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DISTRICT IV

September 14, 2015

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

2014AP2255

JPMorgan Chase Bank, National Association, assignee of Mortgage Electronic Registration Systems, Inc. as nominee for Premium Capital Funding, LLC d/b/a Topdot Mortgage v. James Hubbard and Karen Hubbard, Trent Alvis, Sharon Alvis and Dane County Clerk of Circuit Court (L.C. # 2013CV1316)

Before Lundsten, Sherman and Blanchard, JJ.

James and Karen Hubbard appeal a summary judgment of foreclosure. They argue that material issues of fact made summary judgment inappropriate and that JPMorgan Chase (the Bank) lacked standing and was not a real party in interest when the lawsuit was filed. Upon our

review of the parties' briefs and the record, we conclude at conference that the judgment should be summarily affirmed. WIS. STAT. RULE 809.21 (2013-14).¹

Many of the outstanding issues of fact identified by the Hubbards are based on the Bank's refusal to answer some questions during discovery. The Hubbards argue that the court should have drawn an adverse inference from the refusal to answer the questions, thus creating issues of material fact. However, the Bank objected to the questions as irrelevant and the Hubbards did not follow the procedure set out in WIS. STAT. § 804.11(1)(c) for compelling a response to discovery questions. Because they did not bring a motion to compel discovery, any request that the circuit court or this court draw a negative inference from the Bank's refusal to answer is forfeited. Therefore, the Bank's uncontradicted evidence regarding the signature on the allonge and its assertion that it possessed the original note created a sufficient basis for granting summary judgment. In addition, the Hubbards' concerns about non-identical copies of the note, their demand to discover the consideration the Bank paid for the note's transfer, and their general allegation that the Bank was not forthcoming were forfeited by their failure to file a motion to determine the sufficiency of the Bank's objections.

The Hubbards argue that the note was not properly assigned or sold to the Bank. However, because the note is endorsed in blank and the Bank is the possessor or holder of the note, ownership is irrelevant for purposes of the right to enforce the note. *See* WIS. STAT. § 403.301. As to the validity of the signatures, they are presumptively valid under WIS. STAT.

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

§ 403.308(1), and the burden was on the Hubbards to rebut the presumption. Their argument on appeal incorrectly attempts to switch the burden of proof to the Bank.

The Hubbards fault the circuit court for considering an entire transcript when their motion for summary judgment quoted only ten lines from the transcript. Under the “rule of completeness,” the circuit court had discretion to consider the complete record to provide context and prevent distortion. *See State v. Eugenio*, 219 Wis. 2d 391, 411-12, 579 N.W.2d 642 (1998). The Hubbards opened the door to consideration of the entire transcript by utilizing part of it.

The Hubbards argue that the Bank produced an invalid assignment of the mortgage. Assignment of the mortgage was irrelevant because the mortgage follows the note and, as we have discussed, the Bank established its right to enforce the note. *See Dow Family, LLC v. PHH Mortg. Corp.* 2013 WI App 114, ¶34, 350 Wis. 2d 411, 838 N.W.2d 119.

The Hubbards claim that a ledger entry reducing the loan balance to zero in the Bank’s records indicates that the mortgage and note were paid in full. However, the Hubbards offered no other evidence suggesting that their mortgage insurer or anyone else paid the debt. In contrast, the Bank’s explanation of the notation was that it “zeroed it out,” a result of the repurchase and we agree that this is the only reasonable inference that can be drawn from the notation in the absence of any additional evidence.

Finally, there is no merit to the Hubbards’ argument that the Bank was not a real party in interest or lacked standing to bring this action. The holder of the note is entitled to enforce it regardless of whether it is the owner. *See WIS. STAT. § 403.301*. That the Bank became the owner of the debt during the pendency of the case is irrelevant.

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

Diane M. Fremgen
Clerk of Court of Appeals