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MEMORANDUM OPINION AND JUDGMENT
OF THE DISTRICT OF COLUMBIA
COURT OF APPEALS
(JULY 31, 2018)

DISTRICT OF COLUMBIA COURT OF APPEALS

METEKU NEGATU,

Appellant,

v.

WELLS FARGO BANK, N.A.,

Appellee.

No. 17-cv-412

Appeal from the Superior Court of
the District of Columbia (CAR-4574-15)
(Hon. Michael L. Rankin, Trial Judge)

Before: BECKWITH and MCLEESE,
Associate Judges, and LONG, Senior Judge,
Superior Court of the District of Columbia.*

PER CURIAM

Appellant Meteku Negatu challenges the trial
court's ruling that appellee Wells Fargo Bank, N.A.

* Sitting by designation pursuant to D.C. Code § 11-707(a)
(2012 Repl.).

was entitled to a judicial sale of real property. We affirm.

I.

The following facts either are undisputed or were found by the trial court. In April 2007, Mr. Negatu obtained a \$658,500 mortgage loan from World Savings Bank, FSB, for real property located at 2829 11th Street, N.W. Mr. Negatu executed a promissory note payable to “World Savings, Bank, FSB, a federal savings bank, its successors and/or assignees.” The note was secured by the property and evidenced by a deed of trust recorded in the land records of the District of Columbia. The word “(Seal)” appears at the end of Mr. Negatu’s signature line on the note. The note referred to and incorporated the rights set forth in the deed of trust. Under the deed of trust, the lender had the right to demand immediate payment and sell the property in the event of nonpayment. As with the promissory note, the word “(Seal)” appeared at the end of Mr. Negatu’s signature line in the deed of trust. Wells Fargo is the successor in interest to the original lender.

In October 2009, Mr. Negatu stopped making the required monthly payments. In November 2009, the loan was referred to foreclosure and Mr. Negatu received a demand letter to cure the default. Wells Fargo appointed substitute trustees, who filed a complaint for judicial foreclosure in June 2015. Mr. Negatu filed an answer but did not assert any defenses. The trial court entered summary judgment in favor of Wells Fargo.

II.

Mr. Negatu raises a number of arguments, all but one of which are raised for the first time on appeal. We review orders granting summary judgment *de novo*. *Ward v. Wells Fargo Bank, N.A.*, 89 A.3d 115, 126 (D.C. 2014). Absent extraordinary circumstances, however, our review is limited to those arguments raised before the trial court. *Linen v. Lanford*, 945 A.2d 1173, 1180 n.4 (D.C. 2008) (“Generally speaking, matters not properly presented to a trial court will not be resolved on appeal. A court deviates from this principle only in exceptional situations and when necessary to prevent a clear miscarriage of justice apparent from the record.”) (citation and internal quotation marks omitted).

The only argument raised in this court that was presented to the trial court is Mr. Negatu’s contention that Wells Fargo made numerous false representations about Mr. Negatu’s ability to delay mortgage payments so he could qualify for loan modifications. Mr. Negatu’s misrepresentation claim, however, was raised for the first time in his unsworn opposition to summary judgment, was worded in entirely conclusory terms, and was not supported by specific evidence that could create a genuine issue of material fact. *Musa v. Cont’l Ins. Co.*, 644 A.2d 999, 1002 (D.C. 1994) (“Mere conclusory allegations on the part of the non-moving party are insufficient to stave off the entry of summary judgment.”); *id.* (court must affirm grant of summary judgment where appellant cannot demonstrate genuine issue of material fact).

As to the newly raised arguments, Mr. Negatu first argues that Wells Fargo lacked standing to enforce the promissory note because Wells Fargo did not

establish a proper chain of endorsements from the original lender. To the contrary, however, a representative of Wells Fargo stated under oath in response to an interrogatory that Wells Fargo was the owner of the note, having purchased the original lender. Mr. Negatu did not dispute that statement, and in fact he admitted in his answer that Wells Fargo was the beneficiary of a deed of trust secured by the property. We are satisfied that Wells Fargo had standing.

Second, Mr. Negatu argues that the foreclosure claim was barred by the statute of limitations or by laches. Mr. Negatu did not raise either argument at any point before the trial court, and he has not pointed to any circumstances that would warrant exercising our discretion to review claims raised for the first time on appeal. We therefore need not decide either claim on the merits. *Mayo v. Mayo*, 508 A.2d 114, 115-16 (D.C. 1986) (“A statute of limitation is an affirmative defense which must be asserted in a responsive pleading before the trial court. Failure to plead the limitation defense results in a waiver thereof.”) (citation omitted). Although Mr. Negatu contended at oral argument that his statute-of-limitations claim was jurisdictional and could be raised at any time, the law is otherwise. *Id.*; see also, e.g., *Brin v. S.E.W. Inv’rs*, 902 A.2d 784, 800 (D.C. 2006) (“Normally, a statute of limitations erects no jurisdictional bar. . . .”) (internal quotation marks omitted). In any event, we note that, contrary to Mr. Negatu’s contentions, this action was governed by the twelve-year statute of limitations applicable to documents under seal, D.C. Code § 12-301(6) (2012 Repl.), because the word “Seal” appeared right next to Mr. Negatu’s signature on both the promissory note

and the deed of trust. *See Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 318 (D.C. 2008) (“[W]e have said that the presence of the word ‘seal,’ in parentheses, and opposite the signature undoubtedly evinces an intention to make the instrument a sealed instrument.”) (brackets and internal quotation marks omitted).

Third, Mr. Negatu argues that the trial court ignored his counterclaims. Mr. Negatu, however, never filed any counterclaims.

Finally, Mr. Negatu argues that Wells Fargo took no action to mitigate damages. This belated claim provides no basis for relief. Mr. Negatu filed for bankruptcy in December 2008 and received a discharge in March 2009. According to the terms of the discharge, Wells Fargo could enforce its mortgage lien against Mr. Negatu’s property, but Mr. Negatu cannot be pursued for any debt above the sale price of the property at foreclosure. Mr. Negatu has failed to explain how, given those circumstances, he could be injured by any failure of Wells Fargo to mitigate damages.

For the foregoing reasons, the judgment of the trial court is hereby

Affirmed.

ENTERED BY DIRECTION OF
THE COURT:

/s/ Julio A. Castillo
Clerk of the Court

App.6a

Copies to:

Honorable Michael L. Rankin
Director, Civil Division

Copies e-served to:

Johnny Barnes, Esquire
Virginia W. Barnhart, Esquire

**ORDER GRANTING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT AND DECREE
FOR SALE OF REAL PROPERTY
(JUNE 30, 2017)**

SUPERIOR COURT OF THE DISTRICT
OF COLUMBIA CIVIL DIVISION

WELLS FARGO BANK, N.A.,

Plaintiff,

v.

METEKU NEGATU,

Defendant.

Case No. 2015 CA 004574 R(RP)

Before: Michael L. RANKIN, Associate Judge.

This action seeking a decree of judicial sale under D.C. Code § 42-816 on the property located at 2829 11th Street NW, Washington, DC 20001 (“the property”) is before the court on Plaintiff’s motion for summary judgment and Defendant’s opposition thereto. Plaintiff has established its prima facie entitlement to judgment as a matter of law,¹ and Defendant does not dispute

¹ Plaintiff alleged and Defendant has not demonstrated a genuine factual dispute that: (1) Defendant is the record owner of the property; (2) Plaintiff is a beneficiary of the Deed of Trust secured by the property; (3) Plaintiff is the current holder of the note; (4) Defendant defaulted under terms of Note and Deed of

that he has not made repayments on the promissory note secured by the Deed of Trust on the property since 2009. Accordingly, it is this 4th day of April, 2017 hereby:

ORDERED that Plaintiff's motion for summary judgment is GRANTED; and it is further

ORDERED, ADJUDGED, AND DECREED that Plaintiff is entitled to judicial sale of the property under the following terms and conditions:

1. To the extent that Carrie M. Ward, Howard N. Bierman, Jacob Geesing, Jason T. Kutcher, Joshua P. Coleman and Joseph A. Delozier have been named as Substitute Trustees as to the property, the same is ratified and confirmed, or, in the alternative, Carrie M. Ward, Howard N. Bierman, Jacob Geesing, Jason T. Kutcher, Joshua P. Coleman and Joseph A. Delozier are appointed as Substitute Trustees for purposes of foreclosure. On the posting of a bond in the amount of \$25,000.00 into the Court, any of them, acting alone or in concert, may proceed to foreclose on the property by public auction.

2. The Trustees shall mail notice of the time, place, and terms of the auction to all junior interest holders,² owners of record, and occupants, by certified

Trust in October of 2009; (5) Plaintiff mailed a demand letter to Defendant's last known address stating the amount needed to cure the default; and (6) Defendant failed to cure the default. Finally, Plaintiff has attached an affidavit which complies with the Service members Civil Relief Act.

² This provision requires Plaintiff to provide notice to all holders of subordinate interests recorded or acquired subsequent to the mortgage, including junior mortgagees, holders of judgments and

mail, return receipt requested and by first class mail, no more than 45 days and no less than 30 days, before the auction date, and the Trustees shall notice to Defendant no fewer than 30 days before the sale of Defendant's right to redeem the mortgage by paying the outstanding obligation on the note and outstanding penalties in full before the foreclosure auction.³

3. In accordance with the contractual provisions in the Deed of Trust and Rule 308(b)(1) of the Superior Court Rules of Civil Procedure, the Trustees shall advertise the time, place and terms of the auction, in two newspapers of general circulation in the District of Columbia, once a week for four consecutive weeks leading up to the auction.

4. Pursuant to the contractual provisions in the Deed of Trust and Rule 308(b)(3) of the Superior Court Rules of Civil Procedure, the Trustees may employ an auctioneer for the sale process and incur reasonable costs associated therewith.

5. In compliance with the contractual provisions in the Deed of Trust, the Trustees may appoint an attorney to appear on behalf of the Trustees to supervise and attend the sale.

6. In accordance with the contractual provisions in the Deed of Trust, the Trustees may require a purchaser to post a nonrefundable deposit of up to

liens acquired after the superior mortgage, and lessees and tenants/parties in possession of the real property.

³ D.C. Code 42-815 requires notice of foreclosure to be mailed at least 30 days before any foreclosure sale may take place. The court sees no reason to relax this requirement for judicial foreclosures.

10% of the price bid in certified funds, may condition the right to bid or acceptance of bids upon a showing of said deposits, and may reserve the right to reject any bid made by anyone who does not have the deposit in hand at the auction.

7. Pursuant to D.C. Code § 42-817, the *Philadelphia Newspaper* cases, and *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 U.S. 845 (2011), the deposit required to bid at the auction is waived for the Noteholder and any of the Noteholder's successors or assigns.

8. The Noteholder may bid up to the amount owed on the Note plus all costs and expenses of sale on credit and may submit a written bid to the Trustees which shall be announced at sale.

9. Based on the customs and practices in the District of Columbia, the Trustees shall hold any deposit in a non-interest bearing trust account.

10. The Trustees may establish additional terms of sale as may be appropriate in their judgment to promote the best price at the auction so long as any additional terms remain consistent with and do not alter the specific terms and conditions of the Deed of Trust and this Order and Decree of Sale.

11. In accordance with the contractual provisions in the Deed of Trust, Rule 308(b)(2) of the Superior Court Rules of Civil Procedure, and D.C. Code § 42-816, the Trustees may enter into a contract of sale with the highest qualified bidder subject to ratification by the Court, and any memorandum of sale must indicate that the sale is subject to said ratification.

12. In accordance with Rule 308(b)(2) of the Superior Court Rules of Civil Procedure, if a Third Party is successful at auction, the bond shall be increased to the full amount of the purchase price, which shall be posted prior to ratification by this Court.

13. Pursuant to Rule 308(b)(4) of the Superior Court Rules of Civil Procedure, the Trustees shall file a Verified Report of Sale with the Court within 30 days of the auction. The Verified Report of Sale shall specify the time, place, terms of the sale, the purchaser, the purchase amount, and the deposit held, together with an affidavit and documentation establishing that the Trustees complied with the notice and advertisement requirements set forth above.

14. In accordance with the contractual provisions in the Deed of Trust, and unless otherwise ordered at the time of ratification, settlement shall occur by payment of all sums due under the bid in certified funds to the trustees within 60 days from the entry of an Order ratifying the Sale. If the purchaser fails or refuses to settle within the allotted time frame, the deposit will be forfeited and the Trustees may apply the deposit toward costs, fees or their compensation associated with the initial auction and the resale process. Any remaining amount shall be credited to the underlying debt.

15. Pursuant to the contractual provisions in the Deed of Trust, after the purchaser's funds submitted to the Trustees have cleared, the Trustees shall execute and deliver a Trustees' Deed, transferring title to the purchaser. The costs of recording the Deed shall be the responsibility of the purchaser.

16. In compliance with the contractual provisions in the Deed of Trust and Rule 308(b)(d) of the Superior Court Rules of Civil Procedure, within 60 days of settlement, the Trustees shall file with the court evidence of the settlement including a copy of the Trustee's Deed, a proposed accounting and distribution of funds, and a proposed order ratifying the distribution. A copy of those documents shall be sent to the borrower and all junior lien holders, together with a notice that any claim or dispute with the proposed accounting and distribution must be filed within 14 days, and that if no claim or objection is filed, the same may be ratified by without further hearing.

17. In accordance with the Deed of Trust, any unclaimed funds due to the junior lienholders, owners, or any other party, may be identified for payment into the Court registry, and upon payment thereof, the Trustees may request a determination that their duties have been discharged and the case be closed with the bond released.

18. In compliance with the Deed of Trust, the Trustees shall be entitled to recover their costs incurred, including reasonable attorney's fees and commissions as authorized by the Deed of Trust for the execution of duties performed in accordance with the foreclosure and this Decree as part of the settlement. It is further

ORDERED that the pretrial conference is VACATED, and a status hearing is set for June 30, 2017 at 11:30 a.m. in Courtroom 517.

SO ORDERED.

App.13a

/s/ Michael L. Rankin

Associate Judge

Copies to:

Counsel of Record
Via CaseFileXpress