

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

DEUTSCHE BANK NATIONAL TRUST
COMPANY AS TRUSTEE NOVASTAR
MORTGAGE FUNDING TRUST, SERIES
2006-5 NOVASTAR HOME EQUITY LOAN
ASSET-BACKED CERTIFICATES, SERIES
2006-5,

FILED

JUN 28 2012

CLERK OF CIRCUIT COURT
CIRCUIT CIVIL DEPT.

CLERK OF CIRCUIT COURT
JUN 28 11:01 AM '12
CIRCUIT CIVIL DEPT.

Plaintiff,

ANNETTE A. RYAN et al.,

Case No. 2011-12070
Division B

Defendant.

ORDER GRANTING SUMMARY JUDGMENT

THIS CAUSE, having come before the Court on June 21, 2012 on Defendant's 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 Defendant is entitled to summary judgment as a matter of law, for two reasons.
2. First, 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. 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 & 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

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evidence may be considered in ruling on a motion for summary judgment.”)

3. Second, Plaintiff lacked standing at the inception of the case. Though Plaintiff alleged it had standing, the Note attached to its Complaint lacked an endorsement, and Plaintiff introduced no sworn evidence to overcome Defendant’s affidavit that it lacked standing when it filed suit.

4. In light of the foregoing, this case is dismissed without prejudice and without leave to amend.

DONE AND ORDERED in Chambers in Tampa, Hillsborough County, Florida on this 27 day of June, 2012.



Hon. Robert Foster
Circuit Court Judge

cc: Mark P. Stopa, Esq.
Clarfield, Okon, Salomone & Pincus