

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

**ORNA MILLER,**  
Appellant,

v.

**BANK OF AMERICA, N.A.,**  
Appellee.

No. 4D16-2329

[October 18, 2017]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Eli Breger, Judge; L.T. Case No. 2013CA010264XXXXMB.

Michael A. Levin of the Law Offices of Michael A. Levin, Weston, and Andrew M. Kassier of Andrew M. Kassier, P.A., Coral Gables, for appellant.

Brandon S. Vesely of Albertelli Law, Tampa, for appellee.

PER CURIAM.

In this foreclosure proceeding we affirm the denial of appellant's post-judgment motion for sanctions against the appellee based on *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979) (finding that in the absence of an adequate record on appeal an appellate court must affirm an order or judgment). Although the parties filed a stipulation of facts, those facts do not show that the court abused its discretion in denying the motion. *See Galasso v. Gargione*, 40 So. 3d 14 (Fla. 2d DCA 2010). Here, the stipulation contained no facts regarding whether the appellee paid previously awarded amounts of sanctions, one of the grounds upon which additional sanctions were sought. Further, the appellant accused the bank of misconduct in proceeding with the loan foreclosure while the appellant was seeking modification and in refusing to give her a payoff figure for her loan. There is simply insufficient evidence within the statement of facts or in this record to show without dispute that the bank acted improperly, so that the denial of sanctions was an abuse of discretion.

*Affirmed.*

WARNER, LEVINE and BUCHANAN, LAURIE E., Associate Judge, concur.

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***Not final until disposition of timely filed motion for rehearing.***