

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

LEE FRIEDMAN,

Appellant,

v.

Case No. 5D20-1068  
LT Case No. 2017-CA-007946-O

DEUTSCHE BANK NATIONAL TRUST  
COMPANY, AS TRUSTEE FOR SOUNDVIEW  
HOME LOAN TRUST 2006-OPT5, ASSET-  
BACKED CERTIFICATES, SERIES 2006-  
OPT5, BEACON PARK PHASE I  
HOMEOWNERS ASSOCIATION, INC., ET AL.,

Appellees.

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Opinion filed October 22, 2021

Appeal from the Circuit Court  
for Orange County,  
Kevin B. Weiss, Judge.

Joseph A. Frein, of Joseph A. Frein,  
P.A., Orlando, for Appellant.

Kimberly S. Mello and Arda Goker, of  
Greenberg Traurig, P.A., Orlando, for  
Appellee, Deutsche Bank.

No Appearance for Other Appellees.

SASSO, J.

Lee Friedman appeals a final judgment of foreclosure entered in favor of Deutsche Bank National Trust Company as Trustee for Soundview Home Loan Trust 2006-OPT5, Asset-Backed Certificates, Series 2006-OPT5 (“Deutsche Bank”). Friedman presents two errors in the final judgment, errors which Deutsche Bank commendably concedes. As a result, the only remaining issue is the appropriate remand instructions, which we now address.

#### BACKGROUND AND FACTS

The complaint at issue was filed August 28, 2017, and proceeded to a non-jury trial on February 14, 2020. At trial, Deutsche Bank offered one witness, who offered the note, mortgage, and a composite transaction history into evidence. Although Deutsche Bank had previously filed a fee and expert affidavit in support of its claim for attorneys’ fees for prosecuting the foreclosure case, the affidavits were never moved into evidence during the non-jury trial.

Under the note and mortgage, Friedman was obligated to pay interest on the unpaid principal balance at a specified rate that was detailed in the loan documents. To establish the interest owed on the unpaid principal balance, Deutsche Bank presented testimony of a loan analyst and admitted

the composite transaction history. The loan analyst testified as to the monetary damages, including \$293,805.79 in interest. By contrast, the composite transaction history, while lining up with the loan analyst's testimony in other respects, listed the interest owed as \$219,784.04.

Ultimately, the trial court entered final judgment in favor of Deutsche Bank, specifically noting there was "sufficient evidence [to support] the amount of the damages claim . . . by [Deutsche Bank]." The trial court then awarded Deutsche Bank the amounts listed in the composite transaction history, deviating only as to the amount of interest. For the interest amount, the trial court awarded \$219,805.79, which was \$21.75 more than the amount listed in the composite transaction history and \$74,000 less than the amount testified to by the loan analyst. In addition, the trial court awarded Deutsche Bank attorneys' fees in the amount of \$8,015.30 in accordance with the fee affidavits.

### ANALYSIS

Friedman raises two errors on appeal. First, Friedman argues the trial court erred in awarding damages for attorneys' fees where the amount was unsupported by *any* evidence, because the affidavits were never moved into evidence. Deutsche Bank concedes error, and we accept the concession. *See Charles v. HSBC Bank USA Nat'l Ass'n as Tr. for GSAA Home Equity*

*Tr. 2005-9*, 294 So. 3d 1018, 1018 (Fla. 5th DCA 2020) (reversing an award of attorneys' fees in a final judgment of foreclosure where no evidence was introduced at trial to substantiate the award of attorneys' fees).

While the parties agree on the error, they disagree on what this court's remand instructions should be. On this point, we follow our prior opinions and reverse the attorneys' fee award without remanding for additional proceedings. See *Charles*, 294 So. 3d at 1018 ("Because no evidence was introduced at trial to substantiate the award of attorneys' fees, we reverse the award of those fees without remand."); *Ali v. Wells Fargo Bank, N.A.*, 264 So. 3d 1096, 1097 n.1 (Fla. 5th DCA 2019) (refusing to remand because there was no evidence at trial to support the fee award but distinguishing the case law where the party seeking attorneys' fees had presented some evidence at trial and filed attorneys' fees affidavits prior to trial that substantiated the fees). To provide for additional proceedings would afford Deutsche Bank the proverbial "second bite." Cf. *Tracey v. Wells Fargo Bank, N.A. as Tr. for Certificateholders of Banc of Am. Mortg. Sec., Inc.*, 264 So. 3d 1152, 1162 (Fla. 2d DCA 2019) (noting the primary function of appellate courts is to correct errors, "not to serve as a conduit for unnecessarily protracted, piecemeal litigation").

The second error Friedman sets forth is the trial court's award of interest. Specifically, Friedman argues the amount of interest awarded is inconsistent with the evidence presented, as it neither reflects the loan analyst's testimony nor the amount identified in the composite transition history. Significantly though, Friedman does not challenge on appeal the nature of the evidence presented, nor did he object on these grounds below. In other words, Friedman does not argue the trial court could not or should not have accepted the evidence presented as to the amount of interest. Friedman asserts error only in the inconsistency between the trial court's order and the evidence presented. We accept Deutsche Bank's concession of error on this point as well. *See Armao v. McKenney*, 218 So. 3d 481, 485 (Fla. 4th DCA 2017) (a damages award must be supported by competent substantial evidence).

As for instructions on remand, the appropriate role of our court, under these circumstances, is to reverse the portion of the judgment awarding interest and remand for the trial court to adjust the award as needed, based upon a review of the existing evidence. *See, e.g., Armao*, 218 So. 3d at 485; *Salauddin v. Bank of Am., N.A.*, 150 So. 3d 1189, 1191 (Fla. 4th DCA 2014).

Accordingly, we reverse the final judgment on appeal as to the award of attorneys' fees and interest. On remand, the trial court should strike the

award of attorneys' fees from the final judgment and revisit the amount of interest awarded in a manner consistent with this opinion.

REVERSED and REMANDED.

LAMBERT, C.J., and COHEN, J., concur.