

THIS IS NOT A
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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

BAC HOME LOAN SERVICING, L.P. F/K/A
COUNTRYWIDE HOME LOANS SERVICING, L.P.,

Plaintiff,

v.

ERICK TOMORELLI, *et. al.*

Defendants,

11-CA-9010
Case No. 2011-CA-09010
Division: C
CLERK OF CIRCUIT COURT
HILLSBOROUGH COUNTY, FLA
APR 13 AM 9:46

ORDER GRANTING SUMMARY JUDGMENT

THIS CAUSE, having come before the Court on April 2, 2012 on Defendant's Motion for Summary Judgment, 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 Defendant is entitled to summary judgment as a matter of law. To wit, Plaintiff failed to send the notice and cure letter as 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.

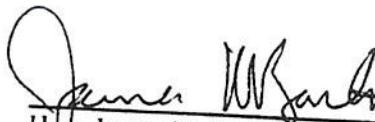
2. At the hearing, Plaintiff argued its filing of a letter precluded summary judgment. This Court disagrees, for two reasons. First, the letter was not authenticated and not properly considered for summary judgment purposes. See Bryson v. Branch Banking & Trust Co., 75 So. 3d 783 (Fla. 2d DCA 2011) ("The 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."). Second, even if the letter could have been considered by this Court, it is clear on the face of the letter that it did not comply with paragraph 22 of the mortgage because it did not inform Defendant of the need for a

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judicial proceeding and of the Defendant's rights within the judicial proceeding.

3. 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.

12th DONE AND ORDERED in Chambers in Tampa, Hillsborough County, Florida on this
day of April, 2012.



Hon. James M. Barton, II
Circuit Court Judge

cc: Mark P. Stopa, Esq.
Albert Zakarian, Esq.