

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

HSBC MORTGAGE SERVICES, INC.,

Plaintiff,

Case No. 10-CA-18301

v.

FRANCISCO ANGLERO, PILAR ANGLERO, *et. al.*

Defendants.

_____ /

ORDER GRANTING SUMMARY JUDGMENT

THIS CAUSE, having come before the Court on September 11, 2012 on Defendants' Motion for Summary Judgment, and the Court, having reviewed the motion, heard the arguments of counsel, and being duly advised in the premises, it is hereby;

ORDERED AND ADJUDGED as follows:

1. The Court file contains two notices of hearing for September 11, 2012 at 8:45 a.m., one from Defendants' counsel and one from Plaintiff's counsel. The hearing was not cancelled, and no notice of cancellation was filed. As the hearing began, Defendants' counsel, Mark P. Stopa, Esq., was present, but Plaintiff's counsel was not. The halls were sounded, and all courtrooms where foreclosure hearings take place were checked, but nobody appeared for Plaintiff. Additionally, Plaintiff did not file an affidavit in opposition to summary judgment or "specifically identify" any evidence it intended to rely upon in opposition to summary judgment, as required by Rule 1.510.

2. There are no disputed issues of material fact, and Defendants are entitled to summary judgment as a matter of law.

3. 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 Defendants' affidavit and the absence of any summary judgment evidence from Plaintiff to the contrary.

4. Though Plaintiff filed a letter dated January 26, 2011, it does not preclude summary judgment. 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).

5. Even if this Court were to consider Plaintiff’s unauthenticated letter, it would not prevent summary judgment, as: (i) there was no evidence the letter was sent; (ii) the letter did not specify the failure to cure the alleged default would result in “foreclosure by judicial proceeding,” instead falsely apprising Defendants they would have to “bring a court action”; and (iii) the letter did not come from the “lender,” as required under the terms of the Mortgage.

6. 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.

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

Circuit Court Judge

cc: Mark P. Stopa, Esq.
Daniel C. Consuegra, Esq.