

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

SHONTAE BARBER and	:	
TAMMY M. BARBER,	:	
	:	
Plaintiffs,	:	
	:	CIVIL ACTION NO.
v.	:	1:11-CV-01818-RWS
	:	
SUNTRUST MORTGAGE, INC.;	:	
SUNTRUST MORTGAGE LOSS	:	
MITIGATION; and	:	
FEDERAL NATIONAL	:	
MORTGAGE ASSOCIATION,	:	
	:	
Defendants.	:	

**ORDER**

This case comes before the Court on Defendant SunTrust Mortgage, Inc.’s (“SunTrust”) and Defendant Federal National Mortgage Association’s (“Fannie Mae”) (collectively, “Defendants”) Motion for Summary Judgment [16].<sup>1</sup> After a review of the record, the Court enters the following Order.

**I. Preliminary Matters**

As an initial matter, Defendants’ Statement of Material Facts as to Which

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<sup>1</sup> Defendants state in their Motion for Summary Judgment that “‘SunTrust Mortgage Loss Mitigation,’ one of the named defendants in [this action], is not a legal entity.” (Dkt. [16] at 1.)

There Is No Genuine Issue to Be Tried (“Def.s’ Statement of Material Facts”) [16-4] is deemed admitted because Plaintiffs Shontae Barber and Tammy M. Barber (collectively, “Plaintiffs”) have failed to file a response. See LR 56.1(B)(2)(a)(2), NDGa (“This Court will deem each of the movant’s facts as admitted unless the respondent: (i) directly refutes the movant’s fact with concise responses supported by specific citations to evidence (including page or paragraph number); (ii) states a valid objection to the admissibility of the movant’s fact; or (iii) points out that the movant’s citation does not support the movant’s fact or that the movant’s fact is not material or otherwise has failed to comply with the provisions set out in LR 56.1 B.(1).”).

## **II. Background**

This case arises out of the non-judicial foreclosure sale of Plaintiffs’ home located at 1597 Coronet Drive in Riverdale, Georgia (“Property”). (Def.s’ Statement of Material Facts, Dkt. [16-4] ¶ 2.) As Defendants have asserted and Plaintiffs have admitted, the facts are as follows.

In 2008, Plaintiffs executed a security deed (“Security Deed”) in connection with the purchase of their home. (Id. ¶¶ 2, 4.) The Security Deed granted to SunTrust the right to conduct a non-judicial foreclosure sale in the event Plaintiffs defaulted on their loan repayment under a promissory note







(quoting Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). Where the moving party makes such a showing, the burden shifts to the non-movant, who must go beyond the pleadings and present affirmative evidence to show that a genuine issue of material fact does exist. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257 (1986).

The applicable substantive law identifies which facts are material. Id. at 248. A fact is not material if a dispute over that fact will not affect the outcome of the suit under the governing law. Id. An issue is genuine when the evidence is such that a reasonable jury could return a verdict for the non-moving party. Id. at 249-50.

In resolving a motion for summary judgment, the court must view all evidence and draw all reasonable inferences in the light most favorable to the non-moving party. Patton v. Triad Guar. Ins. Corp., 277 F.3d 1294, 1296 (11th Cir. 2002). But, the court is bound only to draw those inferences which are reasonable. “Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial.” Allen v. Tyson Foods, Inc., 121 F.3d 642, 646 (11th Cir. 1997) (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)). “If the evidence is merely colorable, or is not significantly probative, summary

judgment may be granted.” Anderson, 477 U.S. at 249-50 (citations omitted); see also Matsushita, 475 U.S. at 586 (finding that once the moving party has met its burden under Rule 56(a), the non-moving party “must do more than simply show there is some metaphysical doubt as to the material facts”).

Finally, even if a motion for summary judgment is unopposed, the movant must nevertheless show it is entitled to judgment on the merits based on evidentiary materials in the record. The district court “need not sua sponte review all of the evidentiary materials on file at the time the motion is granted,” but it must at least review all those submitted in support of the summary judgment motion. United States v. 5800 S.W. 74th Ave., 363 F.3d 1099, 1101 (11th Cir. 2004). A district court’s order granting an unopposed motion for summary judgment must indicate that the merits were considered. Id. at 1102. With these standards as a foundation, the Court turns to the merits of Defendants’ unopposed Motion for Summary Judgment [16].

B. Analysis

Defendants argue that there is no genuine dispute of material fact that could show the foreclosure sale of the Property was wrongful, improper, or illegal, or that the sale in any way constituted a breach of contract by SunTrust. Plaintiffs admit (through their failure to respond) that: they executed the

Security Deed; the Security Deed granted to SunTrust the right to foreclose in the event of default; they were in default; SunTrust had no duty either to postpone the foreclosure or to modify the loan; they never executed and returned the AMP loan modification agreement; and SunTrust, through foreclosure counsel, sent the notice of foreclosure more than thirty days prior to the foreclosure sale and complied with Georgia and federal law. (Def.s' Statement of Material Facts, Dkt. [16-4] ¶¶ 4, 15, 17, 21-22, 24, 31, 33, 35.) The Court addresses Plaintiffs' claims in light of these admissions.

Plaintiffs allege in their complaint that SunTrust violated O.C.G.A. § 44-14-162.2 by failing to send proper notice of the non-judicial foreclosure sale. (Compl., Dkt. [1-1] ¶ 9.) The statute provides: "Notice of the initiation of proceedings to exercise a power of sale in a mortgage, security deed, or other lien contract shall be given to the debtor by the secured creditor no later than 30 days before the date of the proposed foreclosure." O.C.G.A. § 44-14-162.2(a). There is no genuine issue of material fact, however, because Plaintiffs have admitted that "SunTrust Mortgage, through foreclosure counsel, sent all notices of non-judicial foreclosure to Plaintiffs as required under Georgia and Federal law." (Def.s' Statement of Material Facts, Dkt. [16-4] ¶ 24; see also Dkt. [16-8] (notice of foreclosure sale).) Therefore, this claim is without merit.



Plaintiffs further allege that SunTrust breached the AMP loan modification agreement by foreclosing on the Property. The admitted facts show that there is no genuine issue of material fact regarding the AMP loan modification agreement. Plaintiffs failed to execute and return the agreement, and therefore a contract was never formed (Def.s' Statement of Material Facts, Dkt. [16-4] ¶ 15.) Further, SunTrust never received any payments from Plaintiffs under the AMP loan modification agreement. (Id.) As a result, Plaintiffs' breach of contract claim fails.


Defendants have met their burden of showing, based on materials in the record, the absence of a genuine issue of material fact. The burden has shifted to Plaintiffs to present affirmative evidence that a triable issue of material fact does exist. Anderson, 477 U.S. at 257. Plaintiffs have presented no such evidence. Therefore, the Court finds no genuine dispute of material fact and finds that Defendants are entitled to judgment as a matter of law.

Defendants' Motion for Summary Judgment [16] is **GRANTED**.

#### **IV. Conclusion**

Defendants' Motion for Summary Judgment [16] is **GRANTED**. The Clerk is **DIRECTED** to close the case.

**SO ORDERED**, this 5th day of November, 2012.

  
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RICHARD W. STORY  
UNITED STATES DISTRICT JUDGE