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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1385**

Federal National Mortgage Association,
Respondent,

vs.

Gwen E. Lysne,
Appellant,

John Doe, et al.,
Defendants.

**Filed February 19, 2013
Affirmed
Chutich, Judge**

Washington County District Court
File No. 82-CV-12-1019

Jonathan R. Cuskey, Peterson, Fram & Bergman, P.A., St. Paul, Minnesota (for
respondent)

William B. Butler, Jeramie R. Steinert, Butler Liberty Law, LLC, Minneapolis,
Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Chutich, Judge; and Smith,
Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

On appeal from summary judgment in this eviction proceeding, appellant Gwen Lysne argues that the district court erred in granting summary judgment to respondent Federal National Mortgage Association and by not considering her defenses to the foreclosure underlying the eviction proceeding. Because the district court properly granted summary judgment, we affirm.

FACTS

In 2005, Lysne executed a promissory note in favor of America's Wholesale Lender (AWL) in the principal amount of \$183,600. On the same day, Lysne executed a mortgage on her property located in Cottage Grove in favor of Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for AWL. MERS recorded the mortgage on September 27, 2005, in Washington County.

In January 2011, MERS assigned the mortgage to BAC Home Loans Servicing, LP (BAC) on behalf of AWL. The assignment was recorded on March 11, 2011, in Washington County. Shortly after the assignment, Lysne defaulted on her mortgage and BAC commenced a foreclosure-by-advertisement proceeding. On May 18, 2011, the property was conveyed to BAC by way of a sheriff's certificate of sale, subject to Lysne's statutory six-month redemption period.

During the redemption period, Lysne and numerous other plaintiffs filed an action in Hennepin County against Bank of America, seeking an order to quiet title on their properties. Bank of America removed the case to federal court. *See Xiong v. Bank of*

Am., N.A., Civil No. 11-3377, 2012 WL 4470274, at *1 (D. Minn., Sept. 27, 2012). The plaintiffs, including Lysne, claimed that their “mortgages were not perfected, the required notices were not executed by an authorized person, and the assignments of the mortgages were invalid.” *Id.* at *2.

Six months passed and Lysne failed to redeem the property. On February 17, 2012, BAC transferred its interest in the property to Federal National Mortgage Association (Fannie Mae) by way of quitclaim deed. That same day, Fannie Mae filed an unlawful-detainer action against Lysne to recover possession of the property. Lysne answered and requested a jury trial, arguing that the foreclosure underlying the eviction was invalid. The parties filed cross-motions for summary judgment, and the district court granted summary judgment for Fannie Mae. Lysne now appeals.

D E C I S I O N

A motion for summary judgment shall be granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03. A party opposing summary judgment “may not rest upon the mere averments or denials of the adverse party’s pleading but must present specific facts showing that there is a genuine issue for trial.” Minn. R. Civ. P. 56.05. On appeal from summary judgment, this court reviews de novo whether there are genuine issues of material fact and whether the district court erred in applying the law. *Dahlin v. Kroening*, 796 N.W.2d 503, 504 (Minn. 2011). “[T]he reviewing court must view the evidence in the light most favorable to the party

against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

An eviction action is “a summary court proceeding to remove [an] . . . occupant from or otherwise recover possession of real property.” Minn. Stat. § 504B.001, subd. 4 (2012). Eviction by the person “entitled to the premises” is proper if another person holds over or continues possession of real property after “expiration of the time for redemption on foreclosure of a mortgage.” Minn. Stat. § 504B.285, subd. 1(1) (2012).

An eviction proceeding is limited in scope and “merely determines the right to present possession and does not adjudicate the ultimate legal or equitable rights of ownership possessed by the parties.” *Dahlberg v. Young*, 231 Minn. 60, 68, 42 N.W.2d 570, 576 (1950); *see also Cimarron Vill. v. Washington*, 659 N.W.2d 811, 817 (Minn. App. 2003). Parties are generally not allowed to litigate disputes beyond the narrow scope of the proceedings, including alleged defects in the underlying foreclosure, if it is possible to litigate those issues in a noneviction proceeding. *Amresco Residential Mortg. Corp. v. Stange*, 631 N.W.2d 444, 446 (Minn. App. 2001).

To prevail on an eviction claim, a plaintiff must prove that (1) the mortgage was foreclosed, (2) the time for redemption expired, (3) the defendant is holding over the property, and (4) the plaintiff is entitled to the premises. Minn. Stat. § 504B.285, subd. 1(1)(ii). A “sheriff’s certificate of sale . . . [is] prima facie evidence that all the requirements of law in that behalf have been complied with, and prima facie evidence of title in fee thereunder in the purchaser at such sale . . . after the time for redemption therefrom has expired.” Minn. Stat. § 580.19 (2012).

In support of its motion for summary judgment, Fannie Mae submitted a copy of the quitclaim deed executed by BAC, transferring its interest to Fannie Mae, and the sheriff's certificate of sale. These documents demonstrate that BAC, Fannie Mae's predecessor in interest, foreclosed on the mortgage by advertisement, Lysne's time for redemption expired, and Fannie Mae is entitled to the premises. Lysne does not dispute that she continues to possess the property after the expiration of the redemption period. Thus, Fannie Mae has satisfied all of the statutory requirements for an eviction.

Lysne instead challenges the validity of the underlying foreclosure action, arguing that the foreclosure by advertisement was void because there was an unrecorded assignment of her mortgage. A foreclosure by advertisement requires, among other things, "that the mortgage has been recorded and, if it has been assigned, that all assignments thereof have been recorded." Minn. Stat. § 580.02(3) (2012). Lysne specifically claims that the mortgage was assigned to Fannie Mae before the sheriff's sale, and the assignment was not recorded.

Lysne's argument fails because it is outside the scope of an eviction proceeding. *See Dahlberg*, 231 Minn. at 68, 42 N.W.2d at 576. Due to the summary nature of an eviction action, counterclaims and defenses attacking the underlying foreclosure cannot be brought in an eviction proceeding unless there is no alternative forum to litigate such claims. *Fraser v. Fraser*, 642 N.W.2d 34, 40 (Minn. App. 2002); *Amresco*, 631 N.W.2d at 445–46. Here, Lysne had an alternative forum available to challenge the validity of her foreclosure, and did so. Thus, there is no need to interfere with the summary nature of the eviction proceeding. *Amresco*, 631 N.W.2d at 446.

In addition, Lysne argues that she “offered evidence of an unrecorded assignment of the mortgage,” thereby creating a fact issue. But nothing in the record supports these assertions. Lysne merely speculates that an unrecorded assignment exists, which does not create a genuine issue of material fact and is insufficient to withstand summary judgment. *See* Minn. R. Civ. P. 56.05 (stating that a party opposing summary judgment “must present specific facts showing that there is a genuine issue for trial); *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995) (holding that speculation is insufficient to create a genuine issue of material fact).

Lysne’s defenses to the eviction action are based on challenges to the underlying foreclosure, which is outside the scope of the eviction proceedings. The record shows that no genuine issues of material fact existed and that Fannie Mae was entitled to recover the property. *See* Minn. Stat. § 504B.345, subd. 1(a) (2012). The district court did not err in granting summary judgment.

Affirmed.