

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

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

ARR INVESTMENTS, INC., A FLORIDA
CORPORATION, ARR CHILD CARE, INC.,
A FLORIDA CORPORATION, ARISTA
ACADEMY, INC., A FLORIDA CORPORATION,
RAFAEL RODRIGUEZ AND
ALEJANDRINO RODRIGUEZ,

Appellants,

v.

Case No. 5D18-1663

BAUTISTA REO US, LLC.,

Appellee.

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Opinion filed September 13, 2019

Appeal from the Circuit Court
for Orange County,
Julie H. O'Kane, Judge.

Dorothy F. Easley, of Easley Appellate
Practice, PLLC, Miami, and John W.
Zielinski, of Nejame Law, P.A., Orlando, for
Appellants.

Denise D. Dell-Powell and Dean Mead, of
Dean, Mead, Egerton, Bloodworth,
Capouano & Bozarth, P.A., Orlando, for
Appellee.

GROSSHANS, J.

ARR Investments, Inc., et al. (Appellants) appeal the trial court's entry of final summary judgment in favor of Bautista REO US, LLC, the Appellee (Bautista). We agree with Appellants that a genuine issue of material fact remained regarding Bautista's standing to enforce the promissory note. Therefore, we reverse and remand for further proceedings.

In 2006, Doral Bank made a loan to Appellants who executed a promissory note, loan security agreement, and guaranties. Subsequently, Doral Bank lost the note and executed a lost note affidavit.

Appellants defaulted on the note, and Doral Recovery II, LLC (Doral Recovery) filed the initial complaint against Appellants, asserting that it was authorized to enforce the note. While the case was pending, the note was transferred to a number of entities through a series of assignments.

Ultimately, Bautista, the final assignee in the chain of assignments, filed an amended complaint. In the amended complaint, Bautista alleged that it was reestablishing a lost note and that it was authorized to enforce the note pursuant to statutory requirements. To the amended complaint, Bautista attached the assignments following the path of the lost note from Doral Bank to Bautista, which included an assignment to and from FDIC. Appellants subsequently filed affirmative defenses, alleging that Bautista lacked standing to enforce the note.

Following discovery, Bautista filed a motion for summary judgment, and, in its response, Appellants maintained that Bautista lacked standing, arguing that genuine issues of material fact regarding the assignments precluded summary judgment. After a

hearing, the trial judge granted final judgment in favor of Bautista, finding an absence of any genuine issue of material fact. This appeal timely followed.

We review a trial court's ruling on a motion for summary judgment de novo. See Volusia Cty. v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000). Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law. Id. (citing Menendez v. Palms W. Condo. Ass'n, 736 So. 2d 58 (Fla. 1st DCA 1999)). "The burden to conclusively establish the nonexistence of a disputed issue of material fact and entitlement to judgment as a matter of law rests squarely with the movant." Gee v. U.S. Bank Nat'l Ass'n, 72 So. 3d 211, 214 (Fla. 5th DCA 2011). When reviewing an order granting summary judgment, "[a]n appellate court must examine the record in the light most favorable to the non-moving party." Vander Voort v. Universal Prop. & Cas. Ins. Co., 127 So. 3d 536, 538 (Fla. 4th DCA 2012).

Moreover, it is well-established that a plaintiff must prove its right to enforce the note at inception of the suit and "as of the time the summary judgment is entered." Beaumont v. Bank of N.Y. Mellon, 81 So. 3d 553, 555 (Fla. 5th DCA 2012). In order to do so, a plaintiff can submit "an assignment from payee to the plaintiff or an affidavit of ownership proving its status as holder of the note." Gorel v. Bank of N.Y. Mellon, 165 So. 3d 44, 46 (Fla. 5th DCA 2015). Of Appellants' many arguments that Bautista lacked standing at both critical points, we find one meritorious and dispositive of this appeal.

Bautista's standing depended on a series of assignments. Appellants argue that records attached to the amended complaint show that Doral Bank—not Doral Recovery—owned the note when it was assigned to FDIC. These records, relied upon by Bautista to

enforce the note, cast doubt on whether Doral Recovery owned the lost note at case inception and whether Doral Recovery had any rights in the lost note to convey to FDIC. This conflict in the evidence created a material issue of fact which precluded summary judgment. See Khan v. Bank of Am., N.A., 58 So. 3d 927, 928 (Fla. 5th DCA 2011). Accordingly, the trial court erred in entering final summary judgment in favor of Bautista. We therefore reverse the entry of summary judgment and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED.

HARRIS, J., and ORFINGER, M.S., Associate Judge, concur.