fails because the note is self-authenticating under WIS. STAT. § 909.02(9), which provides that extrinsic evidence of authenticity is not required for "[c]ommercial paper, signatures thereon, and documents relating thereto to the extent provided by chs. 401 to 411." We agree with WHEDA that the note is commercial paper under this provision.

"Negotiable instruments" are the subject of WIS. STAT. ch. 403. Because those provisions are within "chs. 401 to 411," if the Rydland note is a negotiable instrument, it is self-authenticating.

WHEDA relies on ***Lakeshore Commercial Finance Corp. v. Bradford Arms Corp.***, 45 Wis. 2d 313, 324, 173 N.W.2d 165 (1970), for the proposition that "[a] mortgage note is a negotiable instrument." However, that case contains no such broad holding. The court stated only that "the note *in this case* is a negotiable instrument." ***Id.*** (emphasis added).

WHEDA also argues that, in ***Dow Family, LLC v. PHH Mortgage Corp.***, 2013 WI App 114, 350 Wis. 2d 411, 838 N.W.2d 119, *aff'd*, 2014 WI 56 (July 10, 2014), we "held that copies of promissory notes are not self-authenticating but original promissory notes are." We are unable to find language in that case stating either of those holdings. Rather, in ***Dow Family*** we concluded that the party's argument about self-authentication of copies was undeveloped, and we said nothing about whether originals are self-authenticating. *See* ***id.***, ¶¶20-22.

WHEDA asserts that the Rydland note is a "negotiable instrument" under WIS. STAT. § 403.104(1) because the note is, quoting the statute's definition of that term, "an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order." ***Id.*** While that definition appears to include a typical mortgage note, WHEDA fails to state the rest of that statutory definition, which contains three additional elements that must be met. WHEDA does not attempt to explain how the Rydland note satisfies those elements.

In reply, the Rydlands do not appear to dispute that, under this definition, the note is a negotiable instrument. And, our own inspection of the note confirms that the note appears to satisfy the remaining elements. The note is endorsed by the issuing bank with "PAY TO THE ORDER OF WHEDA WITHOUT RECOURSE." Therefore, the note satisfies the requirement that it be "payable to bearer or to order at the time that it is issued or first comes into possession of a holder." *See* WIS. STAT. §§ 403.104(1)(a) and 403.109(2).

In addition, the note requires that payments be made through August 1, 2035, and therefore the note satisfies the requirement that it be "payable on demand or at a definite time." WIS. STAT. § 403.104(1)(b). Finally, our review of the note confirms that it does not contain any unpermitted "undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money." WIS. STAT. § 403.104(1)(c).

Accordingly, we conclude that the note was a negotiable instrument, and was therefore self-authenticating commercial paper that the circuit court properly relied on without further extrinsic evidence for authentication.

WHEDA moves for a finding that this appeal is frivolous under WIS. STAT. RULE 809.25(3). While the Rydlands' argument has not prevailed, we do not conclude that it lacked a reasonable basis in law or equity.

Finally, for the future reference of WHEDA's attorney, we note that WHEDA's brief does not comply with the type requirements of WIS. STAT. RULE 809.19(8)(b). The certification attached to the brief states that the brief conforms to the rules for use of "a monospaced proportional serif font." The terms "monospaced" and "proportional" are mutually exclusive. The brief appears to be produced with a proportional serif font. For such a brief, the body text must be 13 points, but the text of the brief appears to be smaller than that. Furthermore, the maximum number of characters per full line is 60, and WHEDA's brief appears to have approximately 80 characters per line.

IT IS ORDERED that the judgment appealed is summarily affirmed under WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that the motion for a finding of frivolousness is denied.

Diane M. Fremgen
Clerk of Court of Appeals