

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2012

DEUTSCHE BANK NATIONAL TRUST COMPANY, as Trustee for HSI
Asset Securitization Corporation 2006-OPT4 Mortgage Pass-Through
Certificates, Series 2006-OPT4,
Appellant,

v.

DAMASINO TAPERI and ROSALINDA TAPERI,
Appellees.

No. 4D11-1582

[May 16, 2012]

PER CURIAM.

We reverse the summary final judgment granted below, which was based on the failure of one of the defendants to sign the applicable mortgage. The bank's filing of the proper mortgage corrected the clerical error of the attachment of the wrong mortgage to an amended complaint.

Deutsche Bank National Trust Company brought a mortgage foreclosure action against Damasino and Rosalinda Taperi. To its initial complaint, the bank attached a mortgage signed by both Taperis. The Taperis' motion to dismiss was granted and the bank filed an amended complaint. To the amended complaint, the bank inadvertently attached the wrong mortgage—one that had never been recorded and which was signed by Mr. Taperi but not by Mrs. Taperi. In the Taperis' answer to the complaint, they asserted that Mrs. Taperi had not signed the mortgage attached to the amended complaint and they moved for summary judgment on that ground. The bank filed a "Notice of Filing of Recorded Mortgage" along with the copy of the mortgage signed by both Taperis; the notice of filing was served on the Taperis' lawyer. The bank followed up by filing the original mortgage, note, and assignment of mortgage on February 4, 2011. A month later, the trial court granted summary final judgment in favor of Mrs. Taperi.

The trial court erred in granting the motion for summary judgment. The bank had cured its clerical error in failing to file the mortgage that both Taperis signed by its notice of filing a copy of that mortgage, which

was served on the Taperis' lawyer. *Cf. Hughes v. Home Sav. of Am.*, 675 So. 2d 649, 650 (Fla. 2d DCA 1996) (noting that such a notice, sent to the adverse party, would have cured the failure to attach that was the subject of a pre-answer motion to dismiss).

The Taperis raised no issue of fact concerning their both signing the correct mortgage attached to the notice.

Reversed and remanded.

WARNER, STEVENSON and GROSS, JJ., concur.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Howard Harrison, Senior Judge; L.T. Case No. 502008CA031111XXXXMB.

Nancy M. Wallace and Kristen M. Fiore of Akerman Senterfitt, Tallahassee, and William P. Heller and Nathaniel D. Callahan of Akerman Senterfitt, Fort Lauderdale, for appellant.

Thomas E. Ice of Ice Legal, P.A., Royal Palm Beach, for appellees.

Not final until disposition of timely filed motion for rehearing.