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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
STATE OF HAWAII

JP Morgan Chase Bank, NA,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL NO: 12-1-0527
)	
Elise Sari Travis, Bruce)	
Travis,)	
)	
Defendants.)	
_____)	

TRANSCRIPT OF PROCEEDINGS

had before the Honorable Rhonda I.L. Loo, Circuit Court Judge presiding, on Tuesday, August 16, 2016, in the above-entitled matter: Motion for Summary Judgment and Interlocutory Decree of Foreclosure.

APPEARANCES:

David B. Rosen, Esq.	Attorney for Plaintiff
810 Richards Street, Suite 880	
Honolulu, Hawaii	
Gary Dubin, Esq.	Attorney for Defendants
55 Merchant Street, Suite 3100	
Honolulu, Hawaii	

REPORTED BY: Cammie Gillett, RPR
Official Court Reporter, State of Hawaii
Hawaii Certified Shorthand Reporter #438

1 TUESDAY, AUGUST 16, 2016

2 * * *

3 THE CLERK: Calling Civil 12-1-0527, JP Morgan Chase
4 Bank NA versus Elise Sari Travis, et al., for plaintiff's
5 motion for summary judgment and interlocutory decree of
6 foreclosure.

7 MR. ROSEN: Good morning, Your Honor. David Rosen for
8 plaintiff/movant.

9 THE COURT: Okay. Good morning.

10 MR. DUBIN: Good morning, Your Honor. Gary Dubin
11 representing the Travis defendants.

12 THE COURT: Okay. Good morning.

13 Go ahead, counsel.

14 MR. ROSEN: Thank you, Your Honor.

15 Your Honor, while there was an opposition to our
16 motion, there was no declaration submitted from Ms. Travis
17 rebutting any of the Anderson factual assertions.

18 Mr. Dubin did submit his own declaration. As we've
19 explained in our reply, nothing in his declaration or any of
20 the exhibits are admissible. They haven't been authenticated.
21 So there's been no rebuttal of the factual assertions in the
22 motion.

23 As far as the standing issue, there's a big issue
24 over -- well, Ms. Travis has raised a challenge to standing.
25 And I have brought with me the original note that was provided

1 to me by my client. So -- which is in its physical possession.

2 Mr. Dubin did inspect it last week with his expert
3 witness. I'm happy to present it to the Court. Although, I
4 don't think it's necessary because, again, the assertion that
5 my client does hold the note hasn't been rebutted in any way.

6 Unless the Court has any other questions, I think our
7 motion and reply are self-explanatory. Again, there's been no
8 rebuttal evidence that's been submitted.

9 THE COURT: Thank you.

10 Mr. Dubin.

11 MR. DUBIN: Your Honor, this is really a classic case
12 of fraud. The plaintiff has submitted now in the record five
13 different forms of a promissory note. First, we have examined
14 the original note. But in the motion for summary judgment,
15 there's two notes, copies of the notes, and they differ from
16 one another.

17 The one that's most egregious is the one that's
18 presented by the loan servicer who says that's the one copy of
19 what he saw back at the office. This all began with WaMu FA,
20 which was the biggest lender in the United States until they
21 went into receivership. When they went into receivership, even
22 the receiver in charge, Mr. Chute, has acknowledged in a
23 criminal case -- which we gave you a certified copy of -- his
24 testimony that the FDIC didn't know what Washington Mutual
25 owned in terms of the mortgages, so they just passed it on to

1 ~~CHASE~~
Wells Fargo.

2 ~~CHASE~~
Wells Fargo then proceeded to, itself, create mortgage
3 assignments. But in addition to that, the FDIC itself, even
4 after what was called the assumpsit agreement, the FDIC itself
5 started to assign mortgages, even though it said it had
6 assigned everything to Chase. And then, of course, Penymac
7 came along.

8 Now, we all know that to foreclose, the foreclosure
9 mortgagee has to prove that their the party who's entitled to
10 be paid and who owns it. And the Yvanova case, 365 Pac.3d,
11 857, California Supreme Court explained that if the borrower
12 owes money, not to the world at large, but to a particular
13 person or institution, the only person or institution entitled
14 to payment to enforce the debt is the one who owns the security
15 and the loan.

16 And they quoted -- this is interesting. They quoted a
17 Texas Federal Court decision, 2012 in the Yvanova case, it says
18 banks are never a private attorney general -- attorney's
19 general, nor bounty hunters armed with a rouge in commission to
20 seek out the owning homeowners and take away their homes in
21 satisfaction of some other bank's deed of trust.

22 What we're relying upon as evidence here are the
23 submissions themselves of the bank. And the Hawaii Supreme
24 Court, as Your Honor knows in the case that was -- let's see.
25 Takamiya case, it held that even if there's no opposition to

1 summary judgment, the Court has an obligation to look through
2 the documents themselves.

3 Now, I have prepared and I've given to Mr. Rosen and if
4 I could approach the bench, I'd like to give the Court, since
5 he's indicated he has the original promissory note. I'd like
6 to give the Court copies of the five promissory notes that are
7 in the record that are all different so Your Honor can see, for
8 example, that my client's signature is different on one of them
9 than the other four.

10 One of them in 2011, doesn't even have the endorsement
11 of Cynthia Riley. And Cynthia Riley, as I've provided Your
12 Honor with her deposition, she left WaMu FA in November of
13 2006. And this loan is December 1st, 2007. So the person who
14 purports to have created a bare note was not even employed by
15 WaMu at that time.

16 And that's all in the record, Your Honor. We've given
17 you certified copies of most of these documents. And if I
18 could approach the bench, I'd like to show Your Honor the
19 different five.

20 THE COURT: You can leave it with the clerk.

21 MR. DUBIN: Thank you, Your Honor.

22 THE COURT: Mr. Rosen, have you seen copies of those
23 documents?

24 MR. ROSEN: I believe Mr. Dubin gave me a copy.

25 MR. DUBIN: Yes.

1 So what we have, Your Honor, is we have a record that
2 has five different promissory notes. The signature of my
3 client is different in some of those notes.

4 The endorsement, the stamped endorsement is actually
5 different on some of those notes. So which one is the true
6 copy of the promissory note? And we have one in 2011, which
7 doesn't have an endorsement. So it's clear that there are
8 issues in genuine dispute as to whether or not this purported
9 lender actually is the owner of the note.

10 And I have many, many foreclosure cases. But this one
11 beats them all in terms of the problems. For example, Cynthia
12 Riley -- see, they're depending on a borrower's bearer note.
13 Otherwise, they don't have any standing to start with.

14 But the person who signed the bearer note wasn't even
15 with the company at the time. So that destroys the bare note.
16 That alone would mean that they don't have the note. And I've
17 also given Your Honor evidence that Washington Mutual
18 instructed its servicers that it was all right to destroy the
19 notes, even though they're negotiable instruments, as long as
20 they kept digital copies so they could re-create the notes.

21 So the logical conclusion is that they re-created
22 notes, and in the process, they experimented and created a
23 couple of them and somehow by sloppiness, even in the motion
24 for summary judgment, they provided us with two different
25 notes.

1 So we would ask Your Honor to deny the motion for
2 summary judgment and to look at the record carefully. And I
3 will actually give two copies of these five different
4 promissory notes to your law clerk. Thank you.

5 THE COURT: Thank you.

6 Mr. Rosen.

7 MR. ROSEN: Thank you, Your Honor.

8 Your Honor, there's no declaration from Ms. Travis
9 saying they she didn't sign the note or that the copy of the
10 note that's been attached to the pleadings is not her signature
11 or some type of forgery. There's no evidence before the Court
12 that the notes have been manipulated or fabricated or are
13 forgeries in anyway. Mr. Dubin has presented argument. That's
14 all.

15 I have the original note. It's here. It was inspected
16 by Mr. Dubin last week. There are different versions of this
17 document that have been -- copies of different versions that
18 have been submitted to this Court at different times. The copy
19 of the note submitted with the original complaint was the
20 original note that Ms. Travis had signed before it had been
21 endorsed.

22 The copy that was imaged into the system and presented
23 with my client's declaration in support of the MSJ for an
24 endorsement. The original, which was delivered to me, was that
25 same document, but a stamp had been placed on the first page by

1 Chase.

2 These are not different documents. They're the same
3 documents at different periods of time. And, again, the
4 original is in my possession, and my client has declared that
5 this is the original and that it was delivered to me as its
6 agent.

7 More telling, Your Honor -- I mean, the essence of
8 Mr. Dubin's argument, number one, is this a forged instrument;
9 but number two, is that there is a potential that some other
10 party could seek to enforce this note and this loan.

11 Again, we don't have any testimony that in the five
12 years this loan has been in default, anyone other than my
13 client and its assignors has ever contacted Ms. Travis or
14 sought to enforce this note to collect upon it or anything
15 else.

16 So we have submitted an adequate record under Anderson,
17 under Matos and Rumbaua. What we've submitted is admissible
18 evidence. And there is nothing admissible that has been
19 submitted in response. Everything that Mr. Dubin has said has
20 been argument. His argument that the note -- that there's
21 different notes, it's just argument at this point.

22 So I do believe we're entitled to summary judgment.
23 Again, if the Court has any other questions, I will be happy to
24 answer them. Thank you.

25 THE COURT: Thank you.

1 Mr. Dubin, did you want to -- go ahead.

2 MR. DUBIN: Yes. I neglected to mention that our
3 expert did examine the so-called original promissory note, and
4 I have his report. And he's concluded it's a fake promissory
5 note, it's not the original. I can give the report to Your
6 Honor. And Mr. Rosen has that report. If you'd like.

7 Basically, we have the documents themselves submitted
8 by Mr. Rosen. If you looked at the documents, you can see with
9 a naked eye that we got several promissory notes. In the old
10 days, we'd bring in a handwriting analyst.

11 But today, that's junk science because the technology
12 that we have today, you can not only lift and put a signature
13 on another piece of paper, but you can also apply pressure when
14 you do that. So it's almost impossible to tell except by using
15 different scientific analyses. Our expert it that. He's an
16 expert in computer science. And I have his report, which I can
17 provide to your law clerk, which shows that the note is
18 fabricated.

19 The only thing that Mr. Rosen is saying is, well, we
20 don't have any -- we don't have any declaration from the
21 clients. The clients can only -- they be cannot contribute
22 because what our argument is based upon is the documents
23 themselves, including the documents that have been submitted by
24 Mr. Rosen.

25 For example, the motion for summary judgment has two

1 different promissory notes in it. So based upon documented
2 evidence, and documentary evidence is evidence, and Mr. Rosen
3 hasn't submitted any declaration that says that any of these
4 documents that he's submitted are not -- or were submitted by
5 mistake or are not accurate.

6 So we would just ask the Court to look at the five
7 different promissory notes. And we think that this is
8 important, not only for this case, but for a lot of cases that
9 come before this Court because not every borrower has the money
10 to have an expert look at the documents.

11 And when a lender comes before this Court and says I
12 have the promissory note, they submit different versions. It
13 suggests that the whistle blowers that say that the lenders
14 have manufacturing plants that produce promissory notes, the
15 Court has to wonder whether fraud is being committed on this
16 Court.

17 And not only that, but the Hawaii legislature several
18 years ago required an attorney affirmation, where you can't
19 file a case for summary judgment. It says that in good faith,
20 you've looked at everything and everything is accurate. How
21 could an attorney on this record say everything is accurate?
22 However, like most cases, the attorney says everything is
23 accurate because that's what I was told by the loan officer.
24 That's really hearsay.

25 This loan officer, Mr. Gutierrez, submitted a

1 promissory note copy, which is different than the other
2 promissory notes. So we think there's a lesson to be learned
3 here, more than just for this case.

4 For those of us who do foreclosure defense, we think
5 it's important that we've been able to prove that in this case,
6 held by the sloppiness of the purported letter, and the very
7 fact that Cynthia Riley, on the promissory note they want to
8 show Your Honor, wasn't even employed by Washington Mutual FA
9 at the time this loan was created should be evidence enough.
10 And we've given you her sworn declaration -- or, actually,
11 transcript under oath. Obviously, my clients can't give you
12 that personal firsthand knowledge. But you have it from
13 Cynthia Riley. So what's left in their case in chief?
14 Nothing.

15 Somebody may own the promissory note, but it's
16 not -- it's not Penymac, it's not Chase. Chase can't even
17 prove that they got the promissory note from the FDIC. The
18 head of the FDIC in the WaMu case has already admitted in a
19 criminal case. And you have the certified record from that
20 Federal Court that the FDIC didn't even know what WaMu had.

21 He was asked, well, how do you know what WaMu had in
22 2008 when the receiver was appointed? And he said we don't
23 know, you'll have to ask Chase. It goes round and round and
24 round. And, fortunately, we don't have a government that today
25 tells the truth.

1 The FDIC didn't know what WaMu owned. So they could
2 have told everybody, you know, we're researching it. Instead,
3 they covered up.

4 We ask this Court, again, to deny summary judgment.

5 THE COURT: Thank you, counsels.

6 The Court, having had an opportunity to review the
7 motions, the opposition, and having heard the oral arguments in
8 court this morning, the Court's going to go ahead and grant
9 plaintiff's motion for summary judgment.

10 Defendants argue in their opposition that, one, this is
11 a fraudulent endorsement on the note; two, that the assignment
12 of the mortgage was invalid; three, that plaintiff's
13 declarations do not meet the requirement of HRCF Rule 56(e) and
14 are hearsay under the Hawaii Rules of Evidence.

15 A plaintiff must establish four elements to succeed on
16 a summary judgment motion in a foreclosure action: One, the
17 existence of an agreement exists; two, the terms of the
18 agreement; three, default by the defendant under the terms of
19 the agreement; and four, the giving of cancellation notice and
20 recordation of an affidavit to such effect. Here, plaintiff
21 has clearly established all of the elements.

22 Defendants admit that a mortgage was executed in favor
23 of the lender, Washington Mutual FA, on December 1st, 2007.

24 Defendants admit that they borrowed \$1,858,750 from the
25 lender as secured by the mortgage.

1 Defendants are in default of the terms of the
2 agreement.

3 Defendants were given notice of the default, and there
4 has been a failure to cure.

5 Additionally, defendants are not in the military
6 service and the attorney affirmation has been filed pursuant to
7 HRS 667-17.

8 Therefore, defendants do not have standing to challenge
9 the endorsement on the note or the validity of the assignment
10 of the mortgage, and these arguments are improperly argued
11 before the Court.

12 As to the admissibility of plaintiff's presented
13 evidence, plaintiff has satisfied its burden under HRCP 56(c)
14 and (e), and documentary evidence introduced by the declaration
15 of indebtedness is admissible under HRE Rule 803(b)(6), as an
16 exception to HRE Rule 801.

17 There being no material questions of fact in dispute
18 and plaintiff having shown it is entitled to judgment as a
19 matter of law, I'm going to go ahead and grant the motion; ask
20 Mr. Rosen to prepare the order on the matter, and include a
21 paragraph regarding advancing costs of publication to the
22 Commissioner, please.

23 MR. ROSEN: I will. Thank you very much, Your Honor.

24 THE COURT: Thank you.


25 (Proceedings concluded.)

C E R T I F I C A T I O N

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I, CAMMIE GILLETT, a Registered Professional Reporter,
Certified Shorthand Reporter for the State of Hawaii #438, do
hereby certify that the foregoing pages comprise a full, true
and correct transcript of the proceedings had in connection
with the above-entitled cause.

Dated this 17th day of August 2016.

Sgd: / 
Cammie Gillett, RPR
Official Court Reporter, State of Hawaii
Hawaii Certified Shorthand Reporter #438