

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 23, 2014**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2014AP764**

**Cir. Ct. No. 2012CV3214**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**OCWEN LOAN SERVICING, LLC AS SERVICER FOR U.S. BANK, N.A.,  
IN ITS CAPACITY AS TRUSTEE FOR THE HOLDERS OF MORGAN  
STANLEY DEAN WITTER CAPITAL I, INC. TRUST 2002-HEI  
MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2002-HEI,**

**PLAINTIFF-RESPONDENT,**

**v.**

**CARL E. SEGEBRECHT AND LINDA M. SEGEBRECHT,**

**DEFENDANTS-APPELLANTS.**

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APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL GUOLEE, Judge. *Affirmed.*

Before Curley, P.J., Brennan, J., and Thomas Cane, Reserve Judge.

¶1 CANE, J. Carl E. and Linda M. Segebrecht appeal a judgment of foreclosure entered in favor of Ocwen Loan Servicing, LLC, as servicer for U.S.

Bank, N.A. The Segebrechts argue the circuit court erred by granting Ocwen's summary judgment motion. They contend there are disputed issues of material fact as to whether Ocwen has the right to enforce the underlying note, claiming: (1) Ocwen did not prove standing or that it was the real party in interest to foreclose on their mortgage loan; and (2) Ocwen's affidavits did not satisfy the "made on personal knowledge" requirement. We affirm.

## I.

¶2 In February of 2002, the Segebrechts signed a mortgage note for \$196,000 with Nationwide Lending Corporation. Nationwide Lending Corporation assigned the Segebrechts' mortgage note to New Century Mortgage Corporation, which in turn, assigned it to Ocwen as servicer for U.S. Bank. In June of 2009, the Segebrechts stopped paying their mortgage. In March of 2012, Ocwen, as servicer for U.S. Bank, started this foreclosure action against the Segebrechts.

¶3 After a series of summary judgment motions, the circuit court granted Ocwen's summary judgment motion, ruling: (1) Ocwen had standing; (2) Ocwen's affidavits sufficiently supported the summary judgment motion; and (3) the \$2800 mortgage payment the Segebrechts made in March of 2011 did not create an issue of material fact.<sup>1</sup> The circuit court ruled in its decision:

The summary judgment material submitted by Ocwen contains an endorsement of the original note from Nationwide Lending Corporation to New Century Mortgage Corporation dated February 22 of 2002.

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<sup>1</sup> The Segebrechts appeal only the circuit court's decision on standing and the affidavits; they do not raise the \$2800-payment ruling.

It also contains an endorsement in blank signed by New Century Mortgage. In addition, there is an allonge dated August 7 of 2012 that evidences a transfer of the original note from New Century Mortgage to US Bank.<sup>[2]</sup>

## II.

¶4 A circuit court grants summary judgment if “there is no genuine issue as to any material fact” and a party “is entitled to a judgment as a matter of law.” WIS. STAT. § 802.08(2) (2011-12)<sup>3</sup>. We review *de novo* the circuit court’s summary-judgment decision, and apply the governing standards “just as the [circuit] court applied those standards.” *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 314-17, 401 N.W.2d 816 (1987). “We examine the moving party’s submissions to determine whether they constitute a prima facie case for summary judgment. If they do, then we examine the opposing party’s submissions to determine whether there are material facts in dispute that entitle the opposing party to a trial.” *Palisades Collection LLC v. Kalal*, 2010 WI App 38, ¶9, 324 Wis. 2d 180, 781 N.W.2d 503 (internal citations omitted). Affidavits submitted in support of summary judgment “shall be made on personal knowledge,” and “set forth such evidentiary facts” to make a prima facie showing that the evidence would be admissible at trial. § 802.08(3); *Palisades*, 324 Wis. 2d 180, ¶10.

¶5 A party proves standing in a foreclosure action when it is in possession of the original Note that is endorsed in blank. *PNC Bank, N.A. v. Bierbrauer*, 2013 WI App 11, ¶10, 346 Wis. 2d 1, 827 N.W.2d 124. “The

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<sup>2</sup> “An allonge is a slip of paper attached to a negotiable instrument for the purpose of receiving an endorsement.” *PNC Bank, N.A. v. Bierbrauer*, 2013 WI App 11, ¶7 n.2, 346 Wis. 2d 1, 827 N.W.2d 124.

<sup>3</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

‘holder’ of an instrument has the right to enforce that instrument.” *Id.* (citing WIS. STAT. § 403.301); *see also* WIS. STAT. § 403.205(2) (“If endorsed in blank, an instrument becomes payable to bearer.”). Further, negotiable instruments are self-authenticating under WIS. STAT. § 909.02(9) (“Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to ...: (9) ... Commercial paper, signatures thereon, and documents relating thereto to the extent provided by chs. 401 to 411.”), and not hearsay when offered for their legal effect. Likewise, assignments of a mortgage are self-authenticating and admissible as certified copies of public records under § 909.02(4) (“Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to ...: (4) ... A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office...”), and also admissible under a hearsay exception.

¶6 Here, the undisputed facts support the circuit court’s grant of summary judgment. Ocwen made a *prima facie* case that it had standing to foreclose and is the real party in interest:

- Ocwen produced the original Note in court, endorsed in blank;
- Melissa A. Keefer, Contract Management Coordinator for Ocwen, submitted an affidavit averring, as material:
  - (1) That I am employed as a Contract Management Coordinator of Ocwen Loan Servicing, LLC (“Ocwen”) and am authorized to make this affidavit on behalf of Ocwen. Ocwen is responsible for servicing this delinquent mortgage account as attorney-in-fact for Plaintiff.
  - (2) Through the regular performance of my job functions, I have personal knowledge of Ocwen’s business practices and procedures

and am familiar with both the business records regularly prepared and maintained by Ocwen for the purpose of servicing mortgage loans and the particular record keeping procedures used by Ocwen in the course of servicing those loans.

(3) These records (which include data compilations, electronically imaged documents, and others) are made at or near the time by, or from information provided by, persons with knowledge of the activity and transactions reflected in such records, and are kept in the ordinary course of business activity conducted regularly by Ocwen.

(4) It is the regular practice of Ocwen's mortgage servicing business to make and update these records, and I have examined the relevant records personally in connection with making this affidavit.

....

(6) A full, true and correct copy of said [Note], including the Allonges, is attached hereto as Exhibit "I".

....

(11) U.S. Bank[] is the holder of the Note.

- Ocwen filed with the circuit court a recorded copy of the Mortgage and certified copies of the assignments of the Mortgage that had been previously recorded in the Register of Deeds office in Milwaukee County.

¶7 The circuit court ruled correctly that Ocwen made a prima facie case that it had standing to enforce the note. Ocwen is in possession of the original Note endorsed in blank. This proves standing. See *PNC Bank, N.A.*, 346 Wis. 2d 1, ¶10. Keefer's affidavit was made upon her personal knowledge as an employee

of Ocwen that Ocwen owned the Segebrechts' Note and Mortgage. The Segebrechts argument that the Keefer affidavit is inadmissible because it is not made on personal knowledge is contrary to the affidavit. Keefer averred that she is an employee, she "ha[s] personal knowledge of Ocwen's business practices and procedures," she is "familiar with both the business records regularly prepared and maintained by Ocwen for the purpose of servicing mortgage loans," the records were "made at or near the time by, or from information provided by, persons with knowledge of the activity and transactions reflected in such records, and are kept in the ordinary course of business," and she "examined the relevant records personally."

¶8 Moreover, both the Note and the Mortgage would be admitted at trial as self-authenticating documents. *See* WIS. STAT. § 909.02(4) & (9); *see also* WIS. STAT. § 889.17 ("Every instrument entitled by law to be recorded or filed in the office of a register of deeds, and the record thereof and a certified copy of any such record or of any such filed instrument, is admissible in evidence without further proof thereof, and the record and copies shall have like effect with the original.").

¶9 Next, we must determine whether the Segebrechts raised any genuine issues of material fact that would require a trial. As noted, the Segebrechts abandon on appeal any claim about recent payments. Instead, they argue about the allonges in the case, claiming the allonges create an issue of material fact because they were not properly "affixed" i.e., stapled to the Note, there were conflicting allonges, and one allonge was dated after the filing of the foreclosure action, suggesting fraud. The circuit court rejected these arguments because there was no dispute that at the time this foreclosure was started, U.S. Bank "h[e]ld[] the note that was clearly endorsed in blank" and "a blank

endorsement permits an instrument to be transferred by possession alone.” *See* WIS. STAT. § 403.205(2) (“If an endorsement is made by the holder of an instrument and it is not a special endorsement, it is a blank endorsement. If endorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially endorsed.”). With respect to the allonge that post-dated the foreclosure filing date, the circuit court found:

The subsequent allonge was created to clarify ownership of the note which is an acceptable practice under 403.204(4) of the Wisconsin Statutes; quote, if an instrument is payable to a holder under a name that is not the name of the holder, endorsement may be made by the holder in the name stated in the instrument or in the holder’s name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection, closed quote.

The comments to that section indicate that it was intended at least in part to clarify the validity of an endorsement when an endorsement is in a different name from that used in the instrument. That’s 403.204, Comment 3.

¶10 The circuit court did not err in granting summary judgment. Ocwen proved that it is entitled to foreclosure judgment as a matter of law to enforce the Note and there are no material issues of fact requiring a trial.

*By the Court.*—Judgment affirmed.

Not recommended for publication in the official reports.

