

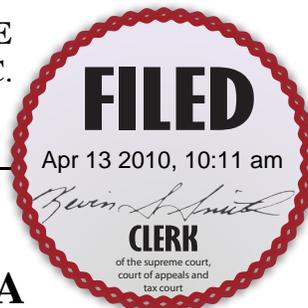
Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

APPELLANTS *PRO SE*:

RALPH E. DALZELL  
SANDRA S. DALZELL  
Lynn, Indiana

ATTORNEY FOR APPELLEES:

MATTHEW S. LOVE  
Feiwell & Hannoy, P.C.  
Indianapolis, Indiana



IN THE  
COURT OF APPEALS OF INDIANA

RALPH E. DALZELL, SANDRA S.  
DALZELL and HOUSEHOLD FINANCE  
CORPORATION III, )

Appellants-Defendants,<sup>1</sup> )

vs. )

No. 68A01-0908-CV-394

THE BANK OF NEW YORK MELLON, FKA )  
THE BANK OF NEW YORK AS SUCCESSOR )  
IN INTEREST TO JPMORGAN CHASE BANK, )  
NA, AS TRUSTEE FOR STRUCTURED ASSET )  
MORTGAGE INVESTMENTS II INC. BEAR )  
STEARNS ALT-A TRUST 2005-5, MORTGAGE )  
PASS-THROUGH CERTIFICATES, SERIES )  
2005-5, )

Appellee-Plaintiff. )

APPEAL FROM THE RANDOLPH CIRCUIT COURT  
The Honorable Jay L. Toney, Judge  
Cause No. 68C01-0812-MF-650

<sup>1</sup> Household Finance Corporation does not join the Dalzells' challenge on appeal. Pursuant to Indiana Appellate Rule 17(A), however, a party of record in the trial court shall be a party on appeal.

**April 13, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

In this *pro se* appeal, Appellants-Defendants Ralph Dalzell and Sandra Dalzell challenge the trial court's entry of summary judgment against them in a foreclosure action brought by Appellee-Plaintiff The Bank of New York Mellon. Upon appeal, the Dalzells challenge the trial court's summary judgment by claiming that The Bank's designated evidence lacks validity. We affirm.

**FACTS AND PROCEDURAL HISTORY**

On March 17, 2005, the Dalzells executed an Adjustable Rate Note with Ameriquest Mortgage Company in which they promised to pay, in exchange for a loan, the principal sum of \$152,100 plus interest. One term of this note stated as follows: "I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the 'Note Holder.'" App. p. 5. As security interest for their loan, the Dalzells mortgaged and conveyed to Ameriquest and its "successors and assigns" their property located at 4102 East County Road 900 South in Lynn. Appellant's App. p. 11.

On March 24, 2005, Ameriquest executed an assignment of this mortgage to The Bank, or more specifically, "The Bank of New York Mellon, fka The Bank of New York as successor in interest to J.P. Morgan Chase Bank, N.A., as Trustee for Structured Asset

Mortgage Investments II Inc. Bear Stearns Alt-A Trust 2005-5, Mortgage Pass-Through Certificates, Series 2005-5.”<sup>2</sup> Appellant’s App. p. 28. On December 5, 2008, The Bank filed a complaint alleging that the Dalzells were in default of the terms of their note, having failed to make the required payments since their last payment on March 1, 2008. The Bank claimed to be the current holder of the note and sought to accelerate the Dalzells’ indebtedness, which at that time was \$145,886.09 plus interest, and to foreclose on their property.

On March 26, 2009, The Bank moved for summary judgment against the Dalzells. In support of its motion, the Bank designated, *inter alia*, copies of the promissory note and mortgage between the Dalzells and Ameriquest, Ameriquest’s assignment of the mortgage to The Bank, and an affidavit averring that The Bank was the holder of the note and mortgage. On April 24, 2009, the Dalzells filed a “Motion to Object” to The Bank’s summary judgment motion but did not designate any evidence. Following a June 26, 2009 summary judgment hearing, the trial court granted The Bank’s motion for summary judgment on July 14, 2009. This appeal follows.

---

<sup>2</sup> Exhibit D, the document creating this assignment, is somewhat difficult to interpret. The plain language indicates that Ameriquest assigned its mortgage with the Dalzells to “JP Morgan Chase Bank, N.A., as Trustee for Structured Asset Mortgage Investments II Inc. Bear Stearns.” Appellant’s App. p. 28. There are three handwritten asterisks in front of “JP Morgan Chase Bank.” Later in the document, three asterisks signal the language, “The Bank of New York Mellon, fka The Bank of New York as Successor in interest to.” Apparently, this subsequent “The Bank of New York . . .” language was intended to be placed in front of the “JP Morgan Chase Bank” language as designated by the placement of the matching three asterisks. Also, the language “Bear Stearns” in the original assignment language is followed by a single asterisk. Later in the document, a single asterisk signals the language “Alt-A Trust 2005-5, Mortgage Pass-Through Certificates, Series 2005-5.” Apparently, this subsequent “Alt-A Trust . . .” language was intended to be placed after “Bear Stearns” as designated by the placement of the matching single asterisks. This plain-language interpretation is consistent with the designated evidence averring that The Bank was the holder of the note and mortgage.

## DISCUSSION AND DECISION

On appeal, the Dalzells challenge The Bank's ability to enforce the terms of the note and mortgage by questioning the validity of The Bank's designated documents. When reviewing a grant or denial of summary judgment our well-settled standard of review is the same as it is for the trial court: whether there is a genuine issue of material fact, and whether the moving party is entitled to judgment as a matter of law. *Ind. Univ. Med. Ctr., Riley Hosp. for Children v. Logan*, 728 N.E.2d 855, 858 (Ind. 2000). Summary judgment should be granted only if the evidence sanctioned by Indiana Trial Rule 56(C) shows that there is no genuine issue of material fact and the moving party deserves judgment as a matter of law. *Id.* All evidence must be construed in favor of the opposing party, and all doubts as to the existence of a material issue must be resolved against the moving party. *Id.*

Here, The Bank's designated evidence included the promissory note and mortgage executed between the Dalzells and Ameriquest, Ameriquest's assignment of the mortgage to The Bank, and an affidavit verifying the authenticity of The Bank's records. While the Dalzells dispute the reliability of The Bank's records, they submitted no designated evidence in support of their position. To the extent they rely upon their claims in their "Motion to Object," unsworn statements and unverified exhibits do not qualify as proper Rule 56 evidence. *Id.* Without designated evidence in support of their claims, the Dalzells cannot demonstrate the existence of a genuine issue of material fact regarding the validity of The Bank's designated evidence. Accordingly, the trial court did not err in granting summary judgment.

The judgment of the trial court is affirmed.

RILEY, J., and MATHIAS, J., concur.