

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

First Place Bank

Court of Appeals No. L-12-1095

Appellee

Trial Court No. CI0201003002

v.

Tara L. Adkins, et al.

DECISION AND JUDGMENT

Appellant

Decided: December 14, 2012

* * * * *

Eric T. Deighton, for appellee.

Tara L. Adkins, pro se.

* * * * *

SINGER, P.J.

{¶ 1} Appellant appeals a summary judgment issued against her by the Lucas County Court of Common Pleas in a foreclosure action. Because we conclude that appellant failed to present evidence sufficient to demonstrate a question of fact and her legal theory is without basis, we affirm.

{¶ 2} In 2005, appellant, Tara L. Adkins, obtained a home loan from appellee, First Place Bank. The note for the loan was secured by a mortgage on real property on Camille Drive in Toledo, Ohio. In 2010, appellee sued to foreclose the note, alleging that appellant was in default.

{¶ 3} The court referred the matter to mediation three times without resolution. Initial motions for summary judgment from both parties were denied. On February 16, 2012, appellee renewed its summary judgment motion. Appellant filed a memorandum in opposition, arguing that appellee was not entitled to summary judgment because an irregularity in its filings with the Ohio Secretary of State made it ineligible to conduct business when it made its loan to appellant. Appellant also maintained that some of her payments were not properly credited.

{¶ 4} Appellee responded, pointing out that appellant had presented no evidence in support of her assertion of incorrect accounting. Moreover, appellee noted, the documents attached in support of appellant's argument with respect to filing irregularities were unverified.

{¶ 5} The trial court granted appellee summary judgment, foreclosed the mortgage and ordered sale of the real property. According to the trial court, appellant had failed to present any admissible evidence in support of either of her theories, while appellee had put forth relevant documents and affidavits in support of its claim.

{¶ 6} From this judgment, appellant now brings this appeal. Appellant does not state an assignment of error in her principal brief on appeal. She does, however, recite the following as an assignment of error in her reply brief:

The trial court erred as a matter of law when it issued summary judgment to Plaintiff/Appellee First Place Bank, a federally chartered bank, as there existed a genuine issue of fact before the court.

{¶ 7} Appellate review of a summary judgment is de novo, *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996), employing the same standard as trial courts. *Lorain Natl. Bank v. Saratoga Apts.*, 61 Ohio App.3d 127, 129, 572 N.E.2d 198 (9th Dist.1989). The motion may be granted only when it is demonstrated:

(1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 67, 375 N.E.2d 46 (1978), Civ.R. 56(C).

{¶ 8} When seeking summary judgment, a party must specifically delineate the basis upon which the motion is brought, *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 526 N.E.2d 798 (1988), syllabus, and identify those portions of the record that demonstrate

the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996). When a properly supported motion for summary judgment is made, an adverse party may not rest on mere allegations or denials in the pleadings, but must respond with specific facts showing that there is a genuine issue of material fact. Civ.R. 56(E); *Riley v. Montgomery*, 11 Ohio St.3d 75, 79, 463 N.E.2d 1246 (1984). A “material” fact is one which would affect the outcome of the suit under the applicable substantive law. *Russell v. Interim Personnel, Inc.*, 135 Ohio App.3d 301, 304, 733 N.E.2d 1186 (6th Dist.1999); *Needham v. Provident Bank*, 110 Ohio App.3d 817, 826, 675 N.E.2d 514 (8th Dist.1996), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 201 (1986).

{¶ 9} On appeal, appellant has abandoned her argument with respect to an improper accounting of her payments. This is just as well as her submissions to the trial court were devoid of any evidentiary basis for this claim.

{¶ 10} The prerequisites for a party seeking to foreclose a mortgage are execution and delivery of the note and mortgage; valid recording of the mortgage; default; and establishing an amount due. *First Natl. Bank of Am. v. Pendergrass*, 6th Dist. No. E-08-048, 2009-Ohio-3208, ¶ 21. With its motion for summary judgment appellee has presented verified documents going to all of these elements.

{¶ 11} Appellant insists that when she obtained her loan in 2005, appellee did not have the legal capacity to do business in Ohio. Appellant’s argument is that as a federally chartered bank, appellee is a foreign corporation which, pursuant to R.C.

1703.03, must be licensed to transact business in Ohio. Appellant presented an unauthenticated document, purported to be a filing with the Ohio Secretary of State, registering appellee's trade name. This document indicates that appellee first used the name First Place Bank in 2007. A subsequent 2009 affidavit from appellee's vice-president corrects the first date of name use to December 22, 2000. These documents, according to appellant, create a question of fact as to whether appellee was licensed to do business in Ohio at the time of her loan origination. Such a question of fact precludes summary judgment, appellant argues.

{¶ 12} Appellant's argument fails both factually and legally. Civ.R. 56(E) sets forth the requirements for evidence submitted in support of a motion for summary judgment. The rule provides:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to or served with the affidavit. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits.

{¶ 13} Appellant attached to her summary judgment an affidavit averring that everything in her motion was "true and factual to the best of my knowledge and belief." But nowhere in her motion does she assert personal knowledge of the source of the

purported Secretary of State filings and the documents themselves are not certified.

Thus, these documents are insufficient under Civ.R. 56(E).

{¶ 14} Moreover, appellant has directed our attention to no authority to support her contention that, assuming arguendo appellee was not properly licensed to do business in 2005, this condition has any legal consequences affecting its standing to bring legal action now. Even appellant concedes that appellee is presently in compliance with the registration statutes and may properly do business in Ohio. There is no question of fact as to the execution and delivery of the note and mortgage, recording or default.

Appellant contested the amount due, but provided no evidence to support this assertion. Consequently, there are no questions of material fact outstanding and appellee is entitled to judgment as a matter of law. Accordingly, the trial court did not err in granting summary judgment to appellee. Appellant's sole assignment of error is not well-taken.

{¶ 15} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.