

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY, FLORIDA

WELLS FARGO BANK, N.A.,

CASE NO. 312010CA075393

Plaintiff,

vs.

RENEE L PAGE A/K/A RENEE PAGE;
RBC BANK (USA) F/K/A INDIAN RIVER
NATIONAL BANK; THE PRESERVE OF
VERO HOMEOWNERS
ASSOCIATION, INC.; UNKNOWN
SPOUSE OF MARILYN BLACK
DUSSAULT; UNKNOWN SPOUSE OF
RENEE L PAGE A/K/A RENEE PAGE;
MARILYN BLACK DUSSAULT;
MICHAEL PAGE A/K/A MICHAEL S
PAGE; and UNKNOWN TENANT(S) IN
POSSESSION OF THE SUBJECT
PROPERTY,

Defendants.

FILED
PROCEEDINGS
CLERK OF CIRCUIT COURT
INDIAN RIVER COUNTY, FL
14 APR 22 AM 10:19
BY JEFFREY R. SMITH C.C.

FINAL JUDGMENT OF FORECLOSURE

THIS CAUSE was tried before the Court on November 12-13, 2013 and after hearing testimony from the Plaintiff and Defendants, receiving evidence, hearing legal argument and being otherwise duly advised in the premises, the Court makes the following findings of fact and conclusions of law:

The original Note, which was endorsed in blank, was admitted into evidence. Plaintiff's Trial Exhibit 1. Testimony and admitted records demonstrated that the original Note was in Plaintiff's possession since prior to the filing of this foreclosure action. See, e.g., Plaintiff's Trial Exhibit 15, testimony of Kyle Campbell. A certified copy of the Mortgage was also admitted into evidence. Plaintiff's Trial Exhibit 2. The Court therefore finds that conclusive evidence exists which demonstrates that Plaintiff is the holder of the

Note and Mortgage with standing to prosecute this foreclosure action. *See, e.g., Harvey v. Deutsche Bank Nat. Trust Co.*, 69 So. 3d 300, 304 (Fla. 4th DCA 2011) (holding that possession of original note endorsed in blank which was filed with the Court was sufficient to establish standing); *Riggs v. Aurora Loan Services, LLC*, 36 So.3d 932 (Fla. 4th DCA 2010) (possession of the original promissory note, indorsed in blank, sufficient to establish lawful holder of the note, and entitlement to enforce its terms).

Defendants RBC Bank f/k/a Indian River National Bank, The Preserve of Vero Homeowners Association Inc., Michael Page and tenant Laurie Sullivan have all been defaulted and thus conceded their interests are subject, subordinate and inferior to Plaintiff's title, interest and lien. The Court finds that Plaintiff's first mortgage interest in the property is superior to that of any other defendant.

The evidence presented demonstrates that Defendants Renee L. Page and Marilyn Black Dussault (hereinafter "Defendants") defaulted under the Note and Mortgage by failing to make full, timely payments. Specifically, Kyle Campbell, a representative of Plaintiff, testified that no payment was made in December 2009 and no payments were ever made to bring the loan current. This testimony was corroborated by documents admitted into evidence. *See, e.g., Plaintiff's Trial Exhibit 31.* Moreover, Defendant Renee Page admitted there was no payment in December 2009 and she never made a subsequent payment to bring the loan current. Defendant Marilyn Dussault admitted during her testimony that she never made any payments on the loan. Further, Mr. Campbell, Ms. Page and Ms. Dussault all consistently testified that Defendants failed to pay for property taxes and insurance premiums that were advanced by Plaintiff in 2009 and thereafter. Plaintiff's Trial Exhibit 31 which was admitted into evidence, also corroborates the testimony that Defendants failed to pay taxes and insurance premiums. Based on the testimony of Plaintiff and both Defendants, as well as the documents

admitted into evidence, it was also undisputed that since January 2010, Defendants have never sent in monthly payments sufficient to pay the principal, interest and escrow for taxes and insurance—even after Plaintiff advanced payments for property taxes and insurance premiums related to the subject property. The Court rejects Defendants' argument that they are somehow absolved from any obligation to reimburse Plaintiff for the property taxes and insurance premiums that Plaintiff advanced on Defendants' behalf.

The Court also rejects Defendants' argument that the revocation of the escrow waiver was ineffective because it was not sent directly to Ms. Dussault. The Mortgage admitted into evidence provides that Lender may revoke the waiver "by a notice given in accordance with Section 15" of the Mortgage and Section 15 explicitly provides that "[n]otice to any one Borrower shall constitute notice to all Borrowers." Plaintiff's Trial Exhibit 2, §§ 3, 15. Since it is undisputed that Ms. Page was provided with written notice that the escrow waiver was being revoked, the Court finds that the revocation was proper and effective.

Defendants claimed that under a proposed loan modification, they did not need to make any payment in December 2009. While had they accepted the loan modification, this would have been true, it was undisputed that Defendants rejected the loan modification that was offered to them, despite the fact that it would have reduced the interest rate and thus the amount of principal and interest due on the Note on a monthly basis. See, e.g., testimony of Campbell, Page, and Dussault. Having rejected the proposed loan modification, the Court finds the Defendants were required to pay the 5.875% interest rate provided for in the original Note and were obligated to pay the monthly amount of \$1,330.96 for principal and interest. See Plaintiff's Trial Exhibits 1, 2. As set forth above, it was undisputed that Defendants failed to make such payments in

December 2009. See testimony of Campbell, Page, and Dussault, as well as Plaintiff's Trial Exhibit 31.

Moreover, the Mortgage admitted into evidence provided for escrow payments to be made for taxes and insurance. See Plaintiff's Trial Exhibit 2, § 3. While the escrow requirement was originally waived, the Mortgage specifically provides that the escrow waiver was revocable and, in fact, the evidence demonstrates that the escrow waiver was revoked in 2009. See, e.g., Plaintiff's Trial Exhibit 21 ("the Lender's waiver as to payment of Escrow Items, if any, has been revoked"), Plaintiff's Trial Exhibit 15, p. WELLS FARGO 366 (loan notes reflecting Borrower's acceptance of escrow). Accordingly, the Court finds Defendants were required to make monthly escrow payments for taxes and insurance, which they failed to do. Moreover, even if the Court were to find that the revocation of escrow applied only to the time period when the Temporary Payment Plan ("TPP") was in place, while the TPP was in place, Plaintiff advanced funds to pay both taxes and insurance for the property at issue. At no time have Defendants made any effort to repay the sums advanced by Plaintiff.

The Court admitted into evidence multiple notices of default and demands for payment which were sent by Plaintiff to Defendants. See Plaintiff's Trial Exhibits 26, 28. Mr. Campbell, Ms. Page and Ms. Dussault all consistently testified that Defendants never made the payments required by the default notices and demands for payment. The documents admitted into evidence also corroborated this testimony. While Defendants claimed confusion as to the amounts owed, the Court finds the default notices and statements sent to Defendants clearly set forth the amounts required to bring the loan current. See, e.g., Plaintiff's Trial Exhibits 24, 26, 28. Although the testimony and admitted documents revealed that partial payments made by Defendants were subsequently applied to unpaid or partially-paid months in 2009, the evidence also

demonstrated that amounts sufficient to bring the loan current were never paid to Plaintiff and thus the default was never cured.

The Court also finds that Plaintiff presented substantial, competent evidence of the amounts currently due under the Note and Mortgage, those amounts being set forth in detail below. Specifically, the Court admitted records showing the amounts due. See, Plaintiff's Trial Exhibit 31. Moreover, Mr. Campbell testified to these amounts and confirmed that the amounts sought matched the proposed final judgment of foreclosure. Mr. Campbell testified not only as to what amounts were owed, but why the amounts were owed and what amounts were being credited to Defendants for payments held in suspense.

Defendants failed to present evidence sufficient to support any legally viable defense. Specifically, the Court finds the Truth in Lending Act ("TILA") is inapplicable here, since the undisputed evidence demonstrates that property at issue was purchased as a secondary residence, not a primary residence. See 15 U.S.C. § 1603(3) (providing that TILA applies only to principal dwelling). Moreover, Defendants presented no evidence of a TILA violation in any event. Additionally, Defendants presented no evidence that the Plaintiff had unclean hands. To the contrary, the Court finds the evidence presented shows that if anyone had unclean hands, it was Defendants, who received over \$800 for insurance premiums paid by Plaintiff, while refusing to reimburse Plaintiff for the payment of those premiums. See testimony of Ms. Page. The Defendants have also refused to repay Plaintiff the sums that it had advanced in 2009 to pay the taxes and insurance for the property.

Likewise, the Court finds Defendants' affirmative defenses claiming violations of HAMP fail because Defendants have no standing to assert defenses premised on the alleged breach of Plaintiff's HAMP obligations. See *Miller v. Chase Home Finance, LLC*,

2012 WL 1345834, 2, No. 11-15166 (11th Cir. April 19, 2012) (finding borrower lacked standing to pursue claims “insofar as they are premised on an alleged breach of Chase’s HAMP obligations”); *Zoher v. Chase Home. Fin.*, No. 10-14135-CIV, 2010 WL 4064798, *4-5 (S.D. Fla. Oct. 15, 2010) (“Borrowers may not attempt to enforce HAMP compliance as third-party beneficiaries of a contract.”). Moreover, Defendants presented no evidence of any HAMP violations other than Ms. Dussault’s unsupported conclusion that she did not qualify for a HAMP modification and therefore it was somehow improper for Plaintiff to offer a permanent modification. The Court also notes that this claim, made at trial, differs from Ms. Dussault’s testimony at deposition in which she stated that the permanent HAMP modification was rejected because she and her daughter Ms. Page did not like the terms.

The Court finds Defendants remaining defenses fail as a matter of law and/or based on Defendants’ failure to present any evidence to support the defenses.

Therefore, IT IS ADJUDGED that:

1. Final Judgment of Foreclosure is Granted.

2. Amounts Due. Plaintiff, Wells Fargo Bank, N.A., whose address is 3476 Stateview Boulevard, MAC #X7801-013, Fort Mill, South Carolina 29715, is due:

Principal	\$212,033.01
Interest on the note and mortgage from 12/01/09 to 11/07/13	\$48,994.53
Per diem interest at 5.875% from 11/07/13 To 4/21/14 (165 days)	\$5,631.22
Title search expense	
Taxes	\$8,825.08
Insurance premiums	RESERVED
Attorneys’ fees	
Attorneys’ fees total	RESERVED
Court costs	RESERVED
Additional Costs	
Property inspections	RESERVED
LESS: Other Borrower credit	(-\$332.75)
LESS: Payments/Other Suspense	(-\$59,093.20)

TOTAL**\$216,057.89**

3. **Interest.** The total amount in paragraph 2 shall bear interest from this date forward at the prevailing rate.

4. **Lien on Property.** Plaintiff holds a lien for the total sum superior to all claims or estates of defendant(s), on the following described property in **Indian River** County, Florida:

**LOT 39, PRESERVE OF VERO PHASE ONE SUBDIVISION,
ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN
PLAT BOOK 16, PAGES 40 AND 40A, OF THE PUBLIC RECORDS OF
INDIAN RIVER COUNTY, FLORIDA.**

Property address: **370 25th Avenue SW, Vero Beach, FL 32962**

5. **Sale of Property.** If the total sum with interest at the rate described in paragraph 2 and all costs accrued subsequent to this judgment are not paid, the clerk of this court shall sell the property at public sale on **JUNE 2, 2014** at 10:00 a.m., to the highest bidder for cash, except as prescribed in paragraph 6, by electronic sale at <https://www.indian-river.realforeclose.com> in accordance with section 45.031, Florida Statutes. **The public sale shall not be postponed or canceled without a court order, and shall proceed regardless of whether plaintiff, a plaintiff's representative, or plaintiff's counsel is present. All orders postponing or canceling the sale must be filed with the clerk of court no later than 5:00 p.m. two business days before the sale date. Counsel for plaintiff must be certain that the clerk has the original proof of publication of the notice of sale on file no less than three business days before the sale date. Failure to file the original proof of publication of the notice of sale will not stop the sale, however the certificate of sale will not issue until the original proof of publication of notice of sale is filed. The failure of plaintiff's counsel to properly and timely publish the notice of sale may result in sanctions against the plaintiff, plaintiff's counsel individually, and the law firm representing the plaintiff.** If the original proof of publication of the notice of sale is not filed with the clerk within ten calendar days after the sale, an order will be entered directing the plaintiff to show cause why the sale should not be vacated and the case dismissed with or without prejudice. The fact that an attorney has a high volume practice will not be a showing of good cause. Any electronic sale by the clerk shall be in accordance with the written administrative policy for electronic sales published by the clerk at the official website for the clerk and posted in the public areas of the clerk's offices.

6. **Costs.** Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the clerk if plaintiff is not the purchaser of the property for sale, provided, however, that the purchaser of the property for sale shall be responsible for the documentary stamps payable on the certificate of title. If plaintiff is the purchaser, the clerk shall credit plaintiff's bid with the total sum with interest and costs accruing subsequent to this judgment, or such part of it, as is necessary to pay the bid in full. The clerk shall receive the service charge imposed in Section 45.031, Florida Statutes.

7. **Distribution of Proceeds.** On filing the certificate of title, the clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of plaintiff's costs; second, documentary stamps affixed to the certificate; third, plaintiff's attorneys' fees; fourth, the total sum due to plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 2 from this date to the date of the sale; and by retaining any remaining amount pending the further order of this court.

8. **Right of Redemption.** On filing the certificate of sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property, except as to claims or rights under chapter 718 or chapter 720, Florida Statutes, if any.

9. **Right of Possession.** Upon the filing of the certificate of title, the person named on the certificate of title shall be let into possession of the property, subject to the provisions of the "Protecting Tenant At Foreclosure Act of 2009".

10. **Jurisdiction Retained.** Jurisdiction of this action is retained to enter further orders that are proper including, without limitation, a deficiency judgment.

11. If any defendant remains in possession of the property, the clerk shall without further order of the court issue forthwith a writ of possession upon request of the person named on the certificate of title.

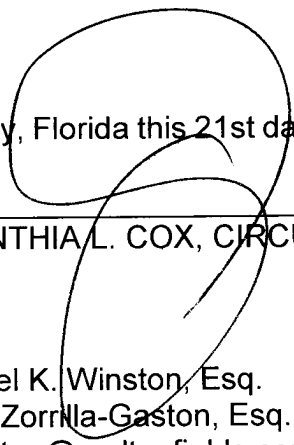
IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THE FINAL JUDGMENT. IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, 2000 16TH AVENUE, VERO BEACH, FLORIDA 32960, WITHIN 10 DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT FLORIDA RURAL LEGAL SERVICE – FORT PIERCE OFFICE, 510 SOUTH US HIGHWAY 1, SUITE 1, FORT PIERCE,

FLORIDA 34948, (772) 466-4776, TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT FLORIDA RURAL LEGAL SERVICE – FORT PIERCE OFFICE, (772) 466-4776, FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

DONE AND ORDERED in Indian River County, Florida this 21st day of April, 2014.



CYNTHIA L. COX, CIRCUIT JUDGE

Copies furnished to:

Louis B. Vocelle, Jr.
Paul R. Berg, Esq.
bvocelle@vocelleberg.com
courtdocs@vocelleberg.com
yfraga@vocelleberg.com
pberg@vocelleberg.com
jgraney@vocelleberg.com
*Counsel for Defendants Rene L. Page
a/k/a Renee Page and Marilyn Black
Dussault*

Dale L. Friedman, Esq.
dfriedman@conroysimberg.com
*Counsel for Law Offices of Marshall C.
Watson, P.A.*

RBC Bank (USA) f/k/a Indian River
National Bank c/o President, VP or any
other Officer Authorized to Accept
Service
301 Fayetteville Street Raleigh, NC
27601

The Preserve of Vero Homeowners
Association, Inc. c/o William F. Miller,
Registered Agent 2001 9th Street, Suite
308 Vero Beach, FL 32968

Michael K. Winston, Esq.
Alana Zorrilla-Gaston, Esq.
mwinston@carltonfields.com
azorrilla@carltonfields.com
pcote@carltonfields.com
jmeehan@carltonfields.com
wpbecf@cfdom.net
*Co-Counsel for Plaintiff Wells Fargo Bank,
N.A.*

Ruth Jean, Esq.
ruth.jean@marshallwatson.com
*Co-Counsel for Plaintiff Wells Fargo
Bank, N.A.*

Unknown Tenant(s)
n/k/a John & Laurie Sullivan
370 25th Avenue, S.W.
Vero Beach, FL 32962

Michael Page a/k/a Michael S. Page
375 12th Road, Apt. 108
Vero Beach, FL 32960