

Third District Court of Appeal

State of Florida, July Term, A.D. 2013

Opinion filed December 04, 2013.
Not final until disposition of timely filed motion for rehearing.

No. 3D12-2994
Lower Tribunal No. 10-11977

Terrence and Tiwana Kelsey,
Appellants,

vs.

SunTrust Mortgage, Inc.,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Eugene J. Fierro, Senior Judge.

Ice Appellate, and Thomas Erskine Ice and Amanda L. Lundergan (Royal Palm Beach), for appellants.

Broad and Cassel, and Steven Ellison and Tara S. Pellegrino (West Palm Beach), for appellee.

Before ROTHENBERG, LAGOA, and EMAS, JJ.

PARTIAL CONCESSION OF ERROR

ROTHENBERG, J.

This appeal comes to us from a final default judgment ordering the foreclosure of the Kelseys' home in favor of SunTrust Mortgage, Inc. ("SunTrust"). Although the Kelseys have raised several points of error on appeal, we address only one, and based on SunTrust's proper concession of error, we reverse and remand for further proceedings.

At trial, SunTrust's only testifying witness was Lauren Gergeceff ("Gergeceff"), a mediation litigation specialist employed by Nationstar Mortgage, LLC ("Nationstar").¹ Gergeceff testified that she had no independent knowledge of the loan, she had only seen the subject note for the first time the day of trial, and she had only become familiar with the mortgage file when she learned the case was being tried. The Kelseys objected to Gergeceff's authentication of the note and mortgage because she lacked the requisite foundation and she was incompetent to testify because her purported knowledge was based entirely on out-of-court documents that had not been made available for inspection, and which were hearsay. The trial court overruled the objections, allowed Gergeceff to testify, and admitted the note and mortgage into evidence.

To establish its entitlement to foreclosure, SunTrust needed to introduce the subject note and mortgage, as well as the acceleration letter sent to the Kelseys. See Ernest v. Carter, 368 So. 2d 428, 429 (Fla. 2d DCA 1979) (holding that

¹ Nationstar began servicing the Kelseys' loan and mortgage after a modification agreement had allegedly been reached with SunTrust, the original loan servicer.

foreclosure plaintiffs must show: (1) an agreement, (2) a default, (3) an acceleration of debt to maturity, and (4) the amount due). The documents establishing these requirements constitute impermissible hearsay unless properly authenticated. § 90.803, Fla. Stat. (2012); Yisrael v. State, 993 So. 2d 952, 956 (Fla. 2008).

The Kelseys argue, among other things, that the trial court erred in allowing Gergeceff to authenticate these documents without showing that she was a records custodian or that she had personal knowledge of the documents. SunTrust filed a partial concession of error in this Court, admitting that the trial court erred in allowing the documents, as they are hearsay without the proper authentication. We agree, and remand for rehearing on that issue. The Kelseys' remaining arguments either lack merit, were decided in their previous interlocutory appeal, or are rendered moot based on our remand.

Reversed and remanded.