

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

NATIONSTAR MORTGAGE, LLC,

Appellant,

v.

Case No. 5D19-1070

EMILY C. MCDANIEL A/K/A EMILY
MCDANIEL, LEE Y. MCDANIEL A/K/A
LEE MCDANIEL, OAK PARK HOMEOWNERS
ASSOCIATION, INC., JULIE SHUMAN
AND CAROL RILEY,

Appellees.

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Opinion filed January 9, 2020

Appeal from the Circuit Court
for Seminole County,
Debra S. Nelson, Judge.

Nancy M. Wallace, of Akerman LLP,
Tallahassee, William P. Heller, of Akerman
LLP, Fort Lauderdale, and Eric M. Levine,
of Akerman LLP, West Palm Beach, for
Appellant.

Anthony N. Legendre, II, of Law Offices of
Legendre & Legendre, PLLC, Maitland, for
Appellee, Emily C. McDaniel.

No appearance for other Appellees.

EDWARDS, J.

Appellant, Nationstar Mortgage LLC, appeals the trial court's order dismissing its fifth amended verified complaint to foreclose a mortgage against Appellees. The

complaint was dismissed because there was no servicing agreement or power of attorney attached in support of Appellant's allegation that it was the servicing agent of U.S. Bank. "The elements of a foreclosure complaint are: 1) an agreement, 2) a default, 3) an acceleration of the amount due, and 4) the amount due." *Black Point Assets, Inc. v. Fed. Nat'l Mortg. Ass'n*, 220 So. 3d 566, 568 (Fla. 5th DCA 2017). Appellant's complaint alleged the foregoing in reasonable detail and attached copies of the blank-indorsed note and the mortgage. Also attached to the complaint were copies of the assignment of mortgage to U.S. Bank and the loan modification agreement regarding the subject loan.

Appellant alleged that it was acting on behalf of U.S. Bank as servicer of the loan represented by the note and mortgage and asserted that it had authority to foreclose the mortgage on behalf of U.S. Bank. Furthermore, Appellant alleged that it was proceeding as the holder of the blank-indorsed note, thereby complying with section 702.015(2)(b), Florida Statutes (2019). There may come a time during the course of litigation that Appellant will have to prove those allegations if Appellees raise these issues in their pleadings; however, now is not the time. "[T]he purpose of a motion to dismiss is to test the legal sufficiency of the complaint and not to determine issues of fact." *Fed. Nat'l Mortg. Ass'n v. Legacy Parc Condo. Ass'n*, 177 So. 3d 92, 94 (Fla. 5th DCA 2015) (alteration in original) (citation omitted). The factual allegations of a complaint are taken as true for purposes of a motion to dismiss. See *Demase v. State Farm Fla. Ins.*, 239 So. 3d 218, 220 (Fla. 5th DCA 2018).

Florida Rule of Civil Procedure 1.130(a) only requires that the documents (or copies thereof) on which the action is brought be attached to the complaint; here, those would be the mortgage and note. See *Glen Garron, LLC v. Buchwald*, 210 So. 3d 229,

233–34 (Fla. 5th DCA 2017). Appellant is not suing on the servicing agreement or power of attorney; thus, those documents need not be attached to the complaint.

Appellant's fifth amended complaint states a cause of action with sufficient clarity to require Appellees to answer it. The trial court erred in dismissing the complaint for failure to attach a servicing agreement or power of attorney. Accordingly, we reverse the order of dismissal and remand for further proceedings consistent with this opinion that move the matter towards resolution on the merits.

REVERSED AND REMANDED.

ORFINGER and SASSO, JJ., concur.