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DISTRICT II

December 23, 2014

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

2013AP2402 Bank of America NA v. Amy Jo Brown (L.C. # 2011CV3333)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

This case arises out of a foreclosure action commenced against Amy Jo Brown. Brown appeals pro se from circuit court orders granting summary judgment in favor of Bank of America, N.A. ("BANA") and dismissing her counterclaims and third-party claims against it. Based on 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 orders of the circuit court.

In September 2004, Brown executed a promissory note evidencing a loan for $383,200. The note was secured by a mortgage on property located in Waukesha County. Brown stopped making payments on the loan in May 2009.

In September 2011, BANA filed a foreclosure action against Brown. Eventually, it moved for summary judgment on its claim. In support of its motion, BANA submitted an affidavit from an employee named Johnny Richard Hillberry. Hillberry attested that as part of his "job responsibilities for BANA," he was "familiar with the type of records maintained by BANA" and that he executed the affidavit "from [his] personal knowledge of how [BANA's loan] records are created, kept and maintained." From that foundation, he attested that BANA possessed the original note and that Brown was in default on her loan. Attached to the affidavit was a copy of the note along with other documents, including Brown's payment history. Brown responded to the motion by filing various counterclaims and third-party claims,[2] which BANA then moved to dismiss.

Following a hearing on the matter, the circuit court issued orders granting summary judgment in favor of BANA and dismissing Brown's counterclaims and third-party claims. This appeal follows.

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

[2] These included claims under the Fair Debt Collection Practices Act, a claim for fraud, and a declaratory judgment claim to quiet title.

We review a grant of summary judgment using the same methodology as the circuit court. ***Green Spring Farms v. Kersten****,* 136 Wis. 2d 304, 314–15, 401 N.W.2d 816 (1987). Summary judgment is proper when there are no genuine issues of material fact and one party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).

On appeal, Brown contends that the circuit court erred in granting BANA's motion for summary judgment. She asserts that BANA lacked standing to foreclose on the property and was not the real party in interest. She further asserts that BANA failed to make a prima facie case for summary judgment.

Here, we are satisfied that BANA had standing to foreclose on the property and that it was the proper party to do so. As the possessor of the original note, BANA was the injured party when Brown defaulted on her payments. Accordingly, it was within its rights to pursue a foreclosure action.

We are also satisfied that BANA made a prima facie showing for summary judgment. As noted, BANA presented evidence showing that it possessed the original note and that Brown was in default on her loan. Although Brown suggests that the note is a forgery, her bare assertion

fails to establish a genuine issue of material fact. Likewise, her other objections to the evidence presented are all without merit.[3]

In the end, we agree with the circuit court that Brown established no genuine issues of material fact and that BANA was entitled to judgment as a matter of law. Accordingly, we affirm.[4]

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

[3] For example, Brown questions the admissibility of the note on grounds that it was not authenticated and constitutes hearsay. This argument is a non-starter as such a note is self-authenticating under WIS. STAT. § 909.02(9) and is not hearsay when offered to show the legal effect of the document. *See* ***Bank of America, N.A. v. Neis***, 2013 WI App 89, ¶49, 349 Wis. 2d 461, 835 N.W.2d 527. Brown also questions the sufficiency of Hillberry's affidavit because, among other things, it fails to "aver that he is an expert in the examination of the questioned documents," and fails to "lay a basis for his personal knowledge of an endorsement on the note." Brown, of course, cites no authority that requires such an exacting standard for an affidavit. In any event, we conclude that the affidavit was sufficient.

[4] To the extent we have not addressed an argument raised by Brown on appeal, the argument is deemed rejected. *See* ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").