

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

August 21, 2013

US BANK NATIONAL ASSOCIATION,)
as Trustee for Citigroup Mortgage Loan)
Trust, Inc., 2007-AHL1, Asset-Backed)
Pass-Through Certificates Series)
2007-AHL1,)
Appellant,)
v.)
LEROY MARION; LUE RITA MARION;)
UNKNOWN TENANT 1; UNKNOWN)
TENANT 2; and ALL UNKNOWN)
PARTIES CLAIMING BY, THROUGH,)
UNDER OR AGAINST THE ABOVE)
NAMED DEFENDANT(S), WHO (IS/ARE)
NOT KNOWN TO BE DEAD OR ALIVE,)
WHETHER SAID UNKNOWN PARTIES)
CLAIM AS HEIRS, DEVISEES,)
GRANTEES, ASSIGNEES, LIENORS,)
CREDITORS, TRUSTEES, SPOUSES,)
OR OTHER CLAIMANTS,)
Appellees.)
_____)

Case No. 2D12-2258

BY ORDER OF THE COURT:

Appellees Leroy and Lue Rita Marion's motion for rehearing is granted only to the extent that the citation to the decision in Deutsche Bank National Trust Co. v. Prevratil has been updated and the introduction to the sentence following that citation is altered. The motion is otherwise denied. The prior opinion dated May 8, 2013, is withdrawn,

and the attached opinion is issued in its place. No further motions for rehearing will be entertained.

I HEREBY CERTIFY THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL COURT ORDER.

JAMES BIRK HOLD, CLERK

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OF FLORIDA
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Opinion filed August 21, 2013.

Appeal from the Circuit Court for Pinellas
County; Pamela A.M. Campbell, Judge.

Joseph Hagedorn Lang, Jr., and
Michael K. Winston of Carlton Fields, P.A.,
Tampa, for Appellant.

D. Rand Peacock, Jr., of Rand Peacock
P.A., St. Petersburg, for Appellees Leroy
Marion and Lue Rita Marion.

No appearance for remaining Appellees.

ALTENBERND, Judge.

US Bank National Association, as Trustee for Citigroup Mortgage Loan Trust, Inc. 2007-AHL1, Asset-Backed Pass-Through Certificates Series 2007-AHL1, appeals an order dismissing its foreclosure action against Leroy Marion, Lue Rita Marion, and other unknown parties. The trial court dismissed this action because the complaint was verified by an employee of the servicing agent, Wells Fargo Bank, N.A., and not by an employee of US Bank. This court recently granted relief in a certiorari proceeding that involved similar circumstances. Deutsche Bank Nat'l Trust Co. v. Prevratil, 38 Fla. L. Weekly D1123 (Fla. 2d DCA May 22, 2013). We likewise reverse this order and remand for further proceedings.

In reversing this order, we note that Florida Rule of Civil Procedure 1.110(b) requires verification of a complaint that is filed in an action for foreclosure on residential real property. With respect to the required verification, the rule specifically states:

When verification of a document is required, the document filed shall include an oath, affirmation, or the following statement:

"Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief."

A problem with the required verification arises from the fact that an entity like US Bank cannot sign a verification or an affidavit as "I." Most foreclosure actions are filed by commercial entities with numerous employees, agents, or independent contractors. As a result, some human being must sign the verification stating "I declare"

The circuit courts are understandably concerned about complaints filed by an entity like US Bank and verified by an unidentified person. In this case, the initial complaint was verified by a woman whose title was "legal process specialist." An amended complaint was verified by a man who is identified as "vice president loan documentation," signing as a representative of "Wells Fargo Bank, N.A. as contractual servicer for US Bank National Association, as Trustee for Citigroup Mortgage Loan Trust, Inc. 2007-AHL1, Asset-Backed Pass-Through Certificates Series 2007-AHL1." It is not clear whether either of the verifiers would be subject to the jurisdiction of the court if their verifications proved to be false.

Thus, although we reverse this order, we are not holding that a trial court lacks the authority to require a plaintiff in a foreclosure action to provide additional information concerning the person signing the verification. Likewise, we do not decide whether the trial court may require that the person signing the verification be within or otherwise submit to the jurisdiction of the court.

Reversed and remanded.

WALLACE and CRENSHAW, JJ., Concur.