IN THE COURT OF APPEALS OF IOWA

No. 3-526 / 12-2068
Filed August 21, 2013

THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2007-OH1, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-OH1,
Plaintiff-Appellee,

vs.

JARED D. LOFLAND,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

Jared Lofland appeals from the grant of a motion for summary judgment in favor of the Bank of New York Mellon. **AFFIRMED.**

Jared Lofland, Ankeny, appellant pro se.

C. Anthony Crnic of Klatt, Odekirk, Augustine, Sayer, Treinen & Rastede, P.C., Waterloo, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

Jared Lofland appeals from the grant of a motion for summary judgment in favor of the Bank of New York Mellon. We affirm.

I. Facts and proceedings.

Lofland received a loan for his home from Quicken Loans in the amount of $400,000 in 2007. Quicken Loans secured this interest with a mortgage on the property. This loan was reassigned and ultimately bought by the Bank of New York Mellon.[1] Lofland failed to make payments as required under the loan and a petition for foreclosure was filed in November 2011. The Bank of New York Mellon filed a motion for summary judgment in April 2012. Lofland filed a resistance to the motion, a pretrial brief, and witness and exhibit list. A hearing was held on the motion for summary judgment on August 28, 2012. The court granted the motion, ruling:

> The material facts are undisputed: Defendant Jared D. Lofland signed the promissory note for the purchase of the subject real estate and secured payments on the same via a mortgage; Defendant Lofland has breached the terms of the contract by failing to make the required payments and the Plaintiff has met all of the statutory prerequisites for seeking foreclosure on the mortgage. The Defendant in resistance to the motion challenges, among other things, the Plaintiff's ownership rights alleging thereon a defective assignment. However, as pointed out by Plaintiff's counsel, the assignment was done with the Defendant receiving notice at the time of the execution of the contract that an assignment [was made] and any assignment may be made. In any event, Defendant has not provided any competent evidence to show that Plaintiff is not the owner of the promissory note and mortgage. The breach of the mortgage contract documents having been shown, the Court finds that the Plaintiff is entitled to prevail on its Motion for Summary Judgment.

[1] In 2010, prior to the Bank of New York Mellon transfer, Lofland communicated with the Bank of America, who was servicing his loan, regarding a modification of the loan. These modification efforts were unsuccessful.

After the ruling, Lofland hired counsel and a motion to reconsider was filed. This motion was denied. Lofland appeals, arguing genuine issues of material fact exist and that the loan assignment was not valid, among several other claims.[2]

II. Analysis.

"Foreclosure proceedings are typically tried in equity. This appeal, however, is from an order granting summary judgment and related supplemental orders. Our review, therefore, is for correction of errors of law." *Freedom Fin. Bank v. Estate of Boesen*, 805 N.W.2d 802, 806 (Iowa 2011) (internal citations omitted). Summary judgment is appropriate where there is no genuine issue of material fact after a review of the entire record and when the moving party established entitlement to judgment as a matter of law. *Pavone v. Kirke*, 807 N.W.2d 828, 832 (Iowa 2011).

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[2] These claims include that the court failed to rule on Lofland's counterclaims, that the loan was unconscionable under our consumer credit statute, and that the loan was entered into under duress.

In his answer, Lofland does not articulate any legally cognizable counterclaim. He alleges the Bank of New York Mellon "is attempting to defraud the settlement agreement with the State of Iowa," referencing a multi-state loan modification class action which has no bearing on the present action. He also states the Bank of New York Mellon was attempting to modify his loan which caused him "economic duress." Finally, he states the Bank of New York Mellon was required to offer modification or settlement terms of some kind. No error resulted in the district court's decision not to address these statements from Lofland's answer.

Lofland's arguments of unconscionability and duress are also without merit. He argues the loan was unconscionable under our consumer fraud statute. However, that statute does not apply to Lofland's $400,000 loan. Iowa Code § 537.1301(15)(a) (2007) (defining a "consumer loan" as a loan financing an amount under $25,000).

Lofland also argues the loan was made under duress. He cites no authority to support his proposition. *See State v. Adney*, 639 N.W.2d 246, 250 (Iowa Ct. App. 2001) ("When a party, in an appellate brief, fails to state, argue, or cite to authority in support of an issue, the issue may be deemed waived"). Further, the argument relies on behavior by the loan servicer during his failed attempt to modify of the already-existing loan. This behavior cannot support an argument Lofland entered into the loan under duress. *See Turner v. Low Rent Housing Agency of City of Des Moines*, 387 N.W.2d 596, 598 (Iowa 1986) (stating our rule of duress requires victim's assent to an agreement must be induced by improper threat from the other party leaving no reasonable alternative).

"In performing this review, we examine the record in a light most favorable to the nonmoving party to determine if the moving party has met its burden." *Id.*

We find Lofland failed to present any issue of material fact as required under our summary judgment rule. In arguing that genuine issues of material fact exist to proceed to trial, Lofland directs our attention to filings in other pending cases involving foreclosures around the country involving other borrowers and lenders. While instructive as to our nation's troubled housing situation, these do not create genuine issues of material fact as to Lofland's specific loan with the Bank of New York Mellon.

Lofland argues his filings and affidavit in support of his resistance to summary judgment create genuine issues of material fact. None of Lofland's filings were signed; the affidavit was not sworn and does not include factual disputes. *See* Iowa Code § 622.85 ("An affidavit is a written declaration made under oath, without notice to the adverse party, before any person authorized to administer oaths within or without the state."). While in the filings he denies aspects of the motion such as the amount of the loan, he does not support this denial. Instead, he raises his frustrations with the protracted and ultimately unsuccessful loan modification process.

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered.

Iowa R. Civ. P. 1.981(5).

Lofland similarly fails to support his assertions that his loan was not properly assigned to the Bank of New York Mellon. He provides no support to his contention that "the path of the mortgage transfer cannot be valid and has been misrepresented." We agree with the district court that Lofland "has not provided any competent evidence to show that Plaintiff is not the owner of the promissory note and mortgage." He has failed to meet his burden under our rules to provide a genuine issue for trial. *See id.* We affirm the grant of the motion for summary judgment.

AFFIRMED.