COURT OF APPEALS
DECISION
DATED AND FILED

December 16, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP2788 **Cir. Ct. No. 2013CV3486**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

JPMORGAN CHASE BANK NATIONAL ASSOCIATION,

PLAINTIFF-RESPONDENT,

V.

JAMES R. BRAUN,

DEFENDANT-APPELLANT,

CITY OF MILWAUKEE, CITIBANK SOUTH DAKOTA NA, EAGLES AUDITORIUM, INC., KENT BIEGANSKI, ERIC CERA, STEVEN MURPHY, MICHAEL WEBER, ROBERT G. RUESCH AND VILLAGE OF HALES CORNERS,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Milwaukee County: PAUL R. VAN GRUNSVEN, Judge. *Affirmed*.

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. James R. Braun, *pro se*, appeals a summary judgment of foreclosure granted to JPMorgan Chase Bank National Association. Braun contends that summary judgment was inappropriate because Chase lacked standing, the note was fraudulent because it lacked his then-wife's signature, and the original note had been refinanced and was now unenforceable. We conclude that Braun has pointed to no proof sufficient to defeat summary judgment, so we affirm the judgment.

¶2 In February 2005, Braun executed an adjustable rate note for $60,000. The lender was One Choice Mortgage, LLC, and the note was secured by a mortgage on property. The note was then endorsed and transferred to Wachovia Mortgage Corporation, which endorsed the note in blank; this made it payable to the bearer. Chase eventually acquired the note, and also acquired the mortgage through an assignment.

¶3 In December 2011, Braun defaulted on the loan and has not made a payment since. Chase initiated this action in April 2013. Braun answered in May 2013. In June 2013, he filed a "Brief in Support for Counter Claim and 3rd Party Counter Claim." Braun's allegations in that document are largely irrelevant to the appeal, except to the extent that Braun alleged that Chase could not prove "they are the legal owners of the mortgage note and related materials."

¶4 The third-party complaint was dismissed. Chase moved to dismiss Braun's counterclaims, Braun moved for summary judgment on his counterclaims, and Chase ultimately moved for summary judgment on its original complaint. By October 4, 2013, Chase had produced the original note for Braun's inspection. This satisfied the circuit court, which denied Braun's motion and granted Chase's

motion to dismiss the counterclaims. The circuit court then set a hearing for Chase's summary judgment motion and set a deadline for Braun to respond.

¶5 In his reply to Chase's summary judgment motion, Braun complains that Chase lacked standing because it did not possess the original note at the time of filing. He further alleged that the "original" note Chase ultimately did produce was fraudulent because it did not bear his then-wife's signature. Finally, he asserted that the original note had been satisfied by refinancing and, thus, was not enforceable. The circuit court concluded there were no genuine issues of material fact and granted summary judgment to Chase. Braun appeals.

¶6 We review summary judgments *de novo*, using the same methodology as the circuit court. *See* ***PNC Bank, N.A. v. Bierbrauer***, 2013 WI App 11, ¶9, 346 Wis. 2d 1, 827 N.W.2d 124. "A party is entitled to summary judgment if 'there is no genuine issue as to any material fact' and that party 'is entitled to a judgment as a matter of law.'" ***Wachovia Mortg. FSB v. Dallas***, 2011 WI App 54, ¶5, 332 Wis. 2d 426, 797 N.W.2d 930 (citing WIS. STAT. § 802.08(2) (2011-12)).[1] We review the movant's submissions to see whether those submissions present a *prima facie* case for summary judgment; if they do, we then examine the opponent's submissions to determine whether there is a genuine issue of material fact that would entitle the opponent to a trial. *See* ***Bierbrauer***, 346 Wis. 2d 1, ¶9.

¶7 Braun does not dispute that Chase is the current holder of the note and mortgage or that, as the current holder, Chase would be entitled to enforce the

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

note. *See* ***id.***, ¶10 (under WIS. STAT. § 403.301, the holder of an instrument has the right to enforce that instrument). Instead, Braun contends that Chase did not hold and produce the original note at the time it commenced the underlying action, so it lacked standing to enforce the note by foreclosure, meaning the case must be dismissed. For this proposition, Braun relies on an out-of-state case, ***Federal Home Loan Mortg. Corp. v. Schwartzwald***, 979 N.E.2d 1214 (Ohio 2012). That case, however, is contrary to Wisconsin law.

¶8 Federal Home Loan had commenced a foreclosure action before obtaining an assignment of the note and mortgage on which the foreclosure was based. *See* ***id.*** at 1216. The Ohio Supreme Court ultimately dismissed Federal Home Loan's case, explaining that standing is required to invoke the jurisdiction of the common pleas court and must be determined at the time suit is commenced. *See* ***id.*** at 1219. Because there was no evidence that Federal Home Loan had suffered any injury at the time it started the action, it lacked standing to invoke the court's jurisdiction, a defect that required dismissal and could not be cured. *See* ***id.*** at 1223. In Wisconsin, however, standing is not a jurisdictional prerequisite. *See* ***Foley-Ciccantelli v. Bishop's Grove Condo. Assoc., Inc.***, 2011 WI 36, ¶40 n.18, 333 Wis. 2d 402, 797 N.W.2d 789.

¶9 Chase alleged it currently holds the note, and Braun does not dispute that. Indeed, he inspected the note in Chase's offices. Braun also does not dispute that the current holder may enforce the note. Thus, there is no genuine issue of material fact that would prevent Chase from enforcing the note by foreclosure.

¶10 Chase alleged and Braun did not dispute that he executed the note and mortgage. Instead, Braun complains that his then-wife's signature was not on the original note or mortgage. He argues that, as a result, the documents are

fraudulent. However, a spouse's signature is only required when a conveyance alienates any interest in a homestead. *See* WIS. STAT. §§ 706.02(1)(f) (conveyance requirements) and 706.01(7) ("homestead" definition). Chase had offered evidence showing that the mortgaged property is not homestead property. Braun did not contradict that evidence. He also did not produce any evidence that would show his wife had originally joined him in executing the note and mortgage. Accordingly, there was no genuine issue of material fact regarding the signatories on the original note.

¶11 Finally, Braun countered that the original note was refinanced and that Chase had not produced the refinanced note. Chase concedes that there was a loan modification in 2008, but a modification is not a refinancing. Modification changes the terms of an existing note. *See* BLACK'S LAW DICTIONARY 1156 (10th ed. 2014) (a modification is a change to something); *see also* 12 U.S.C. § 5220(b)(2) (modifications include a reduction in interest rate or principal). Refinancing results in satisfaction of the original note and execution of a new note. *See* BLACK'S LAW DICTIONARY 1471 (10th ed. 2014) (refinancing is the replacing of an old debt with a new debt). Refinancing also would have resulted in a new mortgage that would have been recorded. Braun has offered no evidence to show that the note Chase seeks to enforce was refinanced and supplanted by a different note. Thus, there is no genuine issue of material fact regarding the note that is currently in force—it is the one held by Chase.

¶12 Braun presented no evidence to counter Chase's motion for summary judgment. In his appellant's brief, he points to no portion of the record that shows otherwise, and he declined to file a reply brief. Accordingly, we, like the circuit court, conclude that there are no genuine issues of material fact. Summary judgment for Chase was appropriate.

By the Court.—Judgment affirmed.

This opinion shall not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.