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Civil Procedure > Justiciability > Standing
[HN4] Florida courts have repeatedly held that borrowers cannot defeat a foreclosure plaintiff's standing by relying upon trust documents to which the borrower is not a party.

COUNSEL: Carlton Fields Jorden Burt, P.A., and Michael K. Winston, Dean A. Morande, and Alana Zorrilla-Gaston (West Palm Beach), for appellant.

W.J. Barnes, P.A., and Jeff Barnes (Boca Raton), for appellees.

JUDGES: Before SUAREZ, C.J., and SHEPHERD and SCALES, JJ.

OPINION BY: SCALES

OPINION

[*228] SCALES, J.

Appellant, plaintiff below, Citibank, N.A., as trustee for the BSARM 2007-2 trust (the "Trust"), appeals a final judgment involuntarily dismissing the Trust's foreclosure complaint post-trial. The trial court entered final judgment against the Trust based exclusively on Appellees' expert witness who testified at trial that the Trust was not, and never had been, the holder of the subject note. We reverse because the trial court impermissibly relied upon the expert's legal conclusions rather than competent, substantial evidence.

I. Facts

In September of 2006, the now defunct Orion Bank loaned Appellee Martin Olsak $540,000. Orion Bank's loan was memorialized with a promissory note (the "Olsak Note"), and secured with a mortgage (the "Olsak Mortgage") encumbering Olsak's real property in Key West, Florida. After Olsak defaulted **[**2]** on the note and mortgage by failing to make a required installment payment, the Trust -- which had allegedly acquired the Olsak Note and Mortgage -- filed a foreclosure action in Monroe County Circuit Court in June of 2009.

Prior to trial, the Trust filed with the Court the original Olsak Note payable to Orion Bank. The Olsak Note was endorsed by the loan's servicer, Wells Fargo, as Orion Bank's attorney-in-fact, and then endorsed in blank by Wells Fargo. The Trust introduced into evidence a September 2006 mortgage assignment showing that the Olsak Mortgage and Olsak Note were assigned by Orion Bank to Wells Fargo on the same day the loan was originated. In addition, the Trust introduced into evidence a Wells Fargo "screen shot" purportedly showing that the loan was placed into the Trust on June 28, 2007.

Olsak called one witness, **Richard Kahn,** a mortgage foreclosure fraud investigator and securitization auditor. Over the Trust's objections, Kahn, a non-lawyer whom the trial court treated as an expert witness, gave opinion testimony that the Trust documents did not allow for the Trust to acquire a note, like the Olsak Note, that had been endorsed in blank. **[*229]** Kahn also testified that the **[**3]** Olsak Note endorsements violated IRS provisions related to real estate mortgage investment conduits ("REMICs") such as the Trust. While