[Cite as *CitiMtge., Inc. v. Bennett,* 2013-Ohio-4062.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

CitiMortgage, Inc.,	:	
Plaintiff-Appellee,	:	
v.	:	No. 13AP-228 (C.P.C. No. 11CVE-05-6684)
Vicki L. Bennett et al.,	:	(REGULAR CALENDAR)
Defendants-Appellants.	:	

D E C I S I O N

Rendered on September 19, 2013

Graydon Head & Ritchey LLP, Lynda Hils Mathews and *Harry W. Cappel*, for appellee.

Duncan Simonette, Inc., Brian K. Duncan and *Bryan D. Thomas*, for appellant Vicki L. Bennett.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Defendant-appellant, Vicki L. Bennett, is appealing from the Franklin County Court of Common Pleas' judgment granting plaintiff-appellee, CitiMortgage, Inc.'s motion for summary judgment. For the following reasons, we affirm the trial court's judgment.

{¶ 2} Appellant asserts the following assignments of error:

> 1. THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO ITS COMPLAINT BECAUSE THERE WERE GENUINE ISSUES OF MATERIAL FACT, INCLUDING BUT NOT LIMITED TO, WHETHER PLAINTIFF HAD THE RIGHT TO FORCE DEFENDANTS TO CARRY FLOOD INSURANCE ON THE UNDERLYING PROPERTY, ALLOCATION OF

PAYMENTS, AND WHETHER DEFENDANTS' COUNTER-CLAIMS WERE BARRED AS A RESULT OF A PREVIOUSLY FILED BANKRUPTCY.

2. THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO DEFENDANTS' COUNTERCLAIMS, INCLUDING BUT NOT LIMITED TO THEIR RESPA CLAIM, BECAUSE THERE WERE GENUINE ISSUES OF MATERIAL FACT AS TO WHETHER PLAINTIFF FAILED TO PERFORM ITS DUTIES UNDER THAT STATUTE.

3. THE TRIAL COURT ERRED IN FINDING THE PLAIN-TIFF WAS ENTITLED TO JUDGMENT AS A MATTER OF LAW ON DEFENDANTS' RESPA COUNTERCLAIMS BE-CAUSE THE SAME WERE NOT BARRED BY HER PRIOR BANKRUPTCY FILING.

4. THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO DEFENDANTS' BREACH OF CONTRACT CLAIM, BECAUSE THERE WERE GENUINE ISSUES OF MATERIAL FACT, INCLUDING WHETHER PLAINTIFF FAILED TO PERFORM ACCORDING TO THE TERMS OF THE UNDER-LYING NOTE AND MORTGAGE AND WHETHER PLAIN-TIFF HAD THE UNILATERAL RIGHT TO IMPLEMENT FLOOD INSURANCE ON THE UNDERLYING PROPERTY.

5. THE TRIAL COURT ERRED IN FINDING THAT PLAINTIFF WAS ENTITLED TO JUDGMENT AS A MATTER OF LAW ON DEFENDANTS' BREACH OF CONTRACT CLAIM.

6. THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO DEFENDANTS' UNJUST ENRICHMENT CLAIM, BECAUSE THERE WERE GENUINE ISSUES OF MATERIAL FACT AS TO WHETHER PLAINTIFF RETAINED A BENEFIT WHICH IT WAS UNJUST IN RETAINING.

7. THE TRIAL COURT ERRED IN FINDING THAT PLAINTIFF WAS ENTITLED TO JUDGMENT AS A MATTER OF LAW ON DEFENDANTS' UNJUST ENRICHMENT CLAIM.

{¶ 3} On August 23, 2002, Ms. Bennett, executed a note with ABN AMRO Mortgage Group, Inc., who was the original lender and holder for the principal amount of $150,829. This note was secured by a mortgage on the property located at 5673 Siler Spurs Lane, Galloway, Ohio 43119. CitiMortgage is the successor by merger to ABN AMRO, and was the holder of the original note when this action was commenced.

{¶ 4} In September 2008, CitiMortgage sent Ms. Bennett a Notice of Flood Insurance Requirements indicating that the property was located in a special flood hazard area. Partly as a result of increased payments that resulted from the additional flood insurance that was unilaterally placed on the property by CitiMortgage, Ms. Bennett failed to make full payments and went into default as a result.

{¶ 5} On May 31, 2011, CitiMortgage filed a foreclosure action against Ms. Bennett and subsequently filed a motion for summary judgment on January 18, 2013 to which attached was an affidavit and other evidence. Ms. Bennett responded to the summary judgment motion but failed to attach any affidavit or present any evidence to the trial court for any defense or counterclaim. The trial court granted CitiMortgage's summary judgment motion on February 21, 2013 and Ms. Bennett timely appealed on March 19, 2013.

{¶ 6} De novo review is well established as the standard of review for summary judgment. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996). We stand in the shoes of the trial court and conduct an independent review of the record applying the same summary judgment standard. As such, we must affirm the trial court's judgment if any of the grounds raised by the moving party, at the trial court level, are found to support it, even if the trial court failed to consider those grounds. *See Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996); *Coventry Twp. v. Ecker*, 101 Ohio App.3d 38, 41-42 (9th Dist.1995).

{¶ 7} Addressing Ms. Bennett's contention that summary judgment was improperly granted, Civ.R. 56(C) states that summary judgment shall be rendered forthwith if:

> [T]he pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and

> that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion * * *.

Accordingly, summary judgment is appropriate only where: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can come to but one conclusion and that conclusion is adverse to the non-moving party. *Tokles & Son, Inc. v. Midwestern Indemn. Co.*, 65 Ohio St.3d 621, 629 (1992), citing *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 65-66 (1978). "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record * * * which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." *Dresher* at 292.

{¶ 8} CitiMortgage attached to its motion for summary judgment an affidavit, as well as the note, mortgage, and other evidence. CitiMortgage identified which parts of the record demonstrate the absence of a genuine issue of fact. CitiMortgage met its initial responsibility and was entitled to summary judgment as a matter law if Ms. Bennett did not respond with opposing evidentiary material.

{¶ 9} Once the moving party meets its initial burden, the nonmoving party must then produce competent evidence showing that there is a genuine issue for trial:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

Civ.R. 56(E). When a motion for summary judgment has been supported by proper evidence, the nonmoving party may not rest on the mere allegations of the pleading, but must set forth specific facts, by affidavit or otherwise, demonstrating that there is a

genuine triable issue. *Jackson v. Alert Fire & Safety Equip., Inc.*, 58 Ohio St.3d 48, 52, (1991).

{¶ 10} Ms. Bennett failed to file any evidence on which we, or the trial court, could find that there is a genuine issue of material fact. Civ.R. 56(E) requires that the non-moving party set forth specific facts. Ms. Bennett could not rest on her own allegations or denials of CitiMortgage's arguments in her pleading. Because she provided no evidentiary material, there was no genuine issue of material fact and CitiMortgage was entitled to judgment as a matter of law.

{¶ 11} Having overruled all of appellant's assignments of error, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed

KLATT, P.J., and CONNOR, J., concur.