MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Brian L. Spurlock and Brian L. Spurlock as Successor Trustee of Ben and Ruby Revocable Living Trust June 15, 1995,

Appellant-Defendant,

v.

Regions Bank,

Appellee-Plaintiff.

May 17, 2021

Court of Appeals Case No. 20A-MF-2254

Appeal from the Marion Superior Court

The Honorable Timothy W. Oakes, Judge

Trial Court Cause No. 49D02-1810-MF-40825

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Brian Spurlock (Spurlock), appeals the trial court's grant of summary judgment, determining that there were no genuine issues of material facts precluding judgment in favor of the Appellee-Plaintiff, Regions Bank (Regions) on Regions' request for foreclosure.

[2] We affirm.

ISSUE

[3] Spurlock presents six issues on appeal, one of which we find dispositive and restate as follows: Whether the trial court erred by granting summary judgment to Regions on its request for foreclosure.

FACTS AND PROCEDURAL HISTORY

[4] In August 2008, Benjamin Spurlock (Ben) and Ruby Spurlock (Ruby) as Trustees of The Ben and Ruby Revocable Living Trust (Trust), executed a promissory note (Note) evidencing a home equity line of credit in the original principal amount of $545,000 and a mortgage (Mortgage) granting Regions a security interest in the Trustees' home at 11460 Woods Bay Lane, Indianapolis, Indiana (Property).

[5] On June 2, 2014, Ben died, and Ruby died on February 4, 2018. No further payments were made towards the loan from March 2, 2018. On October 10, 2018, Regions filed a Complaint on the Note and to Foreclose Mortgage, alleging that any heirs and devisees of the Trustees, any unknown beneficiaries

of the Trust, and unknown occupants of the Property, were in default on the mortgage and that there was an outstanding principal balance of $538,743.03.

[6] On November 8, 2018, the Trustees' son, Spurlock, entered his appearance on behalf of the Trust. Spurlock thereafter filed a motion to compel discovery, but the trial court never ruled on that motion. On November 9, 2018, Spurlock filed a Counterclaim and asserted that he was a beneficiary and the successor trustee (Successor Trustee) to the Trust, an heir and devisee of the Trustees, and the unknown occupant of the Property. Among other things, Spurlock claimed that Regions could not foreclose on the mortgage because it had failed to directly sue the Trust, which he claimed was the real party in interest and true owner of the Property. Spurlock also alleged that Regions had engaged in predatory lending practices because at the time the Trustees signed the mortgage, Ben was eighty-four years old, Ruby was eighty-one years old, and their prior tax return showed that the Trustees' business had not reported any income. Making arguments for himself, Spurlock claimed that he did not sign the Note, therefore, he was not liable for the Trustees' debt. Spurlock equally filed a motion to dismiss Regions' Complaint, but the trial court denied his motion.

[7] On November 28, 2018, based on Spurlock's claim that he was Successor Trustee, Regions filed an Amended Complaint, and named Spurlock and the Successor Trustee as parties to the suit. Proceeding *pro se,* Spurlock, in his own right and on behalf of Successor Trustee, filed his Answer to the Amended Complaint. On December 12, 2018, Spurlock filed an amended motion to

dismiss, and on December 17, 2018, the trial court issued an order denying his motion.

[8] From approximately March 2020 to August 2020, Regions' action was put on hold due to the COVID-19 pandemic and the Indiana moratorium on foreclosures. On September 11, 2020, Regions filed its Motion for Default and Summary Judgment. Regions submitted the following designated evidence: (1) the Note; (2) the recorded Mortgage; (3) notice of default; (4) an affidavit by Jeffery Walters (Walters' Affidavit), an officer of Regions, averring that Regions is in possession of the original Note, and that the Trustees had defaulted pursuant to the terms of the Note by failing to tender monthly payments when due, and that the unpaid principal balance of $530,595.23[1] together with interest at the adjustable rate of 3.75% from March 2, 2018; (5) a copy of the Payoff Verification showing that the last payment received was for February 2018; and (6) the payment history.

[9] On September 28, 2020, Spurlock, *pro se*, and while equally representing the Successor Trustee, filed a response to the summary judgment motion but did not designate any evidence. On November 10, 2020, via Zoom, the trial court conducted a hearing on Regions' Motion for Default and Summary Judgment. Regions claimed that they were the holder of the Note, that the Trustees had

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[1] Regions had initially indicated in its complaint that the unpaid principal balance was $538,743.03, however, at the summary judgment hearing, Regions argued that the unpaid principal balance was $530,595.23.

defaulted under the terms of the Note and Mortgage, that there was an outstanding principal balance of $530,595.23, that there were other amounts due on the loan, as well as attorney fees. Regions argued that it was not seeking a personal judgment against the defendants, but an *in-rem* judgment against the Property for the outstanding loan. Spurlock claimed that personally, and also as Successor Trustee, he was not liable for the Trustees' mortgage debt since he did not sign the Note, and that Regions could not foreclose on the mortgage because Regions had failed to directly sue the Trust, the real party in interest. At the close of the hearing, the trial court then took the matter under advisement. On the same day, the trial court issued an order, which included an *in-rem* judgment in the sum of $534,595.23, which excluded default interest, but included collection costs and attorneys fees in favor of Regions, a decree foreclosing the Regions' mortgage, and an order for the sale of the Property.

[10] Spurlock now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[11] Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). "A fact is material if its resolution would affect the outcome of the case, and an issue is genuine if a trier of fact is required to resolve the parties' differing accounts of the truth . . ., or if the undisputed facts

support conflicting reasonable inferences." *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009).

[12] In reviewing a trial court's ruling on summary judgment, this court stands in the shoes of the trial court, applying the same standards in deciding whether to affirm or reverse summary judgment. *First Farmers Bank & Trust Co. v. Whorley*, 891 N.E.2d 604, 607 (Ind. Ct. App. 2008), *trans. denied*. Thus, on appeal, we must determine whether there is a genuine issue of material fact and whether the trial court has correctly applied the law. *Id*. at 607-08. In doing so, we consider all of the designated evidence in the light most favorable to the non-moving party. *Id*. at 608. "Any doubt as to any facts or inferences to be drawn therefrom must be resolved in favor of the non-moving party." *Goodwin v. Yeakle's Sports Bar & Grill, Inc.*, 62 N.E.3d 384, 386 (Ind. 2016). The party that lost in the trial court bears the burden of persuading us that the trial court erred. *Biedron v. Anonymous Physician 1*, 106 N.E.3d 1079, 1089 (Ind. Ct. App. 2018), *trans. denied*.

II. *Analysis*

[13] Indiana Code section 32-30-10-3(a) provides that, "if a mortgagor defaults in the performance of any condition contained in a mortgage, the mortgagee or the mortgagee's assign may proceed in the circuit court of the county where the real estate is located to foreclose the equity of redemption contained in the mortgage." To establish a *prima facie* case that it is entitled to foreclose upon a mortgage, the mortgagee or its assign must enter into evidence the demand note and the mortgage, and must prove the mortgagor's default. *McEntee v. Wells*

Fargo Bank, N.A., 970 N.E.2d 178, 182 (Ind. Ct. App. 2012). "Once the mortgagee establishes its *prima facie* case, the burden shifts to the mortgagor to show that the note has been paid in full or to establish any other defenses to the foreclosure." *Id*.

[14] Spurlock does not dispute that the Trustees were in default under the terms of the Note and Mortgage, rather, his defense against the foreclosure is that Regions did not join an indispensable party, the Trust, whom he argues is the real party in interest. Therefore, he asserts that Regions was not entitled to summary judgment on its Complaint for foreclosure. Indiana Trial Rule 17(A)(1) allows a trustee to "sue in his own name without joining with him the party for whose benefit the action is brought, but stating his relationship and the capacity in which he sues." In *Lunsford v. Deutsche Bank Trust Company Americas as Trustee* 996 N.E.2d 815, 821 (Ind. Ct. App. 2013), we recognized that the trustee was the proper party in the foreclosure action without having to name the trust specifically as a party.

[15] Regions Bank contends it has named the proper party in this matter. Regions sought to foreclose the mortgage by filing its Amended Complaint against Successor Trustee and others. Pursuant to *Lunsford*, it was not necessary for Regions to name the Trust as a party to this foreclosure action since it joined the Successor Trustee, who was a representative of the Trust.

[16] As for whether summary judgment was proper in this case, Regions should have demonstrated that there are no genuine issues of material fact with respect

to any elements of its foreclosure claim. Regions submitted the following designated evidence in support of summary judgment: The Note, which showed that the Trustees had borrowed money from Regions; the Mortgage, which showed that the Trustees agreed to provide the Property as collateral for the Note; the recorded Mortgage; the Walters Affidavit; the Notice of Default; the payment history, and an attorney fees affidavit. The Walters Affidavit averred that Regions was in possession of the original Note, the Trustees had defaulted by the terms of the Note by failing to tender monthly payments when due, and that the unpaid principal balance was $530,595.23, together with interest at the adjustable rate of 3.75% from March 2, 2018 through August 7, 2020.

[17] Regions designated evidence establishing a *prima facie* case that Regions was entitled to foreclose on the Mortgage to recover the unpaid principal balance of $530,595.23 plus interest, and attorneys fees. The burden then shifted to Spurlock to dispute the amount due, show that the Note had been paid in full, or establish any other defenses to the foreclosure. *McEntee*, 970 N.E.2d at 182. Spurlock, however, offered no designated evidence. On appeal, Spurlock neither challenged the existence or authenticity of the Note or Mortgage, nor does he contest that monthly payments under the Note ceased in February 2018. In other words, he does not challenge that the Note and Mortgage are in default.

[18] Under the facts before us, we conclude that Regions designated sufficient evidence to establish that the Note is in default and that Spurlock failed to

designate any evidence that might excuse the Trustees' default. Thus, we hold that the trial court properly granted summary judgment in favor of Regions.

CONCLUSION

[19] For the foregoing reasons, we affirm the trial court's entry of summary judgment in favor of Regions on its request for foreclosure on the Trustees' Property.

[20] Affirmed.

[21] Mathias, J. and Crone, J. concur