Real Property and Business Litigation Report

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Manuel Farach

Salinas v. Ramsey, Case No. 16-10552 (11th Cir. 2018).
Relying on the Florida Supreme Court's opinion, the Eleventh Circuit rules that post-judgment discovery is not an "action" under Florida law and is not limited by the Florida Statute of Limitations and discovery may be employed during the life of the judgment.

Grimes v. Lottes, Case No. 2D16-5557 (Fla. 2d DCA 2108).
Whether a sales agent's statement that there are no other procuring brokers involved in a transaction is fraudulent involves factual determinations, including whether the statement was one of opinion or fact.

DeJesus v. A.M.J.R.K. Corp., Case No. 2D17-2374 (Fla. 2d DCA 2018).
Property owned by a corporation is not entitled to homestead exemption from forced levy, even if the person residing on the property is the president and owner of the corporation.

HSBC Bank USA v. Buset, Case No. 3D16-1383 (Fla. 3d DCA 2018).
Experts, including those on "securitization" issues, may not testify on legal issues. Additionally, securing a note with a mortgage does not render the note a non-negotiable note under Article 3.

Sabido v. The Bank Of New York Mellon, Case No. 4D16-2944 (Fla. 4th DCA 2018).
Nationstar Mortgage LLC v. Glass, 219 So. 3d 896 (Fla. 4th DCA 2017), is broader than the issue of standing and holds that that a party that is not entitled to enforce a contract cannot be burdened with the obligations under the contract.

Restoration 1 CFL, LLC v. Asi Preferred Insurance Corporation, Case No. 5D17-755 (Fla. 5th DCA 2018).
Contracts, including mortgages, may not have anti-assignment language that prohibit post-loss assignments.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

C&J GLOBAL INVESTMENTS, INC., a Florida Corporation,

Appellant,

v.

JVS CONTRACTING, INC., a Florida Corporation; CHICAGO TITLE INSURANCE COMPANY, a Nebraska Corporation; CAPGAIN PROPERTIES, INC., formerly known as Big Mojo Capital, Inc., a corporation organized under the laws of the Province of Alberta, Canada; CAPGAIN HOLDINGS, INC., formerly known as Capgain Properties, Inc., a corporation organized under the laws of the Province of Alberta, Canada; MICHAEL LOPRIENO and BRIAN KNIGHT,

Appellees.

Case No. 2D16-4857

Opinion filed February 14, 2018.

Appeal from the Circuit Court for Polk County; Mark F. Carpanini, Judge.

Donald J. Schutz, St. Petersburg, for Appellant.

Michael R. D'Onofrio of The D'Onofrio Law Firm, P.A., Naples; and Jonathan B. Sbar of Rocke, McLean & Sbar, P.A., Tampa, for Appellee JVS Contracting, Inc.

David S. O'Quinn of Fidelity National Law Group, Fort Lauderdale, for Appellee Chicago Title Insurance Company.

No appearance for remaining appellees.

SILBERMAN, Judge.

In the underlying action, C&J Global Investments, Inc., sued multiple defendants seeking, among other relief, a declaration that a warranty deed ("the first deed") it executed naming Capgain Properties, Inc., as grantee, is void; rescission of the first deed; and to quiet title to the property. C&J Global also seeks a declaration that a warranty deed (the "second deed") executed in the name of Capgain Properties, Inc., as grantor, in favor of JVS Contracting, Inc., as grantee, is void as a wild deed and seeks damages from JVS based on its intentional unauthorized entry onto the property.

JVS filed a cross-claim against codefendants Capgain Holdings, Inc., and Capgain Properties, Inc., seeking reformation of the second deed and a related contract based on an alleged error as to the named grantor. In this appeal, C&J Global seeks review of an order denying its motion to intervene in that cross-claim. We conclude that C&J Global does not have a direct and immediate interest in the reformation cross-claim at this time and affirm.

Florida Rule of Civil Procedure 1.230 provides for intervention by "[a]nyone claiming an interest in pending litigation."

> [T]he interest which will entitle a person to intervene . . . must be in the matter in litigation, and of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment. In other words, the interest must be that created by a claim to the demand in suit or some part thereof, or a claim to, or

> lien upon, the property or some part thereof, which is the subject of litigation.

Union Cent. Life Ins. Co. v. Carlisle, 593 So. 2d 505, 507 (Fla. 1992) (alteration in original) (omission in original) (quoting Morgareidge v. Howey, 78 So. 14, 15 (Fla. 1918)). A person should be joined in an action to reform a deed if a ruling could divest that person of whatever interest he or she might have in the property. Palm v. Taylor, 929 So. 2d 566, 568 (Fla. 2d DCA 2006). Absent an abuse of discretion, a trial court's decision to grant or deny a motion to intervene will be upheld. Bonafide Props. v. Wells Fargo Bank, N.A., 198 So. 3d 694, 695 n.2 (Fla. 2d DCA 2016).

C&J Global is not a party to the second deed but argues that it has an ownership interest that could be divested if JVS prevails in the reformation cross-claim. C&J Global asserts that if the second deed is reformed, JVS may be able to successfully maintain that it is a bona fide purchaser of the property without notice. And then JVS would not be subject to C&J Global's claims seeking to establish its interest in the real property at issue in the underlying action. See Restatement (Third) of Restitution and Unjust Enrichment § 66 cmt. a (Am. Law Inst. 2011).

The difficulty with C&J Global's argument is that the property interest it seeks to protect by intervention is the interest that it transferred through the first deed. Although C&J Global contends that the transaction reflected by the first deed is invalid and should be undone, a judgment reforming the second deed will not itself cause C&J Global to directly and immediately gain or lose an interest it might have in the property. Indeed, before the reformation action could result in any impact on the interest C&J Global claims it should have in the property, C&J Global must first prevail in its action to void or rescind the first deed. Because that has not yet occurred and because C&J

Global is not a party to the second deed, it cannot establish that it has an interest that would be directly and immediately affected by reformation of the second deed. See Stefanos v. Rivera-Berrios, 673 So. 2d 12, 13 (Fla. 1996) (holding that an "indirect, inconsequential or contingent interest is wholly inadequate" to entitle a party to intervene in the matter being litigated); Kissoon v. Araujo, 849 So. 2d 426, 429 (Fla. 1st DCA 2003) (same). Further, based on the limited information contained in our record and the arguments of the parties, it remains in dispute whether JVS ultimately may be deemed to be a bona fide purchaser of the property.

Under these circumstances, we are compelled to conclude that C&J Global's asserted interest is not of a direct and immediate character; rather, the interest is contingent and uncertain. At this time, C&J Global does not have an ownership interest in the property such that it would gain or lose by the direct legal operation of a judgment reforming the second deed. Accordingly, we cannot say the trial court erred in denying C&J Global's motion to intervene.

Affirmed.

CASANUEVA and LUCAS, JJ., Concur.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JOHN A. CATALO and **CATALO APPRAISAL & REALTY, INC.,**
Appellants,

v.

LLANO FINANCING GROUP, LLC,
Appellee.

No. 4D16-4348

[February 14, 2018]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit; Palm Beach County; Cymonie S. Rowe, Judge; L.T. Case No. 50-2015-CA-008897-XXXX-MB-AN.

Roy W. Jordan, Jr. of Roy W. Jordan, P.A., West Palm Beach, for appellants.

Robert J. Hauser of Pankauski Hauser PLLC, West Palm Beach, for appellee.

GROSS, J.

This is an appeal from an order denying attorneys' fees based on a proposal for settlement filed by the defendants. Due to the untimeliness of appellants' motions for attorneys' fees in the circuit court, we affirm in part. We reverse and remand as to appellate attorneys' fees, which were not dependent on an award of fees at the trial court level.

The circuit court originally dismissed the case with prejudice on February 25, 2016. The court later determined that the order of dismissal was not a final order and entered a second order of dismissal on May 13, 2016. Appellee/plaintiff appealed the second order of dismissal; this court dismissed the appeal for lack of jurisdiction, ruling that the February 25 order was a final order and that the plaintiff failed to timely move for rehearing, so the appeal was untimely. We also granted appellate attorneys' fees "conditioned on the trial court determining that [appellants/defendants] are entitled to fees under section 768.79, Florida Statutes, and, if so, to set the amount of the attorneys' fees to be awarded for this appellate case."

Appellants' first motion for fees was filed on April 22, 2016, more than 30 days after the February 25 order of dismissal. A second motion for fees was filed on May 13, 2016, the same day that the second order of dismissal issued.

The circuit court took up the issue of appellants' entitlement to attorneys' fees and held a hearing. The court ultimately denied all attorneys' fees due to problems with service of the motions.

We do not reach the issue of the propriety of the service because we affirm the denial of trial level attorneys' fees under the tipsy coachman rule. "Under the tipsy coachman rule, 'if a trial court reaches the right result, but for the wrong reasons, it will be upheld if there is any basis which would support judgment in the record.'" *Bueno v. Workman*, 20 So. 3d 993, 998 (Fla. 4th DCA 2009) (quoting *Dade Cty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644 (Fla. 1999)).

Pursuant to Florida Rule of Civil Procedure 1.525, a motion for attorneys' fees must be served "no later than 30 days after filing of the judgment, including a judgment of dismissal." *See also Swift v. Wilcox*, 924 So. 2d 885, 886 (Fla. 4th DCA 2006), *aff'd Barco v. Sch. Bd. of Pinellas Cty.*, 975 So. 2d 1116, 1124 (Fla. 2008). Additionally, section 768.79, Florida Statutes, requires the party seeking fees pursuant to an offer of judgment to file its motion for attorneys' fees within 30 days after the entry of judgment or after voluntary or involuntary dismissal. *See* § 768.79(6), Fla. Stat. (2016) ("Upon motion made by the offeror within 30 days after the entry of judgment or after voluntary or involuntary dismissal . . . .").

In this case, the April 22 and May 13 motions were served after the 30-day time limit from the operative February 25 dismissal, so they were untimely.

We agree with appellants that our award of *appellate* attorneys' fees was not dependent upon their entitlement to trial level attorneys' fees. *See Disney v. Vaughen*, 804 So. 2d 581, 583 (Fla. 5th DCA 2002) (rejecting "Vaughen's argument that obtaining a ruling on a motion for trial attorney's fees in the trial court is necessary before a party may obtain appellate attorney's fees."); *Spencer v. Barrow*, 752 So. 2d 135, 138 (Fla. 2d DCA 2000).

We therefore reverse the denial of appellate attorneys' fees and remand to the circuit court to determine entitlement and, if appropriate, the amount. We note that in the first appeal, little was required of the

appellants (appellees in the first appeal). No briefs were filed and appellants' filings were few.

FORST and KUNTZ, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

MARLENA KNIGHT, DERRICK KNIGHT, and SARA PORTER,

Appellants,

v.

GTE FEDERAL CREDIT UNION,

Appellee.

Case No. 2D16-3241

Opinion filed February 14, 2018.

Appeal from the Circuit Court for Hillsborough County; James M. Barton, Judge.

Mark P. Stopa of Stopa Law Firm, LLC, Tampa, and Latasha Scott of Lord Scott, PLLC, Tampa, for Appellants.

John D. Cusick of Phelan Hallinan Diamond & Jones, PLLC, Ft. Lauderdale, for Appellee.

BADALAMENTI, Judge.

Derrick Knight, Marlena Knight, and Sara Porter (the Borrowers) appeal from a final judgment of foreclosure entered in favor of GTE Federal Credit Union (GTE). On appeal, the Borrowers contend that the trial court abused its discretion by admitting a "letter log" produced by GTE's loan servicer because it contained

inadmissible hearsay. At the conclusion of the bench trial, the Borrowers moved for an involuntary dismissal of the foreclosure complaint, arguing that without that letter log, GTE failed to present competent, substantial evidence that it mailed the written notice of acceleration of the note to the Borrowers as required by paragraph 22 of the mortgage. We reverse the trial court's denial of the Borrowers' motion for involuntary dismissal because GTE neglected to carry its burden to establish that it had complied with paragraph 22.

GTE's sole witness was a default corporate representative from its loan servicer, Cenlar, FSB (Cenlar). The witness testified that in Cenlar's normal course of business, Cenlar employees input information regarding the loans it services into its servicing platform. Cenlar utilizes the information stored within its servicing platform to compose a default letter addressed to a borrower in default on a mortgage. That default letter is then sent to a third-party vendor to be mailed.[1] According to the witness, that third-party vendor, About Mail, "tak[es] the letter, put[s] it in the envelope and drop[s] it off at the post office." The witness explained that About Mail does not have access to Cenlar's servicing platform. As such, About Mail cannot make an entry into Cenlar's letter log indicating that it mailed a default letter. Instead, once Cenlar receives a "report" from About Mail indicating that About Mail mailed the default letter, a Cenlar employee inputs that information on Cenlar's letter log at or near the time that the default letter was sent. The witness admitted that the entry in the letter log "is based on

[1]A "letter log" is a tracking system Cenlar utilizes "to identify all letters being sent out on a loan." The default letter contained the notice that failure to cure the default may result in acceleration of the sums due, as required by paragraph 22 of the mortgage.

something that About Mail allegedly did and told to Cenlar." The witness stated that he had no documents with him that "in any way reference the company About Mail." He further did not have any documents to support his testimony that About Mail mailed the letter to the Borrowers on the date indicated in Cenlar's letter log. The witness neither visited About Mail's offices nor had any contact with About Mail's employees. The Borrowers' counsel objected to the admission of the letter log as follows:

> And this letter log, where this voir dire started, contains hearsay within hearsay. The entry itself is hearsay because the entry purported to reflect the letter is not something that Cenlar did, but it's based on something that [About Mail] would have communicated to Cenlar in some way. The communication from the other company to Cenlar is the hearsay. And there's no exception to that hearsay here.

Over the Borrowers' hearsay objection, the trial court admitted the letter log under the business records exception to the hearsay rule. After GTE rested, the Borrowers renewed their hearsay objections as to the letter log and moved for involuntary dismissal, which the trial court denied. The trial court subsequently entered a final judgment of foreclosure in favor of GTE.

We review de novo a trial court's ruling on a motion for involuntary dismissal. Deutsche Bank Nat'l Tr. Co. v. Kummer, 195 So. 3d 1173, 1175 (Fla. 2d DCA 2017). A trial court's ruling on the admissibility of evidence is reviewed for an abuse of discretion. Heller v. Bank of Am., NA, 209 So. 3d 641, 643 (Fla. 2d DCA 2017).

The trial court abused its discretion by admitting Cenlar's letter log under the business records exception. Hearsay is an out-of-court statement "offered in evidence to prove the truth of the matter asserted." § 90.801(c), Fla. Stat. (2016).

"Except as provided by statute, hearsay evidence is inadmissible." § 90.802. A document is admissible under the business records exception to the hearsay rule if

> (1) the record was made at or near the time of the event; (2) was made by or from information transmitted by a person with knowledge; (3) was kept in the ordinary course of a regularly conducted business activity; and (4) . . . it was a regular practice of that business to make such a record.

Yisrael v. State, 993 So. 2d 952, 956 (Fla. 2008); accord § 90.803(6)(a). "[W]hen a business record contains a hearsay statement, the admissibility of the record depends on whether the hearsay statement in the record would itself be admissible under some exception to the hearsay rule." Van Zant v. State, 372 So. 2d 502, 503 (Fla. 1st DCA 1979). "[I]f the person who prepared the record could not testify in court concerning the recorded information, the information does not become admissible as evidence merely because it has been recorded in the regular course of business." Id.

"In the context of a foreclosure action, a representative of a loan servicer testifying at trial is not required to have personal knowledge of the documents being authenticated, but must be familiar with and have knowledge of how the 'company's data [is] produced.' " Sanchez v. Suntrust Bank, 179 So. 3d 538, 541 (Fla. 4th DCA 2015) (alteration in original) (quoting Glarum v. LaSalle Nat'l Ass'n, 83 So. 3d 780, 783 (Fla. 4th DCA 2011)). The witness must be "well enough acquainted with the activity to provide testimony." Cayea v. CitiMortgage, Inc., 138 So. 3d 1214, 1217 (Fla. 4th DCA 2014) (citing Cooper v. State, 45 So. 3d 490, 493 (Fla. 4th DCA 2010)).

Here, it is clear that the entry on the letter log denoting that the default letter was mailed by About Mail to the Borrowers is hearsay. It was an out-of-court

statement being offered to demonstrate that the default letter was mailed by About Mail to the Borrowers to satisfy the requirements set forth in paragraph 22 of the mortgage. Admission of this hearsay testimony under the business records exception was problematic. Cenlar's employee testified that he had no documents with him that "in any way reference the company About Mail," let alone any report from About Mail to Cenlar indicating that the default letter was mailed to the Borrowers. In other words, he did not demonstrate that he was "well enough acquainted" with About Mail's business practices to authenticate his testimony that the default letter was mailed by About Mail in the regular course of About Mail's business. See id.

Although Cenlar's employee testified that the entries in the letter log are made by Cenlar employees at or near the time that the default letter is sent, that the entries are made by Cenlar employees based on a "record" sent by About Mail indicating that the letters are sent, that those entries are made in the regular course of business, and that it was Cenlar's regular course of business to generate such a letter log, see Yisrael, 993 So. 2d at 956, "the fact that a witness employed all the 'magic words' of the exception does not necessarily mean that the document is admissible as a business record." Sanchez, 179 So. 3d at 541 (quoting Landmark Am. Ins. Co. v. Pin-Pon Corp., 155 So. 3d 432, 441 (Fla. 4th DCA 2015)). Indeed, as this court has explained in Jackson v. Household Finance Corp. III, 43 Fla. L. Weekly D261b (Fla. 2d DCA Jan. 31, 2018), such testimony may be sufficient to lay the initial predicate for admission of records, shifting the burden to the opposing party to establish that the witness actually "lacked the requisite knowledge to testify as the records custodian." Id.

Here, the testimony established that the records were not properly admissible through Cenlar's employee. The employee testified that he did not work for About Mail, never visited About Mail's facility, never spoke with an About Mail employee, and did not have documents with him at trial that "in any way reference the company About Mail" and further testified that he did not have any documents—other than the letter log—to support his testimony that About Mail mailed the letter to the Borrowers on the date indicated in Cenlar's letter log. See Allen v. Wilmington Tr., N.A., 216 So. 3d 685, 688 (Fla. 2d DCA 2017) (concluding that witness's testimony about company's routine business practice did not establish rebuttable presumption of mailing of default letter because she did not have personal knowledge of the company's general practice in mailing letters); Sas v. Fed. Nat'l Mortg. Ass'n, 112 So. 3d 778, 779 (Fla. 2d DCA 2013) (holding that witness, a representative of the bank, was not qualified to testify regarding the amount of debt owed by debtor to the bank because he had no personal knowledge of the amount of debt and the bank introduced no evidence supporting his testimony).[2]

GTE has failed to introduce any admissible evidence that the default letter was actually mailed to the Borrowers. As such, GTE did not meet its burden of proving it satisfied the condition precedent of giving notice of acceleration of the note pursuant

[2]The Borrowers' overarching argument on appeal is that the letter log was hearsay within hearsay. The letter log contains two "levels" of hearsay: (1) the letter log containing the notes and (2) the content of the notes. The log is itself hearsay because it is an out-of-court statement being offered for the truth of the matter asserted, i.e., that GTE mailed the default letter to the Borrowers. See § 90.801(1)(c). It is Cenlar's account of the information provided to it by About Mail. Because we hold that the entry within the letter log indicating that the default letter was mailed by About Mail is inadmissible, we need not address the admissibility of the letter log as a whole.

to paragraph 22. Thus, the trial court erred in denying the Borrowers motion for involuntary dismissal. Accordingly, we reverse the judgment of foreclosure and remand for dismissal of the action. See Allen, 216 So. 3d at 688.

Reversed and remanded with directions.

NORTHCUTT and SILBERMAN, JJ., Concur.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

DR. AN Q. LE, individually, **DALLAS DENTISTRY ASSOCIATES, P.C., NORTH DALLAS DENTISTRY ASSOCIATES, P.C., NORTH RICHARDSON DENTISTRY ASSOCIATES, P.C.,** and **PLANO DENTISTRY ASSOCIATES, P.C.,**
Appellants,

v.

TRALONGO, LLC,
Appellee.

No. 4D17-1325

[February 14, 2018]

Appeal of a non-final order from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Barbara McCarthy, Judge; L.T. Case No. CACE 16-020859 (21).

Bradford J. Beilly and John Strohsahl of Beilly & Strohsahl, P.A., Fort Lauderdale, for appellants.

Robert M. Einhorn, Kaari Gagnon and Beshoy Rizk of Zarco Einhorn Salkowski & Brito, P.A., Miami, for appellee.

GROSS, J.

Dr. An Q. Le and his four corporate dental practices appeal a non-final order denying their motions to dismiss an amended complaint that alleges breach of contract and tortious interference with contractual relationships. The defendants, who are located in Texas, sought dismissal based upon lack of personal jurisdiction and improper venue. The trial court has personal jurisdiction because the defendants breached a contractual provision they were required to perform in Florida and they have sufficient minimum contacts with the state. But, because the contracts for two of the dental clinics provide for venue in Georgia, we reverse in part.

In December 2013, Dr. Le signed a Territory Agreement merging his dental practice (Dallas Dentistry Associates, P.C.) into the Tralongo System. Tralongo, LLC provides management, accounting, marketing,

acquisition, and other services to dental practices. In exchange for management and administrative services, the clinic pays Tralongo a monthly service fee, which is a percentage of the clinic's gross receipts. The Territory Agreement also includes a buyout provision allowing Tralongo to purchase a clinic at any time as provided in each Clinic Agreement.

Le purchased three additional dental practices in Texas (North Richardson Dentistry Associates, P.C., North Dallas Dentistry Associates, P.C., and Plano Dentistry Associates, P.C.), and each signed Clinic Agreements with Tralongo.

Pursuant to the Clinic Agreements, Tralongo provided the dental offices various administrative and accounting services such as payroll services, insurance verification for new patients, negotiating fees for services with insurance companies, purchasing clinical supplies, paying vendors, recording daily deposit reports, reconciling accounts, and providing accounting reports.

When the parties signed the Territory Agreement and initial Dallas Clinic Agreement, Tralongo was a Georgia corporation. Tralongo subsequently opened an office in Davie, and the office moved to Sunrise, Florida. Tralongo has provided services to the defendants from Florida since October 2013. Tralongo maintained a Georgia office, but at the time of the alleged breach all services to the clinics were provided from the Sunrise office, and the clinics had regular e-mail communication with the Sunrise office.

Some initial payments for services were made by checks sent to Tralongo's Georgia office. Subsequent payments were made by the Tralongo Sunrise office withdrawing money from the clinics' bank accounts or by withholding funds from money that Tralongo collected on behalf of the clinics.

In September 2016, after Tralongo sought to exercise the buyout option for two clinics, Le and the clinics removed Tralongo's access to their bank accounts and notified Tralongo that they were transitioning off its services.

Tralongo filed an amended complaint against Le and the clinics alleging tortious interference with contractual relationships and breach of contract for terminating without cause, inducing other members of the network to wrongfully terminate their contracts with Tralongo, preventing Tralongo from exercising the buyout option, and failing to pay monthly service fees.

Le and the clinics moved to dismiss arguing that the trial court does not have personal jurisdiction because the agreements did not require them to perform any act in Florida and they do not have sufficient minimum contacts with this state. In a supplemental motion, defendants also argued that claims against two clinics were improperly brought in Broward County based upon the forum selection clauses in their Clinic Agreements. Following a hearing, the trial court denied the motions.

A two-step analysis is used to determine whether a court has personal jurisdiction over a nonresident defendant. *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989). First, the court must determine whether the plaintiff has alleged facts sufficient to fall within the scope of the long arm statute, section 48.193, Florida Statutes, and if so, the court must next determine whether sufficient minimum contacts are demonstrated to satisfy due process. 554 So. 2d at 502.

Tralongo's amended complaint alleges that the trial court has personal jurisdiction over the Texas defendants pursuant to section 48.193(1)(a)(7) because they failed to pay monthly support fees to Tralongo in Florida. This subsection provides for personal jurisdiction in Florida if the party "breach[ed] a contract in this state by failing to perform acts required to by the contract to be performed in the state." § 48.193(1)(a)(7), Fla. Stat. (2016).

The agreements are silent as to where the clinics were required to make payments. But, the parties' course of dealings can fill in gaps in the express terms of a contract. *See, e.g.*, *Scott v. Rolling Hills Place, Inc.*, 688 So. 2d 937, 939 (Fla. 5th DCA 1996) ("Although the contract was silent as to the method of payment, the actions of the parties in making interim payments on the submission of invoices became a term of the contract."); *see also NCP Lake Power v. Fla. Power Corp.*, 781 So. 2d 531, 537 (Fla. 5th DCA 2001) (recognizing that customary practices can "'annex incidents to a written contract' regarding matters to which the contract is silent"). Tralongo was acting on defendants' behalf when it paid itself in Florida. These payments were continuously and exclusively made to Florida for almost a year before the defendants terminated the agreements.

Tralongo also demonstrated that the defendants had sufficient minimum contacts with Florida. In order to satisfy due process it is generally not enough for a non-resident defendant to contract with a Florida resident. *Metnick & Levy, P.A. v. Seuling*, 123 So. 3d 639, 644 (Fla. 4th DCA 2013). But, "the exercise of jurisdiction may be proper where [the] out-of-state defendant enters into a contract with a forum-state party 'for substantial services to be performed in Florida.'" *Id.* (quoting *EOS*

Transport Inc. v. Agri–Source Fuels LLC, 37 So. 3d 349, 354 (Fla. 1st DCA 2010)). Here, the clinics regularly exchanged information with Tralongo's Florida office so that Tralongo could provide administrative and accounting services to the clinics. The Florida office had access to the clinics' daily reports and bank accounts to balance the clinics' books and pay vendors. The Florida office regularly sent the clinics reports and invoices.

Through technology, business tasks that were once performed on site, can now be completed at a distance. Personal jurisdiction evolves accordingly. The Texas defendants could reasonably anticipate being haled into court in Florida where they have had systematic and continuous contact with a Florida business that provides office management and accounting services to help run the Texas clinics. By contracting for the performance of extensive services in Florida, the Texas defendants engaged in conduct "purposefully directed toward" Florida. *Asahi Metal Industry, Co., Ltd. v. Superior Court of California, Solano Cty.*, 480 U.S. 102, 112 (1987) (O'Connor, J.). Maintenance of the suit in this state, therefore, does not offend "traditional notions of fair play and substantial justice." *Int'l Shoe v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer* 311 U.S. 457, 463 (1940)).

The requirements for personal jurisdiction are satisfied, but we agree with appellants that the trial court erred in denying the motion to dismiss as to North Richardson Dentistry Associates and North Dallas Dentistry Associates. The Clinic Agreements for these defendants included forum selection clauses requiring that any action be brought in Atlanta, Georgia. Mandatory forum selection clauses should be enforced. *Espresso Disposition Corp. 1 v. Santana Sales & Mktg. Group, Inc.*, 105 So. 3d 592, 595 (Fla. 3d DCA 2013). The separate choices of law provision in the Agreements does not override the unambiguous forum selection clause.

Accordingly, the order denying appellants' motions to dismiss is reversed in part and remanded for the trial court to grant the motions as to North Richardson Dentistry Associates and North Dallas Dentistry Associates.

Affirmed in part, reversed and remanded in part.

TAYLOR and FORST, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

JAMES McCAMPBELL, Appellant, v. FEDERAL NATIONAL MORTGAGE ASSOCIATION, Appellee.	)	Case No. 2D16-177

Opinion filed February 14, 2018.

Appeal from the Circuit Court for Sarasota County; Lee Haworth, Judge.

Mark P. Stopa of Stopa Law Firm, Tampa, for Appellant.

Robert R. Edwards of Choice Legal Group, P.A., Fort Lauderdale, for Appellee.

CASANUEVA, Judge.

In this appeal from a final judgment of foreclosure, James McCampbell contends that the trial court erred in admitting copies of his loan modification agreement, and Federal National Mortgage Association (Fannie Mae) correctly concedes that the admission of the copies was improper. Accordingly, we reverse.[1]

[1]We do not find merit in Fannie Mae's argument that the appeal should be affirmed based on the tipsy coachman doctrine because, although the trial court took

On October 26, 2007, Mr. McCampbell signed the original mortgage and promissory note on the property, and on July 14, 2010, an agreement modifying the original loan and all of the original loan documents was executed. At trial, Fannie Mae called one witness to testify and that witness did not produce the original loan modification agreement nor did the witness explain its absence. Rather, Fannie Mae sought the admission of a copy of the agreement. Over objection, the trial court admitted the copy.

We hold that the trial court erred in admitting a copy of the document and remand for a new trial. Section 90.952, Florida Statutes (2012), provides as follows: "Except as otherwise provided by statute, an original writing . . . is required in order to prove the contents of the writing . . . ." In Rattigan v. Central Mortgage Co., 199 So. 3d 966, 967 (Fla. 4th DCA 2016), a similar failure resulted in a reversal of a foreclosure judgment. In that case, the bank, as here, was proceeding under a modified loan. The Fourth District noted:

> When the terms of an agreement are necessary for resolution of an issue brought before a court, the failure to introduce the agreement itself into evidence violates the best evidence rule.
>
> . . . .
>
> This written modification was as much a part of the parties' agreement as the original note itself. The Bank violated the best evidence rule by virtue of its failure to introduce the modification at trial (either the original or a duplicate with an explanation as to why the original note was unavailable, see Deutsche Bank Nat'l Tr. Co. v. Clarke, 87 So. 3d 58, 62 (Fla. 4th DCA 2012)).

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judicial notice of certain bankruptcy pleadings, no other pleading accompanied the judicial notice request.

Id. (citing J.H. v. State, 480 So. 2d 680, 682 (Fla. 1st DCA 1985)). As a result, the admission of testimony regarding the content of the modification was error. Here, the identical failure to admit the modification agreement took place and resulted in the identical evidentiary error. See also Mathis v. Nationstar Mortg., LLC, 227 So. 3d 189, 193 (Fla. 2d DCA 2017) (holding that where bank's witness did not provide any explanation regarding why the original allonge was not available, the "testimony regarding the contents of the allonge was inadmissible under the best evidence rule").

We reverse and remand for a new trial. See Heller v. Bank of Am., NA, 209 So. 3d 641, 645 (Fla. 2d DCA 2017) (reversing and remanding final judgment of foreclosure for a new trial where trial court improperly allowed the bank's witness to give hearsay testimony regarding content of business records which had not been admitted into evidence).

Reversed and remanded.

SALARIO and BADALAMENTI, JJ., Concur.

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-10552

D.C. Docket No. 1:03-cv-22046-KMW

JUAN A. SALINAS,
LUCILA FUENTES,

Plaintiffs-Appellants,

versus

SUE ANN RAMSEY,
HILDA RAMSEY,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(February 5, 2018)

Before WILLIAM PRYOR and MARTIN, Circuit Judges, and DUFFEY,[*] District Judge.

MARTIN, Circuit Judge:

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[*] Honorable William S. Duffey, Jr., United States District Judge for the Northern District of Georgia, sitting by designation.

Last year our panel heard the appeal of Juan Salinas and Lucila Fuentes, who sought and were denied post-judgment discovery by the District Court in relation to a 10-year-old judgment they got in that court. See Salinas v. Ramsey, 858 F.3d 1360, 1360 (11th Cir. 2017). The District Court denied the discovery motion as untimely, holding that post-judgment discovery was barred by the 5-year limitations period established in Fla. Stat. § 95.11(2)(a).[1] Id. In so holding, the District Court relied on this Court's decision in Balfour Beatty Bahamas, Ltd. v. Bush, 170 F.3d 1048 (11th Cir. 1999), which in turn relied on decisions from Florida's intermediate courts of appeal, particularly Kiesel v. Graham, 388 So. 2d 594 (Fla. 1st DCA 1980). See Salinas, 858 F.3d at 1360; Balfour, 170 F.3d at 1050–51.

Since Balfour issued, however, developments in the Florida courts caused us to have "substantial doubt" about whether Fla. Stat. § 95.11(2)(a) is the appropriate limitations period to be applied to post-judgment discovery. See Salinas, 858 F.3d at 1361–62 (discussing inconsistent decisions from Florida's intermediate courts of appeal). For that reason we certified to the Florida Supreme Court the question of which limitations period applies. See id. at 1362. That Court has kindly assisted us and told us the following: Under Florida law, post-judgment discovery for the

[1] "The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." Fed. R. Civ. P. 69(a)(1).

purpose of collecting a federal money judgment issued by a federal court in Florida "is permitted for a period of twenty years from the date the judgment was entered." See Salinas v. Ramsey, No. SC17-823, 2018 WL 549183, at *1 (Fla. Jan. 25, 2018). The Florida Supreme Court also explained that "post-judgment discovery is not an 'action,' and section 95.11 does not establish when it must begin." Id. at *3. That being the case, post-judgment discovery "is appropriate as long as the judgment is enforceable," which under Florida law is for twenty years. Id.

With the benefit of the guidance from Florida's highest court, we now know that Mr. Salinas and Ms. Fuentes's motion to compel post-judgment discovery was timely.[2] See 28 U.S.C. § 1962 (requiring federal court judgments to be treated like judgments awarded in courts of the state where the federal court is located). We remand to the District Court for proceedings consistent with this ruling.

REVERSED AND REMANDED.

[2] Because the Florida Supreme Court's decision undermines our interpretation of Florida law in Balfour, it is no longer binding in this Circuit. See EmbroidMe.com, Inc. v. Travelers Prop. Cas. Co. of Am., 845 F.3d 1099, 1105 (11th Cir. 2017).