

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2010

JERRY A. RIGGS, SR.,
Appellant,

v.

AURORA LOAN SERVICES, LLC,
Appellee.

No. 4D08-4635

[April 21, 2010]

STEVENSON, J.

Aurora Loan Services, LLC, filed a mortgage foreclosure action against Jerry Riggs, Sr., alleging that it was the “owner and holder” of the underlying promissory note. Aurora filed a copy of the mortgage and a copy of the promissory note, which named Riggs as the mortgagor and First Mangus Financial Corporation as the mortgagee. The promissory note reflected an “endorsement in blank,” which is a stamp with a blank line where the name of the assignee could be filled in above a pre-printed line naming First Mangus. Aurora moved for summary judgment, and, at the hearing, produced the original mortgage and promissory note reflecting the original endorsement in blank. The trial court granted summary judgment in favor of Aurora over Riggs’ objections that Aurora’s status as lawful “owner and holder” of the note was not conclusively established by the record evidence. We agree with Riggs and reverse the summary judgment.

The Second District confronted a similar situation in *BAC Funding Consortium, Inc. ISAOA/ATIMA v. Jean-Jacques*, 28 So. 3d 936 (Fla. 2d DCA 2010), when the trial court granted alleged assignee U.S. Bank’s motion for summary judgment. In order to establish its standing to foreclose, U.S. Bank filed an assignment of mortgage, which, as described, is comparable to the endorsement in blank in the instant case. *Id.* at 937. That court reversed because, *inter alia*, “[t]he incomplete, unsigned, and unauthenticated assignment attached as an exhibit to U.S. Bank’s response to BAC’s motion to dismiss did not constitute admissible evidence establishing U.S. Bank’s standing to foreclose the note and mortgage.” *Id.* at 939. The court in *BAC Funding*

Consortium, properly noted that U.S. Bank was “required to prove that it validly held the note and mortgage it sought to foreclose.” *Id.*

In the instant case, the endorsement in blank is unsigned and unauthenticated, creating a genuine issue of material fact as to whether Aurora is the lawful owner and holder of the note and/or mortgage. As in *BAC Funding Consortium*, there are no supporting affidavits or deposition testimony in the record to establish that Aurora validly owns and holds the note and mortgage, no evidence of an assignment to Aurora, no proof of purchase of the debt nor any other evidence of an effective transfer. Thus, we reverse the summary judgment and remand for further proceedings. We find no merit in any of the other arguments raised on appeal.

Reversed and remanded.

GROSS, C.J., and POLEN, J., concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Thomas M. Lynch, IV, Judge; L.T. Case No. CACE 07-17670 (14).

Jerry A. Riggs, Sr., Cooper City, pro se.

Diana B. Matson and Roy A. Diaz of Smith, Hiatt & Diaz, P.A., Fort Lauderdale, for appellee.

Not final until disposition of timely filed motion for rehearing.