

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-15-00382-CV**

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**Steven Armbruster, Appellant**

**v.**

**Deutsche Bank National Trust Company and Juanita Strickland, Appellees**

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**FROM THE DISTRICT COURT OF WILLIAMSON COUNTY, 277TH JUDICIAL DISTRICT  
NO. 13-0631-C277, HONORABLE STACEY MATTHEWS, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

This is an appeal from a take-nothing summary judgment rendered by the district court of Williamson County in a suit challenging a foreclosure sale. Appellant is Steven B. Armbruster, and appellee is Deutsche Bank National Trust Company (the Bank). This Court will affirm the judgment.

In 2004, Armbruster purchased residential property in Round Rock located at 621/623 Greenlawn Boulevard. The purchase was financed by a note payable to New Century Mortgage Corporation and secured by a deed of trust. Thereafter, New Century assigned the note, but retained its servicing rights to the note.

New Century later filed for bankruptcy. The bankruptcy court approved the sale of New Century's servicing business to Carrington Mortgage Services LLC. Armbruster failed to make

several mortgage payments. Carrington then posted the property for foreclosure. The Bank bought the property at the foreclosure sale.

As we understand, Armbruster claimed by his suit that the foreclosure sale was absolutely null because New Century's assignment of the note was not timely and, therefore, void under New York law.

The Bank filed a combined traditional and no-evidence motion for summary judgment. Armbruster filed a written response. After hearing, the district court granted the Bank's motion. The district court recited in its order that the "Traditional and No-Evidence Motion for Summary Judgment is granted."

On appeal, Armbruster presents two issues. In one issue he contends that the traditional summary judgment should be reversed because there was no summary-judgment proof that Carrington was the mortgage servicer. The Bank points out, correctly, that Armbruster did not raise this contention in his written response to the Bank's summary-judgment motion. Texas Rule of Civil Procedure 166a(c) provides:

"Issues not expressly presented to the trial court by written motion, answer, or other response shall not be considered on appeal as grounds for reversal."

The non-movant in a summary-judgment proceeding must expressly present to the trial court in writing any reason seeking to avoid summary judgment. *McConnell v. Southside Indep. Sch. Dist.*, 858 S.W.2d 337, 341 (Tex. 1993); *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex. 1979). Any issue not so raised in the trial court will not be considered on appeal as a ground for reversal of the judgment. Tex. R. Civ. P. 166a(c).

Because we will affirm the traditional summary judgment, we need not examine Armbruster's other issue attacking the summary judgment as violative of Texas Rule of Civil Procedure 166a(i).

The judgment is affirmed.

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Bob E. Shannon, Justice

Before Chief Justice Rose, Justices Field and Shannon\*

Affirmed

Filed: March 16, 2017

\* Before Bob E. Shannon, Chief Justice (retired), Third Court of Appeals, sitting by assignment. *See* Tex. Gov't Code § 74.003(b).