

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

RESI WHOLE LOAN VI, LLC,

Plaintiff,

v

Case No. 2011-14684

Division: K

DANIEL WADE MCBRIDE A/K/A DANIEL
W. MCBRIDE A/K/A DANIEL MCBRIDE
and LORRIE MCBRIDE, et al.,

Defendants,

ORDER GRANTING SUMMARY JUDGMENT

THIS CAUSE, having come before the Court on June 21, 2012 on Defendants' Motion for Summary Judgment or to Dismiss Complaint, and the Court, being duly advised in the premises, it is hereby;

ORDERED AND ADJUDGED as follows:

1. There are no disputed issues of material fact, and Defendants are entitled to summary judgment as a matter of law.
2. The undisputed evidence shows that Plaintiff failed to send the notice and cure letter required by paragraph 22 of the subject mortgage, a fact proven by Defendant's affidavit and the absence of any summary judgment evidence from Plaintiff.
3. Though Plaintiff argued its filing of a letter precluded summary judgment, this Court disagrees. The letter was not authenticated and not properly considered for summary judgment purposes. See Bryson v. Branch Banking and Trust Co., 75 So. 3d 783 (Fla. 2d DCA 2011) ("The unauthenticated copies of default letters purportedly sent to Bryson by BB&T were insufficient for summary judgment purposes because only competent evidence may be considered in ruling on a motion for summary judgment."); First North American Nat'l Bank v.

Hummel, 825 So. 2d 502 (Fla. 2d DCA 2006) (“By relying on the unauthenticated documents to reverse the county court, the circuit court did not apply the correct law governing summary judgment proceedings.”). The fact that Plaintiff’s Complaint was verified on “knowledge and belief” does not change this result. See Ballinger v. Bay Gulf Credit Union, 51 So. 3d 528 (Fla. 2d DCA 2010).

4. Even if this Court were to consider the unauthenticated letter attached to Plaintiff’s Response, it would not prevent summary judgment, as: (i) there was no evidence the letter was sent; (ii) the letter did not specify what Defendants had to do to cure the alleged default (as the letter indicated that additional monies in unspecified amounts were owed above and beyond the amount set forth in the letter, leaving Defendants guessing as to the amount that must be paid to cure the default); and (iii) the letter does not indicate that failure to cure the alleged default would result in “foreclosure by judicial proceeding.”

5. Plaintiff’s failure to comply with this condition precedent does not justify a summary judgment on the merits, but this case is dismissed without prejudice ~~and without leave to amend.~~

6. The Court’s ruling in this regard renders moot the other arguments in the motion.

DONE AND ORDERED in Chambers in Tampa, Hillsborough County, Florida on this
____ day of July, 2012.

ORIGINAL SIGNED

JUL 20 2012

DONALD C. EVANS
SENIOR CIRCUIT JUDGE

Hon. William Levens
Circuit Court Judge

cc: Mark P. Stopa, Esq.
Robertson, Anschutz & Schneid, PL