

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 96-10578

SMS FINANCIAL II LLC, and Arizona limited
liability company,

Plaintiff-Counter Defendant-Appellee,

VERSUS

YUKIHIRO NAKAMURA; TAMMY HARRIS NAKAMURA,

Defendants-Counter Claimants-Appellants.

Appeal from the United States District Court
For the Northern District of Texas

(3:95-CV-954-G)

October 22, 1996

Before GARWOOD, JOLLY and DENNIS, Circuit Judges.*

PER CURIUM:

Appellants Yukihiro Nakamura and Tammy Harris Nakamura seek relief from a decision granting SMS Financial II, L.L.C. ("SMS") the right to collect on a promissory note. The thrust of their argument is that SMS should not be entitled to enforcement because it does not qualify as a holder in due course in two respects: (1)

* Pursuant to Local Rule 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

SMS cannot produce the original note and (2) the note was improperly endorsed.

The trial court rejected these contentions reasoning that (1) the summary judgment evidence of SMS satisfactorily establishes its ownership of the note, notwithstanding loss of the original, and (2) despite improper endorsement and lack of holder in due course status, SMS, as owner of the note, can enforce it subject to any equitable defenses, and the Nakamuras have asserted no such defenses.

Having considered the briefs of the parties and the relevant portions of the record, this Court concludes, essentially for the reasons stated in the district court's memorandum opinion, that the judgment below is correct. Accordingly, the judgment of the district court is

AFFIRMED