

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

JAMES RALEIGH,

Appellant,

v.

Case No. 5D19-1692

CORNERSTONE QUARRY 2010 A TRUST,

Appellee.

Opinion filed May 1, 2020

Appeal from the Circuit Court
for Brevard County,
Charles J. Roberts, Judge.

Beau Bowin, of Bowin Law Group,
Indialantic, for Appellant.

David M. Snyder, of David M. Snyder, PA,
Tampa, and Joshua D. Moore, of Law
Offices of Daniel C. Consuegra, Tampa, for
Appellee.

ORFINGER, J.

James Raleigh appeals a summary final judgment of foreclosure entered against him and in favor of Cornerstone Quarry 2010 A Trust. We reverse.

Raleigh executed a promissory note in favor of Cornerstone's predecessor. The note was secured by a mortgage encumbering real property. When Raleigh allegedly defaulted on his loan, Cornerstone brought the instant foreclosure action. The note

attached to the complaint required Cornerstone to give Raleigh a notice of default at least 21 days before filing suit. The note further required that the default notice was to be mailed to the address reflected on the note or any other address that Raleigh had specified in writing.

In its complaint, Cornerstone generally alleged that it had complied with all conditions precedent to bringing suit. Raleigh answered and asserted as an affirmative defense that Cornerstone failed to give a notice of default, as required by the note. Cornerstone then filed a motion for summary judgment supported by an affidavit, asserting that while the default notice had not been sent to the address shown on the note, it was sent to Raleigh's residence. In opposition to summary final judgment, Raleigh filed an affidavit, alleging that he never received the notice of default.¹

To prevail on summary judgment, Cornerstone was required to show the absence of any genuine issue of material fact and to refute Raleigh's legally sufficient affirmative defense. See Martins v. PNC Bank, Nat'l Ass'n, 170 So. 3d 932, 935–36 (Fla. 5th DCA 2015). When, as here, a note or mortgage contains a provision that specifically requires a default notice be sent to the borrower prior to foreclosure, the plaintiff must prove either that it complied with the notice provisions contained in the note and mortgage documents or that the defendant actually received the default notice. See id. at 936; Ramos v. Citimortgage, Inc., 146 So. 3d 126, 128 (Fla. 3d DCA 2014). It is undisputed that Cornerstone did not send the notice to the address specified in the note and mortgage documents. And, by way of affidavit, Raleigh denied that he received the default notice.

¹ The record does not establish Raleigh's residence address.

Hence, Cornerstone did not meet its burden to disprove Raleigh's affirmative defense so as to be entitled to summary judgment.

Accordingly, we reverse the final judgment of foreclosure and remand the case for further proceedings.

REVERSED and REMANDED.

EVANDER, C.J. and WALLIS, J., concur.