

In The Matter Of:
HSBC Bank VS
Calvin & Jacqueline Johnson

Judge Lorraine Kelly
June 23, 2010

Kanabay Court Reporters
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1 THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
 2 IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA
 3 CIVIL DIVISION
 4
 5 CASE NO.: 09-009463-19
 6
 7 HSBC Bank,
 8 Plaintiff,
 9 vs.
 10 CALVIN and JACQUELINE
 11 JOHNSON,
 12 Defendants.
 13
 14 PROCEEDINGS: Motion to Continue Hearing.
 15 BEFORE: The Honorable Lorraine Maureen Kelly,
 16 Acting Circuit Judge.
 17 DATE: June 23, 2010
 18 PLACE: Courtroom H,
 19 Judicial Building,
 20 St. Petersburg FL.
 21 REPORTED BY: Phyllis B. Pennington, RPR, CP,
 22 Notary Public,
 23 State of Florida at large.
 24 (Pages 1 through 14)
 25
 KANABAY COURT REPORTERS
 TAMPA AIRPORT MARRIOTT HOTEL (727) 224-9500
 ST. PETERSBURG - CLEARWATER (727) 821-3320

1 _____
 2 (THE HEARING COMMENCED AS FOLLOWS:)
 3 _____
 4 THE COURT: All right. I'll go ahead
 5 and set the style of the case. Judge Lorraine
 6 Kelley, County Court Judge sitting in Circuit
 7 capacity pursuant to an administrative order
 8 signed by our Chief Judge hearing motions for
 9 summary judgment.
 10 We're here in the matter of HSBC Bank
 11 vs. Calvin Johnson, Circuit Case 09-9463-CI.
 12 May I have the lawyers announce
 13 themselves for the record?
 14 MR. WEIDNER: Good morning, your
 15 Honor. Matthew Weidner for the defendants
 16 Calvin Johnson and Jacquelyn Johnson.
 17 (Court called Plaintiff's attorney.)
 18 MS. COLLIER: This is Jenna.
 19 THE COURT: Hi. This is Judge Kelley
 20 hearing Judge William's calendar. Are you the
 21 attorney on the case?
 22 MS. COLLIER: Yes, ma'am.
 23 THE COURT: May I have your first and
 24 last name?
 25 MS. COLLIER: Sure. My name is Jenna

1 APPEARANCES: JENNA F. COLLIER, ESQ.,
 2 Smith, Hiatt & Diaz,
 3 2691 Oakland Park Blvd.,
 4 Suite 303,
 5 Fort Lauderdale, Florida 33306-1620,
 6 Counsel for Plaintiff.
 7 (Appearing by phone.)
 8
 9 MATTHEW D. WEIDNER, ESQ.,
 10 1229 Central Avenue,
 11 St. Petersburg, Florida 33705,
 12 Counsel for Defendants.
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1 Collier.
 2 THE COURT: All right. Miss Collier,
 3 I'm here with Attorney Weidner for the
 4 defendants and this matter is being reported by
 5 a court reporter.
 6 MS. COLLIER: Okay.
 7 THE COURT: Do you know of any
 8 affirmative defenses or affidavits in opposition
 9 that have been filed in this cause, Miss
 10 Collier?
 11 MS. COLLIER: Yes, we have an
 12 affidavit in opposition of our motion for
 13 summary judgment and there has been a motion to
 14 dismiss which was granted.
 15 THE COURT: All right.
 16 MS. COLLIER: We amended our
 17 complaint.
 18 THE COURT: All right. Then let me
 19 hear from Mr. Weidner.
 20 MR. WEIDNER: Thank you, your Honor.
 21 I'm Matthew Weidner for the defendants.
 22 I want to first start with noting that
 23 this is the second time in a week that a summary
 24 judgment hearing has been scheduled. I didn't
 25 receive any notice of this. The only way I

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1 found out about the hearing was my client
2 advised me.
3 Now, in defense of counsel I will
4 state that the prior attorney was noticed, but
5 I'm the attorney of record on the file and I
6 haven't received notice of this hearing.
7 So I'm going to object to the hearing
8 based on that as a starting point.
9 The second issue that I want to get
10 into is the fact that none of the evidence that
11 is before this Court in this case, and I'll dare
12 say in the hundreds of other cases sitting here,
13 support summary judgment.
14 I'm going to speak specifically to the
15 issue of affidavits that are submitted in
16 foreclosure cases in support of summary judgment
17 and read for the rule -- or read for the record
18 the rule. I've got copies for the Court right
19 here.
20 The problem that we have in these
21 foreclosure cases is the plaintiffs' firms are
22 admitting conclusory hearsay affidavits in
23 support of amounts due and owing that do not
24 comport with the law that requires that those
25 affidavits contain with them certified copies of

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1 the books or records upon which that affidavit
2 is allegedly based upon.
3 I've yet to see certified copies of
4 these records.
5 Judge Rondolino recently had a hearing
6 and in that hearing he investigated the case
7 law, not just that was supported on behalf of
8 the plaintiffs on this issue, not just that was
9 introduced on behalf of the defendants in this
10 issue, but he needed a comprehensive search of
11 all of the case law regarding affidavits and
12 hearsay.
13 But I'm going to assert for the
14 record --
15 THE COURT: And what did he decide?
16 MR. WEIDNER: That affidavits, the
17 conclusory hearsay affidavits that are submitted
18 in these cases do not support summary judgment.
19 I've cited the case law in my motion
20 that was filed in opposition to summary judgment
21 here, a number of cases, all of which are before
22 the Court now.
23 All of these cases stand for the
24 proposition that when we have affidavits that
25 are not supported by competent legally

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1 admissible evidence, summary judgment is
2 inappropriate:
3 CSX Transportation vs. Pasco County,
4 660 So.2d 757; Hoyt vs. St. Lucy, 705 So.2d 119;
5 Carter vs. Cessna, 498 So.2d 1319; Alvarez vs.
6 Florida Insurance Guaranty, 661 So.2d 1230.
7 I can keep going. They're all in the
8 motion. I've got dozens of them.
9 The point of the matter is that when a
10 plaintiff introduces an affidavit and the
11 affidavit is not supported by admissible
12 evidence, there's no evidence to support summary
13 judgment in the case. And yet we see this again
14 and again and again.
15 The Court of course is aware of BAC
16 Funding and Variso and the other cases which
17 stand for the proposition that we need to hold
18 foreclosure cases to the same evidentiary
19 standards that we apply to all cases in court
20 and we can't just cut corners because it's a
21 foreclosure case.
22 So I've got about six other reasons
23 upon which I can object to summary judgment, but
24 I'll start with the fact that I didn't receive
25 notice of this hearing.

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1 So under Verizzo I didn't get notice
2 and didn't get the evidence that is being
3 submitted in here.
4 The next issue is going to be the
5 affidavits that they did submit do not comport
6 with the case law requiring admissible evidence.
7 The third issue, there's outstanding
8 discovery in this case that has not been
9 responded to.
10 In my motion I've got, you know,
11 dozens of cases that stand for the proposition
12 that when discovery is outstanding summary
13 judgment is not appropriate.
14 The third issue. I've submitted an
15 answer and affirmative defenses. Plaintiff's
16 counsel has not responded in any way to those
17 affirmative defenses.
18 So under the case law in Frost and
19 Lazuran, and again cited in my motion, it's
20 improper for this Court to enter summary
21 judgment when affirmative defenses are
22 interposed and not responded to by opposing
23 counsel.
24 THE COURT: All right. Miss Collier?
25 MS. COLLIER: Yes, your Honor.

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1 THE COURT: Rebuttal? Response?
2 MS. COLLIER: Rebuttal. Notice of
3 hearing, uh, I'm showing on our service list --
4 I'm sorry, your name, opposing counsel's name?
5 THE COURT: Weidner.
6 MR. WEIDNER: My name is Matthew
7 Weidner, W-E-I-D-N-E-R.
8 MS. COLLIER: Okay. I have Anthony
9 Comparetto for Calvin and the same attorney for
10 Jacquelyn and then Peter (unintelligible) for
11 First Home Bank.
12 MR. WEIDNER: I filed a notice of
13 appearance. And, again, out of respect to you,
14 my notice of appearance in the file, it was
15 docketed May 26. So, you know, you guys filed
16 this on May 28.
17 I'm here now, but the point of the
18 matter is that I have had an answer filed and
19 affirmative defenses and that hasn't apparently
20 made it onto your system yet.
21 MS. COLLIER: I don't have any record
22 of you being the attorney of record if it had
23 changed.
24 THE COURT: Well, let's go on to the
25 next issue.

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1 MS. COLLIER: Okay. As far as the
2 affidavit, I'm basing our affidavit that it
3 doesn't attempt a conclusory statement.
4 I would argue that the affidavit of
5 indebtedness and the amount that's owed are
6 based on the business records of the bank so
7 they do fall under an exception.
8 THE COURT: Were the business records,
9 did those accompany the affidavit?
10 MS. COLLIER: The business records
11 that would be attached, if any, would be the
12 judgment figure that are provided to us by the
13 bank. I can look at our AOS to see if they were
14 attached.
15 THE COURT: Were they attached,
16 Mr. Weidner?
17 MR. WEIDNER: Something was attached,
18 your honor.
19 THE COURT: I mean I'm not talking
20 about just like a piece of paper that has blank
21 slots and figures written in it. I'm talking
22 about the actual business records that support
23 the Excel spreadsheet or whatever it is you guys
24 attach. Because I --
25 MS. COLLIER: No, your Honor. We --

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1 it is not our business practice nor is it our
2 bank business practice to attach all of the
3 records, which would be extremely cumbersome if
4 they attached every loan record that they had.
5 THE COURT: All right.
6 Well, respectfully, without moving any
7 further, I do find, you know, not bad faith on
8 either party, but there is a notice issue.
9 So without reaching any of the six
10 arguments at this point, though certainly they
11 are well-taken, I will grant the defense's
12 request for a continuance.
13 MS. COLLIER: Okay.
14 THE COURT: And then why don't you
15 guys circle the wagons and figure out when to
16 reset it. But I -- I suspect these same
17 arguments will be leveled again so maybe you can
18 visit with Mr. Weidner in the meantime and get
19 the rest of those answers and discovery to him
20 pursuant to the request made.
21 MS. COLLIER: Okay. Mr. Weidner --
22 MR. WEIDNER: Yes.
23 MS. COLLIER: -- can I have your phone
24 number or some contact information to --
25 MR. WEIDNER: Your office received a

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1 Federal Express package from me on June 28 in
2 addition to this hearing -- or the objection to
3 hearing, but my phone number is 727 894-3159.
4 MS. COLLIER: Okay. Thank you.
5 MR. WEIDNER: You're welcome.
6 THE COURT: All right. Thanks. Miss
7 Collier.
8 MS. COLLIER: All right, your Honor.
9 Is that it for today?
10 THE COURT: Well, not necessarily, but
11 we have other live bodies so I'm going to take
12 those cases. If I need to call you back, I
13 will.
14 MS. COLLIER: Okay. Wonderful.
15 Thanks, your Honor.
16 MR. WEIDNER: Excuse me, counsel.
17 MS. COLLIER: Yes.
18 MR. WEIDNER: I do have a formal
19 stipulation for substitution of counsel. Even
20 though I'm attorney of record, I've got an order
21 here asking to formally substitute me. And if
22 you wouldn't object to that being entered?
23 MS. COLLIER: That would be fine.
24 MR. WEIDNER: Thank you.
25 THE COURT: Okay. You need to file

1 that with the clerk because we don't have a
2 clerk here at these hearings.
3 MR. WEIDNER: Thank you.
4 THE COURT: Thanks. Miss Collier.
5 MS. COLLIER: Okay. Bye-bye.

7 (HEARING CONCLUDED AT 9:30 A.M.)

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1 REPORTER'S CERTIFICATION

2 STATE OF FLORIDA)
3 COUNTY OF PINELLAS)
4 I, Phyllis B. Pennington, Registered
5 Professional Reporter, certify that I was authorized to
6 and did stenographically report the foregoing
7 proceedings and that the transcript is a true record of
8 my stenographic notes.

9 DATED this 24th day of June, 2010, at St.
10 Petersburg, Pinellas County, Florida.

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13 Phyllis B. Pennington, RPR, CP,
14 Court Reporter

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