DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

Dalia Israel v. U.S. Bank National Association, as Trustee Under Pooling and Servicing Agreement Dated as of March 1, 2006 Master Asset-Backed Securities Trust 2006-WMCI Mortgage Pass-Through Certificates Series 2006-WMCI, and Mortgage Electronic Registration Systems, Inc., as Nominee for WMC Mortgage Corporation

No. 4D20-2331 · No. No. 4D20-2331 · Decided November 10, 2021

SUMMARY

The Florida Fourth District Court of Appeal affirmed a foreclosure judgment against Dalia Israel. A dissent argued that the mortgage servicer failed to prove compliance with the mortgage's paragraph 22 notice-of-default condition precedent because the notice was sent to an unclaimed post office box not shown to have been provided by the borrower.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Per Curiam; Levine, J.; Klingensmith, J.; Warner, J.
JURISDICTION	Florida
DECIDED	November 10, 2021
DOCKET	No. 4D20-2331
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a foreclosure judgment entered by the Circuit Court for Palm Beach County.
PRECEDENTIAL VALUE	Published opinion; per curiam affirmance with dissent
PARTIES	Dalia Israel v. U.S. Bank National Association, as Trustee under Pooling and Servicing Agreement dated as of March 1, 2006 Master Asset-Backed Securities Trust 2006-WMCI Mortgage Pass-Through Certificates Series 2006-WMCI, Mortgage Electronic Registration Systems, Inc., as Nominee for WMC Mortgage Corporation

TOPICS

foreclosure · mortgages · appellate procedure · real estate

PRACTICE AREAS

foreclosure · mortgages · appellate procedure

QUESTIONS PRESENTED

1. Whether the servicer complied with paragraph 22 of the mortgage by providing the required notice of default before filing the foreclosure action.

HOLDINGS

1. The circuit court's foreclosure judgment was affirmed.

KEY QUOTATIONS

> *"The 'breach letter' admitted into evidence did not meet the requirement in the mortgage to deliver the default notice to appellant at the 'notice address,' defined in the mortgage as 'the property address.'"* (at 2)

FACTUAL BACKGROUND

The appeal concerned a foreclosure judgment and whether the servicer proved compliance with paragraph 22 of the mortgage, which required notice of default before suit. According to the dissent, the notice of default was sent to a post office box address, there was no evidence that Israel had provided that address to the servicer, and the notice was returned unclaimed.

PROCEDURAL HISTORY

Dalia Israel appealed a foreclosure judgment entered in the Fifteenth Judicial Circuit in and for Palm Beach County. The Fourth District Court of Appeal affirmed per curiam. Judge Warner dissented, concluding that the servicer failed to prove compliance with the mortgage's paragraph 22 default-notice requirement and would have reversed for dismissal.

DISPOSITION

affirmed

CASES CITED

- Blum v. Deutsche Bank Trust Co., 159 So. 3d 920 (Fla. 4th DCA 2015)
- Federal National Mortgage Association v. Hawthorne, 197 So. 3d 1237, 1240 (Fla. 4th DCA 2016)
- Holt v. Calchas, LLC, 155 So. 3d 499, 507 n.4 (Fla. 4th DCA 2015)

OPINION

PER CURIAM.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT DALIA ISRAEL, Appellant, v. U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE UNDER POOLING AND SERVICING AGREEMENT DATED AS OF MARCH 1, 2006 MASTER ASSET-BACKED SECURITIES TRUST 2006-WMCI MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-WMCI, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR WMC MORTGAGE CORPORATION, Appellees.

No. 4D20-2331 [November 10, 2021] Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Roger B. Colton, Judge; L.T. Case No. 50-2018-CA-005314-XXXX-MB. Michael Jay Wrubel of Michael Jay Wrubel, P.A., Davie, for appellant. Kimberly S. Mello and Arda Goker of Greenberg Traurig, P.A., Orlando, for appellee U.S. Bank National Association, as Trustee, etc. PER CURIAM.

Affirmed. LEVINE and KLINGENSMITH, JJ., concur. WARNER, J., dissents with opinion. WARNER, J., dissenting. I dissent from the affirmance of this foreclosure judgment. I would hold that the servicer failed to prove that it provided any notice of default pursuant to paragraph 22 of the mortgage.

The facts of this case appear to be identical to those in Blum v. Deutsche Bank Trust Co., 159 So. 3d 920 (Fla. 4th DCA 2015), as the case was explained in Federal National Mortgage Association v. Hawthorne, 197 So. 3d 1237, 1240 (Fla. 4th DCA 2016): In Blum, we reversed and remanded for entry of dismissal where "[t]he 'breach letter' admitted into evidence did not meet the requirement in the mortgage to deliver the default notice to appellant at the 'notice address,' defined in the mortgage as 'the property address.' " Id. at 920–21.

However, the record in Blum reflected that the plaintiff sent the default notice to a post office box not listed in the mortgage, and no evidence existed to indicate that the defendant had provided the post office box information to the plaintiff. Like Blum, the notice of default in this case was sent to a post office box address for which there was no evidence that the defendant provided that address to the servicer.

The notice was returned unclaimed. Failure to comply with paragraph 22, a condition precedent to filing suit, should have resulted in dismissal. See Blum, 159 So. 3d 920; Holt v. Calchas, LLC, 155 So. 3d 499, 507 n.4 (Fla. 4th DCA 2015). I would reverse. * * * Not final until disposition of timely filed motion for rehearing. 2