

IN THE DISTRICT COURT of APPEAL
OF THE 5th DISTRICT

WILMINGTON SAVINGS FUND SOCIETY,
FSB d/b/a CHRISTIANA TRUST, not in its
individual capacity, but solely as TRUSTEE for
BCAT 2015-16TT
Appellant

v.

DANIELLE S TACORONTE
JESSE E TACORONTE
& al.
Appellees

case # **5D19-1326**
Osceola # **2017-CA-1757-MF**

APPELLEES DANIELLE & JESUS TACORONTE
NOTICE to INVOKE DISCRETIONARY JURISDICTION

Notice is given that **Jesse and Danielle Tacoronte**, defendants in trial court and appellees in this court, invoke the discretionary jurisdiction of the Supreme Court to review the decision of this court entered on 03-Apr-2020 and rendered on 23-Apr-2020. The order is within the Supreme Court jurisdiction pursuant to Fla.R.App.P. 9.030(a)(2)(A)(iv) because it expressly and directly conflicts with a decision of the Supreme Court on the same question of law.

Copies of these papers are attached:

- A 03-Apr-2020 opinion to be reviewed
- B 23-Apr-2020 order denying rehearing

Respectfully submitted,



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RECEIVED, 05/07/2020 02:59:32 PM, Clerk, Supreme Court
RECEIVED, 05/07/2020 02:18:29 PM, Clerk, Fifth District Court of Appeal

Certificate of Service

I certify that a copy hereof has been furnished to all parties listed below by the method indicated for each party.

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Done this 7 day of May, 2020.



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[TN (Times-New-Roman) 14-17-1]



app.



opinion

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
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FILE MOTION FOR REHEARING AND
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WILMINGTON SAVINGS FUND
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TACORONTE, GB HOME EQUITY, LLC,
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.,
MARC B. COHEN AND GREENSPOON
MARDER, P.A.,

Appellees.

_____ /

Opinion filed April 3, 2020

Appeal from the Circuit Court
for Osceola County,
Mike Murphy, Judge.

Nancy M. Wallace, of Akerman LLP,
Tallahassee, William P. Heller, of Akerman
LLP, Fort Lauderdale, and Eric M. Levine,
of Akerman LLP, West Palm Beach, for
Appellant.

Tanner Andrews, of Tanner Andrews, P.A.,
Deland, for Appellees Danielle S. Tacoronte
a/k/a Danielle Tacoronte and Jesse E.
Tacoronte.

No Appearance for other Appellees.

PER CURIAM.

Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, as Trustee for BCAT 2015-16TT (“Wilmington”) appeals the order dismissing with prejudice, Wilmington’s second amended foreclosure complaint. Wilmington argues that the trial court erred by interpreting Florida Rule of Civil Procedure 1.115(e) to preclude its servicer from verifying its complaint. We agree and reverse.

Background

On June 30, 2017, Wilmington filed a complaint to foreclose on a residential property against Danielle and Jesse Tacoronte (“the Tacorontes”). The trial court dismissed the initial complaint with leave to amend because it determined that verification by Wilmington’s servicer, New Penn Financial, LLC, d/b/a Shellpoint Mortgage Servicing (“Shellpoint”) did not comply with rule 1.115(e), which requires the claimant, Wilmington, to verify the complaint. Wilmington’s amended complaint was again verified by an agent of Shellpoint, and Wilmington attached to the complaint a limited power of attorney which purported to grant Shellpoint the authority to verify the complaint. The trial court dismissed the amended complaint with leave to amend, based upon finding that the limited power of attorney was insufficient to establish Shellpoint’s authority. More specifically, the court found that Shellpoint’s authority to verify the complaint was limited by a servicing agreement which was not attached to the complaint.

Wilmington then filed a second amended complaint to which it attached a power

of attorney that expressly authorized Shellpoint to verify its complaints. The trial court dismissed the second amended complaint with prejudice after it determined that rule 1.115(e) required verification by the claimant, Wilmington, and it did not permit verification by the claimant's agent. Wilmington timely filed this appeal.

Analysis

Our review of the issue presented in this appeal is de novo. *Scovell v. Delco Oil Co.*, 798 So. 2d 844, 846 (Fla. 5th DCA 2001) (“On appeal of a judgment granting a motion to dismiss, the standard of review is de novo.”). Resolution of the issue requires some historical context.

In 2010, “the Task Force on Residential Mortgage Foreclosure Cases (Task Force) was ‘established to recommend to the Supreme Court policies, procedures, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties.’” *In re Amendments to the Fla. R. Civ. P.*, 44 So. 3d 555, 555–56 (Fla. 2010). Based on the recommendations received, the Florida Supreme Court amended Florida Rule of Civil Procedure 1.110(b) to include a verification provision in foreclosure complaints. One of “[t]he primary purposes of this amendment [was] . . . to provide incentive for the plaintiff to appropriately investigate and verify its ownership of the note or right to enforce the note and ensure that the allegations in the complaint are accurate.” *Id.* at 556.

That version of rule 1.110(b) as amended read, in part, as follows: “When filing an action for foreclosure of a mortgage on residential real property the complaint shall be verified.” *Id.* at 560. After the implementation of this procedural verification rule, Florida appellate courts consistently interpreted rule 1.110(b) to allow a plaintiff's loan servicer to verify the foreclosure complaint on behalf of the plaintiff. *See Deutsche Bank Nat'l Tr.*

Co. v. Huber, 137 So. 3d 562, 564 (Fla. 4th DCA 2014) (“A plaintiff’s loan servicing agent is a proper representative to verify a mortgage foreclosure complaint.”); *Deutsche Bank Nat’l Tr. Co. v. Prevratil*, 120 So. 3d 573, 574 (Fla. 2d DCA 2013) (“[T]he trial court departed from the essential requirements of law by requiring Deutsche Bank, not its loan servicer, to verify the foreclosure complaint.”); see also *U.S. Bank Nat’l Ass’n v. Williamson*, 273 So. 3d 190, 191 (Fla. 5th DCA 2019) (a case under the ambit of rule 1.110(b) recognizing that loan servicers often verify complaints on behalf of the plaintiff); *Deutsche Bank Nat’l Tr. Co. v. Plageman*, 133 So. 3d 1199 (Fla. 2d DCA 2014) (“This court has recently concluded that rule 1.110(b) does not preclude the verification of a foreclosure complaint by an employee of the plaintiff bank’s loan servicer.”).

Three years later, the Legislature enacted section 702.015, Florida Statutes (2013), which contained additional requirements for foreclosure complaints. The express purpose of these requirements was to “expedite the foreclosure process by ensuring initial disclosure of a plaintiff’s status and the facts supporting that status, thereby ensuring the availability of documents necessary to the prosecution of the case.” § 702.015(1), Fla. Stat. (2013). The Legislature also requested the Florida Supreme Court to enact appropriate rules in response to the new legislation. Ch. 2013-137, § 9, Laws of Fla. Thereafter, the Florida Supreme Court created a new rule governing foreclosure complaints, rule 1.115, which included a new verification requirement, which stated: “When filing an action for foreclosure of a mortgage on residential real property the complaint shall be verified *by the claimant seeking to foreclose the mortgage.*” Fla. R. Civ. P. 1.115(e) (emphasis added).

To date, no appellate court has addressed whether the addition of “by the claimant seeking to foreclose the mortgage” to the verification requirement affects the ability of a

duly authorized loan servicer to verify a complaint on behalf of the entity seeking to foreclose. Our analysis begins with the “well settled” principle “that the Florida Rules of Civil Procedure are construed in accordance with the principles of statutory construction.” *Saia Motor Freight Line Inc. v. Reid*, 930 So. 2d 598, 599 (Fla. 2006) (citing *Brown v. State*, 715 So. 2d 241, 243 (Fla. 1998)).¹ “[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.” *Barco v. Sch. Bd. of Pinellas Cty.*, 975 So. 2d 1116, 1121 (Fla. 2008). Moreover, in the event a “critical” word within a rule of procedure is not defined (in this instance the word “claimant”), then “[i]t is appropriate to refer to dictionary definitions when construing [the rule].” *Id.* at 1122.

The word claimant is defined as: “1. Someone who asserts a property interest in land, chattels, or tangible things. 2. Someone who asserts a right against the government, esp. for money.” *Claimant*, Black’s Law Dictionary (11th ed. 2019); see also Claimant, Merriam–Webster’s Online Dictionary (Feb. 17, 2020) <https://www.merriam-webster.com/dictionary/claimant> (“One that asserts right or title”). Wilmington is, by definition, a “claimant,” and, therefore, the claimant seeking to foreclose the mortgage. However, nothing in the plain language of the rule attempts to abrogate applicable agency law,² under which Wilmington would be authorized to delegate its

¹ Additionally, “[t]he general guide to construction of the procedural rules is set forth in Florida Rule of Civil Procedure 1.010, which states that the rules ‘shall be construed to secure the just, speedy, and inexpensive determination of every action.’” *Barco v. Sch. Bd. of Pinellas Cty.*, 975 So. 2d 1116, 1123 (Fla. 2008) (citing *Singletary v. State*, 322 So. 2d 551, 555 (Fla. 1975) (“Procedural rules should be given a construction calculated to further justice, not to frustrate it.”)).

² “An agency relationship can arise by written consent, oral consent, or by implication from the conduct of the parties.” *Palm Garden of Healthcare Holdings, LLC, v.*

verification duties to its servicer, Shellpoint. By virtue of the delegated authority to verify the complaint, Shellpoint “steps into the shoes of” Wilmington “and acts . . . pursuant to the grant of authority vested in” Shellpoint by Wilmington. *King v. Young*, 107 So. 2d 751, 753 (Fla. 2d DCA 1958).

As a procedural rule, rule 1.115(e) cannot constrain a claimant plaintiff from delegating to its agent the authority to verify its foreclosure complaint. Interpreting the verification requirement under rule 1.115(e) to prevent such delegation of authority would improperly usurp substantive agency law through a procedural rule change of court. See *Boyd v. Becker*, 627 So. 2d 481, 484 (Fla. 1993) (“While the Florida Constitution grants [the Florida Supreme] Court exclusive rule-making authority, this power is limited to rules governing procedural matters and does not extend to substantive rights.”).

Accordingly, we reverse the order dismissing the second amended complaint with prejudice.

REVERSED and REMANDED.

WALLIS and EDWARDS, JJ., and GARAGOZLO, B.B., Associate Judge, concur.

Haydu, 209 So. 3d 636, 639 (Fla. 5th DCA 2017). Wilmington, as trustee for the BCAT 2015-16TT trust, has alleged an agency relationship with Shellpoint. The agency relationship is further confirmed by the limited power of attorney attached to the second amended complaint.

□

app. **B**

order denying

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EQUITY, LLC, MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., MARC B.
COHEN AND GREENSPOON MARDER, P.A.,

Appellees.

_____ /

DATE: April 23, 2020

BY ORDER OF THE COURT:

ORDERED that Appellees' Motion for Rehearing and Certification, filed
April 17, 2020, is denied.

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*

Sandra B. Williams



SANDRA B. WILLIAMS, CLERK

Panel: Judges Wallis, Edwards, and Garagozlo

cc:

Eric M. Levine
William P. Heller

Nancy M. Wallace

Tanner Andrews

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Opinion filed April 3, 2020

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of Akerman LLP, West Palm Beach, for
Appellant.

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No Appearance for other Appellees.

PER CURIAM.

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Accordingly, we reverse the order dismissing the second amended complaint with prejudice.

REVERSED and REMANDED.

WALLIS and EDWARDS, JJ., and GARAGOZLO, B.B., Associate Judge, concur.

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_____ /

DATE: April 23, 2020

BY ORDER OF THE COURT:

ORDERED that Appellees' Motion for Rehearing and Certification, filed
April 17, 2020, is denied.

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*

Sandra B. Williams



SANDRA B. WILLIAMS, CLERK

Panel: Judges Wallis, Edwards, and Garagozlo

cc:

Eric M. Levine
William P. Heller

Nancy M. Wallace

Tanner Andrews

5DCA CERTIFICATION

I hereby certify that the foregoing is a true and correct copy of the instrument(s) filed in this office.

Witness my hand and official seal this May 7, 2020.

Sandra B. Williams, Clerk of the Fifth District Court of Appeal.



By: /s/ Kathy Palmere

