Third District Court of Appeal

State of Florida

Opinion filed November 6, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-0881
Lower Tribunal No. 14-32372

U.S. Bank, National Association, etc.,
Petitioner,

vs.

Raul Zayas and unknown spouse of Raul Zayas k/n/a Lucia Zayas,
Respondents.

A Writ of Certiorari to the Circuit Court for Miami-Dade County, Beatrice Butchko, Judge.

Akerman, LLP, and William P. Heller (Ft. Lauderdale), and Nancy M. Wallace (Tallahassee), for petitioner.

Jacobs Legal, PLLC, and Bruce Jacobs; Wasson & Associates, Chartered, and Roy D. Wasson, for respondents.

Before LOGUE, LINDSEY, and LOBREE, JJ.

PER CURIAM.

Petitioner U.S. Bank seeks a writ of certiorari quashing an April 15, 2019 order of the trial court directing U.S. Bank to show cause why it should not be sanctioned under the court's inherent contempt powers for defying the discovery order of August 20, 2018.[1] A writ of certiorari quashing a trial court's order will lie where the trial court departed from the essential requirements of law, resulting in irreparable injury that is not remediable on plenary appeal. Aurora Bank v. Cimbler, 166 So. 3d 921 (Fla. 3d DCA 2015) (citing Allstate Ins. Co. v. Langston, 655 So. 2d 91, 94 (Fla. 1995)). We find the petition to be well-taken for three reasons.

First, it is a departure from the essential requirements of law, not remediable on appeal, to subject a party to a show cause order and sanctions for failing to produce documents it has not previously been ordered to produce. See Menke v. Wendell, 188 So. 3d 869, 871 (Fla. 2d DCA 2015) (granting petition for certiorari and finding a departure from the essential requirements of law observing that "[i]t is well established that a party cannot be sanctioned for contempt for violating a court directive or order which is not clear and definite as to how a party is to comply with the court's command." (quoting Ross Dress for Less Va., Inc. v. Castro, 134 So. 3d 511, 523 (Fla. 3d DCA 2014)) (citing Keitel v. Keitel, 716 So. 2d 842, 844 (Fla. 4th

[1] The full name of Petitioner is U.S. Bank National Association as Trustee for Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates Series 2006-BC2.

DCA 1998) ("[W]hen a final judgment or order is not sufficiently explicit or precise to put the party on notice of what the party may or may not do, it cannot support a conclusion that the party willfully or wantonly violated that order.")).

Second, a court cannot require a deponent to produce documents outside of his or her possession or control. See Fritz v. Norflor Constr. Co., 386 So. 2d 899, 901 (Fla. 5th DCA 1980); Fla. R. Civ. P. 1.410 (2019); Authors Comment to Fla. R. Civ. P. 1.410 (1967) ("A subpoena duces tecum generally reaches all documents or tangible things under the control of the person or corporation ordered to produce, except for questions of privilege and unreasonableness."). Finally, documents regarding loan ownership and origin are irrelevant when the foreclosing plaintiff pleads standing as the noteholder. HSBC Bank USA, Nat'l Ass'n v. Buset, 241 So. 3d 882 (Fla. 3d DCA 2018).

Accordingly, we grant the petition and quash the April 15, 2019 order.