COURT OF APPEALS
DECISION
DATED AND FILED

October 30, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP2018 **Cir. Ct. No. 2009CV7784**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

ONEWEST BANK FSB,

PLAINTIFF-RESPONDENT,

V.

EUGENE GROYSMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: THOMAS R. COOPER, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Eugene Groysman, *pro se*, appeals from a judgment of foreclosure entered by the trial court, which granted summary

judgment in favor of OneWest Bank, FSB.[1] Groysman argues that summary judgment was improper because the property's current owner was not named as a defendant and there was inadequate proof of the mortgage assignment and the amount of Groysman's default. We reject his arguments and affirm the judgment. We also deny OneWest's request for attorney fees.

BACKGROUND

¶2 The following background facts are taken from the filings and electronic docket entries in this case.[2] In May 2009, OneWest filed suit seeking to foreclose on a duplex in Milwaukee. The complaint alleged that Groysman, the mortgagor, failed to make mortgage payments starting August 1, 2008. It further alleged that OneWest was the current holder of the mortgage.

¶3 Groysman filed an answer acknowledging that he is the mortgagor, but also asserting that he is not personally the owner of the property. He did not claim that he was not the owner at the time he executed the mortgage. He further asserted that Indy Mac Federal Bank, FSB, was the holder of the mortgage. He stated that he had "on numerous occasions … attempted to resolve this issue" and had been told, on January 26, 2009, that "a restructured mortgage or repayment will be set into place." Groysman sought dismissal so that he could pursue the "restructured mortgage or repayment deal [that] has been assured to him."

[1] Groysman represented himself throughout all stages of the litigation in this case.

[2] Groysman chose not to provide any transcripts for this appeal. As a result, this court does not know specifically what arguments were made at the five motion hearings that were held between October 2010 and June 2011. "It is the appellant's responsibility to ensure completion of the appellate record and 'when an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the trial court's ruling.'" ***State v. Provo***, 2004 WI App 97, ¶19, 272 Wis. 2d 837, 681 N.W.2d 272 (citation omitted).

Notably, Groysman did not deny that he had failed to make mortgage payments or affirmatively assert that he had made any payments starting August 1, 2008. Finally, he indicated that he does not personally live on the property.[3]

¶4 In August 2009, OneWest moved for summary judgment. In response, Groysman sought an adjournment because he was in the process of seeking a loan modification with OneWest. In January 2010, OneWest moved to dismiss the action "with right to re-open subject to terms of workout." The trial court granted the motion.

¶5 In August 2010, OneWest moved to reopen the action and for summary judgment, explaining that Groysman was not approved for a loan modification. Groysman filed a two-page written argument in opposition to the motions. He argued that EAG Investments, LLC, is the owner of the property, was not named as a defendant, and should have the right to answer the complaint. He also argued that OneWest had "added new sums to the complaint since its original filing" and that Groysman "denies all charges from May 20, 2009, until the filing on August 16, 2010." He sought time to respond to those additional charges.[4]

¶6 Groysman also argued that "[s]ince the Assignment of Mortgage was not filed with Milwaukee County until after the original complaint, it should be excluded for this proceeding." In addition, Groysman asserted that the case should not proceed until OneWest again considered a modification of the loan.

[3] The record indicates that the duplex is a rental property.

[4] Ultimately, Groysman never filed any written documentation refuting his responsibility for overdue mortgage payments, interest, and fees.

¶7 In October 2010, the trial court held a hearing on the motion to reopen and the motion for summary judgment. It granted the motion to reopen, but denied the motion for summary judgment for reasons not detailed in the online docket entries. It appears that the trial court gave Groysman time to continue to seek loan modification, based on docket entries for hearings in November 2010 and January 2011.

¶8 OneWest continued to file revised motions for summary judgment. A motion hearing was conducted in May 2011. The docket entry indicates that the parties were to "continue settlement negotiations" and that Groysman was waiting for a response from the bank on his request for loan modification.

¶9 In June 2011, the trial court heard the renewed motion for summary judgment and granted it. It is unknown what arguments Groysman presented or how the trial court ruled on them. The only written documents that Groysman filed in opposition to the foreclosure or motion for summary judgment were his original answer and his August 2010 statement in opposition to summary judgment. The trial court signed written findings of fact and conclusions of law and entered judgment in OneWest's favor, with no deficiency judgment against Groysman. The judgment was subsequently amended to correctly reflect a redemption period of six months. This appeal follows.

STANDARD OF REVIEW

¶10 On appeal, this court reviews *de novo* a grant of summary judgment, employing the same methodology as the trial court. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 314-16, 401 N.W.2d 816 (1987). A party is entitled to summary judgment when there are no genuine issues of material fact and that party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2)

(2009-10).[5] "We examine the moving party's submissions to determine whether they constitute a prima facie case for summary judgment. If they do, then we examine the opposing party's submissions to determine whether there are material facts in dispute that entitle the opposing party to a trial." ***Palisades Collection LLC v. Kalal***, 2010 WI App 38, ¶9, 324 Wis. 2d 180, 781 N.W.2d 503 (citation omitted).

DISCUSSION

¶11 Groysman argues that summary judgment was improperly granted for several reasons and urges this court to reverse and remand for a trial. We consider each of those issues in turn and, for the reasons below, we reject Groysman's arguments and affirm the judgment.[6] Finally, we deny OneWest's one-sentence request for attorney fees.

I. EAG Investments, LLC, was not named in the complaint.

¶12 In a one-paragraph argument, Groysman asserts that "at the time of the filing and until present, Eugene Groysman was not the owner of the property named in the foreclosure action." Instead, he contends, the owner is EAG Investments, LLC. Groysman argues that EAG Investments has not had its day in

[5] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

[6] Groysman identifies several issues in his statement of issues, but his discussion section does not separate the arguments by issue, making it difficult to discern which arguments are meant to address which issue. To the extent we do not address a particular subissue, it is rejected because we have concluded that it lacks merit and does not warrant discussion. In addition, we decline to address issues that Groysman raises for the first time in his reply brief. *See* ***Northwest Wholesale Lumber, Inc. v. Anderson***, 191 Wis. 2d 278, 294 n.11, 528 N.W.2d 502 (Ct. App. 1995) (it is a well-established rule of appellate practice that the court will not consider arguments raised for the first time in a reply brief).

court and that "[t]he fact that Groysman is not the owner of the property is an issue of material fact" that precludes summary judgment. There are numerous problems with Groysman's attempt to reverse the summary judgment with his assertion that EAG Investments owns the property related to the mortgage and note in this foreclosure action.

¶13 It is undisputed that all of the mortgage and note documents identified the borrower as "Eugene Groysman." Groysman conceded that he signed the note and mortgage. He offered no evidence to rebut his ownership of the property at the time he executed those documents. While Groysman indicated in his answer that he was not the owner of the property, he did not specify when he ceased to own it and he did not identify EAG Investments as the purported owner until fourteen months later, in his written opposition to the motion for summary judgment. At that time, he attached a photocopy of a recorded deed dated January 27, 2009, that purported to transfer the property from Eugene Groysman to EAG Investments. That deed does not reference the existing mortgage and, in fact, indicates that the title is "free and clear of encumbrances" with several limited exceptions.

¶14 Groysman's written argument to the trial court did not provide any additional information about EAG Investments or details about the transfer, and it did not address whether Groysman believed he had authority to make arguments on behalf of EAG Investments. The written argument also did not address the legal issues of whether the transfer was proper given the existing mortgage and whether the transfer affected Groysman's rights and obligations under the mortgage. As previously noted, Groysman did not provide this court with transcripts from the numerous motion hearings, so we do not know if Groysman

raised these issues with the trial court and, if so, how the trial court addressed them.

¶15 On appeal, Groysman does not present legal argument concerning the effect of the purported property transfer on the foreclosure. Specifically, he does not explain how the fact that he is allegedly no longer the owner of the property precludes foreclosure as a matter of law where he was the original mortgagor. Groysman has failed to adequately develop his arguments, and we will not abandon our neutrality by developing his arguments for him. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988). We are unconvinced that the summary judgment should be reversed.

II. Challenges to the assignment of the mortgage.

¶16 It is undisputed that the original lender was IndyMac Bank, F.S.B. Groysman argues that the subsequent assignment of the loan to OneWest was not properly recorded with the County until after the complaint was filed and, therefore, OneWest lacked standing to file the case and there was "arguably a slander of title."

¶17 In response, OneWest asserts that the note was "endorsed in blank" by the original lender and that OneWest, as the holder of the note, had standing to foreclose. *See* WIS. STAT. § 403.205(2) ("If an endorsement is made by the holder of an instrument and it is not a special endorsement, it is a blank endorsement. If endorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially endorsed."). It also notes that when Groysman opposed the motion for summary judgment, he did not present any evidence suggesting that OneWest had not been assigned the note. As to the fact that the assignment of mortgage was not recorded until after the

foreclosure action, OneWest argues that an "assignment of mortgage does not need to be recorded to be valid, and the date of the recording has no [e]ffect on the validity of the assignee's interest."

¶18 We agree with OneWest for the reasons and authority it relies on that recording the assignment was not necessary to give OneWest standing to sue. The purpose of recording is to put third parties on notice, not to establish standing to sue. We also acknowledge that Groysman asserts in his reply brief that OneWest lacked standing to file the foreclosure because the assignment was executed one day after the foreclosure was filed. As noted above, per WIS. STAT. § 403.205(2), a blank endorsement is effective upon transfer. Also, it is unknown if Groysman ever brought the one-day discrepancy to the attention of the trial court. We do not consider the merits of issues raised for the first time on appeal. *See* ***State v. Schulpius***, 2006 WI 1, ¶26, 287 Wis. 2d 44, 707 N.W.2d 495. We also note that if an objection had been raised in the trial court, OneWest could have filed an amended complaint. *See* WIS. STAT. § 802.09(1); *see also* WIS. STAT. § 803.01.

¶19 Groysman's final argument related to the assignment is that OneWest "only provided non-qualified people's affidavits as evidence" of the assignment. However, as OneWest explains, the affidavits were not necessary to prove the assignment of mortgage, because a certified copy of the assignment was filed with the court. *See* WIS. STAT. § 889.17 ("Every instrument entitled by law to be recorded or filed in the office of a register of deeds, and the record thereof and a certified copy of any such record or of any such filed instrument, is admissible in evidence without further proof thereof, and the record and copies shall have like effect with the original."). Therefore, Groysman's arguments concerning the affidavits are unconvincing. Moreover, there is no indication that

Groysman raised any concern about the affidavits in the trial court; he is not entitled to litigate issues for the first time on appeal. *See* ***Schulpius***, 287 Wis. 2d 44, ¶26.

III. Challenges to the proof of default.

¶20 Groysman presents two arguments related to the proof of his default. First, he contends that OneWest "could not prove default based on records of default before it purchased the mortgage" because its agents "did not have personal knowledge of how the payments were made." In a related argument, he asserts that the affidavits submitted in support of OneWest's motion for summary judgment do not establish default. He poses a series of questions about the qualifications of the person who signed one particular affidavit and alleges that the affidavits "smack[] of robo-signing."

¶21 Groysman's arguments fail. First, Groysman, in his answer to the complaint, did not dispute that he was in default.[7] Second, there is no indication that Groysman raised any challenge to the proof of default or the affidavits in the trial court, and he has not provided this court with the transcripts of the motion hearings to examine how the trial court evaluated the affidavits and evidence. We decline to allow Groysman to raise this issue for the first time on appeal, *see* ***id.***, and in the absence of any transcripts, "'we must assume that the missing material supports the trial court's ruling.'" *See* ***State v. Provo***, 2004 WI App 97, ¶19, 272 Wis. 2d 837, 681 N.W.2d 272 (citation omitted).

[7] Specifically, Groysman's answer did not deny that he had failed to pay his mortgage starting on August 1, 2008, and he did not submit any filings to the trial court indicating that he had made payments after that date.

IV. OneWest's request for attorney fees and costs.

¶22 In the final sentence of its response brief, OneWest asks this court to award OneWest "its reasonable attorney fees and costs." OneWest has not identified the basis for requesting attorney fees and costs, and it did not file a separate motion explaining its request. As the prevailing party, OneWest is entitled to its statutory costs on appeal, *see* WIS. STAT. § 809.25(1), but we decline to consider the merits of its request for reasonable attorney fees because OneWest has not presented adequate argument on that issue, *see* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (court will not consider inadequately developed arguments).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.