MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE:

FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE), ASSIGNEE OF LASALLE BANK NATIONAL ASSOCIATION AND TRANS LENDING CORPORATION,

Respondent

v.

BARBARA J. BOSTWICK, ET AL.

Appellants

DOCKET NUMBER WD75768

DATE: September 10, 2013

Appeal From:

Circuit Court of Buchanan County, MO
The Honorable Weldon Clare Judah, Judge

Appellate Judges:

Division Two
Thomas H. Newton, P.J., Mark D. Pfeiffer, and Karen King Mitchell, JJ.

Attorneys:

Paul Hasty, Jr., Overland Park, KS — Counsel for Appellants

Attorneys:

Ryan Westhoff, Kansas City, MO — Counsel for Respondent
Robert Pitkin, Kansas City, MO — Co-Counsel for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE), ASSIGNEE OF LASALLE BANK NATIONAL ASSOCIATION AND TRANS LENDING CORPORATION, Respondent, v. BARBARA J. BOSTWICK, ET AL., Appellants

WD75768 **Buchanan County**

Before Division Two Judges: Newton, P.J., Pfeiffer, and Mitchell, JJ.

Fannie Mae sued Bostwick and A&B (collectively A&B) for breach of contract and judicial foreclosure. A&B had obtained a loan of $322,080 from Trans Lending, which was secured by a note, Bostwick's personal guaranty, and a mortgage. Fannie Mae contended that Trans Lending assigned the loan to LaSalle, that LaSalle assigned the loan to Fannie Mae, and that A&B was in default. After a bench trial, the trial court found in Fannie Mae's favor, awarding Fannie Mae $435,178.43 and ordering the mortgage foreclosed. A&B appeals.

REVERSED AND REMANDED.

Division Two Holds:

A&B raises five points. For ease of discussion, we discuss the points out of order. In its second point, A&B argues that Fannie Mae failed to show the note was assigned to it, and therefore could not show it lawfully possessed the note or was entitled to enforce it. In order to recover an amount owed to some other party, the plaintiff is required to prove the assignment of the account to show that is the rightful owner of the debt. At trial, documents were admitted without objection that showed a valid chain of assignment and that Fannie Mae was the last assignee of the note. Consequently, Fannie Mae showed that it was entitled to enforce the Note under section 400.3-301. In Missouri, unless the mortgage has been in some way separately extinguished, the transfer of the note carries the mortgage with it. A personal guaranty also follows the assignment of the note. Thus, because Fannie Mae demonstrated it was the valid assignee of the Note, by operation of law, Fannie Mae also proved that it was the assignee of the mortgage and the guaranty. Point two is denied, and point one is thereby rendered moot.

In its third and fourth points, A&B contends that Fannie Mae did not present any admissible evidence that A&B was in default or of the amount allegedly due on the loan, and that therefore the trial court's award was in error. To recover on a promissory note, the plaintiff must (1) produce the note (2) signed by the maker and (3) show the balance due. Here, Fannie Mae did not properly evidence a default or the balance due, which was a part of its prima facie case. To prove the amount due, Fannie Mae merely offered a draft letter to A&B, which did not properly qualify for the business records exception to the rule against hearsay. Thus, the trial

court erred in its award to Fannie Mae because Fannie Mae failed to show entitlement to recovery or an amount due. Points three and four are granted. Consequently, point five challenging the award is rendered moot.

The judgment is reversed and the case is remanded for further proceedings.

Opinion by Thomas H. Newton, Presiding Judge September 10, 2013

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