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

WALLACE R. COOK AND SUPPORT 100 PROPERTY MANAGEMENT, LLC AS TRUSTEE OF THE 967 VANTAGE LAND TRUST DATED DECEMBER 20, 2013,

Appellant,

v. Case No. 5D19-3649

BANK OF AMERICA, N.A.,

Appellee.

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Opinion filed March 26, 2021

Appeal from the Circuit Court for Brevard County,
Lisa Davidson, Judge.

Blake J. Fredrickson, of Cremeens Law Group, PLLC, Tampa, for Appellant.

Alan M. Pierce, Tricia J. Duthiers, and Elizabeth A. Henriques, of Liebler, Gonzalez & Portuondo, Miami, for Appellee.

EDWARDS, J.

Appellants, Wallace R. Cook and Support 100 Property Management, LLC as Trustee of the 967 Vantage Land Trust, appeal the order of the trial court granting a foreclosure in favor of Bank of America, Appellee. Appellants raised the affirmative defense that Appellee failed to comply with mailing a notice of default and acceleration letter as required by paragraph 22 of the mortgage. Because Appellee failed to prove by competent substantial evidence that it complied with that requirement, we reverse the final judgment.

A lender may prove that a default letter was sent by providing: (1) the testimony of a witness with personal knowledge that a default letter was sent; (2) evidence of a routine business practice of the entity drafting and mailing the letter; or (3) evidence in the record such as an affidavit or a return receipt to prove that the letter was sent. *See Mace v. M&T Bank*, 292 So. 3d 1215, 1219 (Fla. 2d DCA 2020).

At trial, over Appellants' objection, Appellee presented the testimony of Ms. James who had no first-hand knowledge as to whether that letter had been mailed. The only proof of mailing the letter was Ms. James' testimony that she saw information in a document, which indicated the letter had been mailed, contained on Appellee's computer system. However, whatever document she looked at to gain that information was not introduced in

evidence. Where a timely hearsay objection is made, a witness may not testify about the contents of a business record if that record was not properly introduced into evidence. *See Sas v. Fed. Nat'l Mortg. Ass'n*, 112 So. 3d 778, 779 (Fla. 2d DCA 2013).

Ms. James testified that she was familiar with Appellee's business practices, but her explanation did not include the mailing procedures that may have been used here. No affidavit of mailing, mail logs, or return receipts were offered in evidence. Therefore, because Appellee failed to prove it complied with paragraph 22, it was not entitled to entry of judgment in its favor. *See Madl v. Wells Fargo*, 244 So. 3d 1134, 1137 (Fla. 5th DCA 2018); *Figueroa v. Fed. Nat'l Mortg. Ass'n*, 180 So. 3d 1110, 1117 (Fla. 5th DCA 2015).

We reverse the final judgment of foreclosure entered in favor of Appellee and remand with instructions to enter an order granting Appellants' motion for involuntary dismissal.[1] By a separate order, we grant Appellants' motion for appellate attorney's fees. *See J.P. Morgan Mortg. Acq. Corp. v. Golden*, 98 So. 3d 220, 223 (Fla. 2d DCA 2012).

REVERSED AND REMANDED WITH INSTRUCTIONS.

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[1] We need not reach other issues raised by Appellants.

COHEN and WALLIS, JJ., concur.