

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR BREVARD COUNTY

Case # 05-2007-CA-071690-XXXX-XX
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THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF CWALT.
INC. ALTERNATIVE LOAN TRUST 2005-20CB,
MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2005-20CB,

Plaintiff,

v

CHARLES ALLEN HINKLEY, CHARLES ALLEN
HINKLEY, TRUSTEE OF THE CHARLES ALLEN
HINKLEY TRUST UNDER AGREEMENT DATED
7/20/00, ANN HINKLEY, ET AL ,

Defendants

Case No 2007-CA-071690

SCOTT ELLIS
2013 SEP 12 P 2 18
FILED IN VIERA-12
CLERK OF CIR CT
BREVARD CO FL

FINAL JUDGMENT FOR DEFENDANTS

On September 10, 2013, a non-jury trial was held before the Honorable O H Eaton, Jr on the Plaintiff's Amended Complaint to Foreclose Mortgage. The Court being otherwise fully advised in the premises, the Court makes the following

FINDINGS OF FACTS

Plaintiff filed this action on December 5, 2007. During trial, the Plaintiff's counsel attempted to introduce into evidence a business record allegedly showing payments made, lack of payments made and default. Part of these records originated from the prior mortgage loan servicers known as Countrywide Home Loan Servicing, Inc. and Bank of America. The Plaintiff's witness testified that he worked for Bayview Loan Servicing and that he had not worked for the prior loan servicers. He also testified that he had no knowledge of whether the

that part of the information in the business records which came from the prior loan servicers was made at or near the time of the event, whether it was made by or from information transmitted by a person with knowledge, or whether it was kept in the ordinary course of those prior loan servicer's business. The Defendants objected to the business records on the basis of lack of authentication, lack of foundation and hearsay. The Court considered the cases of Glarum v. Lasalle Bank Nat'l Ass'n, 83 So 3d 780 (Fla App, 2011) and Wamco XXVIII v. Integrated Elec Envs., 903 So 2d 230 (Fla App, 2005). The Court sustained the Defendant's objection. Without the business records, the Plaintiff is unable to prove its case.

IT IS ADJUDGED

- 1 Final Judgment granted in favor of the Defendants and against the Plaintiff
- 2 Plaintiff shall take nothing by this action and Defendants shall go hence without day
- 3 The Court reserves jurisdiction to determine the issues of costs and attorney fees upon proper motion. The issue of entitlement to attorney fees shall be addressed prior to any determination as to amount.

DONE AND ORDERED in chambers in Viera, Brevard County, Florida on September 11, 2013


O H EATON, JR
CIRCUIT JUDGE

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