

320 So.3d 226

District Court of Appeal of Florida, Second District.

Kimberly ADAMSON, as personal
representative of the Estate of Julius
J. Adamson, deceased, Appellant,

v.

MAIN STREET OAKS, LLC, Appellee.

Case No. 2D19-3805

Opinion filed April 9, 2021.

Synopsis

Background: Personal representative of deceased mortgagor's estate sought review of the Circuit Court, 10th Judicial Circuit, Polk County, [Steven L. Selph, J.](#), amended final judgment entered in commercial foreclosure case in favor of mortgagee.

The District Court of Appeal, [Casanueva, J.](#), held that the total amount of indebtedness deceased mortgagor's estate owed mortgagee was not supported by competent, substantial evidence.

Reversed and remanded with instructions.

Appeal from the Circuit Court for Polk County; [Steven L. Selph, Judge.](#)

Attorneys and Law Firms

[George Franjola](#) of Law Office of George Franjola, Ocala, for Appellant.

No appearance for Appellee.

Opinion

[CASANUEVA, Judge.](#)

Kimberly Adamson, as personal representative of the Estate of Julius J. Adamson, seeks review of an amended final judgment entered in a commercial foreclosure case in favor of Main Street Oaks, *227 LLC.¹ Ms. Adamson argues that the

amount of damages is not supported by competent, substantial evidence. We agree and reverse.²

The property, on which sits a mobile home park, was mortgaged in 1983. The note and mortgage have been assigned several times since then, with the last assignment to Main Street Oaks. The loan was first assigned to the Sullivans, who presented a payment history showing the amounts due and owing through the time they transferred the loan to David Auten on July 11, 2012. The principal amount due as of July 11, 2012, was \$202,269.40. Mr. Auten transferred the loan to Umpada Dey on December 22, 2012, and Mr. Dey transferred it to Main Street Oaks on April 30, 2014. Main Street Oaks' representative, Sam Houghton, testified that no payments were made while Main Street Oaks held the loan, and he testified that the principal amount due was \$202,269.40.

Main Street Oaks' attorney, Antonio Martin, testified that he assisted Main Street Oaks in the purchase of the loan and conducted due diligence, including contacting Mr. Auten and Mr. Dey regarding payments made while they held the loan. Ms. Adamson raised a hearsay objection to Mr. Martin's testimony that Mr. Auten and Mr. Dey stated they had received no payment. The trial court sustained the objection and stated it would not consider that testimony as evidence of the truth of the matter about whether payments were made. Mr. Martin testified that neither Mr. Auten nor Mr. Dey had documentation to show that no payments were made. No other evidence was offered as to payments made or not made while Mr. Auten and Mr. Dey held the loan.

"It is axiomatic that the party seeking foreclosure must present sufficient evidence to prove the amount owed on the note," [Wolkoff v. Am. Home Mortg. Servicing, Inc.](#), 153 So. 3d 280, 281 (Fla. 2d DCA 2014), and the total amount of indebtedness "must be supported by competent, substantial evidence," [Doyle v. CitiMortgage, Inc.](#), 162 So. 3d 340, 341-42 (Fla. 2d DCA 2015) (quoting [Wagner v. Bank of Am., N.A.](#), 143 So. 3d 447, 448 (Fla. 2d DCA 2014)). Ms. Adamson does not dispute that the loan was in default and that no payments were made to Main Street Oaks; however, she argues that no admissible evidence was offered as to payment history during the time the loan was held by Mr. Auten and Mr. Dey. Thus, she argues that the evidence presented below was insufficient to support the claimed amount of indebtedness.

"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.” [Wolkoff](#), 153 So. 3d at 281. Here, we have the Sullivans' payment records through July 11, 2012, which were admitted without objection; we have the testimony of Main Street Oaks' attorney that he contacted Mr. Auten and Mr. Dey to obtain any records they had regarding payments, *and they had no records*; and we have the testimony of Mr. Houghton that no payments were made to Main Street Oaks, which obtained the loan on April 30, 2014.

Because there is no evidence as to whether or not payments were made during the time the loan was held by Mr. *228 Auten and Mr. Dey, we conclude that the total amount of indebtedness is not supported by competent, substantial evidence. Accordingly, we reverse the amended

final judgment and remand for the trial court to enter an order of involuntary dismissal. See [Green Emerald Homes, LLC v. 21st Mortg. Corp.](#), 300 So. 3d 698, 710 (Fla. 2d DCA 2019) (reversing and remanding for entry of an involuntary dismissal where plaintiff “failed to present legally sufficient evidence of the amount due”); [Tracey v. Wells Fargo Bank, N.A.](#), 264 So. 3d 1152, 1168-69 (Fla. 2d DCA 2019).

Reversed and remanded with instructions.

[LaROSE](#) and [ROTHSTEIN-YOUAKIM, JJ.](#), Concur.

All Citations

320 So.3d 226, 46 Fla. L. Weekly D806

Footnotes

- 1 Main Street Oaks has not filed a brief in this appeal.
- 2 We have considered Ms. Adamson's remaining arguments and find them to be without merit.