

Lazuran v. Citimortgage, Inc.

Court of Appeal of Florida, Fourth District

June 9, 2010, Decided

No. 4D09-1340

Reporter

35 So. 3d 189; 2010 Fla. App. LEXIS 8183; 35 Fla. L. Weekly D 1292

STELIAN LAZURAN, Appellant, v. CITIMORTGAGE, INC., DAVID STERN, P.A., UNKNOWN SPOUSE OF STELIAN LAZURAN, if any, ADRIANA ANCUTA LAZURAN a/k/a ADRIANA LAZURAN, UNKNOWN SPOUSE OF ADRIANA ANCUTA LAZURAN a/k/a ADRIANA LAZURAN, if any, ANY AND ALL UNKNOWN PARTIES CLAIMING BY, THROUGH, UNDER, AND AGAINST THE HEREIN NAMED INDIVIDUAL DEFENDANT(S) WHO ARE NOT KNOWN TO BE DEAD OR ALIVE, WHETHER SAID UNKNOWN PARTIES MAY CLAIM AN INTEREST AS SPOUSES, HEIRS, DEVISEES, GRANTEEES OR OTHER CLAIMANTS, THE BOULEVARD FOREST LAKE MANAGEMENT ASSOCIATION, INC., CITIBANK, N.A. SUCCESSOR BY MERGER TO CITIBANK, FEDERAL SAVINGS BANK, JOHN DOE, and JANE DOE AS UNKNOWN TENANTS IN POSSESSION, Appellees.

Prior History: **[**1]** Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ronald J. Rothschild, Judge; L.T. Case No. 08-45895 (08).

Counsel: ***Mitchell Sens*** of Law Office of ***Mitchell Sens***, P.A., Plantation, for appellant.

Jennifer E. Seipel of Butler & Hosch, P.A., Orlando, for appellee Citimortgage Inc.

No appearance for other appellees.

Judges: GERBER, J. POLEN and LEVINE, JJ., concur.

Opinion by: GERBER

Opinion

[*189] GERBER, J.

We reverse the circuit court's final summary judgment of foreclosure against Stelian Lazuran (the "defendant"). Citimortgage's complaint alleged that all conditions precedent to the mortgage note's acceleration had been fulfilled, and Citimortgage's affidavit in support of its motion for summary judgment stated "[t]hat each and every allegation in the Complaint is true." Such a conclusory allegation is insufficient to refute the defendant's affirmative defense **[*190]** that Citimortgage failed to provide him with notice of the acceleration pursuant to the procedures specified in paragraph 22 of the mortgage. Therefore, reversal is required. See *Frost v. Regions Bank*, 15 So. 3d 905, 906-07 (Fla. 4th DCA 2009) ("Because the bank did not meet its burden to refute the Frosts' lack of notice and opportunity to **[**2]** cure defense, the bank is not entitled to final final summary judgment of foreclosure.").

Reversed.

POLEN and LEVINE, JJ., concur.