RECEIVED, 4/19/2015 11:48 AM, Joanne P. Simmons, Fifth District Court of Appeal

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT

CASE NO.: 5D14-1379

ABDALLAH BOUMARATE AND JENNIFER BOUMARATE,

Appellants,

v.

HSBC BANK USA, N.A., ETC., ET AL.,

Appellees.

ON APPEAL TO THE FIFTH DISTRICT COURT OF APPEAL
FROM THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

APPELLANTS' REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

ARGUMENT

I. THE BANK'S ANSWER BRIEF FAILS TO ADDRESS *BOUMARATE I* AND CONTAINS NO ARGUMENT UPON WHICH THIS COURT CAN AFFIRM.

The Bank should have conceded error in this appeal. The Bank does not dispute that this Court's prior decision in this case, *Boumarate v. HSBC Bank USA, N.A.*, 109 So. 3d 1239 (Fla. 5th DCA 2013) ("*Boumarate I*"), was law of the case on remand. (IB at 8). The Bank does not dispute that *Boumarate I* made clear that to "prove its right to enforce the note" on remand, the Bank had to establish "how it obtained the Novelle Financial Services note and the circumstances of its loss." *Boumarate v. HSBC Bank USA, N.A.*, 109 So. 3d 1239, 1239 (Fla. 5th DCA 2013). Yet, the Bank makes no attempt in its Answer Brief to explain what evidence it adduced at trial to satisfy the requirements described in *Boumarate I*.

The reason the Bank ignores *Boumarate I* in its Answer Brief is because its lone witness testified unequivocally at trial that she had no idea how the note was lost, or how it was obtained from Novelle Financial Services. (R. Vol. 2 at 39-43, 65-66). That testimony is dispositive under *Boumarate I* and compels reversal in this appeal.

Instead of confessing error, the Bank suggests this Court should affirm because the final judgment is "supported by substantial, competent evidence" (AB at 8), even though the Bank identifies the standard of review on appeal as *de novo* (AB at 7). Under any standard, the Bank loses, because the only evidence it cites regarding its ability to enforce the note is Ms. Tramble's wholly conclusory statement at trial that "HSBC was entitled to enforce the Note when it was lost." (AB at 7). Her statement amounts to nothing, and not just because she had already testified she had no knowledge of the circumstances surrounding the note's loss.

Ms. Tramble worked for Ocwen, the servicer of the loan and a non-party to the lawsuit. (AB at 5). Her familiarity with the case was based on her review of Ocwen's records, not the Bank's. *Id*. The note was prepared by Novelle, not the Bank, and certainly not Ocwen. Ms. Tramble testified she knew of no document which established that the Bank was entitled to enforce Novelle's note, such as an endorsement or assignment. (R. Vol. 2 at 65-66). There is no endorsement or assignment in the record. In fact, there is only a copy of the note in the record.

The Bank does not dispute these facts. The Bank does not dispute its burden under *Boumarate I*. This Court should reverse with instructions that the trial court enter judgment in favor of the Boumarates.

CONCLUSION

This Court should reverse the Final Judgment of Foreclosure and remand for entry of judgment for the Boumarates because the Bank failed to meet its burden of proving it was entitled to enforce the purported lost note at trial.

DATED this 19th day of April, 2015.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Reply Brief complies with the font requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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