COURT OF APPEALS
DECISION
DATED AND FILED

June 4, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP2489 **Cir. Ct. No. 2013CV80**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,

PLAINTIFF-RESPONDENT,

V.

THE RAATZ TRUST DATED JULY 26, 1995, KIM E. RAATZ AND CITIBANK NA,

DEFENDANTS,

MARK E. RAATZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Washington County: TODD K. MARTENS, Judge. *Affirmed*.

Before Brown, C.J., Reilly and Gundrum, JJ.

¶1 PER CURIAM. This case arises under Wisconsin's adoption of the Uniform Commercial Code (UCC), WIS. STAT. chs. 401 through 411 (2011-12).[1] Mark Raatz, pro se, appeals a judgment of foreclosure granted in favor of JPMorgan Chase Bank, National Association. We reject Raatz's contentions that Chase lacked standing to pursue the foreclosure and that the circuit court was biased and denied him due process.[2] We affirm.

¶2 In 2002, Raatz and his former wife, Kim Raatz, signed a $140,720.00 promissory note to One Choice Mortgage, LLC. To secure payment under the note, the Raatzes executed a mortgage in favor of One Choice. One Choice endorsed an allonge[3] to the note to make the note payable to Wachovia Mortgage Corporation and assigned the mortgage to Mortgage Electronic Registration System, Inc. (MERS), its successors and assigns, as nominee for Wachovia. Wachovia endorsed the note in blank. MERS assigned the mortgage to Chase and recorded it with the Washington County Register of Deeds. The assignment made Chase both the holder of the note and the mortgagee.

¶3 In September 2012, the Raatzes defaulted. Chase provided them with a notice of acceleration and commenced this foreclosure action in January 2013. Soon after, the Raatzes filed for Chapter 7 bankruptcy. At Chase's request,

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless noted.

[2] Raatz also alleges violations of the Truth in Lending Act at the loan closing in 2002. Even if there was merit to the claim, Raatz did not raise it in the circuit court, let alone within a year of the date of the alleged violation. *See* 15 U.S.C. § 1640(e) (2014). We address it no further here. *See* ***State v. Huebner***, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727 (we generally do not consider issues raised for the first time on appeal).

[3] An allonge is "a slip of paper attached to a negotiable instrument for the purpose of receiving an endorsement." ***PNC Bank, N.A. v. Bierbrauer***, 2013 WI App 11, ¶7 n.2, 346 Wis. 2d 1, 827 N.W.2d 124 (2012) (citing BLACK'S LAW DICTIONARY 83 (8th ed. 2004)).

the circuit court dismissed the foreclosure action without prejudice and with leave to reopen. About a month later, the bankruptcy court granted Chase's motion for relief from the automatic stay, and Chase reopened its foreclosure action.

¶4 The Raatzes did not answer or otherwise respond to the complaint. Instead, on May 15, 2013, Raatz filed a copy of the "qualified written request" (QWR)[4] he had sent to Chase. The QWR challenged Chase's standing to bring the foreclosure action and demanded that it prove it was a holder of a valid mortgage and note on the property. Chase moved for judgment on the pleadings and for a default judgment of foreclosure. Raatz responded with a motion to extend the time to prepare and file pleadings. Chase moved to deny and strike the motion and for a judgment of foreclosure based on Raatz's untimely answer to the complaint.

¶5 The circuit court construed the QWR as an answer and concluded the tardy filing was due to excusable neglect. It directed Chase's counsel to make the original note available to Raatz for inspection. A hearing was set for a month later, October 3, 2013, to decide Chase's motion for judgment on the pleadings.

¶6 Just days before the hearing, Raatz moved to dismiss the complaint. In support, Raatz filed the affidavit of Joseph R. Esquivel, Jr., a purported expert in the field of mortgage foreclosures. Raatz asserted that the Esquivel affidavit "delineate[d] the breaks in the chain of title" and "offer[ed] proof of [Chase's] lack of standing and possible violations of Federal and State laws."

[4] A mortgage loan servicer must acknowledge receipt of a QWR from a borrower within a specified time frame and either make appropriate corrections or respond with a written clarification that includes specific information. *See* 12 U.S.C. § 2605(e)(1)(A) & (e)(2) (2014).

¶7 At the October hearing, Chase's counsel informed the court that Raatz had inspected the original note. Raatz extolled Esquivel's affidavit as a "compelling indictment of the mortgage banking industry," but the court cautioned that the purpose of the hearing was to decide Chase's motion, not to impeach a whole industry. Upon a review of the parties' documentation, the court concluded that Chase was entitled to judgment as a matter of law. It entered a $120,074.08 judgment of foreclosure in Chase's favor. Raatz appeals.

¶8 "If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment." WIS. STAT. § 802.06(3). We review a summary judgment determination de novo, applying the standard found in WIS. STAT. § 802.08, the same methodology that the circuit court uses. ***Sonday v. Dave Kohel Agency, Inc.***, 2006 WI 92, ¶20, 293 Wis. 2d 458, 718 N.W.2d 631. We affirm an award of summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Sec. 802.08(2).

¶9 Raatz contends that Chase has no standing to pursue its claim because it failed to prove it has a legal interest in the note and mortgage. He asserts that Chase merely relies on a copy of the note authenticated only by the affidavit of a Chase employee whose "averment [that Chase is a holder of the note] is a bare legal conclusion," and so does not prove a legal transfer. Raatz does not dispute, however, that he and Kim signed the note and mortgage or that they defaulted.

¶10 "[T]o have standing to sue, a party must have a personal stake in the outcome, and must be directly affected by the issues in controversy." ***Village of Slinger v. City of Hartford***, 2002 WI App 187, ¶9, 256 Wis. 2d 859, 650 N.W.2d 81 (citation omitted). The issue, then, is whether Chase sufficiently proved that it possesses the note and thus is entitled to enforce it. A person entitled to enforce a negotiable instrument—here, the note—includes the "holder" of the instrument. WIS. STAT. § 403.301. A holder generally is the person in possession of the negotiable instrument. WIS. STAT. § 401.201(2)(km)1. An instrument endorsed in blank "becomes payable to bearer and may be negotiated by transfer of possession alone until specially endorsed." WIS. STAT. § 403.205(2).

¶11 Chase submitted the affidavit of Chase Vice President Nicole Smiley. Smiley averred she had access to Chase's business records and to the Raatzes' loan records in particular, that she had personal knowledge that Chase maintained the Raatzes' loan records in the course of its regularly conducted business activities, that Chase batches and posts all transactions daily, that on October 29, 2002, the Raatzes executed a note secured by a mortgage, that Chase is the servicer and holder of the note, and that the Raatzes defaulted on their payment and never cured the default. Chase produced the original note in discovery and at the October 3, 2013 hearing. The note was endorsed in blank. Raatz produced nothing to rebut Chase's showing. Chase, in possession of an instrument payable to its bearer, is a holder entitled to enforce its provisions. *See* WIS. STAT. §§ 403.301, 403.205(2); *see also* ***PNC Bank, N.A. v. Bierbrauer***, 2013 WI App 11, ¶12, 346 Wis. 2d 1, 827 N.W.2d 124 (2012).

¶12 Still, Raatz contends that "no person will acquire any right to the Raatz note until a payee is named" and that One Choice's interest in the property was not transferable except to a specific payee or with his consent. This simply is

incorrect. Again, the endorsed-in-blank note made it payable to its bearer—Chase. The Wisconsin UCC expressly allows transfers of negotiable instruments and enforcement of their terms by subsequent holders. *See* WIS. STAT. §§ 401.201(2)(km)(1)., 403.205(2). Chase has standing enforce the note.

¶13 Nonetheless, Raatz contends the Esquivel affidavit proves that Chase never legally acquired rights to the note and mortgage. The thirty-page brief-like affidavit purportedly is based on research on Raatz's mortgage. With many excerpts from federal and state statutes and case law, Esquivel draws erroneous legal conclusions, parroted by Raatz, about the enforceability of the note and mortgage. We disregard conclusory opinions, because they are not "evidentiary facts." *See* WIS. STAT. § 802.08(3); *see also* ***Bilda v. Milwaukee Cnty.***, 2006 WI App 159, ¶48, 295 Wis. 2d 673, 722 N.W.2d 116; ***Physicians Plus Ins. Corp. v. Midwest Mut. Ins. Co.***, 2001 WI App 148, ¶54 n.19, 246 Wis. 2d 933, 632 N.W.2d 59. Summary judgment was proper.

¶14 Raatz also claims that the circuit court denied him due process by "fabricat[ing]" facts, prejudging the case, and exhibiting bias toward him. This is baloney. The court acknowledged Raatz's right to have his day in court, allowed him to put forth his proof, and applied the law set forth above. It is the law, not the circuit court judge, that is against him.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.