Third District Court of Appeal

State of Florida

Opinion filed August 26, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1208
Lower Tribunal No. 18-14153

3499 Saraev Properties, LLC,
Appellant,

vs.

US Bank National Association,
Appellee.

An appeal from the Circuit Court for Miami-Dade County, John W. Thornton, Jr., Judge.

The Bravo Law Firm, PLLC, and Jason Bravo, for appellant.

Albertelli Law, and Shannon Troutman (Tampa), for appellee.

Before EMAS, C.J., and LINDSEY, and MILLER, JJ.

MILLER, J.

Appellant, 3499 Saraev Properties, LLC ("Saraev"),[1] challenges a final judgment of foreclosure entered in favor of appellee, U.S. Bank National Association. On appeal, Saraev contends the Bank failed to adequately plead and prove an independent breach of a binding loan modification agreement.[2] Discerning no error below, we affirm.

Saraev correctly asserts the Bank, "[h]aving entered into a valid modification agreement, . . . could only foreclose by alleging and proving a breach of the modification agreement." Nowlin v. Nationstar Mortg., LLC, 193 So. 3d 1043, 1046 (Fla. 2d DCA 2016) (citing Kuehlman v. Bank of Am., N.A., 177 So. 3d 1282, 1283 (Fla. 5th DCA 2015)). However, here, the Bank not only explicitly referenced the modification agreement in its verified complaint, but appended the same thereto, along with the promissory note and mortgage. See Fla. R. Civ. P. 1.130(a) ("All bonds, notes, bills of exchange, contracts, accounts, or documents on which action may be brought or defense made, or a copy thereof or a copy of the portions thereof material to the pleadings, must be incorporated in or attached to the pleading.").

Further, an authenticated copy of the modification was properly admitted into evidence during the trial. See Liukkonen v. Bayview Loan Servicing, LLC, 243 So.

[1] Saraev is not the borrower, but, rather, a third-party purchaser of the property subject to the instant foreclosure.

[2] A prior foreclosure action was resolved by execution of the loan modification agreement.

3d 981, 983 (Fla. 4th DCA 2018) ("A modification to a note, while 'as much a part of the parties' agreement [i.e., its terms] as the original note,' is not, itself, a negotiable instrument. Like a mortgage, it 'may thus be proved by using a properly authenticated duplicate.' No explanation as to why the original was unavailable is required.") (alteration in original) (internal citations omitted). Under these circumstances, remaining cognizant that the instant modification did not wholly supersede, but rather "supplement[ed]," the terms of both the promissory note and mortgage, we conclude the Bank properly relied upon the composite of documents in pleading and proving its entitlement to foreclosure.

Finally, as the Bank adduced sufficient testimony regarding both the balance due under the modification and the mortgagors' failure to adhere to their payment schedule, we decline to embrace the assertion of error. See Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980) ("Discretion . . . is abused when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable man [or woman] would take the view adopted by the trial court.") (citation omitted); see also Gonzalez v. Fed. Nat'l Mortg. Ass'n, 276 So. 3d 332, 335 (Fla. 3d DCA 2018) ("To the extent the trial court's final judgment of foreclosure 'is based on factual findings, we will not reverse unless the trial court abused its discretion.'") (citation omitted); Richardson v. Richardson, 442 So. 2d 1005, 1005 (Fla. 3d DCA 1983) ("An abuse of discretion appears when the

record reveals a lack of competent, substantial evidence to sustain the findings of the trial court.") (citation omitted).

Affirmed.