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DISTRICT I

September 13, 2022

To:

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

2020AP894

HSBC Bank USA v. Patricia R. Stewart (L.C. # 2017CV10810)

Before Brash, C.J., Donald, P.J., and Dugan, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Patricia R. Stewart-Martin appeals the circuit court's order in favor of HSBC Bank USA, National Association as Trustee for Structured Asset Securities Corporation, Management Pass-Through Certificate, Series 2004-SCI (HSBC). Stewart-Martin argues: (1) the circuit court's order is inconsistent with this court's prior decision in this action, *HSBC Bank USA v. Stewart-Martin*, No. 2018AP833, unpublished slip op. (WI App June 4, 2019); and (2) the assignment of her mortgage to HSBC without the transfer of the note to HSBC in tandem was a nullity and

rendered the mortgage unenforceable. Based on the briefs and record, we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We affirm.

The procedural history of this action is recounted in our prior appellate decision and will not be repeated here. *See Stewart-Martin*, No. 2018AP833, ¶¶3-17. We reversed the circuit court’s summary judgment in favor of HSBC and remanded for further proceedings. *Id.*, ¶26. We ruled that HSBC’s summary judgment filings had not established that HSBC possessed the note that was secured by Stewart-Martin’s mortgage, and therefore HSBC had not established that it was the holder of the note with standing to bring this action against Stewart-Martin. *Id.*, ¶25. On remand, the circuit court made a factual finding that HSBC had physical possession of the original note. The circuit court again granted summary judgment in favor of HSBC.

Summary judgment is appropriate where there is no issue as to any material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). “We review a circuit court’s decision to grant summary judgment *de novo*, applying the same methodology as the circuit court.” *Fromm v. Village of Lake Delton*, 2014 WI App 47, ¶11, 354 Wis. 2d 30, 847 N.W.2d 845.

Stewart-Martin first argues that the circuit court’s order is inconsistent with this court’s prior decision. We disagree. In our prior decision, we ruled that HSBC’s affidavit presented in support of its motion for summary judgment failed to establish that it had possession of the note that was secured by Stewart-Martin’s mortgage and therefore failed to establish that it had standing to bring the action against Stewart-Martin. *See Stewart-Martin*, No. 2018AP833, ¶25.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

We did not rule that HSBC lacked standing to foreclose as a matter of law; we ruled that HSBC had not met its burden of establishing that it had possession of the note and thus, failed to establish standing to foreclose on Stewart-Martin's property for purposes of summary judgment. On remand, HSBC physically produced the original note at the summary judgment hearing, thus establishing that it was the holder of the note and had standing to foreclose on Stewart's property. The circuit court's ruling that HSBC possessed the note was not inconsistent with our prior decision.

Stewart-Martin next argues that the mortgage is unenforceable because the mortgage was assigned to HSBC without the note being transferred in tandem. We reject this argument. There is no dispute that the mortgage had been assigned to HSBC before it commenced this action. There is also no dispute that the note had been endorsed in blank and transferred. "To foreclose on a mortgage that secures an instrument, a party must show that it is entitled to enforce the instrument by proving that it is the 'holder' of the instrument or 'a nonholder in possession of the instrument who has the rights of a holder.'" *Bank of N.Y. Mellon v. Klomsten*, 2018 WI App 25, ¶22, 381 Wis. 2d 218, 911 N.W.2d 364 (citation omitted). Where, as here, "the note is endorsed in blank, [a party] is entitled to a judgment of foreclosure on the mortgage, that secures the note, if it shows that it is entitled to enforce the note *as the holder in possession of the note.*" *Id.* (emphasis added). Although HSBC did not initially establish for purposes of summary judgment that it was the holder of the note that had been endorsed in blank, *see Stewart-Martin*, No. 2018AP833, ¶25, at the time of the summary judgment hearing on remand, HSBC had physical possession of the original note, thereby proving that it was the holder of the note and entitled to a judgment of foreclosure on the mortgage that secured the note.

Stewart-Martin further contends that HSBC cannot enforce the note because it was required to prove that it had physical possession of the note and the assigned mortgage *when the complaint was filed*. Stewart-Martin cites no authority for that conclusion, and we are aware of none. Therefore, we do not address this argument. *See State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) (we may decline to review issues that are inadequately briefed).

Upon the foregoing,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals