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

MICHAEL J. PARKIN, JR.,

Appellant,

v. Case No. 5D20-160

EAGLE HOME MORTGAGE, LLC,

Appellee.

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Opinion filed March 5, 2021

Appeal from the Circuit Court
for Orange County,
John M. Kest, Judge.

Ricardo L. Carmona and Tomasita D. Carmona, of The Carmona Law Firm, P.A., Maitland, for Appellant.

Michael Ruff and William L. Noriega, of Padgett Law Group, P.A., Tallahassee, and Laura H. Howard, of Solomon Law Group, P.A., Tampa, for Appellee.

WALLIS, J.

In this foreclosure action, Appellant, Michael Parkin, Jr., appeals the final summary judgment entered in favor of Appellee, Eagle Home Mortgage, LLC. He contends that

summary judgment was improperly entered because an issue of fact remains regarding whether the conditions precedent to foreclosure were met. We agree and reverse.[1]

Appellant executed a promissory note and mortgage to purchase property in Mount Dora, Florida. Paragraphs 15 and 22 of the mortgage that Appellant signed contain the standard language regarding the notice that the lender must provide to the borrower before accelerating the loan. After Appellant defaulted on the loan, Appellee filed the instant foreclosure action. As support for its claim that it notified Appellant of the default as required by the mortgage, Appellee attached to the complaint a copy of the "Notice of Default and Cure Letter" dated March 13, 2018. Appellant filed an amended answer, wherein he raised numerous affirmative defenses, including that Appellee failed to fulfill all conditions precedent to foreclosure and that Appellee failed to properly accelerate the note.

Appellee moved for summary judgment and, in response to Appellant's claim that Appellee failed to meet conditions precedent to accelerating the loan, Appellee again relied on the March 13 default letter that it had attached to the complaint. Appellee also attached two documents entitled "Letter Log History File" to the motion for summary judgment. Appellant filed a response to Appellee's motion for summary judgment, arguing that several factual questions remain, including whether Appellee complied with conditions precedent to foreclosure. As support for his claim, Appellant filed an affidavit, swearing that he never received the March 13 default letter and that it was never mailed

[1] Because questions of fact remain regarding whether Appellee complied with conditions precedent and reversal is required on that basis, we decline to address Appellant's other arguments on appeal.

to him. The trial court granted Appellee's motion and entered final summary judgment in favor of Appellee and against Appellant.

It is well settled that compliance with the standard notice requirements contained in paragraphs 15 and 22 of a mortgage is a condition precedent to filing suit. Rivera v. Bank of N.Y. Mellon, 276 So. 3d 979, 982 (Fla. 2d DCA 2019). Thus, in order to be entitled to summary judgment, the lender "must conclusively show that a default letter was mailed or delivered in compliance with paragraphs 15 and 22." Id. To establish that the letter was mailed, the lender must provide "additional evidence such as proof of regular business practices, an affidavit swearing that the letter was mailed, or a return receipt." Id. (quoting Allen v. Wilmington Tr., N.A., 216 So. 3d 685, 688 (Fla. 2d DCA 2017)). Simply attaching a copy of the default letter to a motion for summary judgment without more is insufficient to prove that the letter was mailed. Bryson v. Branch Banking & Tr. Co., 75 So. 3d 783, 786 (Fla. 2d DCA 2011).

Here, the only support that Appellee provided for its claim that it complied with paragraphs 15 and 22 of the mortgage was the copy of the March 13 default letter and the unauthenticated "Letter Log History Files" that were attached to the motion for summary judgment. These documents alone did not establish that the demand letter was mailed to Appellant. See Ghani v. Deutsche Bank Nat'l Tr. Co. as Tr. for PFCA Home Equity Inv. Tr. Certificates, Series 2002-IFC2, 287 So. 3d 637, 638 (Fla. 4th DCA 2020) (holding that bank failed to prove compliance with conditions precedent to foreclosure where the only evidence that the demand letter was mailed was the bank's affidavit accompanying the default letter and the affiant did not have sufficient personal knowledge of GMAC's general practices of mailing letters to establish that the letter was mailed);

Rivera, 276 So. 3d at 983 (reversing summary judgment in favor of the bank where the bank failed to conclusively show that the default letter was mailed); Morrison v. U.S. Bank, N.A., 66 So. 3d 387, 387 (Fla. 5th DCA 2011) (reversing summary judgment of foreclosure where the borrower claimed she had not received the notice of default as required by the mortgage and the bank simply filed a copy of the notice letter to its motion, which was not authenticated by affidavit or otherwise).

Accordingly, because there was insufficient evidence showing that the default letter and the notice of acceleration were mailed to Appellant as required by the mortgage, factual questions remain regarding Appellee's compliance with conditions precedent and summary judgment was improperly entered. See Rivera, 276 So. 3d at 983; Frost v. Regions Bank, 15 So. 3d 905, 906 (Fla. 4th DCA 2009) (reversing summary judgment in favor of the bank where the bank did not provide any evidence indicating that it gave the homeowners the notice that was required by the mortgage). Therefore, we reverse the final summary judgment and remand for further proceedings.

REVERSED and REMANDED.

LAMBERT and EDWARDS, JJ., concur.