

283 So.3d 1282

District Court of Appeal of Florida, Second District.

G. Scott RICHARD, Appellant,

v.

ASSET MANAGEMENT

WEST 15, LLC, Appellee.

Case No. 2D18-4599

Opinion filed December 4, 2019

Synopsis

Background: Mortgagee brought foreclosure action against mortgagor. The Circuit Court, 13th Judicial Circuit, Hillsborough County, [Gregory P. Holder, J.](#), granted mortgagee's motion for summary judgment, and mortgagor appealed.

The District Court of Appeal, [Northcutt, J.](#), held that evidence was insufficient to support mortgagor's alleged amount of indebtedness.

Reversed in part and remanded.

Appeal from the Circuit Court for Hillsborough County; [Gregory P. Holder](#), Judge.

Attorneys and Law Firms

[Ryan C. Torrens](#) of Torrens Law Group, P.A., Tampa, for Appellant.

[Alex L. Braunstein](#) of LeClair Ryan PLLC, West Palm Beach, for Appellee.

Opinion

[NORTHCUTT](#), Judge.

G. Scott Richard challenges a final summary judgment of foreclosure in favor of Asset Management West 15. Richard raises several appellate issues, but we find merit only in his assertion that there was insufficient evidentiary support for the amount awarded in the judgment. We agree with him on this point and remand for further proceedings.

The judgment amount was based on figures set forth in the affidavit of Kenan Thayer, a manager for Asset Management. However, Thayer did not attach any business records to his affidavit, and there is nothing in the court record to support the amounts claimed in the affidavit. Richard filed a response to Asset Management's motion for summary judgment in which he contested the amounts claimed to be due and owing in Thayer's affidavit, including the principal, the accrued unpaid interest, and the late charges. At the hearing on the motion for summary judgment, Richard argued that Thayer's affidavit, without *1283 business records attached, was insufficient evidence of the amount owed. He also argued that the affidavit would have been hearsay even if the business records had been attached because the previous servicer's records were not verified by way of a sworn affidavit.

In another mortgage foreclosure case, [Wolkoff v. American Home Mortgage Servicing, Inc.](#), 153 So. 3d 280, 281 (Fla. 2d DCA 2014), this court held that there was insufficient evidence to support the indebtedness amount found. At the bench trial in that case, the representative for American Home Mortgage “merely confirmed that the totals given to him on a proposed final judgment ‘seemed accurate.’” [Id.](#) No business records were submitted into evidence. [Id.](#) This court stated:

It is axiomatic that the party seeking foreclosure must present sufficient evidence to prove the amount owed on the note. Typically[,] a foreclosure plaintiff proves the amount of indebtedness through the testimony of a competent witness who can authenticate the mortgagee's business records and confirm that they accurately reflect the amount owed on the mortgage. Thereafter, the business records are admitted into evidence.

[Id.](#) at 281. Here, no business records were attached to Thayer's affidavit, and there was no authentication of any business records. Thayer's affidavit, standing alone, could not establish the amount of Richard's indebtedness, and it was an insufficient basis for the summary judgment.

Reversed and remanded for further proceedings.

[LaROSE](#) and [SMITH, JJ.](#), Concur.

All Citations

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