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DISTRICT II/IV

October 21, 2015

To:

Hon. Gary R. Sharpe
Circuit Court Judge
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You are hereby notified that the Court has entered the following opinion and order:

2014AP1681

U.S. Bank National Association v. Julie L. Gerlach p/k/a Julie
Osuski and Jeremy J. Gerlach (L.C. # 2014CV96)

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

Julie and Jeremy Gerlach, pro se, appeal a summary 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 (2013-14).¹ We summarily affirm.

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

Chase Bank filed this foreclosure action on behalf of U.S. Bank, N.A.² against the Gerlachs in March 2014. Julie Gerlach, pro se, answered the complaint and moved to dismiss the foreclosure action based on fraud and lack of standing. In May 2014, Chase moved for summary judgment. Chase submitted a supporting affidavit by a Chase employee averring that she had personal knowledge of Chase's practices for creating and maintaining loan records and personal knowledge that the records for the Gerlachs' loan were maintained by Chase in the course of its regularly conducted business activities; that the Gerlachs had executed a note in January 2004, secured by a mortgage on their property; that Chase is the servicer of the loan; and that the Gerlachs were in default on their payments under the terms of the note and mortgage. Attached to the affidavit were a notice of default Chase sent to the Gerlachs in May 2013 and an April 2014 printout of Chase's transactional history for the Gerlachs' loan. Chase also submitted an affidavit by its attorney, averring that Julie Gerlach had been invited to view the original loan documents in the attorney's office. Attached to the affidavit was a letter sent from Chase's counsel to Julie Gerlach, stating that a copy of the original note was attached, and that any doubt as to Chase's physical possession of the note could be resolved by personal inspection at the attorney's office. Included with the letter is a copy of the Gerlachs' note, endorsed in blank. The Gerlachs opposed summary judgment and submitted affidavits in opposition. The circuit court granted summary judgment to Chase.

² The named plaintiff in the foreclosure action, and the respondent on appeal, is "U.S. Bank National Association as Trustee successor in interest to Bank of America, National Association as Trustee, successor by merger to LaSalle Bank National Association, as Trustee for Structured Asset Investment Loan Trust Mortgage Pass-Through Certificates, Series 2004-5." Chase is the servicer of the Gerlachs' loan, and has filed a respondent's brief on behalf of U.S. Bank.

The Gerlachs contend that Chase Bank lacks standing to foreclose because, the Gerlachs assert, Chase Bank is not the “holder” of the note. Rather, the Gerlachs contend, Chase Bank is only the “servicer” of the note for another, unknown party. The Gerlachs do not point to any dispute in the record that Chase possesses the note, endorsed in blank; rather, they dispute the process by which the note was transferred and thus, they assert, whether Chase is the true party in interest. The Gerlachs also contend that Chase Bank failed to prove that the Gerlachs were in default because Chase Bank did not submit sufficient documents to prove the default, specifically because there was no proof of how the Gerlachs’ payments were applied. Again, the Gerlachs do not point to any dispute in the record that the Gerlachs are, in fact, in default; rather, they contend that Chase has made an insufficient showing by failing to detail the disbursements of the payments the Gerlachs did make. We reject both of the Gerlachs’ contentions.³

A person entitled to enforce a negotiable instrument includes the “holder” of the instrument. WIS. STAT. § 403.301. A “holder,” in turn, includes the person in possession of the negotiable instrument, in this case the Gerlachs’ note. *See* WIS. STAT. § 401.201(2)(km)1. Further, when, as here, a note is endorsed in blank, the note is payable to the bearer and is negotiated by transfer of possession alone. *See* WIS. STAT. §§ 403.201(1) and 403.205(2). Thus, Chase is entitled to enforce the note because it possesses the note. Additionally, the summary

³ To the extent we do not address arguments the Gerlachs raise with respect to these two contentions, we have considered those arguments and deem them insufficiently developed to warrant a response.

judgment material submitted by Chase establishes a prima facie case of default, and the Gerlachs point to no evidence disputing that they were in default.⁴

Therefore,

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

Diane M. Fremgen
Clerk of Court of Appeals

⁴ Our conclusion that Chase Bank is entitled to summary judgment based on the undisputed evidence that it is the holder of the note and that the Gerlachs defaulted on the note is dispositive of this appeal. Accordingly, we need not reach other arguments raised by the Gerlachs.