

IN THE CIRCUIT COURT OF 18TH JUDICIAL
CIRCUIT, IN AND FOR BREVARD COUNTY,
FLORIDA

CASE NO.: 05-2010-CA-117
DIVISION:

U.S. BANK, N.A., AS SUCCESSOR TRUSTEE
TO BANK OF AMERICA, N.A., ETC.

Plaintiff,

v.

Defendant.

ORDER ON DEFENDANT'S MOTION FOR FINAL SUMMARY JUDGMENT

THIS MATTER having come before the Court for hearing on March 18, 2011 on Defendant's Motion for Final Summary Judgment, and the Court having reviewed the Court file, including all record evidence presented, the parties' motions and supporting documents, and the Court having heard argument of counsel and being otherwise fully advised in the premises.

It is hereby ORDERED and ADJUDGED as follows:

I, Procedural History

1. The subject action was filed by the Law Office of David Stern, P.A. in February of 2010, on behalf of U.S. Bank, N.A. to foreclosure on residential real property in Brevard County, Florida.
2. On or about April 13, 2010, counsel for the Defendant served a notice of appearance and requests for admission. The requests for admission asked the Plaintiff to admit such relevant things as "Plaintiff is not the current holder of the original mortgage note" and "Plaintiff is not the current owner of the original mortgage note."
3. The lender referenced on the copy of the note attached to the complaint was American Brokers Conduit which is not a party to the subject litigation. The copy of the note does not contain an endorsement or an allonge.
4. The Defendant served its motion for summary judgment on February 7, 2011.

5. As of the date of the hear on Defendant's motion for summary judgment the Plaintiff failed to answer the requests for admission and as such the requests were admitted by operation of law.

II. FINDINGS OF FACT

6. The Plaintiff is not the owner of the note and mortgage.
7. The Plaintiff is not the holder of the note and mortgage.
8. There is no record evidence before this Court to show that Plaintiff is entitled to bring this foreclosure action.

III. RULING

9. Final Summary Judgment is granted in favor of the Defendant and against the Plaintiff.
10. The Defendant shall go forth without day.
11. The Defendant is the prevailing party in the subject litigation.
12. The Court shall reserve to adjudicate entitlement to and quantum of attorney's fee.

DONE AND ORDERED in Chambers at Viera, FL, this 18th day of March 2011.

Honorable
Brevard County Circuit Judge

ORIGINAL SIGNED ON
MAR 18 2011
BY JUDGE CHARLES M. HOLCOMB
CIRCUIT JUDGE

Copies Furnished to: Richard Shuster, Esquire