

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Countrywide Home Loans, Inc.,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-968
Dennis P. Baker et al.,	:	(C.P.C. No. 08CVE05-7497)
Defendants-Appellants.	:	(REGULAR CALENDAR)

---

D E C I S I O N

Rendered on March 30, 2010

---

*Reisenfeld & Associates, LPA, LLC, Sallie A. Conyers and Matthew C. Steele, for appellee.*

*Dennis P. Baker and Kimberly D. Baker, pro se.*

---

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Defendants-appellants, Dennis P. and Kimberly D. Baker, appeal the judgment of the Franklin County Court of Common Pleas in favor of plaintiff-appellee, Countrywide Home Loans, Inc. (hereinafter, "Countrywide"), pursuant to Countrywide's motion for summary judgment. For the following reasons, we affirm that judgment.

{¶2} On May 22, 2008, Countrywide filed a complaint in the Franklin County Court of Common Pleas alleging that the Bakers were in default on a promissory note secured by a mortgage on property located at 4500 Elder Court, Hilliard, Ohio, and seeking foreclosure on such mortgage. On June 18, 2008, the Bakers filed an answer to Countrywide's complaint in which they denied being in default on their payments.

{¶3} On August 15, 2008, Countrywide filed a motion for summary judgment supported by an affidavit from Kimberly Dawson, Countrywide's First Vice President. In the affidavit, Dawson stated that Countrywide is the holder of a note and mortgage signed by the Bakers, that the Bakers have defaulted on the note, that Countrywide has declared the note's balance due and payable, and that there is a current balance due and owing on the note of \$76,050.73 plus interest. The Bakers filed a response to Countrywide's motion in which they denied that Countrywide was entitled to summary judgment. They did not submit any evidentiary materials.

{¶4} After a failed attempt at mediation, the trial court granted Countrywide's motion for summary judgment and entered judgment in its favor.

{¶5} The Bakers now appeal. Although they have not assigned a specific assignment of error for this court to review, it is apparent that they contend the trial court should not have granted summary judgment in favor of Countrywide. We disagree.

{¶6} Appellate review of summary judgment motions is de novo. *Andersen v. Highland House Co.* (2001), 93 Ohio St.3d 547, 548. "When reviewing a trial court's ruling on summary judgment, the court of appeals conducts an independent review of the record and stands in the shoes of the trial court." *Abrams v. Worthington*, 169 Ohio App.3d 94, 2006-Ohio-5516, ¶11 (quoting *Mergenthal v. Star Banc Corp.* (1997), 122 Ohio App.3d 100, 103). Civ.R. 56(C) provides that a trial court must grant summary judgment when the moving party demonstrates that (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) 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. *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, ¶6.

{¶7} When a motion for summary judgment is made and supported as provided by Civ.R. 56, 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).

{¶8} A party seeking to foreclose on a mortgage must establish execution and delivery of the note and mortgage; valid recording of the mortgage; it is the current holder of the note and mortgage; default; and the amount owed. *Perpetual Fed. Sav. Bank v. TDS2 Property Mgt. LLC*, 10th Dist. No. 09AP-285, 2009-Ohio-6774, ¶19 (citing *Neighborhood Hous. Servs. of Toledo, Inc. v. Brown*, 6th Dist. No. L-08-1217, 2008-Ohio-6399, ¶16).

{¶9} In support of its motion for summary judgment, Countrywide attached an affidavit from Kimberly Dawson, its first Vice President. In her affidavit, Dawson states that Countrywide is the holder of a note and corresponding mortgage secured by the property. The note and mortgage, both attached to the affidavit, are both signed by the Bakers. The mortgage contains a stamp indicating that it was recorded in the office of the Franklin County Recorder. Dawson states that the Bakers failed to make the required payments as required by the note and mortgage, and therefore are in default. Lastly, Dawson states that the Bakers owe Countrywide the sum of \$76,050.73 plus interest and other charges.

{¶10} The Bakers have not disputed that they executed the note and mortgage, that the mortgage was properly recorded, and that Countrywide is the holder of the note and mortgage. Nor have they disputed that Countrywide is entitled to accelerate the debt

if they are in default on these instruments. However, in their answer and in their memorandum contra to Countrywide's motion for summary judgment, the Bakers denied that they were in default on the note.

{¶11} Dawson stated in her affidavit that the Bakers were in default on the note. An affidavit stating the loan is in default is sufficient for purposes of Civ.R. 56, in the absence of evidence controverting those averments. *Id.* at ¶20 (citing *Bank One, N.A. v. Swartz*, 9th Dist. No. 03CA008308, 2004-Ohio-1986, ¶14; *Deutsche Bank Natl. Trust Co. v. Ingle*, 8th Dist. No. 92487, 2009-Ohio-3886, ¶33; *JP Morgan Chase Bank, N.A. v. Brown*, 2d Dist. No. 21853, 2008-Ohio-200, ¶54). Because the Bakers failed to submit any Civ.R. 56(C) evidence in support of their memorandum contra to Countrywide's motion for summary judgment, they failed to identify any issue of fact on the issue of their default. The Bakers' denials in their answer to the complaint and in their memorandum contra are not sufficient. Civ.R. 56(E). Therefore, the trial court properly granted summary judgment in favor of Countrywide.

{¶12} For the foregoing reasons, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BRYANT and CONNOR, JJ., concur.

---