

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2006

MICHAEL BENDE, individually, and **MICHAEL BENDE**, Trustee of the
Michael Bende Revocable Trust,
Appellants,

v.

FURR AND COHEN, P.A. PROFIT SHARING PLAN and **LAVALLE,
BROWN, RONAN & SOFF, P.A.**,
Appellees.

No. 4D05-885

October 4, 2006

PER CURIAM.

We affirm a summary final judgment of foreclosure and award of fees and costs.

With regard to Appellants' multiple issues raised on appeal, a review of the record reflects that they have raised several issues here that were not raised in the answer and affirmative defenses, failed to file affidavits or other sworn statements in opposition to Appellees' motion for summary judgment, and otherwise failed to demonstrate issues of fact.

Appellants' attempt to argue additional defenses, claimed at the last minute, was properly not considered by the trial court where Appellants had not sought leave of court to amend their pleadings. *Sunshine Kitchens, Inc. v. Mallin*, 388 So. 2d 1260 (Fla. 4th DCA 1980); Fla. R. Civ. P. 1.190(a). Further, even had the court considered the new issues, which included fraud and duress claims, the conclusory allegations were unsupported by sworn evidence or allegations of fact. *Heitmeyer v. Sasser*, 664 So. 2d 358, 360 (Fla. 4th DCA 1995)(citing *Seinfeld v. Commercial Bank & Trust Co.*, 405 So. 2d 1039 (Fla. 3d DCA 1981)).

Appellants, for the same reasons, failed to rebut Appellees' sworn proofs of execution of the note and mortgage (executed in settlement of litigation) and failure to pay. *Holl v. Talcott*, 191 So. 2d 40, 45 (Fla. 1966). We further conclude that the allegations raised in Appellants'

brief do not support legal defenses of fraud and undue influence and that Appellants have failed to demonstrate an abuse of discretion in denying a continuance requested at the summary judgment hearing. Additionally, Appellants' claims of invalid service of process are refuted by the record and their claims of homestead exemption, raised on appeal, even if properly pled, would have failed as a matter of law.

As did the trial court, we conclude that no material issues of fact are present and summary judgment is proper.

STEVENSON, C.J., STONE, J. and BATEMAN, THOMAS H., III, Associate Judge, concur.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; John Wessel, Senior Judge; L.T. Case No. 50 2003CA013731XXRFAW.

Michael Bende, Boca Raton, pro se.

Alan R. Crane of Furr and Cohen, P.A., Boca Raton, for Appellee-Furr and Cohen, P.A.

Not final until disposition of timely filed motion for rehearing.