

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-3319

21ST MORTGAGE CORPORATION,

Appellant,

v.

TSE PLANTATION, LLC, MERI L.
HARRELL, CURTIS R. HARRELL, et
al.,

Appellees.

On appeal from the Circuit Court for Suwannee County.
David W. Fina, Judge.

August 31, 2020

PER CURIAM.

Appellant, 21st Mortgage Corporation, appeals a summary final judgment entered in favor of Appellee TSE Plantation, LLC. 21st Mortgage argues in part that TSE Plantation failed to establish that it was injured by 21st Mortgage's alleged misconduct in a bankruptcy case so as to support a grant of summary judgment on TSE Plantation's unclean hands defense. We agree and reverse.

This case stems from a dispute over a Scotbilt mobile home financed by 21st Mortgage and located on land that eventually became the property of TSE Plantation. The underlying land was originally financed by Curtis and Meri Harrell through First

Guaranty Bank and Trust Company of Jacksonville. Security for the mortgage included any buildings and fixtures that were then located on the land, as well as any buildings or fixtures that were added to the land in the future. When the Harrells defaulted on their loan, First Guaranty Bank sought to foreclose on the property.

During the pendency of the foreclosure case, the Harrells financed the purchase of a brand new Scotbilt mobile home for \$81,000 through 21st Mortgage. The Harrells disposed of the existing mobile home on the land and substituted the Scotbilt mobile home in its place. Then, they filed for bankruptcy. In the meantime, First Guaranty Bank obtained a final judgment of foreclosure for the underlying land and sold its interest in that land to CenterState Bank.

CenterState Bank and 21st Mortgage became involved in the bankruptcy proceedings as the Harrells' secured creditors. When the bankruptcy trustee sought to bring the mobile home into the bankruptcy estate, 21st Mortgage filed an objection, arguing that the mobile home was only worth \$30,000 and the Harrells owed more than \$60,000 on the loan. 21st Mortgage asserted that there was no equity in the mobile home and, therefore, the bankruptcy trustee should abandon its interest in that asset. Neither the Harrells nor 21st Mortgage notified the bankruptcy trustee or the bankruptcy court that the mobile home at issue was not the old mobile home originally on the property, but a brand new Scotbilt mobile home recently financed for \$81,000.

After the bankruptcy proceeding concluded, 21st Mortgage filed the complaint in the instant case, seeking to repossess the Scotbilt mobile home because the Harrells had defaulted on the loan. Subsequently, TSE Plantation bought the underlying land from CenterState Bank. TSE Plantation intervened in this case, asserting that it had been assigned the interest in the land and all fixtures thereon, which included the Scotbilt mobile home. 21st Mortgage amended its complaint to seek a writ of replevin to obtain the Scotbilt mobile home from TSE Plantation, and TSE Plantation filed an answer and affirmative defenses that raised the unclean hands defense.

TSE Plantation then filed a motion for summary judgment, arguing that 21st Mortgage had made material misrepresentations to the bankruptcy court concerning the value of, and equity in, the mobile home to maintain control of the asset. Due to this misconduct, TSE Plantation asserted that 21st Mortgage came to the trial court in this case with unclean hands and could not seek an equitable remedy. TSE Plantation submitted evidence concerning the circumstances surrounding the sale of the Scotbilt mobile home and the misrepresentations made to the bankruptcy court. 21st Mortgage did not file a response or submit contrary evidence, although 21st Mortgage did argue the insufficiency of TSE Plantation's evidence during the ensuing hearing. The trial court granted TSE Plantation's motion, and 21st Mortgage appealed.

We review a summary judgment *de novo* to determine whether there are genuine issues of material fact and whether the correct law was applied. *Northwood Assocs., LLC v. Ertel*, 265 So. 3d 665, 668 (Fla. 1st DCA 2019). The unclean hands defense applies to bar an equitable claim regardless of the claim's merits where the plaintiff has engaged in some manner of unscrupulous conduct, overreaching, or trickery that would be "condemned by honest and reasonable men." *Shahar v. Green Tree Servicing, LLC*, 125 So. 3d 251, 253 (Fla. 4th DCA 2013) (quoting *Ocean View Towers, Inc. v. First Fid. Sav. & Loan Ass'n*, 521 So. 2d 325, 326 (Fla. 4th DCA 1988)); *see also Congress Park Office Condos II, LLC v. First-Citizens Bank & Trust Co.*, 105 So. 3d 602, 609 (Fla. 4th DCA 2013). "Unclean hands may be asserted by a defendant who claims that the plaintiff acted toward a third party with unclean hands with respect to the matter in litigation." *Quality Roof Servs., Inc. v. Intervest Nat'l Bank*, 21 So. 3d 883, 885 (Fla. 4th DCA 2009). To prevail on this defense, the adverse party must show that it was injured as a result of the alleged misconduct. *MTGLQ Inv'rs., L.P. v. Moore*, 293 So. 3d 610, 617 (Fla. 1st DCA 2020). This defense is generally not suitable for resolution on summary judgment because it requires the determination of factual disputes. *Dery v. Occhiuzzo & Occhiuzzo Enters., Inc.*, 771 So. 2d 1276, 1279 (Fla. 4th DCA 2000). The burden is on the party seeking summary judgment to show that there is no genuine issue of disputed fact. *Bradner v. Bradner*, 286 So. 3d 947, 949 (Fla. 1st DCA 2019).

21st Mortgage argues in part that TSE Plantation failed to demonstrate that it was injured by 21st Mortgage's misconduct in the bankruptcy case. In its answer brief, TSE Plantation counters that 21st Mortgage's misrepresentation caused its predecessor in interest, CenterState Bank, to file responsive pleadings in the bankruptcy case. To support its position, TSE Plantation cites to a single document from the bankruptcy case that was filed by CenterState Bank—CenterState Bank's objection to Curtis Harrell's claim of exemption. In that document, CenterState Bank joined the bankruptcy trustee's objections to Mr. Harrell's claimed exemptions concerning personal property that he alleged should not be subject to distribution in the bankruptcy case. The bankruptcy trustee's objection argued that Harrell's claimed exemptions for items such as a pick-up truck, clothing, jewelry, and furniture were invalid because the property had been undervalued or the exemptions were not supported by adequate documentation. There is no mention in either filing of the Scotbilt mobile home, 21st Mortgage, or any misrepresentations about the value of the mobile home. Nor does the record contain any other documents from the bankruptcy case that would support TSE Plantation's position.

In fact, the course and outcome of the bankruptcy case are unclear from the record. The trial court's factual findings in the summary final judgment, which are otherwise detailed, merely reference that CenterState Bank expended time and resources responding to 21st Mortgage's bankruptcy filing without providing any specific details. Even assuming, *arguendo*, that CenterState Bank's expenditure of time and resources could be relied upon to show an injury to TSE Plantation, it is clear on this record that no such expenditure was shown. Under these circumstances, the trial court erred by granting summary judgment for TSE Plantation. Therefore, we reverse the summary final judgment and remand for further proceedings.

REVERSED and REMANDED for further proceedings.

LEWIS, MAKAR, and NORDBY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Laura H. Mirmelli of Busch Slipakoff Mills & Slomka LLC,
Atlanta, Georgia, for Appellant.

Thomas S. Edwards, Jr. of Edwards & Ragatz, P.A., Jacksonville,
for Appellee TSE Plantation, LLC.