

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

BANK OF AMERICA, N.A.,

Plaintiff,

Case No. 2012-008119

v.

Division: G

LARRY E. BRADSHAW, JR. A/K/A LARRY E.
BRADSHAW AND DEBORAH M. BRADSHAW,
et al.,

Defendants.

ORDER GRANTING SUMMARY JUDGMENT

THIS CAUSE, having come before the Court on January 30, 2013 on Defendants' Second Amended Motion to Dismiss and for Summary Judgment, and the Court, having heard the arguments of counsel and being duly advised in the premises, it is hereby;

ORDERED AND ADJUDGED as follows:

1. The undisputed, summary judgment evidence before the Court establishes that Plaintiff failed to comply with the conditions precedent set forth in paragraph 22 of the subject mortgage. While Plaintiff argues otherwise based on an Affidavit which attaches a letter dated July 28, 2010, that affidavit and letter do not defeat summary judgment, for a variety of reasons.

2. First, the letter fails to specify the default. See Judy v. MSMC Venture, LLC, 37 Fla. L. Weekly D 2711 (Fla. 2d DCA, Nov. 28, 2012).

3. Second, the letter requires payment of a sum certain, plus unspecified "regular monthly payment or payments, late charges, fees, and charges." In so doing, the letter fails to "specify the actions required to cure the default," as required by paragraph 22.

4. Third, the letter fails to apprise Defendants that they have the right to reinstate

after acceleration, falsely indicating he “may” have that right.

5. Fourth, the letter fails to apprise Defendants that failure to cure the default may result in “foreclosure by judicial proceeding,” falsely informing Defendants they would “have the right to bring a court action” to cure the alleged default.

6. Fifth, the letter fails to give the requisite 30-days’ notice of the default. Here, Plaintiff’s affidavit shows the letter was sent via certified mail. However, that affidavit did not show when the letter was received, and receipt of the letter is what triggers the start of the 30-day period when sent by certified mail. As the letter was dated July 28, 2010 and required payment by August 27, 2010 – exactly 30 days later – the requisite 30-days’ notice was not provided. After all, it is necessarily impossible for the letter to have been sent on July 28, 2010 via certified mail and received that very same day.

7. While Plaintiff argues the letter substantially complies with paragraph 22, these deficiencies, both individually and collectively, show otherwise.

8. In light of the foregoing, the motion is granted and this case is dismissed without prejudice to Plaintiff filing a new lawsuit.

DONE AND ORDERED in Chambers in Tampa, Hillsborough County, Florida on this ____ day of January, 2013.

Hon. Circuit Court Judge

ORIGINAL SIGNED
JAN 31 2013
RAUL C. PALOMINO, JR.
CIRCUIT JUDGE

cc: Mark P. Stopa, Esq.
SHD Legal Group, P.A.