

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

U.S. BANK NATIONAL	:	APPEAL NO. C-190301
ASSOCIATION, NOT IN ITS	:	TRIAL NO. A-1703042
INDIVIDUAL CAPACITY BUT SOLELY	:	
AS TRUSTEE FOR THE RMAC	:	<i>JUDGMENT ENTRY.</i>
TRUST, SERIES 2016-CTT,	:	
Plaintiff-Appellee,	:	
vs.	:	
TINA BAYNE,	:	
Defendant-Appellant,	:	
and	:	
JOHN DOE, NAME UNKNOWN, THE	:	
UNKNOWN SPOUSE OF TINA BAYNE	:	
(IF ANY), et al.,	:	
Defendants.	:	

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.

Defendant-appellant Tina Bayne appeals from the decision of the Hamilton County Court of Common Pleas granting summary judgment for plaintiff-appellee U.S. Bank National Association (“U.S. Bank”) on its complaint for foreclosure. We affirm.

The complaint, filed in 2017, relates to a promissory note and a mortgage of real property, known as 424 Appalossa Court, Cincinnati, Ohio, 45231, which secures the amounts due under the note. According to the parties, Bayne, the property, and the

same loan were involved in a prior foreclosure action that was filed in 2015 and dismissed without prejudice by the trial court in 2016.

In one assignment of error, Bayne contends the trial court erred by granting summary judgment “where the loan was never decelerated following dismissal of the prior foreclosure action.” We review a grant of summary judgment de novo, applying the standards set forth in Civ.R. 56. *See U.S. Bank Natl. Assoc. v. Broadnax*, 1st Dist. Hamilton No. C-180650, 100 UCC Rep.Serv.2d 1062, 2019-Ohio-5212, ¶ 7.

To prevail on its motion for summary judgment in this foreclosure action, U.S. Bank had to prove: (1) it was the current holder or had an enforceable interest in the note, (2) it was the current holder or had an enforceable interest in the mortgage (3) Bayne was in default on the note, (4) all conditions precedent had been met, and (5) the amount of principal and interest currently due. *See First Fin. Bank, N.A. v. Mendenhall*, 2017-Ohio-7628, 84 N.E.3d 1113, ¶ 7 (1st Dist.), citing *Wells Fargo Bank, N.A. v. Braunskill*, 1st Dist. Hamilton No. C-140014, 2015-Ohio-273, ¶ 42.

The sole issue preserved below and presented on appeal is whether U.S. Bank satisfied the fourth condition by complying with the contractual provisions in her note and mortgage with regard to notice of default and intent to accelerate. Consistent with the note, the notice requirement contained in Bayne’s mortgage provided that the lender cannot resort to the remedies of acceleration and foreclosure upon a default without giving the borrower a notice specifying “(a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceedings and sale of the Property.”

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Bayne conceded that she received a notice of default and intent to accelerate in April 2017, more than 30 days before the filing of this foreclosure action, and that the contents of the notice complied with the terms of the note and mortgage. Her argument on appeal, as we understand it, is that the trial court erred by determining as a matter of law that the fourth condition had been satisfied without further inquiry into what she refers to as a “technicality” relating to the possible acceleration of the loan as a result of the prior action. We are not persuaded by this argument. The unknown details relating to the prior action would be important if this case required a statute-of-limitations analysis, but the statute of limitations is not an issue in this case. *See Broadnax*, 1st Dist. Hamilton No. C-180650, 2019-Ohio-5212, at ¶ 8-9.

Bayne may have received an extra notice of default and intent to accelerate, but this is not prohibited under the note and mortgage and does not create a genuine issue of material fact that prohibits summary judgment for U.S. Bank. Ultimately, Bayne admitted she has been fully apprised of the foreclosure action, she is in default, and has failed to tender payment towards her mortgage for years. Construing the facts in the light most favorable to Bayne, summary judgment was proper because no genuine issue of material fact exists and U.S Bank is entitled to judgment as a matter of law.

We overrule the assignment of error and affirm the trial court’s judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MYERS, P.J., BERGERON and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on July 8, 2020
per order of the court _____.
Presiding Judge