

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

U.S. Bank Trust National Association,	:	
	:	No. 26AP-359
	:	(C.P.C. No. 24CV-1046)
v.	:	
	:	(REGULAR CALENDAR)
Xiaowei He,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on October 20, 2026

On brief: *Robertson, Anschutz, Schneid, Crane & Partners, PLLC*, and *Brian S. Jackson*, for appellee. **Argued:** *Brian S. Jackson*.

On brief: *Xiaowei He*, pro se. **Argued:** *Xiaowei He*.

APPEAL from the Franklin County Court of Common Pleas

EDELSTEIN, J.

{¶ 1} Defendant-appellant, Xiaowei He, appeals from a judgment entry and decree of foreclosure of the Franklin County Court of Common Pleas entered in favor of plaintiff-appellee, U.S. Bank Trust National Association (“U.S. Bank”). For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} This matter involves a foreclosure action for the real property located at 5027 Hibbs Drive in Columbus, Ohio (“property”). On March 25, 2013, Ms. He executed a promissory note in favor of Fifth Third Mortgage Company secured by a mortgage on the

property. (Compl. Ex. A, B.) On February 6, 2024, Fifth Third Bank, National Association fka Fifth Third Bank Successor by Merger to Fifth Third Mortgage Company (“Fifth Third”) filed a complaint in foreclosure against Ms. He and her unknown spouse alleging Ms. He defaulted on the note and mortgage. Ms. He filed a motion for an extension of time to respond, and the trial court granted her leave to file an answer within 28 days of April 17, 2024.

{¶ 3} On August 1, 2024, well after Ms. He failed to answer within the extended time, Fifth Third filed a motion for default judgment. Subsequently, on September 13, 2024, Fifth Third filed a motion to stay pending loss mitigation. The trial court granted the motion to stay on October 7, 2024.

{¶ 4} On February 3, 2025, the trial court substituted Select Portfolio Servicing, Inc. as the plaintiff. The trial court reactivated the case on June 29, 2025 and advised that it would set the pending motion for default judgment for a ruling.¹ The trial court issued a second substitution order on September 15, 2025, this time substituting U.S. Bank as owner trustee for RCAF Acquisition Trust as the plaintiff.

{¶ 5} On December 15, 2025, U.S. Bank filed a motion for summary judgment. U.S. Bank argued Ms. He defaulted on the note and mortgage by failing to make the payment due December 1, 2022 and all subsequent months. To support its motion for summary judgment, U.S. Bank filed an affidavit of Nik Fox, a corporate appearance representative of the loan servicer, authenticating the promissory note, the mortgage, and the loan payment history. Ms. He filed a memorandum in opposition to the motion for summary judgment asserting there existed “a fully executed and notarized Loan Modification Agreement dated August 1, 2024” which “materially altered [Ms. He’s] payment obligations and [U.S. Bank’s] contractual right to accelerate.” (Memo in Opp. at 1-2.) Ms. He filed her own affidavit, a timeline of her communications with the loan servicers, and five pages of a document she described as the “[r]elevant [p]ages of [the] Loan Modification Agreement.” (*Id.* at 5.)

{¶ 6} In a March 20, 2026 decision and entry, the trial court granted U.S. Bank’s motion for summary judgment. The trial court considered the Civ.R. 56 evidentiary materials submitted by U.S. Bank and concluded it is the holder of the note secured by the

¹ The court did not rule on that motion for default judgment.

mortgage, Ms. He is in default, all conditions precedent have been met, and U.S. Bank established the amount of principal and interest due. Additionally, the trial court found that although Ms. He referenced a Loan Modification Agreement, she did not provide any evidentiary materials demonstrating U.S. Bank or its predecessors executed the agreement, the loan servicer implemented the agreement, or the terms of the agreement actually altered U.S. Bank's contractual right to enforce the note and mortgage. The trial court then entered a judgment entry and decree of foreclosure on April 7, 2026. Ms. He timely appeals.

II. Assignments of Error

{¶ 7} Ms. He raises the following three assignments of error for our review:

[I.] The trial court erred in granting summary judgment where genuine issues of material fact existed.

[II.] The trial court erred in failing to properly consider evidence demonstrating the existence and handling of a signed and notarized loan modification agreement.

[III.] The trial court erred in granting summary judgment where the arrears calculation was inconsistent with the acknowledged loan modification.

III. Standard of Review

{¶ 8} An appellate court reviews a trial court's grant of summary judgment under a de novo standard. *Estate of Sample v. Xenos Christian Fellowship, Inc.*, 2021-Ohio-3898, ¶ 9 (10th Dist.). "[D]e novo appellate review means that the court of appeals independently reviews the record and affords no deference to the trial court's decision." (Internal quotations and citations omitted.) *Holt v. State*, 2010-Ohio-6529, ¶ 9 (10th Dist.). Summary judgment is appropriate only when the moving party demonstrates: (1) no genuine issue of material fact exists; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds could come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence most strongly construed in its favor. Civ.R. 56(C); *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 183 (1997).

{¶ 9} Pursuant to Civ.R. 56(C), the moving party bears the initial burden of informing the trial court of the basis for the summary judgment motion and of identifying those portions of the record demonstrating the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-93 (1996). The moving party cannot discharge its initial burden with a conclusory assertion that the nonmoving party has no evidence to prove its case; the moving party must specifically point to evidence of the type listed in Civ.R. 56(C) affirmatively demonstrating the nonmoving party has no evidence to support the nonmoving party's claims. *Id.* at 293; *Vahila v. Hall*, 77 Ohio St.3d 421, 429 (1997). If the moving party fails to satisfy its initial burden, the court must deny the motion for summary judgment. *Dresher* at 293. Where the moving party satisfies the initial burden, summary judgment is appropriate unless the nonmoving party responds, by affidavit or otherwise, as provided under Civ.R. 56, with specific facts demonstrating a genuine issue exists for trial. *Id.*; *Hall v. Ohio State Univ. College of Humanities*, 2012-Ohio-5036, ¶ 12 (10th Dist.); Civ.R. 56(E).

IV. Analysis

{¶ 10} Ms. He's three assignments of error are interrelated, and we address them jointly. In her first assignment of error, Ms. He argues the trial court erred in granting summary judgment in favor of U.S. Bank when genuine issues of material fact remained. In her second assignment of error, Ms. He argues the trial court erred in failing to consider evidence of the existence of a loan modification agreement. In her third assignment of error, Ms. He argues the trial court erred in granting summary judgment because the arrears calculation was inconsistent with the loan modification agreement. Taken together, these three assignments of error assert the trial court erred in granting summary judgment in favor of U.S. Bank because there remained a genuine issue of material fact as to the existence of a genuine loan modification agreement.

{¶ 11} To prevail on a motion for summary judgment in a foreclosure action, a plaintiff must present Civ.R. 56 evidentiary materials establishing: “ ‘(1) that the plaintiff is the holder of the note and mortgage, or is a party entitled to enforce the instrument; (2) if the plaintiff is not the original mortgagee, the chain of assignments and transfers; (3) that the mortgagor is in default; (4) that all conditions precedent have been met; and (5) the

amount of principal and interest due.’ ” *U.S. Bank Natl. Assn. v. Lewis*, 2019-Ohio-3014, ¶ 23 (10th Dist.), quoting *Deutsche Bank Natl. Trust Co. v. Najjar*, 2013-Ohio-1657, ¶ 17 (8th Dist.).

{¶ 12} In support of its motion for summary judgment, U.S. Bank presented the note and mortgage documents, the assignment of the mortgage, the payment history, a default letter sent to Ms. He, and the affidavit of the records custodian establishing Ms. He defaulted under the terms of the loan and did not cure the default, the loan was accelerated, and the amount due on the loan. Thus, U.S. Bank submitted Civ.R. 56 evidentiary materials demonstrating each element of its foreclosure claim, satisfying its burden in support of its motion for summary judgment. *See Lewis* at ¶ 23 (“In a foreclosure action, presentation of the note and mortgage documents, along with the affidavit of a loan servicing agent or employee with personal knowledge of the account, may provide sufficient evidentiary support for a summary judgment in favor of the mortgagee.”).

{¶ 13} Ms. He does not dispute U.S. Bank met its initial burden under Civ.R. 56. Instead, Ms. He asserts the trial court erred in granting summary judgment because there remained a genuine issue of material fact as to the existence of a loan modification agreement. In response to U.S. Bank’s motion for summary judgment, Ms. He filed a memorandum contra along with her own affidavit, a timeline of her communications with the loan servicers, and five pages of a document she claims are the relevant portions of the purported loan modification agreement. U.S. Bank asserts these materials contain inadmissible hearsay and are not true and accurate copies of documents because they are incomplete. However, even assuming the materials are admissible, Ms. He does not point to anything in these pages setting forth the terms of the purported loan modification that would alter U.S. Bank’s contractual right to enforce the note and mortgage or that Ms. He cured the default.

{¶ 14} Among the materials Ms. He submitted in response to U.S. Bank’s motion for summary judgment is a document Ms. He describes as containing the “relevant portions” of the loan modification agreement. This document consists of five pages. The first page references an “enclosed modification agreement,” but Ms. He did not submit the remaining pages of the document containing the terms of the modification itself. (Memo Contra, Ex. A at 1.) The document expressly states Ms. He is in default under the note and mortgage

and U.S. Bank will “complete/resume our collection action as necessary, including foreclosure” if Ms. He fails to properly execute or perform under the proposed modification agreement. (Memo Contra, Ex. A at 1.) The remaining four pages she submitted are various signature pages showing Ms. He’s signature, the date of August 1, 2024, and the seal of a notary public.

{¶ 15} None of these pages include the terms of the proposed modification, and Ms. He does not point to any other Civ.R. 56 materials establishing the terms of the proposed modification or demonstrating Ms. He otherwise cured the default. Construing the evidence in a light most favorable to Ms. He, these materials, at most, create a mere possibility that a loan modification agreement could have existed between the parties. The documents do not demonstrate the terms of such loan modification agreement, whether and how the terms of the loan modification agreement altered the terms of the note and mortgage and impacted U.S. Bank’s ability to enforce the note and mortgage, and whether Ms. He performed under the terms of the loan modification agreement. Instead, Ms. He invites both the trial court and this court to speculate that the loan modification agreement altered her payment obligation and/or U.S. Bank’s ability to enforce the note and mortgage. However, “a nonmovant cannot meet her reciprocal burden of demonstrating a genuine issue of material fact remains for trial by relying upon mere speculation or conjecture.” *Plough v. Nationwide Children’s Hosp.*, 2024-Ohio-5620, ¶ 41 (10th Dist.). *See also United States Bank Natl. Assn. v. 3076 Representation Terrace Trust*, 2014-Ohio-2362, ¶ 21 (10th Dist.) (“It is well understood that using mere speculation to raise questions of material fact is not enough to defeat a summary judgment motion.”). Thus, we agree with the trial court that Ms. He failed to submit Civ.R. 56 evidentiary material to defeat U.S. Bank’s motion for summary judgment.

{¶ 16} In summation, the trial court appropriately considered Ms. He’s evidence and correctly determined Ms. He failed to submit any evidence demonstrating a genuine issue of material fact remains as to whether U.S. Bank was in possession of the note and entitled to enforce the instrument at the time the action was filed, that Ms. He was in default, that all conditions precedent were satisfied, and the amount of principal and interest due. Though Ms. He argues a loan modification agreement created new terms and would affect the arrears calculation, she did not submit to the trial court the actual terms of that

agreement or evidence related to a different amount due under the loan. Accordingly, the trial court did not err in finding no genuine issue of material fact remains and granting summary judgment in favor of U.S. Bank. Therefore, we overrule Ms. He's three assignments of error.

V. Disposition

{¶ 17} Based on the foregoing reasons, the trial court did not err in granting summary judgment in favor of U.S. Bank and entering a judgment entry and decree of foreclosure. Having overruled Ms. He's three assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BOGGS, P.J. and BEATTY BLUNT, J., concur.
