Wells Fargo Bank, N.A. v. Dias

Court of Appeal of Florida, Second District

June 16, 2021, Decided

No. 2D19-3256

Reporter
2021 Fla. App. LEXIS 8826 *; 46 Fla. L. Weekly D 1405

WELLS FARGO BANK, N.A., as trustee for Carrington Mortgage Loan Trust, Series 2006 FRE1 Asset-Backed Pass-Through Certificates, Appellant, v. BRUCE DIAS, MARY LYNNE DIAS, ALVIN RUTLEDGE, and HARBOR TOWERS OWNERS ASSOCIATION, INC., Appellees.

Prior History: [*1] Appeal from the Circuit Court for Sarasota County; Maria Ruhl, Judge.

Wells Fargo Bank v. Dias, 2021 Fla. App. LEXIS 2075, 2021 WL 631532 (Fla. Dist. Ct. App. 2d Dist., Feb. 12, 2021)

Core Terms

mortgage, foreclosure, final judgment, signature, forgery, trial court, foreclose, foreclosure action, summary judgment, purchaser, superior interest, divorced, one-half, parties, rights, affirmative defense, subject property

Case Summary

Overview
HOLDINGS: [1]-Because the trial court on remand in a foreclosure action, misinformed by counsel for a third-party purchaser, misinterpreted the court's prior opinion as a reversal in part, it effectively allowed the purchaser to benefit from one borrower's forgery defense, in spite of his lack of standing; [2]-The purchaser was estopped from proceeding on the affirmative defense of forgery, as an owner who acquired title to the property after a facially valid mortgage on that property had been recorded was estopped from disputing the validity of that mortgage, the borrower did not appear to maintain her initial defense that she did not sign the mortgage, and the lender produced a mortgage that appeared valid on its face and otherwise met its burden to prove the elements of its foreclosure claim and its standing.

Outcome
Reversed and remanded with instructions.

LexisNexis® Headnotes

Civil Procedure > Trials > Bench Trials

Civil Procedure > Appeals > Standards of Review > De Novo Review

HN1[] **Trials, Bench Trials**

Where a trial court's conclusions following a non-jury trial are based upon legal error, the standard of review is de novo.

Real Property Law > Financing > Mortgages & Other Security Instruments > Definitions & Interpretation

HN2[] **Mortgages & Other Security**

Instruments, Definitions & Interpretation

An owner who acquired title to the property after a facially valid mortgage on that property has been recorded is estopped from disputing the validity of that mortgage. And a subsequent purchaser who is not a party to the mortgage contract generally cannot assert rights under the contract that belong to the parties.

Commercial Law (UCC) > Negotiable Instruments (Article 3) > Indorsements, Negotiations & Transfers > Indorsements

Commercial Law (UCC) > ... > Definitions & General Provisions > Definitions > Negotiable & Nonnegotiable Instruments

Commercial Law (UCC) > Negotiable Instruments (Article 3) > Enforcement > Proof of Signature

HN3[] **Indorsements, Negotiations & Transfers, Indorsements**

There is a presumption that a signature on a negotiable instrument is authentic under *§ 673.3081, Fla. Stat.* (2013).

Real Property Law > Financing > Mortgages & Other Security Instruments > Mortgagor's Interests

HN4[] **Mortgages & Other Security Instruments, Mortgagor's Interests**

When faced with a mortgage that is regular on its face, a bank or other lender has no obligation to question the legitimacy of that document.

Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review

Evidence > Burdens of Proof > Allocation

HN5[] **Appellate Jurisdiction, State Court Review**

The primary function of the appellate court is to correct errors committed by the lower tribunal, not to serve as a conduit for unnecessarily protracted, piecemeal litigation. Florida case law favors finality, and basic principles of equity and fairness dictate that a party who has presented insufficient evidence at trial or who fails to meet its burden of proof should not receive the benefit of retrying their case or litigating their case in piecemeal fashion.

Counsel: Morgan L. Weinstein of Van Ness Law Firm, PLC, Deerfield Beach, for Appellant.

John C. Dent, Jr., and Jennifer A. McClain of Dent & McClain, Chartered, Sarasota, for Appellee, Calvin Rutledge.

No appearance for Appellees, Bruce Dias, Mary Lynne Dias, and Harbor Towers Owners Association, Inc.

Judges: SMITH, Judge. KHOUZAM, C.J., and VILLANTI, J., Concur.

Opinion by: SMITH

Opinion

SMITH, Judge.

In this final chapter of the trilogy to foreclose property mortgaged by Bruce and Mary Dias, as husband and wife, Wells Fargo Bank, N.A., appeals the final judgment entered in favor of third-party purchaser Calvin Rutledge following a bench trial on remand from this court in *Wells Fargo Bank, N.A. v. Rutledge, 230 So. 3d 550, 550 (Fla. 2d DCA 2017)* (*Wells Fargo II*), and before that in *Wells Fargo Bank, N.A. v. Rutledge, 148 So. 3d 533, 535 (Fla. 2d DCA 2014)* (*Wells Fargo I*). We reverse and remand with instructions for the trial court to enter final judgment of foreclosure in favor of Wells Fargo and against the Diases and Mr. Rutledge.

After two trials and two appeals stretching over the last decade, we recognize that the complicated history of this case no doubt contributed to the confusion below, and so we will do our best to not add further confusion. Wells Fargo commenced this action in 2010 when it filed **[*2]** its lis pendens and sought to foreclose property subject to the original note and mortgage and the subsequent riders and associated loan documents executed by the Diases. A default judgment was entered against Mr. Dias. Mrs. Dias, appearing pro se, filed an answer and affirmative defenses, one of which was that the signature on the mortgage documents did not appear to be her handwriting. Harbor Towers Owners Association, Inc. (the HOA), also filed an answer to Wells Fargo's foreclosure suit. Other than the filing of the answer and affirmative defenses by Mrs. Dias, neither of the Diases otherwise appeared or participated in any of the foreclosure proceedings below.

During the pendency of Wells Fargo's foreclosure action, the HOA brought its own foreclosure suit in county court seeking to foreclose its lien for unpaid dues and assessments against the same property owned by the Diases and subject to the Wells Fargo foreclosure suit. The HOA named Wells Fargo as a party defendant in its county court foreclosure action and ultimately defaulted Wells Fargo and obtained a final summary judgment against the bank. The property was sold at a public sale with Mr. Rutledge the successful bidder. **[*3]**

In 2011, Mr. Rutledge, as the third-party purchaser, joined Wells Fargo's foreclosure action as a party defendant. He moved for summary judgment based upon theories of laches and equitable estoppel, arguing that regardless of Wells Fargo's superior interest, Wells Fargo had slept on its rights and was thus barred from asserting its superior interest against the property. The circuit court agreed and granted Mr. Rutledge's motion for summary judgment but did not enter a final order.

Meanwhile, in the HOA foreclosure case, Wells Fargo moved to vacate the HOA's final judgment pursuant to *Florida Rule of Civil Procedure 1.540(b)(4)*. The county court recognized that the HOA, as a junior lienholder, could not foreclose on a superior interest and vacated the final judgment against Wells Fargo. Mr. Rutledge appealed and the circuit court, sitting in its appellate capacity, affirmed the order vacating the HOA's final judgment against Wells Fargo.

Having lost his appeal in the HOA action, Mr. Rutledge then filed a motion for final judgment against Wells Fargo in Wells Fargo's foreclosure action, raising Mrs. Dias's affirmative defense of forgery. He filed the affidavit of a forensic handwriting expert who, after comparing Mrs. Dias's signature **[*4]** on the mortgage Wells Fargo was seeking to foreclose with signatures found on an unrelated mortgage and her answer filed in Wells Fargo's foreclosure action, concluded that Mrs. Dias's signature on the mortgage in this case was a forgery. The circuit court granted Mr. Rutledge's motion for final judgment, relying on the summary judgment previously granted in Mr. Rutledge's favor and also finding that because Wells Fargo failed to provide any evidence to refute the affidavit establishing a forgery filed by Mr. Rutledge, summary judgment was appropriate on that ground too. *Wells Fargo I* followed.

In *Wells Fargo I*, we reversed the order granting Mr. Rutledge's first motion for summary judgment, which was granted on the theories of laches and equitable estoppel, largely for the same reason that the county court vacated the final judgment in the HOA lien foreclosure action—the HOA could not foreclose Wells Fargo's superior interest on the subject property. *See Wells Fargo I, 148 So. 3d at 534-35*. We also reversed the second final summary judgment with regard to the forgery defense, concluding there remained material issues of fact that prevented summary judgment. *Id. at 535*. We specifically explained:

> In Wells Fargo's complaint, it **[*5]** alleged Bruce and Mary Dias executed a note and mortgage on the subject property and that they defaulted on the note and mortgage. Wells Fargo attached a copy of the note and

> mortgage, which contained the notarized signatures of Bruce and Mary Dias. There is a presumption that Mary Dias's signature is authentic under section 673.3081, Florida Statutes (2013). In [Mr.] Rutledge's motion for final judgment, he alleged that Mary Dias's signatures were forged and he filed the forensic document examiner's affidavit in support. [Mr.] Rutledge did not file any affidavits or other evidence establishing that Mary Dias's signatures on the unrelated mortgage or on her answer to Wells Fargo's complaint were genuine, nor did he request a stipulation from Wells Fargo. *See* § 92.38, Fla. Stat. (2013) (permitting a witness to compare "a disputed writing with any writing *proved to the satisfaction of the judge to be genuine*" (emphasis added)). Thus, there remains a material issue of fact as to the authenticity of Mary Dias's signature.

Id.

On remand after *Wells Fargo I*, a bench trial was held. Neither of the Diases appeared or participated in the trial. Mr. Rutledge offered into evidence Mrs. Dias's deposition[1] for the purpose of establishing the forgery, **[*6]** as well as preventing Wells Fargo from foreclosing on Mr. Dias's interest in the subject property. While Wells Fargo objected to Mr. Rutledge's ability to assert the forgery defense raised by Mrs. Dias, that objection was overruled and the trial court ultimately found that Mr. Rutledge presented "unrefuted evidence" of the forgery, precluding Wells Fargo from foreclosing on Mrs. Dias's interest. However, the trial court also found that Wells Fargo prevailed in foreclosing on Mr. Dias's interest because Mrs. Dias testified that she had divorced Mr. Dias. Wells Fargo then purchased Mr. Dias's one-half interest at a subsequent foreclosure sale. Both Wells Fargo and Mr. Rutledge appealed the final judgment in *Wells Fargo II*.

In *Wells Fargo II*, we reversed the final judgment below on two grounds. First, we held that Mr. Rutledge could not step into Mrs. Dias's shoes and argue her forgery defense where

> [Mr.] Rutledge purchased the property subject to Wells Fargo's superior interest, and his subordinate interest stemming from his possession of the property is limited. He cannot participate in Wells Fargo's foreclosure action as if he were a party to the note and mortgage; thus, he cannot **[*7]** challenge the mortgage's validity, as he attempted to do in this case.

Wells Fargo II, 230 So. 3d at 552 (citations omitted). We recognized this error was likely due to the trial court's "misimpression that this issue had been resolved in [Mr.] Rutledge's favor in the previous appeal and that, therefore, it could not be addressed on remand." *Id.. at 551*. Second, with regard to Mr. Rutledge's cross-appeal, we held it was error to enter final judgment against Mr. Dias without any evidence to support the trial court's findings that the note and mortgage continued to be valid and enforceable as to his one-half interest. *Id.. at 553*. In particular, we noted

> there was no evidence (such as a final judgment of dissolution) or testimony presented to establish when the couple was divorced or whether the property had been awarded in a judgment of dissolution. [Mary] Dias only testified that she had been married to [Bruce] Dias in 2006, that they were "separated or divorced" in 2007, and that they were no longer married at the time of her deposition in 2015. While [Mary] Dias did state that she and [Bruce] Dias owned the property, she also maintained that she never signed the relevant note or mortgage—raising the question of whether [Bruce] Dias had **[*8]** the authority to enter into the note or mortgage without her in the first place. *See* Sharp v. Hamilton, 520 So. 2d 9, 10 (Fla. 1988) ("Entireties property is not

[1] Mrs. Dias's deposition was taken during the middle of the bench trial, during which she testified that the Wells Fargo mortgage did not contain her signature and that she was divorced from Mr. Dias. *See* *Wells Fargo II, 230 So. 3d at 551*.

> subject to a lien against only one tenant"). Without any evidence to support the [trial] court's findings that the note and mortgage continued to be valid and enforceable as to a one-half interest retained by [Bruce] Dias, it was error to enter final judgment of foreclosure on that interest.

Id.. at 552-53.

On remand from *Wells Fargo II*, the record clearly reflects that the parties never disputed that Mr. Rutledge, as a third-party purchaser, did not have the same rights as Mrs. Dias, an original signor of the mortgage. However, our holding in *Wells Fargo II* still posed a conundrum below because—despite our clear reversal on both issues appealed by the parties—Mr. Rutledge's counsel continued to argue below, without any support, that the trial court had previously made a finding that Mrs. Dias's signature on the loan documents had been forged and the only remaining issue to be tried was Wells Fargo's ability to foreclose Mr. Dias's interest.[2] Relying on the absence of any prior determination of a forgery in the record, Wells Fargo argued a new trial was required based upon *Wells Fargo* ***[*9]*** *II*. The trial court delayed the trial for the parties to submit legal memoranda supporting their arguments. When the trial court reconvened, it announced that, based on its reading of *Wells Fargo II*, the trial was limited to Wells Fargo's foreclosure of Mr. Dias's one-half interest because the forgery was not an issue for remand and not "anything [they] had to consider anyway." Indeed, the trial court ultimately found:

> THIS CAUSE came before the [c]ourt for trial on July 26, 2019, on remand . . . The [c]ourt, having carefully reviewed the case file, heard evidence and argument of counsel, and being otherwise advised of the premises, finds that [Wells Fargo] has not presented any evidence that the note and mortgage are valid and enforceable as to the one-half interest retained by [Mr.] Dias. [citing *Wells Fargo II, 230 So.3d at 552*.] The [c]ourt may not, therefore, enter a final judgment of foreclosure for [Wells Fargo].

Even though the trial court limited the trial, Wells Fargo proceeded and put on its case anew as if there was no forgery finding. Wells Fargo continued to argue throughout the trial that because Mr. Rutledge could not pursue Mrs. Dias's forgery defense, Wells Fargo was proceeding **[*10]** against both of the Diases and therefore did not need to prove dissolution of their marriage. In other words, Wells Fargo argued that it would be limited to proceeding against Mr. Dias's one-half interest only if the forgery finding existed. Confident in his interpretation of *Wells Fargo II*, Mr. Rutledge put on no additional evidence.

On appeal, Wells Fargo argues that the trial court should have conducted an entirely new trial consistent with our decision in *Wells Fargo II*, and we agree. ***HN1***[⬆] "[W]here a trial court's conclusions following a non-jury trial are based upon legal error, the standard of review is *de novo*." *Jasser v. Saadeh, 91 So. 3d 883, 884 (Fla. 4th DCA 2012)* (quoting *Acoustic Innovations, Inc. v. Schafer, 976 So. 2d 1139, 1143 (Fla. 4th DCA 2008)*). In *Wells Fargo II*, we held Mr. Rutledge "cannot participate in Wells Fargo's foreclosure action as if he were a party to the note and mortgage; thus, he cannot challenge the mortgage's validity, as he attempted to do in this case." *Wells Fargo II, 230 So. 3d at 552*; *see also Whitburn, LLC v. Wells Fargo Bank, N.A., 190 So. 3d 1087, 1091-92 (Fla. 2d DCA 2015)* ("Whitburn's interest in this foreclosure proceeding is not a legally cognizable interest because even though it now holds legal title to the property, it purchased the property subject to Wells Fargo's foreclosure proceeding and superior interest in the property. Accordingly, Whitburn does not have standing to object to **[*11]** the sale or intervene in Wells Fargo's foreclosure proceeding."); *PMT NPL Fin.*

[2] We note that Mr. Rutledge's appellate counsel did not appear as trial counsel below. However, his trial counsel was the same in both *Wells Fargo I* and *Wells Fargo II* and obviously should have known that the trial court had made no final forgery determination.

2015-1 v. Centurion Sys., LLC, 257 So. 3d 516, 519 (Fla. 5th DCA 2018) (discussing that mortgage lender is not required to prove signature on mortgage was valid absent any evidence that the signature was forged or unauthorized).

Here, misinformed by Mr. Rutledge's counsel, the trial court misinterpreted our opinion in *Wells Fargo II* as a reversal *in part* of the final judgment from the prior trial and, as a result, effectively allowed Mr. Rutledge to benefit from Mrs. Dias's forgery defense, in spite of his lack of standing and our clear holding otherwise in *Wells Fargo II*. This was error. *See, e.g., Green Emerald Homes, LLC v. 21st Mortg. Corp., 300 So. 3d 698, 705-06 (Fla. 2d DCA 2019)* (acknowledging that subsequent purchasers are barred from raising the following two defenses in a foreclosure suit: (1) "an owner who acquired title to the property after a facially valid mortgage on that property has been recorded is estopped from disputing the validity of that mortgage" and (2) "a subsequent purchaser who is not a party to the mortgage contract generally cannot assert rights under the contract that belong to the parties"). Without the ability to argue the forgery, Mr. Rutledge had no defense to the foreclosure action and, in fact, offered no additional evidence in opposition **[*12]** at the second trial below.

Notwithstanding the obstacle created by the trial court's misinterpretation of our decision in *Wells Fargo II*, Wells Fargo presented its entire case—proceeding against both Mr. and Mrs. Dias. With the benefit of this record preserved by Wells Fargo, we must determine whether Wells Fargo is entitled to foreclose the subject property against both of the Diases. *See U.S. Bank N.A. v. Engle, 45 Fla. L. Weekly D1946, 311 So. 3d 197 (Fla. 2d DCA Aug. 14, 2020)* (concluding involuntary dismissal of lender's foreclosure claim was erroneous where lender proved prima facie case of reformation of mortgage and there was competent substantial evidence supporting foreclosure).

Furthermore, Mr. Rutledge is estopped from proceeding on an affirmative defense based on the theory of forgery of Mrs. Dias's signature on the mortgage in this case.[3] *See Green Emerald Homes, 300 So. 3d at 705-06* (***HN2***[⬆] ***HN3***[⬆] "[A]n owner who acquired title to the property after a facially valid mortgage on that property has been recorded is estopped from disputing the validity of that mortgage. . . . [And] a subsequent purchaser who is not a party to the mortgage contract generally cannot assert rights under the contract that belong to the parties."). Regarding the note, "[t]here is a presumption that [Mrs.] Dias's signature is authentic under **[*13]** *section 673.3081, Florida Statutes* (2013)." *See Wells Fargo I, 148 So. 3d at 535*. Mrs. Dias could have challenged the authenticity of her signature on the note or the mortgage securing it, but she did not dispute the validity of her signature on the note, nor did she allege that the bank itself participated in forging her signature on the mortgage or balloon rider. Mrs. Dias did not ultimately appear or otherwise participate in the trial below to maintain her initial defense that she did not sign the mortgage, and Wells Fargo produced a mortgage that appeared valid on its face and otherwise met its burden to prove the elements of its foreclosure claim and its standing. *See § 702.015, Fla. Stat.* (2010) (setting forth the elements of a complaint of a mortgage foreclosure action); *Ernest v. Carter,*

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[3] We need not rehash whether the term "standing" should be broadly applied to every situation that might limit the nature of a named party defending against a foreclosure action. *See* ***Green Emerald Homes, 300 So. 3d at 703-09*** (discussing the various ways the term "standing" has been used loosely in this context). At the time that Wells Fargo filed its foreclosure action, it named the HOA as a party to the action based on its status as junior lienholder. Mr. Rutledge moved to be substituted for the HOA as a party following his purchase after the foreclosure sale on the HOA lien. Technically, he did not take title until after Wells Fargo filed the foreclosure action and is therefore most properly categorized as a purchaser pendente lite. For reasons that do not require further consideration here, however, he was added as a party, rather than substituted for the HOA or as an intervenor; nevertheless, his party status has at all times been that of a subsequent purchaser by way of a junior lienholder's foreclosure and as current owner of the property—as related to the defense of the in rem portion of this foreclosure action—rather than as a party with rights to enforce or defend against the mortgage contract itself. *See id.*

368 So. 2d 428, 429 (Fla. 2d DCA 1979).

HN4[] "When faced with a mortgage that is regular on its face—such as the mortgage here—a bank or other lender has no obligation to question the legitimacy of that document." JAK Cap., LLC v. Adams, 306 So. 3d 1285, 1289 (Fla. 2d DCA 2020); *see also* Jamnadas v. Singh, 731 So. 2d 69, 70-71 (Fla. 5th DCA 1999) (recognizing under a different posture that even in the face of a void mortgage, an equitable lien subject to a factual determination of priority would exist). We can therefore assume that Mr. Rutledge's party status as a current owner conferred all the rights of due process, including requiring Wells Fargo **[*14]** to prove the elements of its foreclosure claim as the property owner in this quasi-in-rem action, and still recognize that his status does not also confer to him the ability to "assert any right that inured only to [the mortgagor's] benefit under the mortgage contract" to which Mr. Rutledge was not a party and of which he had notice at the time he purchased the property at the foreclosure sale. *See Green Emerald Homes, 300 So. 3d at 707*.

We also reject Mr. Rutledge's argument that Wells Fargo was required to prove the Diases' marriage dissolution in order to prevail against the Diases on its foreclosure claim.

> All real property held by the parties as tenants by the entireties, whether acquired prior to or during the marriage, shall be presumed to be a marital asset. If, in any case, a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim that the subject property, or some portion thereof, is nonmarital.

§ 61.075(6)(a)(2), Fla. Stat. (2010). Even if Mr. Rutledge had established the Diases' divorce at trial, this evidence alone would have no legal significance on the viability of the mortgage between Wells Fargo and the Diases. *See, e.g.,* Carteret Sav. Bank, F.A. v. Weiner, 601 So. 2d 1310, 1312 (Fla. 4th DCA 1992) (holding that former husband and wife were jointly and severally liable **[*15]** under the terms of the note and mortgage, regardless of former wife's postdissolution conveyance of her interest to the former husband, of which the bank was never notified). The issue of the Diases' divorce was a red herring and should never have been a consideration for the trial court below, especially when the only evidence of that divorce—from the deposition of Mrs. Dias—was not entered into evidence at trial. In the absence of these impediments, Wells Fargo was permitted to proceed in foreclosing against both the Diases and the record establishes competent, substantial evidence supporting the foreclosure.

HN5[] "The primary function of this court is to correct errors committed by the lower tribunal, not to serve as a conduit for unnecessarily protracted, piecemeal litigation." Tracey v. Wells Fargo Bank, N.A. as Tr. for Certificateholders of Banc of Am. Mortg. Sec., Inc., 264 So. 3d 1152, 1162 (Fla. 2d DCA 2019) (citation omitted) (quoting Morton's of Chicago, Inc. v. Lira, 48 So. 3d 76, 79-80 (Fla. 1st DCA 2010)). Our case law favors finality, and basic principles of equity and fairness dictate that a party who has presented insufficient evidence at trial or who fails to meet its burden of proof should not receive the benefit of retrying their case or litigating their case in piecemeal fashion. *Id.;* Mace v. M&T Bank, 292 So. 3d 1215, 1223-24 (Fla. 2d DCA 2020). And so it follows that because Mr. Rutledge is estopped from proceeding on an affirmative **[*16]** defense of forgery, his case must too end here.

The parties here have litigated this case long enough. Based upon the record evidence before us, Wells Fargo met its burden in proving its entitlement to the foreclosure against both the Diases. There is no dispute that Wells Fargo's rights are superior to those of Mr. Rutledge, a third-party purchaser. *See* Wells Fargo I, 148 So. 3d at 534-35. Because the record before us establishes competent, substantial evidence supporting foreclosure of the property against the Diases, Wells Fargo is entitled to an end to this decade-long litigation and to a final judgment of foreclosure.

Accordingly, we reverse and remand with instructions for the trial court to enter final judgment in favor of Wells Fargo and against Mr. and Mrs. Dias and Mr. Rutledge; such judgment to be without prejudice to assert any statutory right of redemption should the property proceed to a foreclosure sale. *See* *§ 45.0315, Fla. Stat.* (2010); *Pealer v. Wilmington Tr. Nat'l Ass'n for MFRA Tr., 212 So. 3d 1137, 1138-39 (Fla. 2d DCA 2017)* (Sleet, J., concurring).

Reversed and remanded with instructions.

KHOUZAM, C.J., and VILLANTI, J., Concur.
