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SEP 07 2016
CIRCUIT COURT JUDGE
Spencer Multack
W. Bagley

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE
COUNTY, FLORIDA

MARIE DARILE PIERRE, ET AL.,

Appellant,

v.

COCONUT CAY HOMEOWNERS'
ASSOCIATION, INC.,

Appellee.

APPELLATE DIVISION

CASE NUMBER: 15-323-AP

TRIAL CASE NUMBER:
2014-002288-CC-23

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CIRCUIT COURT

Opinion filed: September 12, 2016.

An appeal from a decision by the County Court in and for Miami-Dade County, Florida,
Spencer Multack, Judge.

Larry R. Fleurantin, Esq., of Fluerantin, Francois and Antonin, P.A., for Appellant.

Michael S. Chadrow, Esq., of Brough, Chadrow & Levin, P.A., for Appellee.

Before: BAGLEY, ARZOLA, and DIAZ, JJ.

PER CURIAM.

This matter comes before the Court upon Appellant Marie Darile Pierre's appeal of the trial court's entry of a Final Summary Judgment of Foreclosure and Order Taxing Costs and Attorney's Fees. The Appellee filed a two-count Complaint for Foreclosure ("Complaint") against Defendant, as well as other Defendants who were defaulted. Appellant filed a Motion to

Dismiss, which alleged in part that Appellee failed to provide adequate notice. The trial court denied the Motion to Dismiss without prejudice and Appellant never filed an Answer to the Complaint, nor was she defaulted. On April 10, 2015, the Appellee filed its Motion for Final Summary Judgment of Foreclosure and Motion to Tax Costs and Fees (“Motion”). Appellant filed an Objection to Plaintiff’s Motion based, in part, on the allegation that Appellee failed to provide adequate notice before filing suit. On August 26, 2015 the trial court entered a Final Summary Judgment of Foreclosure and Order taxing costs and Attorney’s Fees.

A trial court may enter summary judgment only when there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. *Schneider v. Slichter*, 917 So. 2d 299, 300 (Fla. 4th DCA 2005). This means that “[a]ll doubts and inferences shall be resolved in favor of the nonmoving party, and the slightest doubt or conflict in the evidence will preclude summary judgment.” *Sawyers v. Se. Univ., Inc.*, 993 So. 2d 141, 142 (Fla. 2d DCA 2008). Summary judgment “should not be granted if there is even the slightest doubt as to whether any genuine issue of material fact exists.” *Reed v. Schutz Litig. LLC*, 117 So. 3d 486, 488 (Fla. 2d DCA 2013). Where plaintiff moves for summary judgment before a defendant files an answer, it is the plaintiff’s burden to establish that “the defendant could not raise any genuine issues of material fact if the defendant were permitted to answer the complaint.” *Howell v. Ed Bebb, Inc.*, 35 So. 3d 167, 168 (Fla. 2d DCA 2010) (quoting *BAC Funding Consortium Inc. ISAOA/ATIMA v. Jean-Jacques*, 28 So. 3d 936, 937-38 (Fla. 2d DCA 2010)). Essentially, the plaintiff must anticipate the content of the defendant’s answer and establish that there would be no genuine issue of material fact even if the answer was filed. *Statewide Homeowners Sols., LLC v. Nationstar Mortg., LLC*, 182 So. 3d 676, 678 (Fla. 4th DCA 2015). Therefore, where the plaintiff moves for summary judgment before a defendant answers, “[t]he standard is extremely

high and the plaintiff's burden is extremely heavy." *Getman v. Tracey Const., Inc.*, 62 So. 3d 1289, 1291-92 (Fla. 2d DCA 2011) (quoting *Dominko v. Wells Fargo Bank, N.A.*, 102 So. 3d 696, 698 (Fla. 4th DCA 2012)).

The Appellant raised the issue of lack of proper notice on two occasions, yet nothing in the record before this Court reflects proper service on the Appellant and the Final Summary Judgment of Foreclosure is silent on the issue. A homeowners' association must provide a written notice or demand must for unpaid assessments before filing a record of lien against the property. § 720.3085, Fla. Stat. In a lien foreclosure action, the plaintiff is required to show that it has satisfied the statutory notice requirements. *Ciulli v. City of Palm Bay*, 59 So. 3d 295, 297 (Fla. 5th DCA 2011). Although the Appellant did not file an Answer in this case, it is apparent from the record that Appellant would have raised the issue of lack of proper notice as an affirmative defense, yet the Appellee provided no evidence to refute it. As such, the Appellee failed to carry its burden in this regard and the trial court erred by granting Appellee's Motion.

This Court finds that Appellee failed to show the absence of any genuine issue of material fact and thus failed to carry its burden for summary judgment. Therefore, the trial court's Final Summary Judgment of Foreclosure and Order Taxing Costs and Attorney's Fees is hereby **REVERSED** and this matter is **REMANDED** to the trial court.

Accordingly, Appellee's Motion for Attorney's Fees is **DENIED** and Appellant's Motion for Attorney's is **GRANTED**, the trial court shall determine the reasonable amount of fees to be awarded to the Appellant.

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