

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-20326
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
February 28, 2020

Lyle W. Cayce
Clerk

In the Matter of: KEHINDE ADEYEMI ELEBUTE,

Debtor

KEHINDE ADEYEMI ELEBUTE,

Appellant

v.

VILLAGE CAPITAL & INVESTMENT, L.L.C.,

Appellee

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:18-CV-4504

Before WIENER, HAYNES, and COSTA, Circuit Judges.

PER CURIAM:*

In his bankruptcy proceeding, Kehinde Adeyemi Elebute brought an adversary proceeding alleging wrongful foreclosure against Village Capital. The bankruptcy court granted summary judgment against Elebute. Several

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 19-20326

months later, Elebute sought to vacate the judgment under Federal Rule of Civil Procedure 60(b)(1). Elebute argued that the bankruptcy court had mistakenly relied on an unsigned sales contract in granting summary judgment. The bankruptcy court denied that motion, and the district court affirmed that denial. Seeing no abuse of discretion in the bankruptcy court's refusal to reopen the case, we also AFFIRM its denial of Rule 60(b)(1) relief.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Courts
Southern District of Texas
FILED
March 23, 2020

David J. Bradley, Clerk of Court

No. 19-20326
Summary Calendar

D.C. Docket No. 4:18-CV-4504

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In the Matter of: KEHINDE ADEYEMI ELEBUTE,

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KEHINDE ADEYEMI ELEBUTE,

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v.

VILLAGE CAPITAL & INVESTMENT, L.L.C.,

Appellee

Appeal from the United States District Court for the
Southern District of Texas

Before WIENER, HAYNES, and COSTA, Circuit Judges.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.

IT IS FURTHER ORDERED that appellant pay to appellee the costs on appeal to be taxed by the Clerk of this Court.



Certified as a true copy and issued
as the mandate on Mar 23, 2020

Attest: *Lyle W. Cayce*
Clerk, U.S. Court of Appeals, Fifth Circuit

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

3 KEHINDE ADEYEMI ELEBUTE, * Civil No. H-18-4504
APPELLANT *
4 *
5 VERSUS * Houston, Texas
* May 3, 2019
6 VILLAGE CAPITAL & INVESTMENT * 2:00 p.m.
LLC, APPELLEE *

**MOTION HEARING
BEFORE THE HONORABLE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE**

10 | For the Appellant:

11 Mr. Kehinde Adeyemi Elebute
12 1206 Turtle Creek Drive
Missouri City, Texas 77489
PRO SE

15 | For the Appellee:

16 Mr. Scott R. Larson
17 Bell Nunnally & Martin LLP
18 2323 Ross Avenue
Suite 1900
Dallas, Texas 75201

20 Court Reporter:

21 Fred Warner
22 Official Court Reporter
 515 Rusk Avenue
 Houston, Texas 77002

24 Proceedings recorded by mechanical stenography, produced by computer aided transcription.

1 THE COURT: Good afternoon and welcome. Sorry we
2 are a few minutes late. That's my fault.

3 We're here on a bankruptcy appeal. Why don't
4 we take appearance of party or counsel as the case may be.

5 Are you Mr. Elebute?

6 MR. ELEBUTE: Yes, sir.

7 THE COURT: You pronounce your name as Elebute?

8 MR. ELEBUTE: Yes, sir.

9 THE COURT: And you're representing yourself?

10 MR. ELEBUTE: Yes, Your Honor.

11 THE COURT: Welcome to you, sir.

12 MR. LARSON: Scott Larson on behalf of appellee,
13 Village Capital & Investment, LLC.

14 THE COURT: Mr. Elebute, I wanted to have this
15 hearing because I am not sure I fully understand from your
16 writings what the problem is here. Let me give you a chance
17 to tell me, and then I will hear from Mr. Larson.

18 MR. ELEBUTE: Yes, Your Honor. May it please the
19 Court.

20 As stated in the record, my name is Kehinde
21 Elebute. I'm the appellant in this case. This case is about
22 wrongful foreclosure of appellant's property. The property
23 was foreclosed on November, 2016. And before the foreclosure
24 date appellant received an informational letter from
25 defendant Village Capital stating that the new owner for the

1 property, for the mortgage loan was EverBank, meaning that it
2 was the new owner, and the letter was sent stating that the
3 status still remain as Dovenmuehle.

4 THE COURT: Remain as who?

5 MR. ELEBUTE: Dovenmuehle.

6 So right after I got the informational letter,
7 on November, 2015, the previous owner foreclosed the house,
8 the property. After that foreclosure then I file --

9 THE COURT: EverBank. So EverBank, all one word,
10 right?

11 MR. ELEBUTE: Yes, sir. Your Honor. EverBank is
12 the new owner.

13 THE COURT: EverBank is the new owner, okay.

14 MR. ELEBUTE: So when this property was foreclosed
15 on November 1st, 2016, I filed a proceeding for wrongful
16 foreclosure.

17 On January 15, 2018, the defendants filed
18 motion for summary judgment.

19 THE COURT: Okay. This is in the banking case or in
20 the foreclosure case? The foreclosure case?

21 MR. ELEBUTE: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. ELEBUTE: They filed summary judgment.

24 THE COURT: That was granted on March 9, 2018?

25 MR. ELEBUTE: The summary judgment was granted.

1 THE COURT: Yeah.

2 MR. ELEBUTE: So after the summary judgment was
3 granted, I file a paper according to -- I filed with CCD.

4 THE COURT: Motion for rehearing.

5 MR. ELEBUTE: Motion for rehearing, motion to set
6 aside.

7 THE COURT: Set aside the judgment, okay.

8 MR. ELEBUTE: So I was asking the Court for review
9 and to set aside the judgment due to the fact that the
10 evidence contained in the summary judgment were falsified and
11 error in the hearing. That was the purpose of filing it.

12 THE COURT: So what happened in the bankruptcy
13 court? What happened in the bankruptcy court? This is an
14 appeal from bankruptcy.

15 MR. ELEBUTE: Exactly. When I file the appeal,
16 Judge Norman in the bankruptcy court dismissed the appeal
17 stating that it was supposed to be filed for 10 days, while
18 according to the CCD I have a year to file the motion.

19 And the key thing is Judge Norman in his
20 decision for dismissing it, he said I wasn't anticipating
21 ruling or changing anything granted from prior judgment.

22 THE COURT: Was that the only asset in the
23 bankruptcy?

24 MR. ELEBUTE: Yes, sir.

25 THE COURT: It was a one-asset bankruptcy?

1 MR. ELEBUTE: Yes, Your Honor. So Judge Norman
2 stated that he was not interested in trendsetting now.

3 THE COURT: Well, if the foreclosure is going to
4 proceed and the creditor was going to get title for the
5 property, I can see why he would think there would be nothing
6 he could do as a bankruptcy judge.

7 Let me hear from Mr. Larson briefly.

8 MR. LARSON: Good afternoon, Your Honor, Mr.
9 Elebute. May it please the Court.

10 Your Honor, I was going to briefly address kind
11 of the issues before the Court. I think you should affirm
12 the lower court's denial of the Rule 60(b)(1) motion filed by
13 Mr. Elebute for three reasons; they're all independent.

14 First, it wasn't timely under Fifth Circuit
15 precedent when you're alleging legal error as the ground for
16 relief from judgment.

17 THE COURT: Was the case you were trying to get
18 relief from a federal court case?

19 MR. LARSON: Yes, Your Honor.

20 Let me clarify the procedural posture of what
21 happened here. My client foreclosed on some residential real
22 property that was not Mr. Elebute's home.

23 THE COURT: It was his brother's home?

24 MR. LARSON: It was his deceased brother's home,
25 yes.

1 And following the foreclosure, Mr. Elebute
2 filed bankruptcy and initiated an adversary proceeding. I
3 think what you are referring to are the asset foreclosure
4 case. That was an adversary --

5 THE COURT: That was in the bankruptcy?

6 MR. LARSON: Yes, Your Honor. It was originally
7 with Judge Murphy. It was with her until she retired. She
8 granted summary judgment shortly before retiring, and then it
9 went to Judge Norman for the -- there was a Rule 54 --

10 THE COURT: Is it Paul, Judge Murphy?

11 MR. LARSON: Judge Murphy. I believe it was Judge
12 Murphy, I think. I hope I am not getting that wrong. She
13 was a bankruptcy court judge and retired recently.

14 THE COURT: Judge Paul, Judge Brown?

15 MR. ELEBUTE: Judge Brown.

16 MR. LARSON: Judge Brown. Judge Brown retired
17 recently.

18 THE COURT: Yes.

19 MR. LARSON: And then the case went to Judge
20 Murphy -- Judge Norman.

21 So Judge Brown granted summary judgment, and
22 then Mr. Elebute filed an appeal out of time to this Court.

23 THE COURT: Of the adversary proceeding.

24 MR. LARSON: Of the adversary proceeding. He filed
25 it late, out of the time. You dismissed for lack of

1 jurisdiction because it was untimely.

2 Seven months later Mr. Elebute's attorney, Mr.
3 Pope, filed a Rule 60(b)(1) motion in the adversary
4 proceeding seeking relief judgment alleging that --

5 THE COURT: That's out of time, too, though?

6 MR. LARSON: Not quite, Your Honor -- well, yes, it
7 is. Under the rule I can understand why Mr. Pope, Mr.
8 Elebute would think it's not out of time because you
9 technically have a year under Rule 60(b)(1) through (b)(4) or
10 (b)(5).

11 MR. ELEBUTE: (B)(6).

12 MR. LARSON: (B)(6) is unlimited time.

13 (B)(1), which is legal -- which is error on the
14 part of the Court, can be filed up to a year. But the Fifth
15 Circuit has said if you're alleging legal error on the part
16 of the Court's ruling, this appeal window, the appeal
17 deadline is what is imposed, the idea being you can't use
18 Rule 60(b)(1) as a means of circumventing the appellate
19 deadline.

20 Really those cases -- we are using 60(b)(1) as
21 grounds for a motion for relief from judgment -- are reserved
22 for cases when the legal error is so obvious that it would be
23 a waste of time to appeal it. You would raise it with the
24 trial judge, or in this case the bankruptcy judge. The
25 bankruptcy judge would realized, oh, yes, I messed something

1 up here. We're not going to have to worry about appeal.
2 I'll fix it.

3 Now, the case, this case that lays it out --
4 and this is laid out in our response brief -- that case is
5 Benson Street versus St. Joseph Regional Medical Center.
6 That's a Fifth Circuit case from 2009.

7 And that's really what happened here, Your
8 Honor. If you look at the Rule 60(b)(1) motion that was
9 filed by Mr. Elebute's attorney below, he alleged that it was
10 an error for the Court. So the two errors, to backtrack a
11 little bit, the two problems, the two defects raised by Mr.
12 Elebute were lack of notice and the fact that my client did
13 not have authority to conduct a foreclosure sale. Mr.
14 Elebute admitted in his deposition that he received notice.
15 The Court concluded that in its memorandum opinion when it
16 granted a summary judgment.

17 THE COURT: Why was he entitled to notice?

18 MR. LARSON: What, Your Honor?

19 THE COURT: Why was he entitled to notice?

20 MR. LARSON: We didn't concede that in our motion
21 for summary judgment because he wasn't --

22 THE COURT: He wasn't the fee simple owner, was he?

23 MR. LARSON: Correct, Your Honor.

24 We also contended in our summary judgment
25 motion that the estate was never properly probated. He

1 attempt to use a state affidavit in state court to accomplish
2 that. You can't transfer real property to anyone but a
3 spouse or a minor child, neither himself. We argued -- and
4 in fact the Court concluded that he received notice. Mr.
5 Elebute admitted he received notice.

6 The other defect, as I mentioned, is that Mr.
7 Elebute alleged my client did not have the authority to
8 conduct a foreclosure sale. The client did, my client did.
9 We submitted the sales agreement between by client and
10 EverBank which reserved the right on the part of my client to
11 service the note and to conduct a foreclosure proceeding if
12 necessary.

13 Then in the response brief Mr. Elebute's
14 attorney raised the point that the copy of the agreement we
15 include in the summary judgment appendix was unsigned. We
16 addressed that in our rely brief and promptly filed a motion
17 to supplement the appendix with the signature pages.

18 If you look at the Court's ruling, the
19 memorandum opinion, which is at clerk's record 164, the Court
20 states, "Village Capital's summary judgment evidence includes
21 the sales agreement between Village Capital and EverBank.
22 Under the sales agreement Village Capital retained servicing
23 rights of the loan sold to EverBank." For support the lower
24 court cited the summary appendix and the motion for leave to
25 supplement the appendix.

1 So the entire basis of the Rule 60(b)(1) motion
2 below was that it was error for the Court to rely on the
3 signature pages when it never formally granted the motion for
4 leave to supplement.

5 Your Honor, I would contend that including in
6 the memorandum opinion by citing it to the Court is
7 essentially granting that. And more to the point, looking at
8 the merits, I don't think you should even get to it. If
9 we're looking at the merits, it would be a complete waste of
10 time for this appeal to be granted, only if you go down to
11 the bankruptcy court for Judge Norman to enter a formal order
12 granting the motion for leave to supplement, and then
13 essentially issuing the same opinion that Judge Brown did.

14 Your Honor, briefly, though, there is two
15 reasons why you shouldn't even address this. And I have
16 essentially addressed the merits of this, and I've
17 essentially briefed one, addressed one, which is the fact
18 that under Fifth Circuit precedent because Mr. Elebute is
19 alleging legal error on the part of the Court below, his
20 deadline to raise that error to the Court below was 14 days
21 after summary judgment was granted. He missed that deadline
22 by six-and-a-half months. Again, that's a Fifth Circuit case
23 laid out in our brief.

24 A second point -- and this is a Southern
25 District case from I believe 2016 -- Judge Rosenthal said a

1 Rule 60(b) motion of any kind is not grounds for an
2 unsuccessful party to simply relitigate the issues.

3 Your Honor, all of this, this entire argument
4 that my client didn't have the authority and that Mr. Elebute
5 didn't have notice was thoroughly briefed in the summary
6 judgment briefing. The Court ruled on it and ruled against
7 Mr. Elebute. He's raised those same points in the 60(b)(1)
8 motion below, and the Court just concluded he wasn't going to
9 reconsider it.

10 For those three independent reasons we think
11 you should affirm the lower court's denial of the Rule
12 60(b)(1) motion.

13 THE COURT: All right. Thank you.

14 Mr. Elebute, anything further?

15 MR. ELEBUTE: Yes, Your Honor.

16 Your Honor, the evidence viewed in the
17 admission of the summary judgment is clear that there is a
18 legal error in this case because as they presented, they
19 presented this contract stating that they have a solid
20 contract with EverBank, which is the new owner. So their
21 service contract claim is just no signature for it.

22 And secondly, the defendant presented a
23 supplemental appendix to supplement the signature.

24 THE COURT: Yeah.

25 MR. ELEBUTE: Until the second one is presented, you

1 will see no signature on both paragraphs.

2 THE COURT: Okay.

3 MR. ELEBUTE: It's like one person signed one, then
4 the other filing left it blank. So it just seems that there
5 is no binding contract in this agreement at all because there
6 is no acceptance. According to Texas law there has to be
7 acceptance and a binding contract between those parties.
8 Here the signature was left blank and the owner's signature
9 was left blank. They both -- they sign it simply at the
10 page, not where to reflect where they have both agreement and
11 contend to the agreement of the contract, of the agreement,
12 of contract of the agreement, so right there.

13 Then on the establishment of notice, the notice
14 was addressed to the deceased. They addressed that notice to
15 the deceased, to my dead brother. They did not address the
16 notice to me. And the notice was sent to my brother's
17 address even though the defendant, they have my information.

18 THE COURT: I am not sure you were entitled to any
19 notice, Mr. Elebute. You were not the owner. I am not sure
20 you were entitled to any notice. You are not the owner of
21 that property.

22 MR. ELEBUTE: I am the estate owner of the property,
23 Your Honor, vis-a-vis to the mortgage company --

24 THE COURT: You didn't go through the probate,
25 though, I'm afraid. I mean, I think Mr. Larson is correct.

1 You could inherit it if you were a spouse or if you were a
2 child; but a sibling, I don't think, I don't think you get to
3 seize possession and seize title without going through
4 probate.

5 MR. ELEBUTE: But, Your Honor, I mean, it's been
6 established I was the administrator. I was paying for that
7 loan for over a year before the foreclosure. The mortgage
8 company, the defendant, they know me as the administrator.
9 They have been addressing me as the administrator of the
10 estate of Taiwo Elebute. They were sending correspondence to
11 me as the administrator awaiting the foreclosure.

12 THE COURT: But the court, lower court found you got
13 notice, didn't they?

14 MR. ELEBUTE: Yeah. The court, the lower court
15 found that I got notice even though it was 10 days before I
16 got the notice. It was 10 days before I got notice, and the
17 notice wasn't addressed to me.

18 The issue of the notice, this contract they are
19 claiming that they have with EverBank is false, Your Honor,
20 because the signature they're trying to present, this is how
21 they're trying to present it even though the supplement
22 they're presenting, there is no binding contract, Your Honor.

23 THE COURT: You know, homestead cases are among the
24 hardest for me, certainly among the hardest on the civil
25 side. I mean, I know how much my wife and I valued our

1 homes, including the first one we had. It was very modest.
2 It would have been so painful for us to have lost our home in
3 foreclosure, so I know, I understand how high the stakes are.
4 I understand the human emotions involved.

5 But I cannot find fault here with anything that
6 happened below. I think it was right to foreclose, and as
7 painful as that is, we need to accept it.

8 I mean, I know what you're saying. I read your
9 brief. You were sometimes paying money on your brother's
10 home even when you couldn't make the mortgage payments on
11 your own home. I know that must have been an enormous
12 sacrifice for you, and I applaud you for being so
13 large-hearted about it, but I don't think it fixes the legal
14 issue.

15 MR. ELEBUTE: Your Honor, the confusing part for me,
16 the thing that was, when they sent me the letter that there
17 had been a new owner, which was EverBank --

18 THE COURT: That happens all the time. Banks can
19 transfer ownership of property without consent by the
20 borrower. That happens all the time, sir.

21 MR. ELEBUTE: And I thought EverBank, at that time
22 they had told me, yes, they are the new owner, they agree
23 with me to take share payments so I can afford to pay the
24 amount due on the loan. So suddenly Village Capital, they
25 went ahead and foreclosed the house.

1 THE COURT: I cannot be more sympathetic. I really
2 feel for you, but I don't think I can help you.

3 MR. ELEBUTE: If you look at the letter, the
4 information in that letter, that is plain and simple, Your
5 Honor. The information in that letter states clearly, very
6 clearly the new owner and the servicer, which never stated
7 anything about Village Capital being the owner.

8 THE COURT: Well, owners and servicers don't have to
9 be the same. Servicers sometimes can exercise rights of
10 foreclosure. I don't think that's a winning argument, sir.
11 I'm sorry. I know it's frustrating.

12 It used to be you went down to your local bank
13 and you got to borrow money from somebody you knew personally
14 and that person took care of your mortgage for the rest of
15 the life of the mortgage; and then when you paid it off, the
16 same person gave you a free and clear deed. And that's just
17 not the way it works anymore. In a lot of ways I wish we
18 could go back to go those days, but we can't.

19 I am very sorry. I am going to have to dismiss
20 the appeal.

21

22

23 (Conclusion of proceedings)

24

25

1 CERTIFICATION
2
3
4

5 I, Fred Warner, Official Court Reporter for the
6 United States District Court for the Southern District of
7 Texas, Houston Division, do hereby certify that the foregoing
8 pages 1 through 15 are a true and correct transcript of the
9 proceedings had in the above-styled and numbered cause before
10 the Honorable KEITH P. ELLISON, United States District Judge,
11 on the 3rd day of May, 2019.

12 WITNESS MY OFFICIAL HAND at my office in Houston,
13 Harris County, Texas on this the 25th day of October, A.D.,
14 2019.

15
16
17
18
19 /s/ Fred Warner
20 Fred Warner, CSR
21 Official Court Reporter
22
23
24
25



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ENTERED
11/19/2018

IN RE:
KEHINDE ADEYEMI ELEBUTE §
Debtor(s) §
§
KEHINDE ELEBUTE §
Plaintiff(s) §
§
VS. §
§
VILLAGE CAPITAL & INVESTMENT, LLC, §
et al §
Defendant(s) §
§
CASE NO: 16-35528
CHAPTER 13
ADVERSARY NO. 17-3148

ORDER DENYING MOTION TO RECONSIDER

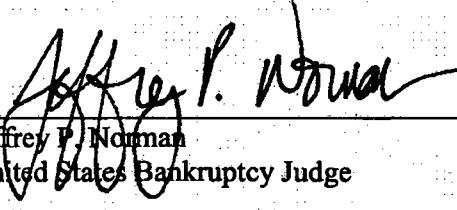
This matter is before the Court on the Motion to Reconsider (ECF No. 49) filed by the plaintiff. The movant is requesting this Court reconsider the Order Granting Motion for Summary Judgment (ECF No 25) entered on March 9, 2018, by Judge Karen Brown. For the following reasons, this motion is denied.

Pursuant to Federal Rule of Bankruptcy Procedure 9023, a party must file a request for a new trial within 14 days of the entry of judgment. The instant motion has been filed more than eight months after the entry of summary judgment. The movant filed an appeal of that order that was considered by the U.S. District Court for the Southern District of Texas (Case No. 18-cv-01091). The District Court dismissed that appeal for lack of jurisdiction because it was not filed timely pursuant to Federal Rule of Bankruptcy Procedure 8002. The plaintiff simply has no further remedies as the time to request a new trial and the time to file an appeal have expired. This Court also notes that it does not anticipate reconsidering orders entered by a prior judge.

Parties should instead pursue their appellate options, if available.

THEREFORE, IT IS ORDERED that the Motion to Reconsider is denied.

SIGNED: 11/19/2018.



Jeffrey P. Norman
United States Bankruptcy Judge

Appendix C

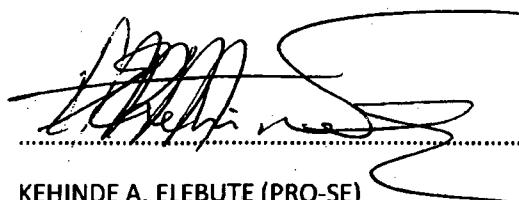
CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE AND CORRECT COPY OF THE ABOVE NOTICE OF APPEAL ON ORDER DENYING MOTION TO RECONSIDER WAS SERVED UPON THE COUNSELS LISTED BELOW VIA E-MAIL ON NOVEMBER 26TH, 2018.

VIA E-MAIL

SCOTT LARSON: slarson@bellnunnally.com

Christopher Trowbridge: ctrowbridge@bellnunnally.com



11-26-18

KEHINDE A. ELEBUTE (PRO-SE)



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ENTERED
03/12/2018

IN RE

KEHINDE AYEDEMI ELEBUTE,

Debtor,

KEHINDE ELEBUTE,

Plaintiff,

1

**VILLAGE CAPITAL &
INVESTMENT, LLC, ET AL.,**

Defendants.

CASE NO. 16-35528-H5-13

ADV. NO. 17-3148

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Before the Court is Defendant Village Capital & Investment, LLC's Motion for Summary Judgment (Docket No. 20). Plaintiff's complaint alleges Village Capital wrongfully foreclosed Plaintiff's interest in real property on November 1, 2016. Village Capital's motion alleges Plaintiff cannot present evidence to support his complaint. Plaintiff submitted no evidence showing a causal link between any alleged defect in the November 1, 2016 and any alleged inadequacy in the purchase price. The Court grants Village Capital's motion for summary judgment.

I. Village Capital's Foreclosure

On June 25, 2014, Taiwo O. Elebute (who was Plaintiff's brother) executed a \$75,705 note payable to Village Capital and a deed of trust securing the property at 15302 Ruppstock Drive, Missouri City, Texas. (Docket No. 20, Exh. A-1, A-2).

On May 18, 2015 and October 30, 2015, Dovenmuehle Mortgage gave notice of default in a letter addressed to Taiwo O. Elebute.¹ (Docket No. 20, Exh. A-4, A-5). On September 29, 2016, counsel for Village Capital gave notice of a foreclosure sale scheduled for November 1, 2016, in a letter addressed to Taiwo O. Elebute. (Docket No. 20, Exh. A-6).

Plaintiff testified in deposition that he received the September 29, 2016 notice of foreclosure in October 2016, and immediately contacted his counsel. (Docket No. 20, Exh. B-5, at 60-61). He testified he contacted Dovenmuehle Mortgage before the foreclosure sale. (Docket No. 20, Exh. B-5, at 61).

Village Capital's substitute trustee conducted a foreclosure sale and sold the property to Meghani Investment Group, LLC for \$86,000 on November 1, 2016. (Docket No. 20, Exh. A-7).

II. Summary Judgment Standard

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); Fed. R. Bankr. P. 7056. A party seeking summary judgment must demonstrate the absence of a genuine dispute of a material fact by establishing the absence of evidence supporting an essential element of the non-movant's case. *Sossamon v. Lone Star State of Tex.*, 560 F.3d 316 (5th Cir. 2009). A court views the facts and evidence in the light most favorable to

¹Plaintiff asserts Taiwo Elebute died in October 2014. (Docket No. 1)

the non-moving party at all times. *Ben-Levi v. Brown*, — U.S. —, 136 S.Ct. 930, 194 L.Ed.2d 231 (2016).

III. Defendant is Entitled to Summary Judgment Due to Absence of Causal Link

Under Texas law, a wrongful foreclosure claim ordinarily requires a showing of (i) a defect in the foreclosure sale proceedings; (ii) a grossly inadequate selling price; and (iii) a causal connection between the defect and the grossly inadequate selling price. *Miller v. BAC Home Loans Servicing, L.P.*, 726 F.3d 717 (5th Cir. 2013).

Plaintiff alleges Village Capital's notice of the foreclosure sale was defective because Village Capital notified Plaintiff that it sold the note to Everbank and Dovenmuehle Mortgage was the new servicer.

Village Capital's summary judgment evidence includes the Sale Agreement between Village Capital and Everbank. Under the Sale Agreement Village Capital retains servicing of the loans sold to Everbank. (Docket No. 20, Exh. A-3; Docket No. 24).

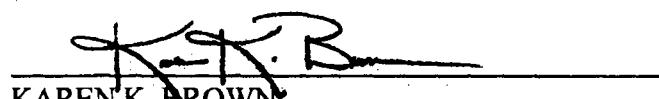
Plaintiff alleges the \$86,000 sale price is grossly inadequate. Plaintiff asserted in the complaint the value of the property on the date of foreclosure was \$125,130. (Docket No. 1) Plaintiff asserted in response to the motion for summary judgment the value of the property on the date of foreclosure was \$140,000. (Docket No. 21). In the light most favorable to Plaintiff the sale price is grossly inadequate compared to the alleged value of the property.

However, Plaintiff cannot prove a causal link between the alleged defect in the foreclosure sale and the alleged grossly inadequate sale price. Village Capital's substitute trustee conducted the foreclosure sale at the place required and on the date established by Texas law. The only defect Plaintiff alleges is that he received insufficient notice of the foreclosure sale.

However, Plaintiff testified in deposition that he had notice of the foreclosure in time to contact both Dovenmuehle Mortgage and his counsel several days before the scheduled foreclosure sale.

In the light most favorable to Plaintiff this alleged defect would not have produced a difference in the outcome at the foreclosure sale.

Signed at Houston, Texas on March 9, 2018.



KAREN K. BROWN
UNITED STATES BANKRUPTCY JUDGE

ENTERED

July 03, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE
KEHINDE ADEYEMI ELEBUTE

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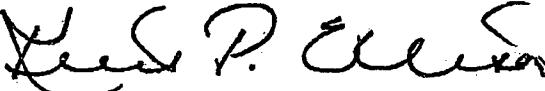
CIVIL ACTION
NO. 4:18-CV-4504

ORDER

Appellant's Motion for Transcript Costs to be Paid by the Government (Doc. No. 18) is
GRANTED.

IT IS SO ORDERED.

SIGNED this 3rd day of July, 2019.



KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

ENTERED

July 02, 2019

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**IN RE
KEHINDE ADEYEMI ELEBUTE**

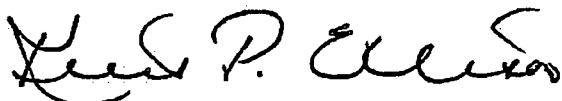
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§ CIVIL ACTION
§ NO. 4:18-CV-4504
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ORDER

A review of Petitioner's request to proceed *in forma pauperis* reveals that Petitioner cannot afford to pay the filing fee. (Doc. No. 20.) Accordingly, Petitioner's application to proceed *in forma pauperis* is **GRANTED CONDITIONALLY**.

IT IS SO ORDERED.

SIGNED this 2nd day of July, 2019.



KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE