FLORIDA DISTRICT COURT OF APPEAL, FIFTH DISTRICT

Rincon v. HSBC Bank USA, National Ass'n

196 So. 3d 417 (Fla. Dist. Ct. App. 2016) · Decided April 15, 2016

SUMMARY

The Florida Fifth District Court of Appeal affirmed a foreclosure judgment in favor of HSBC Bank USA, holding that HSBC established standing to foreclose when it filed the complaint. The court concluded that the note contained a blank indorsement and that testimony established HSBC's possession of the note at filing. The court also rejected a challenge to the admission of business records because the foundational requirements were satisfied.

CASE DETAILS

COURT	Florida District Court of Appeal, Fifth District
WRITING FOR THE COURT	Wallis, J.; Palmer, J.; Edwards, J.
JURISDICTION	Florida
DECIDED	April 15, 2016
DISPOSITION	affirmed
PROCEDURAL POSTURE	Rincon appealed a final judgment of foreclosure entered after a nonjury trial, arguing that HSBC lacked standing to foreclose and that the trial court improperly admitted business records. The opinion was issued on HSBC's motion for rehearing and rehearing en banc, withdrew the prior opinion, and substituted this opinion.
STANDARD OF REVIEW	De novo review of the trial court's finding as to standing; abuse-of-discretion review for admission of business records.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Ruben D. Rincon v. HSBC Bank USA, National Association, as Trustee for Wells Fargo Home Equity Trust 2004-2

TOPICS

foreclosure · mortgages · standing · evidence · hearsay

PRACTICE AREAS

foreclosure · mortgage enforcement · real estate litigation · evidence

QUESTIONS PRESENTED

1. Whether HSBC established standing to foreclose at the time it filed the foreclosure complaint.
2. Whether the trial court abused its discretion by admitting HSBC's business records without a sufficient foundation.

HOLDINGS

1. HSBC established standing to foreclose because it possessed the note, which was payable to bearer by virtue of the blank indorsement, when it filed the foreclosure complaint.
2. The trial court did not abuse its discretion by admitting the business records because the testifying witness addressed the foundational requirements of section 90.803(6)(a), Florida Statutes, and explained how the records were created.

KEY QUOTATIONS

> *"A party seeking foreclosure must prove by competent, substantial evidence that it had standing to foreclose at the time it filed its complaint."* (196 So. 3d at 419)

> *"However, "[i]f the note does not name the plaintiff as the payee, the note must bear a special indorsement in favor of the plaintiff or a blank indorsement.""* (196 So. 3d at 419)

FACTUAL BACKGROUND

Rincon executed a mortgage loan and note in favor of Wells Fargo Bank, N.A., in 2004. HSBC filed a foreclosure complaint in 2012, attaching a copy of the note bearing a blank indorsement from Wells Fargo, and later filed the original note with the same indorsement. A Wells Fargo loan verification analyst testified that Wells Fargo provided the original note to HSBC's counsel when the foreclosure action was filed.

PROCEDURAL HISTORY

HSBC filed a mortgage foreclosure complaint alleging a default and asserting that it was the holder of, or entitled to enforce, the note and mortgage. Rincon raised lack of standing as an affirmative defense. After a nonjury trial, the trial court entered final judgment of foreclosure for HSBC. The Fifth District affirmed, concluding that HSBC established standing when it filed the complaint and that the business-record evidence was properly admitted.

DISPOSITION

affirmed

CASES CITED

- Gorel v. Bank of N.Y. Mellon, 165 So. 3d 44, 46 (Fla. 5th DCA 2015)
- Schmidt v. Deutsche Bank, 170 So. 3d 938, 940 (Fla. 5th DCA 2015)
- Twilegar v. State, 42 So. 3d 177, 199 (Fla. 2010)