

Third District Court of Appeal

State of Florida

Opinion filed March 14, 2018.
Not final until disposition of timely filed motion for rehearing.

No. 3D15-2796
Lower Tribunal No. 15-20240

Wilmington Trust, N.A., etc.,
Appellant,

vs.

Luis M. Alvarez, et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Peter R. Lopez,
Judge.

Holland & Knight LLP, and Brian K. Hole and Katherine M. Joffe (Fort
Lauderdale), for appellant.

Wesoloski Carlson, P.A., and Erik Wesoloski, for appellee BCML Holding
LLC.

Before ROTHENBERG, C.J., and SCALES and LINDSEY, JJ.

PER CURIAM.

In this foreclosure case, Wilmington Trust NA Successor Trustee to
Citibank N.A. Trustee in Trust for Registered Holders of Bear Stearns Asset-

Backed Certificates 2007-SD2 Asset-Backed Certificates Series 2007-SD2 (“Wilmington Trust”), the plaintiff below, appeals an October 29, 2015 final summary judgment in favor of BCML Holding LLC (“BCML”), the defendant below.

As reflected by BCML’s motion for summary judgment and the transcripts of the summary judgment hearing, the trial court held that Wilmington Trust’s foreclosure action was barred by the statute of limitations based upon this Court’s then current panel decision in Deutsche Bank Trust Co. Americas v. Beauvais, 40 Fla. L. Weekly D1, 2014 WL 7156961 (Fla. 3d DCA Dec. 17, 2014). While Wilmington Trust’s appeal was pending, however, this Court withdrew the Beauvais panel opinion, substituting an *en banc* opinion in its stead. See Deutsch Bank Trust Co. Americas v. Beauvais, 188 So. 3d 938 (Fla. 3d DCA 2016) (*en banc*). We therefore reverse the final summary judgment and remand this cause to the lower court for further consideration in light of our Beauvais *en banc* opinion.¹

Reversed and remanded.

¹ In so holding, we reject Wilmington Trust’s claim that BCML lacks standing to raise the affirmative defense that the instant claim is barred by the statute of limitations. See 3709 N. Flagler Drive Prodigy Land Tr. v. Bank of Am., N.A., 226 So. 3d 1040 (Fla. 4th DCA 2017). We also decline Wilmington Trust’s invitation to adjudicate the statute of limitations issue in the first instance.