**REL: February 14, 2020**



# SUPREME COURT OF ALABAMA

**OCTOBER TERM, 2019-2020**

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**1180985**

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**Dale Forbes, administrator ad litem for the Estate of Gay Nell Mize, deceased**

**v.**

**Platinum Mortgage, Inc., and PennyMac Loan Services, LLC**

**Appeal from Jefferson Circuit Court**
**(CV-15-903482)**

SELLERS, Justice.

Dale Forbes, as administrator ad litem for the estate of Gay Nell Mize, deceased ("the estate"), appeals from a summary judgment in favor of Platinum Mortgage, Inc. ("Platinum"), and PennyMac Loan Services, LLC ("PennyMac"). We affirm.

The record on appeal contains a notarized power of attorney, dated September 6, 2013, which appears to be signed by Gay Nell Mize. The limited power of attorney authorizes Gay Nell's husband, Charles Mize, to execute, on Gay Nell's behalf, certain documents in a transaction refinancing the Mizes' house. On the authority of the power of attorney, Charles borrowed $175,000 from Platinum and gave Platinum a mortgage on the Mizes' residence, executing both a loan agreement and a mortgage. Platinum then assigned the loan and mortgage to PennyMac.

In 2015, Gay Nell was declared incompetent and a conservator was appointed for her. The conservator sued multiple defendants, including Platinum and PennyMac, alleging that the power of attorney executed by Gay Nell was invalid, that Gay Nell was not bound by the loan agreement and the mortgage executed by Charles, and that the Mizes' house was not encumbered by the mortgage. The complaint, as amended, suggests that Gay Nell's signature on the power of attorney was forged or that Gay Nell lacked the capacity to execute the power of attorney. Gay Nell died in January 2017, while this action was pending below, and Dale Forbes was appointed

administrator ad litem for the purpose of litigating the action on behalf of her estate.

Platinum and PennyMac filed separate motions for a summary judgment. In support of those motions, Platinum and PennyMac asserted that there was no evidence indicating that the power of attorney used to procure the loan was invalid for any reason. The estate does not direct this Court's attention to any evidence to the contrary. In fact, the notary public who acknowledged Gay Nell's signature on the power of attorney testified during deposition that Gay Nell did indeed sign the instrument and that she appeared competent when she did so.[1]

[1]In support of the factual averments in its brief to this Court, the estate provides citations to its complaint and amended complaints. We note, however, that, "[i]n opposing a motion for summary judgment, the nonmovants cannot merely rely on the allegations in their complaint." Rhodes v. General Motors Corp., Chevrolet Div., 621 So. 2d 945, 949 (Ala. 1993). The estate also makes passing reference in its brief to a copy of the transcript from a criminal proceeding involving Charles Mize. The estate asserts that Charles was "found guilty of defrauding Gay Nell Mize's Estate and financial exploitation in connection with the mortgage at issue in this case." The estate, however, does not give any further details regarding the criminal proceedings or otherwise provide any evidentiary basis for its assertion that the power of attorney was invalid.

The trial court granted Platinum's and PennyMac's summary-judgment motions. The estate appealed.[2]

> "We apply the same standard of review the trial court used in determining whether the evidence presented to the trial court created a genuine issue of material fact. Jefferson County Comm'n v. ECO Preservation Services, L.L.C., 788 So. 2d 121 (Ala. 2000) (quoting Bussey v. John Deere Co., 531 So. 2d 860, 862 (Ala. 1988)). Once a party moving for a summary judgment establishes that no genuine issue of material fact exists, the burden shifts to the nonmovant to present substantial evidence creating a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989)."

Nationwide Prop. & Cas. Ins. Co. v. DPF Architects, P.C., 792 So. 2d 369, 372 (Ala. 2000). Questions of law are reviewed de novo. Van Hoof v. Van Hoof, 997 So. 2d 278, 286 (Ala. 2007).

With some exceptions, § 26-1A-120, Ala. Code 1975, a part of the Alabama Uniform Power of Attorney Act, § 26-1A-101 et seq., Ala. Code 1975, requires third parties to accept "acknowledged" powers of attorney. An "acknowledged" power of attorney is one that is "purportedly verified before a notary public." § 26-1A-119(a), Ala. Code 1975. The evidence in this case establishes that the power of attorney authorizing

[2]Only the judgment in favor of Platinum and PennyMac is before this Court. The estate's claims against the other defendants, which have been resolved, are not before us at this time.

Charles to act as Gay Nell's agent contains Gay Nell's signature and the signature and seal of a notary public. This Court has not been presented with any evidence suggesting that the power of attorney was invalid because Gay Nell's signature was forged, because she lacked the capacity to execute the power of attorney, or for any other reason.

Even if there was evidence indicating that the power of attorney was invalid, Platinum and PennyMac argued in support of their summary-judgment motions that, because the power of attorney appeared valid on its face and because Platinum and PennyMac had no knowledge of any alleged invalidity, they were entitled to rely on the power of attorney and Gay Nell was bound by the terms of the loan agreement and the mortgage. In support, Platinum and PennyMac pointed to § 26-1A-119(c), Ala. Code 1975, which provides:

> "A person that effects a transaction in reliance upon an acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority is fully exonerated from any liability for effecting the transaction in reliance upon the power of attorney as if the power of attorney were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still

> in effect, and the agent had not exceeded and had properly exercised the authority."

The estate does not point to any evidence indicating that either Platinum or PennyMac had any knowledge that the power of attorney was invalid or ineffective for any reason. Although the estate claims that an initial power of attorney Charles attempted to use was rejected by Platinum and that Platinum was therefore on notice that there were "problems with the two powers of attorney presented by Charles Mize," the estate provides no citation to the record in support of that assertion. In reality, the record demonstrates that the first power of attorney was rejected because it was not in the standard form used for loan closings, not because of any suspicion that it had been obtained fraudulently.[3]

The estate also does not provide any persuasive argument in opposition to Platinum and PennyMac's assertion that § 26-

[3]After rejecting the first power of attorney, the closing attorney prepared a second power of attorney and required Gay Nell to execute and deliver it in order to close on the transaction and fund the loan. The notary public to the second power of attorney, who was also named as a defendant in this action but as to whom a summary judgment was eventually entered, testified that he recalled witnessing Gay Nell's signature on the power of attorney and that she appeared competent and under no duress when she executed it. The estate has not pointed to any evidence refuting that testimony.

1A-119(c), combined with Platinum and PennyMac's lack of knowledge of the alleged invalidity of the power of attorney, would render the loan agreement and the mortgage anything other than valid and binding on Gay Nell. The Court notes that § 26-1A-119(c) was taken nearly verbatim from the Uniform Power of Attorney Act. The Uniform Comment to § 26-1A-119 states that it "places the risk that a power of attorney is invalid upon the principal rather than the person that accepts the power of attorney." Thus, lenders and other businesses can rely on an agent's signature, which has been authorized by a power of attorney, to complete any transaction as if the principal were present and supplied his or her own signature. Only if the person effecting the transaction for a lender or other business has actual knowledge of the invalidity of the power of attorney can the transaction be set aside. The trial court in the present case determined, and rightly so, that Platinum and PennyMac properly relied on the power of attorney, because they had no actual knowledge that it was anything other than a valid instrument authorizing Charles to execute the loan agreement and the mortgage as Gay Nell's duly

authorized agent. Accordingly, we affirm the summary judgment.

AFFIRMED.

Parker, C.J., and Bolin, Wise, and Stewart, JJ., concur.