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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

)
 U.S. BANK TRUST, N.A.,)
)
 Plaintiff,)
)
 Vs.)
)
 PATRICK LOWELL VERHAGEN,)
 ET AL.,)
)
 Defendants.)

Civil No. 16-1-0147(1)

TRANSCRIPT OF PROCEEDINGS

had before the Honorable Rhonda I.L. Loo, Circuit Court
Judge presiding, on Thursday, April 6, 2017, in the
above-entitled matter: Plaintiff's motion for summary
judgment and for interlocutory degree of foreclosure.

Reported by:

Angie Weaver, RPR, CSR 520
State of Hawaii
Official Court Reporter

1 APPEARANCES:

2

3 Charles R. Prather, Esq. Attorney for Plaintiff
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7 Gary V. Dubin, Esq. Attorney for Defendants
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THURSDAY, APRIL 6, 2017

* * *

THE CLERK: Calling Civil 16-1-0147,
U.S. Bank Trust, N.A. versus Patrick Lowell Verhagen, for
Plaintiff's motion for summary judgment and for
interlocutory decree of foreclosure.

THE COURT: Okay. Good morning.

MR. PRATHER: Good morning, your Honor.
Charles Prather on behalf of Plaintiff.

THE COURT: Good morning.

MR. DUBIN: Good morning, your Honor. Gary
Dubin representing the defendant, Patrick Verhagen.

THE COURT: Good morning.

Go ahead, Mr. Prather.

MR. PRATHER: Your Honor, if the Court's
received and reviewed our reply memorandum, I don't have
much to add, other than just to reiterate the fact this is
a verified complaint. I think we have satisfied the
standing requirement in this case.

THE COURT: Thank you.

Mr. Dubin.

MR. DUBIN: Your Honor, just for purposes
of clarity, this is a summary judgment motion, and the
foreclosing plaintiff has two obligations: One, to show
it has standing, and that's in addition to the usual Bank

1 of Honolulu versus Anderson, because the Hawaii Supreme
2 Court has added this standing requirement, and in a
3 summary judgment proceeding, not only do they have to show
4 standing, but they have to show there's no genuine dispute
5 regarding standing.

6 In this case, the plaintiff is relying upon
7 a bearer note. They are not the lender. They're not
8 the -- the maker of the note. They rely upon the
9 endorsement of one Cynthia Riley.

10 However, we have the information we've
11 given the Court in her deposition that she was not
12 employed at the time that the loan was made, so therefore,
13 she certainly could not have endorsed the loan when she
14 wasn't employed by Washington Mutual.

15 In addition to that, the Hawaii Supreme
16 Court in Toledo made it very clear that an undated -- an
17 undated endorsement does not prove that the foreclosing
18 plaintiff actually had possession at the time that they
19 filed the complaint, and that's part of the holding of the
20 Toledo case. And here we have an undated rubber stamp.

21 In addition to that, what makes this case
22 right now not susceptible to summary judgment is because
23 in the last year and a half, when my client asked the
24 present loan servicer for a copy of the note, three times
25 they gave him a copy of the note. As late as about six

1 months ago, it did not have an endorsement on it. That in
2 itself suggests that there's an issue of fact as to when
3 that endorsement was put on.

4 Then there's the other issues relating to
5 the note itself because WaMu did not exist as a federal
6 association after 2005 and, therefore, had no legal
7 ability to make a loan in the state of Hawaii in the first
8 place. In fact, that's a federal felony to claim that
9 you're a federal association when you're not.

10 So the note itself -- in addition to the
11 issues of fact relating to the validity of the
12 endorsement, the note itself is suspicion because they
13 didn't have the authority even to record it at the Bureau
14 of Conveyances.

15 And then we have the issue of the mortgage,
16 which apparently the plaintiff wants to forget about the
17 assignment of the mortgage, but that itself has a problem
18 because supposedly Chase, the plaintiff's predecessor, got
19 the mortgage from the FDIC, but the head of the FDIC for
20 Washington Mutual stated in a criminal case, of which I
21 gave the Court a certified copy, that they didn't know
22 what they had when they took over Washington Mutual. And
23 nevertheless, they created an assignment of a mortgage
24 when they didn't have any evidence that they actually
25 owned the mortgage when the receivership took place.

1 So then PennyMac gets an assignment of the
2 mortgage from Chase, even though Chase can't prove that it
3 got the -- got a mortgage from Washington Mutual. In any
4 event, as the plaintiff argues, the mortgage follows the
5 note, and we know all the problems the note has.

6 So certainly, your Honor, under the Toledo
7 case, and even without the Toledo case, but especially now
8 because of the Toledo case, the Hawaii Supreme Court has
9 ruled, and this is a case where the plaintiff has not --
10 not only hasn't substantiated its burden that it has
11 standing, but in its context of summary judgment, there's
12 material issues in genuine dispute. We, therefore, ask
13 that the motion be denied.

14 THE COURT: Thank you.

15 Mr. Prather.

16 MR. PRATHER: Your Honor, again, this is a
17 verified complaint. We had the client swear that they
18 were in possession of the original note at the time the
19 complaint was filed. They're in possession now. I have
20 the original note with me.

21 So we ask that the motion be granted.

22 THE COURT: Anything further, Mr. Dubin?

23 MR. DUBIN: Well, your Honor, a verified
24 complaint -- you can't verify a forgery. This was clearly
25 a forgery. This is not a bearer note. The plaintiff has

1 no basis to be in this proceeding even as a party. Thank
2 you.

3 THE COURT: Okay. Thank you very much,
4 Counsels.

5 The Court having had an opportunity to
6 review the motion, the opposition, the reply, having heard
7 the arguments in court this morning, the Court's going to
8 grant Plaintiff's motion.

9 First off, Plaintiffs have filed their
10 verified complaint on December 26, 2013, which includes a
11 verification of testimony from the loan servicer stating
12 that Plaintiff is in possession of the note.

13 Furthermore, under HRE 902(11), it provides
14 that records of regularly conducted activity of the type
15 admissible under HRE Rule 803(b)(6) are
16 self-authenticating. These requirements have been met in
17 this particular case. Therefore, Plaintiffs have
18 satisfied the standing requirement set forth in the Toledo
19 case.

20 Also under HRS 493-308 provisions, a
21 borrower may challenge whether the borrower actually
22 executed a note. However, a borrower does not have
23 standing to challenge an endorsement of a note because the
24 borrower is not a party to the endorsement, nor is the
25 borrower a third-party beneficiary to the endorsement.

1 Furthermore, it's been a longstanding
2 principle that a transfer of the original note
3 automatically transfers with it the secured instrument
4 used to secure the underlying debt. Therefore,
5 Defendants' argument regarding this lacks merit.

6 Thirdly, regarding the Defendants' argument
7 Chase did not have the authority to assign the mortgage on
8 behalf of FDIC, the Court finds that is also without merit
9 because FDIC became the receiver for Washington Mutual,
10 the original lender, in addition filed a limited power of
11 attorney authorizing Chase to execute documents, such as
12 assignments, on FDIC's behalf. So this argument is
13 without merit.

14 And lastly, Defendants' argument the
15 foreclosure document specialist's declaration is made
16 without personal knowledge is without merit as well
17 because Plaintiffs have satisfied 56(e) and declarant
18 swears under oath that she possesses personal knowledge of
19 the existence and possession of documents, as evidenced by
20 her signed declaration made under penalty of perjury.
21 Therefore, this is not a genuine issue of material fact.

22 Plaintiff has, therefore, demonstrated that
23 it is the holder of the note and assignee of the mortgage
24 prior to date of filing and the note is endorsed in blank.
25 Defendants were given notice of default. There has

1 been -- and there has been a failure to cure. Defendants
2 are not in the military service. The attorney affirmation
3 was filed.

4 There being no material questions of fact
5 in dispute and the plaintiff having shown it has standing
6 is entitled to judgment as a matter of law, so I'm
7 granting the motion.

8 Mr. Prather, prepare the order on the
9 matter and include a paragraph regarding advancing costs
10 of publication to Commissioner, please.

11 MR. PRATHER: Certainly, your Honor.

12 THE COURT: Okay. Thank you.

13 MR. PRATHER: Thank you.

14 (End of Proceedings.)

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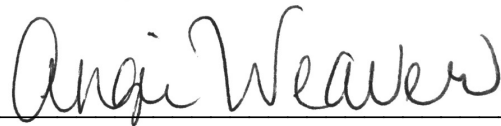
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C E R T I F I C A T E

I, Angie Weaver, a Court Reporter of the Circuit Court of the Second Circuit, State of Hawaii, do hereby certify that the foregoing pages, 1 through 9 inclusive, comprise a full, true and correct transcript of the proceedings had in connection with the above-entitled cause.

Dated this 6th day of April, 2017.



ANGIE WEAVER, RPR, CSR #520

Angie Weaver, RPR, CSR 520
State of Hawaii
Official Court Reporter