

No. 1-17-2199

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PAN AMERICAN BANK, successor by merger to Bank of Palatine,)	Appeal from the Circuit Court of Cook County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 15 CH 14944
)	
NANCY A. MARTINO,)	
)	
Defendant-appellant,)	
)	Honorable Freddrenna Lyle,
(PAN AMERICAN BANK, UNKNOWN OWNERS AND NONRECORD CLAIMANTS,)	Judge Presiding.
)	
Defendants-Appellees).)	

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Burke and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held:* Affirmed. Trial court did not err in granting summary judgment.

¶ 2 In March 2009, defendant-appellant Nancy Martino entered into a mortgage and promissory note with the Bank of Palatine. The mortgage required that Martino pay the real estate taxes for the subject property, located at 16 N. Brockway in Palatine, Illinois. But Martino

failed to pay the real estate taxes for 2013 and 2014. That caused the mortgage and note to enter a state of default, which in turn led plaintiff-appellee Pan American Bank (PAB), Bank of Palatine's successor in interest, to file this lawsuit to foreclose on the note and mortgage. The circuit court ultimately granted summary judgment to PAB, and we affirm.

¶ 3

BACKGROUND

¶ 4 On March 13, 2009, Martino signed a promissory note with Bank of Palatine for \$250,000 to purchase real property located at 16 N. Brockway in Palatine, Illinois. The note was secured with a mortgage on the property. We will call this the "First Note" and "First Mortgage."

¶ 5 The legal description of the property contained in the First Mortgage stated that the property was divided into two parcels with separate property identification numbers (PINs). As relevant here, the terms of the First Mortgage required Martino to pay the property taxes for the subject property.

¶ 6 On August 1, 2013, Martino signed a second promissory note with Bank of Palatine. The second note was for \$42,609.41 and, like its predecessor, was secured by a mortgage on the property located at 16 N. Brockway in Palatine. We will call this the "Second Note" and "Second Mortgage." The mortgage terms once again required Martino to pay the property taxes for the subject property.

¶ 7 On October 9, 2015, PAB filed this lawsuit. PAB's complaint contained four counts. Count 1 was brought on the First Mortgage, alleging that Martino "failed to make required payments towards property taxes on the Property as required by the terms of" the First Note and First Mortgage. Count 3 alleged that Martino "failed to timely pay real estate taxes on the Property, an event of default under the [First] Mortgage."

¶ 8 Counts 2 and 4 were similar to Counts 1 and 3 but they concerned the Second Mortgage and Second Note. These counts were later voluntarily dismissed and are not before us.

¶ 9 A fair amount of litigation followed, including initial cross-motions for summary judgment. Martino's motion for summary judgment was denied as moot, as her motion led to PAB voluntarily dismissing Counts 2 and 4 as we just mentioned. PAB's motion for summary judgment was denied due to irregularities in affidavits PAB attached from Nicholas Dizonno, PAB's executive vice-president and senior lending officer.

¶ 10 In November 2016, the parties once again filed cross-motions for summary judgment. In her motion, Martino argued that she was not delinquent on her monthly payments on the First Mortgage and that PAB had not sufficiently established that she was delinquent in paying property taxes pursuant to the First Mortgage.

¶ 11 In its cross-motion for summary judgment, PAB argued that the basis for default on the First Mortgage and Note, since the filing of the complaint, was *not* the nonpayment of monthly payments but the nonpayment of *property taxes* on the property. To support its argument that Martino had not paid property taxes as required by the First Mortgage and Note, PAB first attached another affidavit from Mr. Dizonno, attesting to that fact. Second, PAB pointed out that Martino had never put forth any evidence to show that she had, in fact, paid those property taxes. Third, PAB attached to its motion "Estimates of Cost Redemption" from the Cook County Clerk's office.

¶ 12 The Estimates of Cost Redemption for the two parcels that comprised the property showed that Martino first became in arrears on her property taxes in the first installment period of 2014, and that her total estimate of cost of redemption—that is, the amount she would have to pay to redeem her taxes—was \$45,552.94.

¶ 13 In response, Martino continued to insist that she had made all monthly payments on the property. She also moved to strike the latest Dizonno Affidavit, claiming that it conflicted with previous versions of the affidavit (specifically the date of default specified).

¶ 14 The trial court granted PAB's motion for summary judgment, denied Martino's motion for summary judgment, and denied Martino's motion to strike the Dizonno Affidavit.

¶ 15 The judicial sale was held on June 6, 2017, and the sale was confirmed by the circuit court on August 7, 2017. Martino timely filed her notice of appeal on September 5, 2017. This appeal followed.

¶ 16 ANALYSIS

¶ 17 On appeal, Martino argues that the circuit court erred by (1) denying her motion to strike Dizonno's affidavit and (2) awarding summary judgment to PAB. We may affirm a grant of summary judgment on any basis appearing in the record, regardless of whether it was the basis on which the trial court ruled. *Urban Sites of Chicago, LLC v. Crown Castle USA*, 2012 IL App (1st) 111880, ¶ 21; *Freedberg v. Ohio National Insurance Co.*, 2012 IL App (1st) 110938, ¶ 26. Though much argument is made on appeal about the Dizonno Affidavit attached to PAB's motion for summary judgment, for the reasons we will explain, we affirm summary judgment on an alternate basis raised by PAB and supported by the record.

¶ 18 Summary judgment is appropriate if there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2016). "In determining the existence of a genuine issue of material fact, courts must consider the pleadings, depositions, admissions, exhibits, and affidavits on file in the case and must construe them strictly against the movant and liberally in favor of the opponent." *Schweihs v. Chase Home Finance, LLC*, 2016 IL 120041, ¶ 48; *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986).

¶ 19 As we just noted, as exhibits to its motion for summary judgment, PAB attached Estimates of Cost of Redemption for the two parcels of land that together comprised the mortgaged property at issue. The Estimates showed that Martino fell into arrears on her property taxes as of the first installment period of 2014, and that the total amount she would have to pay to redeem her taxes was \$45,552.94.

¶ 20 Martino’s response on appeal is that the dates of default in the Estimates do not match up with the Dizonno Affidavit. As PAB notes, however, even if she is correct, the Estimates still unquestionably show nonpayment of property taxes, and thus a breach of the First Mortgage and Note.

¶ 21 Neither in the trial court nor in this court does Martino challenge the validity, accuracy, authenticity, or admissibility of the Estimates. She has thus forfeited any such challenge. See *Bank of New York Mellon v. Rogers*, 2016 IL App (2d) 150712, ¶ 74 (party forfeited challenge on appeal to admissibility of exhibit attached to motion for summary judgment on foundational grounds by not raising issue in trial court); Ill. S. Ct R. 341(h) (eff. Nov. 1, 2017) (points not raised in appellate brief are forfeited). In any event, she could not raise a credible challenge. The Estimates were self-authenticating documents under Illinois Rule of Evidence 902 (eff. Jan. 1, 2011); see *People ex rel. Madigan v. Kole*, 2012 IL App (2d) 110245, ¶ 48 (under Rule 902, “certain evidence is self-authenticating and extrinsic evidence of its authenticity is not a prerequisite to its admission.”).

¶ 22 Specifically, the Estimates were “certified copies of public records” under Rule 902(4). To be self-authenticating under that provision, the document first must be “[a] copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form.” (Emphasis

added.) Ill. R. Evid. 902(4) (eff. Jan. 1, 2011). The Estimates of Cost Redemption were not only authorized by law but, in fact, required by law. Section 21-5 of the Property Tax Code provides that, in Cook County, “the county clerk shall *** prepare a set of records *** showing *** the legal description of all property which has previously been forfeited for the non-payment of general taxes, the amount of the forfeited taxes of prior years, the interest added before forfeiture, the interest added after forfeiture,” and other relevant information, and that “[t]he records are to remain at all times at the county clerk's office for use in preparing estimates of costs of redemption and in issuing orders upon the county collector to receive amounts necessary for the redemption of forfeited general taxes.” 35 ILCS 200/21-5 (West 2014).¹

¶ 23 Second, to be self-authenticating under Rule 902(4), the public record must be “certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any statute or rule prescribed by the Supreme Court.” Ill. R. Evid. 902(4) (eff. Jan. 1, 2011). Here, the certification complied with paragraph (1) of the Rule—that is, Rule 902(1), which provides that extrinsic evidence of authentication is not required for:

“*Domestic Public Documents Under Seal*. A document bearing a seal purporting to be that of the United States, or of any State, *** or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.” Ill. R. Evid. 902(1) (eff. Jan. 1, 2011).

¹ See also 35 ILCS 200/18-250(a) (West 2014) (providing that “[w]hen any property has been forfeited for taxes or special assessments,” the county clerk “shall compute the amount of back taxes and special assessments, interest, statutory costs, and printer’s fees remaining due, with one year’s interest on all taxes forfeited, and enter them upon the collector's books as separate items.”); 35 ILCS 200/18-200(d) (West 2014) (county clerk may distribute copies of Estimates of Cost Redemption if the requestor pays “the fee provided by law”).

¶ 24 The Estimates complied with this portion of Rule 902(4), as well. First, at the top left corner, the Estimates bear the seal of Cook County. Second, the Estimates are stamped, dated, and “approved” by David Orr, the current Cook County Clerk. See *National City Bank v. Majerczyk*, 2011 IL App (1st) 110640, ¶ 5 (summons bearing seal of clerk and clerk’s stamped name sufficient to qualify as clerk’s “signature”); *United States v. Wexler*, 657 F. Supp. 966, 971 (E.D. Pa. 1987) (under counterpart Federal Rule 902(1), “[t]he stamped signature and the verifying initials show the intention of an appropriate custodian to attest to the accuracy and authenticity of the documents.”).

¶ 25 Thus, though Martino has forfeited a challenge to the Estimates’ authenticity by failing to raise the issue in either the trial court or this court, we find the Estimates clearly self-authenticating under our rules of evidence, in any event.

¶ 26 Since the Estimates of Cost Redemption were admissible exhibits, they were properly before the circuit court at summary judgment. *Purtill*, 111 Ill. 2d at 240. And they proved beyond any doubt that Martino didn’t pay her property taxes and thus defaulted on the First Note and Mortgage.

¶ 27 When the moving party meets his initial burden of production, the burden shifts to the non-moving party to show the existence of a genuine issue of material fact. *Triple R Development, LLC v. Golfview Apartments I, L.P.*, 2012 IL App (4th) 100956, ¶ 12. “At this point, the nonmovant cannot rest on its pleadings to raise genuine issues of material fact.” *Id.* Here, when Martino opposed PAB’s motion for summary judgment, she did not introduce any counter-exhibits or counter-affidavits to prove that she had, in fact, paid her property taxes; she merely relied on the general denials in her answer to the complaint. In other words, PAB produced sufficient evidence to enable the court to conclude that no genuine issue of material

fact existed as to whether Martino defaulted by failing to pay her property taxes, and Martino failed to produce any evidence to disabuse the court of that notion.

¶ 28 The mortgages that Martino signed required her to pay property taxes. PAB's complaint alleged that Martino defaulted by failing to pay her taxes. Martino disputes that claim, but the Estimates of Cost Redemption resolve it indisputably in PAB's favor, and Martino has presented nothing to rebut that proof. Summary judgment in PAB's favor was appropriate.

¶ 29 It is unnecessary to consider the Dizonno Affidavit, as it had no bearing on our resolution of this appeal.

¶ 30 Affirmed.