

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

CHRISTOPHER HAMMAC and JESSICA HAMMAC,

Appellants,

v.

U.S. BANK NATIONAL ASSOCIATION, as trustee of the
Bungalow Series IV Trust,

Appellee.

No. 2D22-3020

October 6, 2023

Appeal from the Circuit Court for Hillsborough County; Cheryl K. Thomas, Judge.

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

Christophal Hellewell, Chase A. Berger, and Tara L. Rosenfeld of Ghidotti Berger LLP, North Miami Beach, for Appellee.

LUCAS, Judge.

Christopher and Jessica Hammac appeal a summary judgment of foreclosure against their Tampa home entered in favor of U.S. Bank National Association. They argue that the circuit court's computation of the principal amount owed under their mortgage loan was erroneous.

U.S. Bank appropriately concedes that the erroneous calculation was based upon a loan modification agreement that was neither pled nor proven in the proceedings below.¹ See *Tracey v. Wells Fargo Bank, N.A.*, 264 So. 3d 1152, 1153 (Fla. 2d DCA 2019) ("The circuit court reversibly erred when it permitted Wells Fargo to amend its complaint during trial to conform to the evidence it presented of two unpled modification agreements."); *Morales v. Fifth Third Bank*, 275 So. 3d 197, 201 (Fla. 4th DCA 2019) ("In this action, [Fifth Third Bank] certainly premised its recovery on the modification and the amounts due thereunder. The appellee was required to plead the loan modification and to attach a copy to the complaint.").

We, therefore, reverse the circuit court's summary judgment and remand this case for further proceedings.

Reversed and remanded.

KHOUZAM and ROTHSTEIN-YOUAKIM, JJ., Concur.

Opinion subject to revision prior to official publication.

¹ It was undisputed that the principal amount owed under the (unmodified) note would have been \$156,391.47. The court's final judgment increased that amount by twenty thousand dollars to \$176,396.81.