

312 So.3d 1015

District Court of Appeal of Florida, Second District.

George DEMAKIS, a/k/a

George D. Demarkis, Appellant,

v.

SUNTRUST BANK, Unknown Spouse  
of George D. Demakis, a/k/a George  
Demarkis, Unknown Tenant #2, and All  
Unknown Parties Claiming an Interest By,  
Through, Under, or Against Any Defendant  
or Claiming Any Right, Title, and Interest  
in the Subject Property, Appellees.

Case No. 2D19-3751

Opinion filed February 24, 2021.

### Synopsis

**Background:** Mortgagee brought foreclosure action against mortgagor. The Circuit Court, 6th Judicial Circuit, Pinellas County, [George M. Jirotko, J.](#), granted mortgagee's motion for summary judgment and entered foreclosure judgment. Mortgagor appealed.

The District Court of Appeal, [Northcutt, J.](#), held that home equity line of credit was not self-authenticating negotiable instrument.

Reversed and remanded.

Appeal from the Circuit Court for Pinellas County; [George M. Jirotko](#), Judge.

### Attorneys and Law Firms

[Ivan D. Ivanov](#) of Ivanov of PLLC, Tampa, for Appellant.

[Arthur S. Barksdale IV](#) and [Philip D. Storey](#) of Alvarez, Winthrop, Thompson & Storey, P.A., Orlando, for Appellee SunTrust Bank.

No appearance for remaining Appellees.

### Opinion

[NORTHCUTT](#), Judge.

**\*\*1** George Demakis challenges a final judgment of foreclosure entered after the circuit court granted summary judgment in favor of SunTrust Bank. We reject without comment Demakis's assertions that the foreclosure complaint failed to state a cause of action and that SunTrust was estopped from foreclosing due to “unclean hands.” Nevertheless, we reverse because SunTrust sought to foreclose on a home **\*1016** equity line of credit (HELOC) that was not authenticated.<sup>1</sup>

<sup>1</sup> In addition, the inclusion of \$2099 for hazard insurance disbursements in the damages award lacked evidentiary support. However, our reversal in this case renders this issue moot.

In April 2004, Demakis executed a mortgage on the subject property as security for a line of credit in the amount of \$30,000. Subsequently, in March 2005, after two prior loan modifications, Demakis obtained the subject HELOC with a credit limit of \$235,000 that was secured by a modification of the mortgage. Prior to the hearing on the motion for summary judgment, SunTrust filed a copy of the HELOC with the circuit court. However, as in [Third Federal Savings & Loan Ass'n of Cleveland v. Koulouvaris](#), 247 So. 3d 652 (Fla. 2d DCA 2018), the bank failed to properly authenticate the HELOC. In both his affirmative defenses and his memorandum in opposition to summary judgment, Demakis contended that a HELOC is not a negotiable instrument and must be authenticated with evidentiary proof. He even cited to [Koulouvaris](#) in his first affirmative defense.

The [Koulouvaris](#) court distinguished a HELOC note from a promissory note secured by a mortgage. [Id.](#) at 654–55. A promissory note is an unconditional promise to pay a fixed amount of money, and as such, it is a self-authenticating negotiable instrument. [Id.](#) On the other hand, a HELOC note does not require payment of a fixed sum. Rather, it is a promise to repay draws that may be taken from time to time against a credit limit. [Id.](#) at 653–55. Therefore, [Koulouvaris](#) held that the HELOC in that case was not self-authenticating, and absent other proof of authentication, it was inadmissible into evidence. [Id.](#) at 655. As in [Koulouvaris](#), the unauthenticated HELOC in this case would not have been “admissible in evidence” at trial and, as such, it was not a sufficient basis for a summary judgment. [See Fla. R. Civ.](#)

P. 1.510(c). Accordingly, we reverse and remand for further proceedings.

SLEET and ATKINSON, JJ., Concur.

Reversed and remanded.

**All Citations**

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