

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

DFRP NOTE PURCHASE PARTNERS I, LP,
Appellant,

v.

**GERALD BRUNO, WILLIAM M. HARNELL, U.S. DEPARTMENT OF
TREASURY, CASCADES AT ST. LUCIE WEST RESIDENTS
ASSOCIATION, INC., MOSS AND ASSOCIATES, LLC, UNKNOWN
SPOUSE OF GERALD BRUNO, UNKNOWN SPOUSE OF WILLIAM M.
HARNELL, JOHN DOE and JANE DOE AS UNKNOWN TENANTS IN
POSSESSION,**
Appellees.

No. 4D15-652

[August 3, 2016]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; William L. Roby, Judge; L.T. Case No. 562012CA000446.

Matthew A. Ciccio and Steven C. Rubino of Aldridge Pite, LLP, Delray Beach, for appellant.

Jessica M. VanValkenburgh of McCarthy, Summers, Bobko, Wood, Norman, Bass & Melby, P.A., Stuart, for Appellee Gerald Bruno.

PER CURIAM.

In this mortgage foreclosure action, the trial court granted the defendant's motion for involuntary dismissal. *See* Fla. R. Civ. P. 1.420(b). The court gave credence to the defendant's affirmative defense that the mortgage had been satisfied, based on a recorded affidavit introduced during the plaintiff's case. We reverse and remand for trial of the affirmative defense.

On a motion for involuntary dismissal, the trial court may not weigh the evidence, but must view it "in the light most favorable to [the non-moving party]." *Miller v. Nifakos*, 655 So. 2d 192, 193 (Fla. 4th DCA 1995). *See also McCabe v. Hanley*, 886 So. 2d 1053, 1056 (Fla. 4th DCA 2004). "An involuntary dismissal or directed verdict is properly entered only when the evidence considered in the light most favorable to the non-moving

party fails to establish a *prima facie* case on the non-moving party's claim." *McCabe*, 886 So. 2d at 1055 (citation and internal quotation marks omitted). Here, the plaintiff presented a prima facie case to foreclose the mortgage. *See Bank of Am., N.A. v. Delgado*, 166 So. 3d 857, 859 (Fla. 3d DCA 2015).

On the trial of the affirmative defense that the mortgage had been satisfied, the circuit court shall determine whether the document purporting to satisfy the mortgage was in error. *See Azar v. Steiner*, 196 So. 293 (Fla. 1940). "A court may apply equitable principles to reverse the cancellation of a mortgage satisfaction when that satisfaction is the result of mistake or inadvertence." *All Real Estate Title Servs., Inc. v. Minh Quang Vuu*, 67 So. 3d 260, 262 (Fla. 2d DCA 2010).

On another point on appeal, we hold that the recorded affidavit was properly admitted into evidence.

Reversed and remanded.

GROSS, KLINGENSMITH, JJ., and LINDSEY, NORMA S., Associate Judge, concur.

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Not final until disposition of timely filed motion for rehearing.