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March 23, 2015

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

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2014AP542 JP Morgan Chase Bank NA v. Kenneth Kraemer
(L.C. # 2011CV2689)

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

Kenneth Kraemer and Nisarat Kraemer appeal a judgment against them and in favor of JP Morgan Chase Bank, NA ("Chase"). On appeal, the Kraemers argue that summary judgment should not have been granted because genuine issues of material fact exist as to whether Chase was authorized to enforce the note at issue in this foreclosure case. 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 (2013-14).[1] We summarily affirm.

Chase filed a complaint against the Kraemers for foreclosure of the mortgage on their home. The complaint asserted that a "true and correct copy" of the note underlying the Kraemers' mortgage was attached. The note did not contain any endorsements from Washington Mutual Bank, FA, the lender listed on the note. The Kraemers raised this issue as an affirmative defense in their amended answer, challenging Chase's standing to bring the foreclosure action. Later in the litigation, Chase moved for summary judgment, based in part on a supporting affidavit stating that Chase possessed the original note and attaching a complete copy of the original note, endorsed in blank.

The circuit court granted summary judgment in favor of Chase and entered an order and judgment of foreclosure against the Kraemers. The court reasoned that, under the doctrine of equitable assignment, the bearer holding a note is presumed to have the right to enforce the security for the note. The court then concluded that the second version of the note presented by Chase was bearer paper and that, under WIS. STAT. § 403.308(1), the signature on the endorsement was presumed to be authentic and authorized. The Kraemers now appeal.

Whether the circuit court properly granted summary judgment is a question of law that we review independently, applying the same standards used by the circuit court. ***Tatera v. FMC Corp.***, 2010 WI 90, ¶15, 328 Wis. 2d 320, 786 N.W.2d 810. Under summary judgment methodology, the court first determines if the complaint states a claim for relief. ***Broome v.***

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

***WDOC***, 2010 WI App 176, ¶9, 330 Wis. 2d 792, 794 N.W.2d 505. If the complaint does state a claim for relief and the answer joins issue, then the court considers the affidavits of the moving party to determine if they make a prima facie case for summary judgment. ***Id.*** If they do, the court examines the affidavits of the opposing party to determine if there are genuine issues of material fact. ***Id.*** A party is entitled to summary judgment if there are no genuine issues of material fact. WIS. STAT. § 802.08(2).

As noted, we look first to the complaint to see whether it states a claim. *See* ***Broome***, 330 Wis. 2d 792, ¶9. Under ***Bank of America NA v. Neis***, 2013 WI App 89, 349 Wis. 2d 461, ¶56, 835 N.W.2d 527, the absence of an endorsed copy of the note is not fatal to Chase's foreclosure action but, rather, suffices under notice pleading to give Chase standing. *See* ***Magnum Radio, Inc. v. Brieske***, 217 Wis. 2d 130, 136, 577 N.W.2d 377 (Ct. App. 1998) (under Wisconsin's liberal notice pleading rules, all that is required of a complaint is that it give fair notice of the claim being advanced). Turning next to the summary judgment materials, we are satisfied that Chase's submission of an endorsed version of the note by affidavit sufficed to establish a prima facie case for summary judgment. *See* ***Broome***, 330 Wis. 2d 792, ¶9. The Kraemers did not respond in the summary judgment proceedings with any evidence that called the endorsed note into question.

The Kraemers argue that the difference between the unendorsed note attached to the complaint and the endorsed note filed later by Chase creates a genuine issue of material fact precluding summary judgment. We disagree. As Chase points out in its brief, we rejected a

similar argument in ***Neis***, 349 Wis. 2d 461.[2] In ***Neis***, the bank mistakenly attached the incorrect promissory note to its foreclosure complaint. ***Id.***, ¶56. The bank later rectified its error by supplying a correct copy of the note. ***Id.***, ¶5 n.4. The borrowers argued that the discrepancy between the two copies of the note created a genuine issue of material fact. ***Id.***, ¶56. We rejected the argument, holding that the initial error with respect to the note attached to the foreclosure complaint, corrected later in the case, did not preclude summary judgment in favor of the bank. ***Id.*** Here, like the borrowers in ***Neis***, the Kraemers provide no persuasive reason why the discrepancy between the two notes should preclude summary judgment. *See* ***id.***

The Kraemers assert in their brief that they have a right to challenge the signatures on the endorsement under WIS. STAT. § 401.201(2)(pm), which provides, "'Presumption' or 'presumed' means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence." The problem with this argument is that the Kraemers did *not* present any such evidence to the circuit court. The court stated at the summary judgment hearing that if the Kraemers had some evidence to show that there had been an improper negotiation, the court was willing to consider it. However, the Kraemers did not present any evidence of improper negotiations, nor any other evidence to overcome the presumption that the signature on the endorsement was valid. Kraemer speculated at the summary judgment hearing that perhaps someone simply applied a "rubber stamp" to the endorsement. However, speculation is not sufficient to preclude summary judgment. The party

[2] In its discussion of ***Neis***, Chase cites an unpublished per curiam opinion. We caution Chase's counsel that, under WIS. STAT. RULE 809.23(3)(a) and (b), unpublished per curiam opinions may not be cited as precedent or authority, except to support a claim of claim preclusion, issue preclusion, or law of the case, nor for their persuasive value.

opposing summary judgment must present specific and admissible evidentiary facts. *See* ***Helland v. Kurtis A. Froedtert Mem'l Lutheran Hosp.***, 229 Wis. 2d 751, 756, 601 N.W.2d 318 (Ct. App. 1999). The Kraemers failed to do so here.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed under WIS. STAT. RULE 809.21(1).

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*Diane M. Fremgen*
*Clerk of Court of Appeals*