

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT, IN
AND FOR BREVARD COUNTY, FL

CASE NO.: 05-2013-CA-0 7

HSBC BANK USA, N.A. AS
TRUSTEE FOR BCAP LLC 2008-IND1,

Plaintiff,

v.

N
ET AL.,

Defendant.

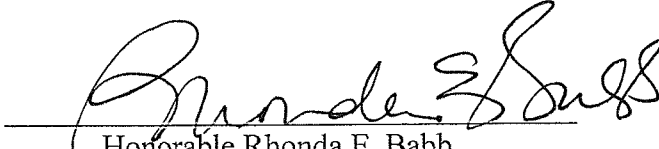
FINAL JUDGMENT FOR DEFENDANT

THIS CAUSE having come before this Court on for Non-Jury Trial on September 21, 2015. The Court having conducted a non-jury trial, reviewed the pleadings, and considered the record, evidence, and taken live testimony does hereby ORDER and ADJUDGE as follows..

1. The subject mortgage secured an interest in real property located at 6 Avenue, Titusville, FL 32780.
2. Paragraph Fifteen of the mortgage that was admitted into evidence provides in pertinent part "The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Paragraph fifteen also provides that "All notices given by Borrower or Lender in connection with this Security Instrument shall be in writing."
3. The Corporate Representative of the Plaintiff was an employee of the current servicer Ocwen.
4. The Notice of Default and Intent to Accelerate, that was admitted into evidence, is on the letterhead of the prior servicer, IndyMac Federal Bank. The Notice of Default is dated November 5, 2008 and addressed to at Merritt Island Causeway, Merritt Island, Florida which is not the address of the subject property.

5. The corporate representative did not offer any testimony or evidence as to why the notice of default was not sent to the property address and did not present any evidence that the borrower ever submitted a written notice to change the notice address to an address other than the property address.
6. The service of the a notice of default that complies with the mortgage is a condition precedent to acceleration of the debt and to filing a foreclosure action. The plaintiff bears the burden of proof of showing that it complied with conditions precedent.
7. In *Blum v. Deutsche Bank*, citation pending (Fla. 4th DCA 2015), the Court reversed final judgment entered in favor of a lender that sent a notice of default to an address other than the property address, and on remand held that “Deutsche Bank’s failure to comply with the condition precedent to filing suit requires dismissal of the case.” *Id.*
8. Since the Plaintiff did not send the notice to the property address or prove that the address to which the notice is addressed was a designated substitute address, the plaintiff has failed to prove its case. As such it is not necessary for the Court to address whether the plaintiff’s failure to advise the homeowner of “the right to assert in the foreclosure proceeding the non-existence of default or any other defense of Borrower to acceleration and foreclosure.”
9. Judgment is hereby entered in favor of the Defendant and against the Plaintiff.
10. The Plaintiff shall take nothing from this action and Defendant shall go forth without day.
11. The Defendant is the prevailing party and is entitled to its reasonable attorney’s fees and costs.

DONE and ORDERED in Chambers in on this 5 day of October, 2015.



Honorable Rhonda E. Babb

Copies Furnished to: Richard Shuster, Attorney For Defendant
Christopher Pennington, Attorney for Plaintiff