

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

CITIMORTGAGE, INC.,	:	APPEAL NO. C-150206
Plaintiff-Appellee,	:	TRIAL NO. A-1204972
vs.	:	<i>JUDGMENT ENTRY.</i>
ABE MESSER,	:	
and	:	
THOMASINA MESSER,	:	
Defendants-Appellants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendants-appellants Abe and Thomasina Messer appeal from the trial court's granting of summary judgment in favor of plaintiff-appellee CitiMortgage, Inc., ("Citi"). We affirm.

Citi filed a complaint in foreclosure alleging that Abe Messer was in default of a note and loan modification agreement held by Citi and secured by a mortgage on the Messers' home. Citi moved the trial court for summary judgment and supported its motion with the affidavit of Susan Knoepfler, a Citi vice president of document control. Knoepfler authenticated and attached to her affidavit Mr. Messer's note, the mortgage, the loan modification agreement, and the payment history on the note. Under the terms of the note, mortgage, and the loan modification agreement, in addition to making monthly payments towards his loan, Mr. Messer agreed to be responsible for payment of the insurance and taxes on the Messers' mortgaged property. Knoepfler further stated that Citi "has advanced and/or may advance

funds for the payment of reasonable and necessary real estate taxes, hazard insurance premiums or otherwise for the protection of the property * * *.” According to the payment history attached to Knoepfler’s affidavit, Mr. Messer’s mortgage loan account showed that in addition to principal and interest, there was due a balance of \$24,052.85, and also showed that Citi had made multiple payments to Hamilton County. Knoepfler stated that Mr. Messer had defaulted under the terms of his note, and that as a result of the default, the entire \$327,788.42 balance due on the loan note had been accelerated.

The Messers opposed Citi’s motion for summary judgment, and also moved for summary judgment in their favor, claiming that Citi had breached the parties’ loan modification agreement. According to the Messers, Citi improperly increased their loan modification payments, failed to credit Mr. Messer’s account for some of the increased payments that Mr. Messer had made, and then refused to accept any payment after March 2011. The Messers supported their motion for summary judgment with Mr. Messer’s affidavit. Attached to Mr. Messer’s affidavit were Fifth Third Bank statements of the A to Z Investment Group, LLC, which purportedly showed that Mr. Messer had made mortgage payments to Citi. Citi objected to the admissibility of the bank statements on the ground that they were hearsay.

The parties’ cross-motions for summary judgment were decided by a magistrate. The magistrate agreed with Citi that the Fifth Third Bank records had not been properly authenticated, and that therefore they were inadmissible hearsay and would not be considered by the court. But the magistrate determined that, even if he had considered the documents, Citi was entitled to judgment in its favor. Citi had demonstrated that Messer’s failure to pay property taxes had triggered a default of the note, and that even if Messer had continued to make payments, these payments had not cured the \$24,052.85 deficiency.

The Messers objected to the magistrate's decision. The trial court overruled the objections and adopted the magistrate's decision. This appeal followed.

In one assignment of error, the Messers contend that the trial court erred in granting summary judgment in favor of Citi.

We review the granting of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Summary judgment is appropriate when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) the evidence, when viewed in favor of the nonmoving party, permits only one reasonable conclusion and that conclusion is adverse to the nonmoving party. Civ.R. 56(C); *Grafton*; *State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 589, 639 N.E.2d 1189 (1994). The moving party must specifically identify those portions of the record that demonstrate an absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996). If the movant satisfies this burden, the nonmoving party has a reciprocal burden to identify specific facts that show a genuine issue of material fact for trial. *Id.*

The Messers claim that the trial court improperly relied on statements of counsel instead of on the evidence submitted in granting Citi's motion for summary judgment. It did not. The evidence in the record supports the trial court's decision. Knoepfler's affidavit stated that Citi had advanced property taxes, and the documents attached to Knoepfler's affidavit showed that multiple payments had been made to Hamilton County. This was sufficient to meet Citi's burden to show that there was no genuine issue concerning whether Mr. Messer had paid his property taxes. And the Messers failed to point to matters in the record that created a genuine issue of material fact concerning this matter. It was undisputed that, under the terms of the note and mortgage, Mr. Messer was required to pay property taxes on the mortgaged

OHIO FIRST DISTRICT COURT OF APPEALS

property. We therefore find that the trial court did not err in entering summary judgment in favor of Citi.

The trial court's judgment is affirmed.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., CUNNINGHAM and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on November 16, 2016
per order of the court _____.

Presiding Judge