

## Cohen v. US Bank Trust, N.A.

Court of Appeal of Florida, Fourth District

June 2, 2021, Decided

No. 4D20-392

### Reporter

2021 Fla. App. LEXIS 7938 \*; 46 Fla. L. Weekly D 1287; 2021 WL 2213299

ADI COHEN, Appellant, v. US BANK TRUST, N.A., as Trustee for LSF11 Master Participation Trust, et al., Appellees.

**Notice:** NOT FINAL UNTIL DISPOSITION OF TIMELY FILED MOTION FOR REHEARING.

**Prior History:** [\*1] Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Dennis D. Bailey, Judge; L.T. Case No. CACE18-010559.

### Core Terms

default notice, borrower, mailed, summary judgment, servicer, condition precedent, further proceedings

**Counsel:** Kenneth Eric Trent, Fort Lauderdale, and Richard G. Chosid of Law Offices of Richard G. Chosid, Fort Lauderdale, for appellant.

Shaib Y. Rios of Brock & Scott, PLLC, Fort Lauderdale, for appellee US Bank Trust, N.A., as Trustee for LSF11 Master Participation Trust.

**Judges:** GROSS, GERBER and KLINGENSMITH, JJ., concur.

### Opinion

PER CURIAM.

In this residential mortgage foreclosure case, the borrower appeals from the circuit court's final summary judgment in the bank's favor, and from

the circuit court's order denying the borrower's motion for rehearing. The borrower argues the circuit court erred in entering the final summary judgment because material issues of fact existed regarding whether the bank proved a prior servicer had mailed a default notice to the borrower as a condition precedent to suit.

We agree with the borrower's argument and reverse. Our decision in [Ghani v. Deutsche Bank National Trust Co., 287 So. 3d 637 \(Fla. 4th DCA 2020\)](#), is directly on point. Like the bank in *Ghani*, here the bank's only evidence that the prior servicer had mailed the default notice was an affidavit executed by its successor servicer's employee, whose affidavit [\*2] did not at least facially demonstrate that the employee had sufficient personal knowledge of the prior servicer's practices of mailing default notices to establish that the prior servicer had mailed the default notice. Thus, factual questions remain regarding the bank's compliance with the condition precedent of having mailed a default notice.

Accordingly, we reverse the circuit court's final summary judgment, and remand for further proceedings.

*Reversed and remanded for further proceedings.*

GROSS, GERBER and KLINGENSMITH, JJ., concur.