STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0082

U. S. Bank National Association,
successor by merger to U. S. Bank National Association ND,
Respondent,

vs.

Anita Brochette Womack,
Appellant,

Ray C Womack, et al.,
Defendants.

Filed October 16, 2017
Affirmed
Bratvold, Judge

Hennepin County District Court
File No. 27-CV-15-5717

Ralph L. Moore, Mary L. Cox, Stein & Moore, P.A., St. Paul, Minnesota; (for respondent)

Anita Brochette Womack, n/k/a Anita B. Summerville, St. Paul, Minnesota (pro se appellant)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Bratvold, Judge.

U N P U B L I S H E D O P I N I O N

BRATVOLD, Judge

Appellant-mortgagor challenges the district court's grant of summary judgment to respondent-bank on appellant's counterclaims, arguing that the district court abused its discretion in granting her a shorter continuance than requested because she had insufficient time to hire counsel, and that the district court erred in concluding that there were no genuine issues of material fact. We affirm.

FACTS

By judgment recorded in January 2003, Womack gained title to residential property located in Minneapolis, Minnesota (the house). At the time of the title transfer, the house was encumbered by a mortgage (senior mortgage) held by Minnesota Housing Finance Agency (MHFA) via assignment from TCF Mortgage Corporation (TCF).

In September 2003, Womack granted respondent U. S. Bank National Association (US Bank) a second mortgage against the house for $60,000 (junior mortgage). In addition to being the junior mortgage holder, US Bank serviced the senior mortgage on behalf of MHFA. Thus, US Bank sent Womack mortgage statements and other correspondence for the senior and junior mortgages.

Womack rented the house and applied the rental income toward the mortgages. Between 2010 and 2014, Womack was periodically delinquent on both mortgages. Relevant to this appeal, during late 2013 through early 2014, Womack became delinquent on the senior mortgage and did not have a tenant occupying the house. On or around January 27, 2014, US Bank (via its agent) entered the house to "winterize" it because it

was unoccupied. The record is sparse regarding the details of US Bank's entry. In her summary-judgment filings, Womack submitted numerous photographs of the house, which she alleges in her brief were taken after US Bank's entry.

In February 2014, MHFA commenced foreclosure proceedings on the senior mortgage. MHFA attempted to personally serve notice of foreclosure sale on the house occupants, but the house was "vacant and unoccupied." Womack admitted during discovery that she did not have a tenant occupying the house between January 25 and March 24, 2014. MHFA proceeded with foreclosure notice by publication. By March 2014, the senior mortgage had an outstanding balance of $37,032.13, a past-due amount of $7,007.81, and $218.29 in unpaid late fees.

On April 16, 2014, MHFA foreclosed the senior mortgage via sheriff's sale for $43,034.05. The sheriff issued a sale certificate to the purchaser, who then recorded it on June 4, 2014, after expiration of the 20-day statutory recording period under Minn. Stat. § 580.12 (2016).

The foreclosure was subject to a one-year redemption period. US Bank, as the junior mortgage holder, recorded its notice of intent to redeem. Due to its concern that the foreclosure may have been invalidated by the purchaser's failure to record the sale certificate within the 20-day statutory period, US Bank filed a complaint on April 6, 2015, against Womack and others seeking: (1) a declaration that the sale was valid; and (2) a temporary restraining order (TRO) that would extend the redemption period and prevent

the sale purchaser from "taking any action to sell, encumber, or otherwise dispose" of the house until the court determined whether the sale was valid.[1]

On April 10, 2015, the district court held a TRO hearing, at which Womack appeared without counsel. Womack stipulated with US Bank that "there is no need for an injunction" because the purchaser's failure to record the sale certificate within the 20-day statutory period did not invalidate the foreclosure sale. Womack expressly waived any right to contest the validity of the foreclosure on that basis, but reserved her right to challenge the foreclosure on other grounds. Based on the stipulation, the district court denied US Bank's TRO request as moot.

On April 16, 2015, the one-year redemption period expired. US Bank chose not to redeem because the sale purchaser satisfied the junior mortgage in full, which by that time amounted to $45,412.87.

Also on April 16, Womack filed an answer and asserted eight counterclaims against US Bank, including: fraud, deceptive practices, "vandalism," emotional distress, mortgage-law violations, violation of state and federal debt-collection laws, loss of income, and loss of property. Womack sought a money judgment and requested that the senior mortgage and foreclosure sale be set aside. At the time of filing her answer, Womack had retained counsel.

[1] The other defendants included MHFA, the sale purchaser (Brandon Womack), the prior property owner (Ray C. Womack), and Aaron I. Womack, none of whom are involved in this appeal.

In July 2015, Womack's attorney withdrew. The notice of attorney withdrawal provided an address for all future correspondence to Womack. The district court and US Bank sent all future correspondence to that address, but Womack did not respond or otherwise engage in pretrial litigation.

In September 2015, US Bank moved for summary judgment on all of Womack's counterclaims. Womack did not file a written response but attended the summary-judgment hearing, during which she requested a two-month continuance so that she could hire counsel and file a response. Womack explained that she had not received US Bank's discovery requests or summary-judgment papers because the mailing address on the attorney-withdrawal notice was incorrect, and her "ex-husband had been diverting her mail." Womack stated that she found out about the hearing when she checked the status on the court's website. She also stated that her "son is selling his property and he has promised to give me $10,000 to hire an attorney over the next couple of months."

The district court determined that Womack had not had a fair opportunity to litigate her counterclaims as a result of her ex-husband's actions, but also recognized that Womack was responsible for providing the court and US Bank with an updated mailing address. The district court therefore granted Womack a three-week continuance to respond to discovery and the summary-judgment motion. "Due to extenuating circumstances," the district court twice extended the continuance. Approximately one month after the hearing, Womack submitted a summary-judgment brief, an affidavit with exhibits, and discovery answers, which the district court took under advisement.

On March 18, 2016, the district court granted US Bank summary judgment and dismissed all of Womack's counterclaims with prejudice.[2] After Womack appealed, this court questioned whether the appeal was premature because the register of actions did not reflect that the district court had entered judgment on US Bank's equitable claims. Womack then voluntarily dismissed the appeal. During a teleconference with the district court, US Bank requested entry of judgment on all of its claims, while Womack argued that "open issues remained regarding whether the underlying foreclosure was conducted properly." The district court concluded that there were no remaining claims or counterclaims to resolve and entered judgment accordingly. Womack appeals.

D E C I S I O N

I. The district court did not abuse its discretion in granting Womack a continuance.

This court reviews a district court's decision to grant or deny a continuance for a clear abuse of discretion. *Chahla v. City of St. Paul*, 507 N.W.2d 29, 31 (Minn. App. 1993), *review denied* (Minn. Dec. 14, 1993). A district court must grant a self-represented litigant a continuance to hire counsel when the litigant has acted diligently in seeking a continuance and the opposing party would suffer no prejudice. *Kasson State Bank v. Haugen*, 410 N.W.2d 392, 395 (Minn. App. 1987).

Womack argues that the district court abused its discretion when it granted her a three-week continuance to respond to the summary-judgment motion. She asserts that the

[2] The district court filed an amended summary-judgment decision on March 18; the only material amendment was that the district court directed entry of judgment on Womack's counterclaims.

district court should have given her at least two months "to obtain funds and retain counsel" because it was aware of "extenuating adverse circumstances" that disadvantaged her. After initially granting Womack a three-week continuance, the district court twice extended the continuance due to "extenuating circumstances," which effectively gave Womack two months to respond to the summary-judgment motion and to hire counsel. Moreover, Womack told the district court that her son would provide her $10,000 "over the next couple of months," yet, when given nearly two months to respond, she did not hire counsel. In other words, Womack was not prejudiced by the district court's decision regarding the length of the continuance. We conclude that the district court did not abuse its discretion in granting Womack a shorter continuance than she requested.

II. The district court did not err in granting US Bank summary judgment.

On appeal from summary judgment, we review de novo whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002). We view the evidence in the light most favorable to the party against whom summary judgment was granted. *Id.* at 76-77. "Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. We may "affirm summary judgment on alternative theories presented but not ruled on at the district court level." *Nelson v. Short-Elliot-Hendrickson, Inc.*, 716 N.W.2d 394, 402 (Minn. App. 2006), *review denied* (Minn. Sept. 19, 2006).

"The moving party has the burden of showing an absence of factual issues." *Anderson v. State, Dep't of Nat. Res.*, 693 N.W.2d 181, 191 (Minn. 2005). If the moving party meets this burden, then the onus is on the nonmoving party to "present sufficient evidence to permit reasonable persons to draw different conclusions." *Gradjelick v. Hance*, 646 N.W.2d 225, 231 (Minn. 2002). To successfully defend summary judgment, the nonmoving party must do more than present "evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the . . . nonmoving party's case." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). A nonmoving party cannot rely on "unverified and conclusory allegations" or postulate "evidence that might be developed at trial." *Gradjelick*, 646 N.W.2d at 230.

The district court granted US Bank summary judgment on all of Womack's counterclaims because Womack failed to provide supporting legal authority or submit admissible evidence creating any genuine issue of material fact for trial. Womack argues the district court erred because she submitted evidence that creates genuine fact disputes on all her counterclaims.[3] Because Womack's eight counterclaims have overlapping facts, we have grouped them into five categories.

[3] For the first time on appeal, Womack argues the district court lacked jurisdiction to hear this case. She appears to argue that the court lacked personal jurisdiction over her because she received insufficient notice of the April 2015 TRO hearing. But Womack waived any challenge to personal jurisdiction when she voluntarily invoked the court's jurisdiction by filing counterclaims and failed to raise her challenge until this appeal. *See Patterson v. Wu Family Corp.*, 608 N.W.2d 863, 867 (Minn. 2000) (stating that a defendant who has "affirmatively invoked the jurisdiction of the court to rule in its favor" has waived personal jurisdiction).

A. Fraud counterclaims

Womack raised several different fraud theories, including one that is styled as "deceptive practices." We will analyze these counterclaims as fraud claims.[4] To establish common law fraud, a plaintiff must prove: "(1) a false representation of a past or existing material fact susceptible of knowledge; (2) made with knowledge of the falsity of the representation or made without knowing whether it was true or false; (3) with the intention to induce action in reliance thereon; (4) that the representation caused action in reliance thereon; and (5) pecuniary damages as a result of the reliance." *U.S. Bank N.A. v. Cold Spring Granite Co.*, 802 N.W.2d 363, 373 (Minn. 2011). Womack's several fraud theories can be grouped into three general categories.

1. Inaccurate billing for the senior mortgage

Womack asserts that US Bank, as senior mortgage servicer, "knowingly sent" her false mortgage statements in 2006, 2007, 2009, and 2010. She contends that, during those years, US Bank failed to apply payments that were put into a "suspense" account to the outstanding principal and interest balances. Womack relies on assertions she made in her summary-judgment affidavit, allegations in her answer, and an exhibit containing: (a) mortgage interest statements from 2010 and 2011 tax returns; (b) a 2010 escrow account

[4] We note that Minnesota recognizes a cause of action for deceptive practices in connection with the "sale of any merchandise." Minn. Stat. § 325F.69, subd. 1 (2016). Womack did not allege a cause of action under section 325F.69; therefore, we do not separately consider a deceptive-practices claim and instead construe Womack's "deceptive practices" claim as a fraud claim.

statement; (c) mortgage statements from 2010, December 2011, January 2012, and March 2014; and (d) delinquency letters from May 2010 through June 2011.

Womack failed to support her 2006, 2007, and 2009 claims because the record only contains mortgage statements dated after 2010.[5] The evidence establishes that, throughout 2010, Womack was delinquent on the senior mortgage, with various past-due balances each month. When Womack made a monthly payment that exceeded her regular monthly obligation, US Bank placed the excess amount in a "suspense" account. Once the suspense account accumulated enough funds to equal one past-due monthly payment, US Bank applied that amount to the past-due balance, using a "first-in, first-out" method. This allocation process occurred in April and October 2010. Womack does not challenge US Bank's authority to use this process to satisfy past-due payments. We conclude there is no genuine fact dispute on whether US Bank misapplied suspense-account payments.

Womack also asserts that US Bank knowingly failed to apply $507.67 from her escrow account in March 2014. The March 2014 mortgage statement shows that US Bank advanced $2,055 from Womack's escrow account that month, but only allocated $1,547.33 towards insurance and taxes, leaving $507.67 in the account. Womack seems to argue that US Bank retained the excess escrow amount after the April 2014 foreclosure. There is no

[5] The statute of limitations for common law fraud is six years from "when the aggrieved party discovers the facts constituting the fraud." *Doe v. Archdiocese of St. Paul and Minneapolis*, 817 N.W.2d 150, 172 (Minn. 2012) (citing Minn. Stat. § 541.05, subd. 1(6) (2016)). There is no evidence or allegation that the statute of limitations was tolled by Womack's failure to discover the facts constituting the alleged fraud. Thus, we also conclude that Womack's 2006 and 2007 claims are barred by the statute of limitations.

evidence to support this claim. Accordingly, we conclude that there are no genuine fact disputes regarding Womack's counterclaim for inaccurate billing.

2. Forced-place insurance for the senior mortgage

Womack argues that US Bank fraudulently charged her for "forced-place insurance" when she was separately paying her own insurance policy.[6] The senior mortgage required Womack to "continuously maintain acceptable hazard insurance," and provided that, if she failed to do so, US Bank (on MHFA's behalf) could purchase insurance and charge her the cost via an escrow account ("forced-place insurance"). On two separate occasions in 2014, US Bank purchased forced-place insurance because Womack had not provided proof that she was maintaining insurance after receiving several notices to do so.

Womack asserts that she had "uninterrupted" insurance coverage. The record evidence establishes that Womack continuously maintained hazard insurance from July 1, 2012 through July 1, 2014 and again from July 1, 2015 through July 1, 2016. Womack acknowledges that the record does not contain an insurance policy establishing coverage for July 2014 through July 2015, but argues that she submitted proof of payment for a 2014-2015 policy.[7] Womack relies on what appears to be an online printout, which shows

[6] Womack also asserts that US Bank wrongfully charged her property taxes when she was independently paying these taxes. Womack did not include this allegation in her answer and counterclaims; she first asserted it in her summary-judgment response brief, the district court did not consider it, and the issue is not properly before this court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (declining to review issues not raised to and considered by the district court). Even if we were to consider this claim, it does not survive summary judgment. Womack submitted no evidence that she over-paid property taxes.

[7] Womack asserts that the district court held her to "an overly burdensome and incorrect legal standard of proof" when it determined that there was "no evidence of [a] 2014-2015

that she paid for a "renewal certificate" on July 1, 2014. But the printout does not state to whom Womack made the payment or that payment provided the required insurance coverage through July 2015.

Even assuming evidence of the July 1, 2014 payment creates a fact dispute about coverage, Womack's argument misses the point because she submitted no evidence that she provided US Bank with *proof* of coverage. Before purchasing forced-place insurance, US Bank sent Womack a letter that stated it had received an insurance policy from Womack, but the policy was inadequate because it listed the incorrect insured's name. The record establishes that Womack amended her insurance policy three days later to reflect a change in the "insured name and/or address," but there is no evidence that she sent the updated policy to US Bank. Womack relies on her discovery answers, in which she asserted that she provided a copy of her divorce decree to US Bank to show that she legally changed her name. But there is no evidence to support this assertion. *See Gradjelick*, 646 N.W.2d at 230 (stating that a nonmoving party must do more than postulate "evidence that might be developed at trial"). Based on the record evidence, we conclude that no reasonable person would conclude that US Bank fraudulently purchased forced-place insurance.

3. Inflated late fees for the junior mortgage

Womack argues that US Bank misrepresented or "inflated" late fees and applied payments to those fees before applying them to the principal and interest balances. Womack appears to challenge $1,297 in late fees that US Bank charged the foreclosure

policy." We disagree. The district court recited and applied the summary-judgment standard and did not hold Womack to a "proof beyond any reasonable doubt" standard.

purchaser to satisfy the junior mortgage. While Womack's misrepresentation theory is unclear, even assuming she alleged a misrepresentation, there is no record evidence indicating US Bank inflated late fees. Womack points to two exhibits, but these exhibits merely establish mortgage satisfaction and other account information. Thus, Womack's evidence does not create a genuine fact dispute whether US Bank misrepresented late fees.

In sum, we conclude that there are no genuine issues of material fact on any of the fraud elements. The district court did not err in granting US Bank summary judgment on Womack's fraud counterclaims.

B. Vandalism, loss-of-property, and loss-of-income counterclaims

Womack raises several different claims relating to US Bank's entry into the house in January 2014, which we will review together. Styled as a "[v]andalism" claim, Womack asserts that US Bank lacked authority to enter the house and its agent caused property damage.[8] Womack also presents loss-of-income and loss-of-property claims, arguing that, as a result of US Bank's unlawful entry, she lost $22,347 in rental income and was forced to pay $30,000 in repairs, which precluded her from redeeming the house.

As an initial matter, we note that there is no civil cause of action for "vandalism" in Minnesota. In the district court, Womack relied on Minn. Stat. § 580.031, which the legislature repealed in 1990. *See* Minn. Laws 1990, ch. 575, § 11, at 2148. For the first time on appeal, Womack argues she intended to cite Minn. Stat. § 582.031 (2016), which

[8] Womack raises new theories in her appellate brief, including negligence and breach of trust. We do not consider these new claims because they were not presented to or considered by the district court. *Thiele*, 425 N.W.2d at 582.

provides mortgage holders the right to protect mortgaged property from waste. US Bank argues that section 582.031 does not provide mortgagors a private cause of action and construes Womack's claim as a civil trespass claim.

We agree with US Bank's analysis and will liberally construe Womack's brief and analyze her vandalism claim as a trespass claim. *State ex rel. Farrington v. Rigg*, 259 Minn. 483, 484, 107 N.W.2d 841, 841-42 (1961). To survive summary judgment, Womack must show that there is a genuine fact dispute whether US Bank's entry into the house was unlawful, and that it is responsible for any property damage. *See Johnson v. Paynesville Farmers Union Coop. Oil Co.*, 817 N.W.2d 693, 701 (Minn. 2012) (stating element of trespass is that "there is a wrongful and unlawful entry upon such possession by defendant") (quotations omitted).

US Bank argues its entry was lawful under section 582.031, subdivision 1(a) (2016), which states that a mortgage holder (or its agents) may enter upon a "vacant or unoccupied" property "to protect the premises from waste and trespass" until the mortgage holder "receives notice that the premises are occupied." The mortgage holder may take action to "prevent or minimize damage to the premises," including by making "periodic inspections" and changing locks. Minn. Stat. § 582.031, subd. 2 (2016).

It is undisputed that US Bank's agents entered the house on or around January 27, 2014, because they believed it was unoccupied. Womack admitted in her discovery responses that: the house was a rental property; she was "between" tenants in December 2013 and January 2014; the house was unoccupied on January 22, 2014; and she was "[w]ithout a paying tenant from January 25, 2014 to March 24, 2015." US Bank posted a

notice on the house, which stated: "This property was found vacant. If occupied, please call immediately." Womack asserts she notified US Bank that she was monitoring and maintaining the house. She relies on her assertions in discovery responses, receipts from home improvements stores, utility bills, and other documents relating to the house to establish that she made purchases for, and was maintaining, the house when US Bank entered it.[9]

Viewing this evidence in the light most favorable to Womack, it does not create a genuine issue of material fact. Womack admitted that she did not have a tenant occupying the house during the relevant time period. Even if she was maintaining the house, section 582.031, subdivision 2, still authorized US Bank's entry because the house was "vacant or unoccupied." The statute does not exempt unoccupied houses that are maintained.

Womack also argues that, even if the entry was lawful, she submitted sufficient evidence of property damage caused by the entry and, therefore, her claim survives summary judgment.[10] She relies on an exhibit containing numerous photographs of the inside and outside of the house and what appears to be some property damage. But neither this exhibit, nor any affidavit filed with the court, establish when the pictures were taken,

[9] Womack also argues that there was no proof that the house was abandoned. She cites the requirements for prima facie evidence of abandonment under Minn. Stat. § 582.031, subd. 1(b), but that subdivision applies only to entry by a "holder of a sheriff's certificate."

[10] Womack challenges "recoverable corporate advance" (RCA) fees that US Bank included on her March 2014 mortgage statement, which appear to have been related to fees US Bank incurred when it entered the house. Womack's challenge fails because, under Minn. Stat. § 582.031, subd. 3, US Bank was authorized to add "[a]ll costs" incurred in protecting the "premises from waste or trespass" to the loan's principal balance.

when damage occurred, or who caused it. Womack refers to her own affidavit, assertions in her discovery responses, and her own estimation of property damage. Based on our review, neither the affidavit nor Womack's other submissions link the photographs or property damage to US Bank. *See Dyrdal v. Golden Nuggets, Inc.*, 689 N.W.2d 779, 783 (Minn. 2004) (stating that party opposing summary judgment must do more than rely on "unverified and conclusory allegations"). We conclude that there are no genuine issues of material fact regarding US Bank's entry into the house or its liability for property damage to the house.

C. Emotional distress counterclaim

Womack argues that US Bank's entry into the house caused her emotional distress. She cites no legal authority or record evidence to support this claim. Womack relies on mere allegations and cites only her statements during the summary-judgment hearing that she was suffering from depression. These statements, however, were not sworn testimony and, therefore, are not admissible evidence sufficient to survive summary judgment. *Allete, Inc. v. GEC Eng'g, Inc.*, 726 N.W.2d 520, 524 (Minn. App. 2007) (stating that nonmoving party must submit admissible evidence to survive summary judgment). Thus, the district court did not err in granting US Bank summary judgment on this counterclaim.

D. Mortgage law counterclaims

Womack's mortgage law claims can be grouped into two categories. First, Womack argues the foreclosure sale should be set aside because US Bank failed to serve her with "foreclosure documents"; included inaccurate loan amounts in the foreclosure notice, which was a result of inaccurate billing; included inaccurate names in the foreclosure

notice; and failed to timely file the notice of pendency. US Bank argues that Minn. Stat. § 582.25 bars these claims. Under section 582.25, upon expiration of the statutory redemption period in Minn. Stat. § 582.27, a foreclosure sale by advertisement becomes "legalized" and "valid" against certain objections listed in the statute. US Bank argues that Womack's objections fall within those listed in section 582.25, and, because the statutory redemption period expired before she raised these objections, the sale is valid.

We do not find it necessary to evaluate each of Womack's objections to see whether it is barred by section 582.25 because, to the extent Womack has standing to challenge the foreclosure, she has sued the wrong party. The mortgage that was foreclosed upon was the senior mortgage, which MHFA held by assignment. MHFA prepared all foreclosure papers and notices and was responsible for the foreclosure. US Bank was the loan servicer on the senior mortgage; it was not the senior mortgage holder. Therefore, US Bank cannot be held responsible for Womack's foreclosure objections.

Womack incorrectly claims that TCF's assignment of the senior mortgage to MHFA was invalid. The undisputed evidence establishes that the assignment was executed and recorded in 1994. *See* Minn. Stat. § 580.02 (2016) (requiring that all mortgage assignments be recorded as a prerequisite to foreclosure). There is also no evidence to support Womack's claim that US Bank represented that it was the senior mortgage holder. Thus, the district court did not err by entering summary judgment against Womack on her foreclosure claims.

Second, Womack asserts, in the alternative, that US Bank refused to modify its mortgage as a loss-mitigation measure in violation of Minn. Stat. § 582.043, subd. 5.

Womack states that she "repeatedly applied" for loan modifications between 2009 and 2012. This claim fails because the legislature did not enact section 582.043, subdivision 5, until 2013. *See* 2013 Minn. Laws ch. 115, § 1 at 1795-96. Also, no evidence supports Womack's claim. Womack submitted two letters from US Bank—one dated July 2010, the other undated—both of which state that she was required to submit a completed mortgage-assistance application to be considered for modification. The record is devoid of any evidence that Womack submitted a complete application or that US Bank denied her application. Accordingly, the district court did not err in granting US Bank summary judgment on Womack's mortgage law counterclaims.

E. Debt collection law counterclaims

Womack asserts US Bank violated the Fair Debt Collection Practices Act (FDCPA) by sharing her information with credit-reporting agencies, 15 U.S.C. §§ 1692e, 1692c(b) (2012), and the Minnesota Collection Agencies Act (MCAA) by making abusive and threatening statements and using unauthorized electronic calling, Minn. Stat. §§ 332.37(3), (13) (2016). US Bank responds that it is not subject to the FDCPA or MCAA because it is a creditor, not a debt collector. *See Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1721-22 (2017) (concluding a company that collects a debt "for its own account" is not a "debt collector" under the FDCPA); *see also* Minn. Stat. § 332.32(a) (exempting "banks when collecting accounts owed to the banks and when the bank will sustain any loss arising from uncollectible accounts").

We conclude it is unnecessary consider whether US Bank was subject to the FDCPA or MCAA because Womack has failed to support her allegations with any evidence from

which reasonable persons could draw different conclusions. The record is devoid of any evidence that US Bank made abusive or threatening statements, used electronic calling, or shared Womack's information with credit-reporting agencies. Womack relies on a recorded phone call between Womack and someone whom Womack claims was a US Bank representative, but it contains no abusive or threatening language. Therefore, the district court did not err in granting US Bank summary judgment on Womack's debt-collection law counterclaims.

After closely reviewing the record and Womack's arguments, we conclude she is not entitled to the relief she seeks.

Affirmed.