

IN THE COURT OF APPEALS OF IOWA

No. 7-085 / 06-0924
Filed April 11, 2007

MOHAMED HUSSEIN GHOBASHI,
Plaintiff-Appellant,

vs.

WELLS FARGO HOME MORTGAGE, INC.,
Defendant-Appellee.

Appeal from the Iowa District Court for Dallas County, Dale B. Hagen,
Judge.

Mohamed Ghobashi appeals the district court's grant of summary
judgment in favor of Wells Fargo Home Mortgage, Inc. **AFFIRMED.**

Mohamed Hussein Ghobashi, Des Moines, pro se.

Todd A. Elverson of Elverson, Vasey & Peterson, L.L.P., Des Moines, for
appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

Wells Fargo Home Mortgage, Inc. lent money to Mohamed Ghobashi and his wife for the purchase of a home. The loan was secured by a mortgage. The Ghobashis defaulted on their loan payments. Wells Fargo obtained a default judgment of foreclosure against them.

Mohamed Ghobashi subsequently sued Wells Fargo. He alleged that the company failed to (1) give him notice of his right to cure the default, (2) serve notice of the foreclosure action, (3) serve notice of the sheriff's sale, and (4) disperse to him any excess sale proceeds received from the sheriff's sale. Wells Fargo moved for summary judgment. Ghobashi did not file a resistance to the motion but, on the day before a scheduled hearing, he submitted two affidavits. Following an unreported hearing, the district court granted Wells Fargo's motion.

On appeal, Ghobashi contends he "was never properly served in the original foreclosure action, and therefore the Court never had jurisdiction to grant a foreclosure decree in favor of [Wells Fargo], and as there is a factual dispute as to whether [Wells Fargo] had knowledge of a mailing address for [him] this matter should have been set for trial." We agree with Ghobashi that summary judgment is only appropriate if

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 the moving party is entitled to a judgment as a matter of law.

Otterberg v. Farm Bureau Mut. Ins. Co., 696 N.W.2d 24, 27 (Iowa 2005) (quoting Iowa R. Civ. P. 1.981(3)).

Ghobashi did not timely create a genuine issue of material fact. Under our rules of civil procedure, any party resisting a motion for summary judgment must file the resistance “within 15 days, unless otherwise ordered by the court, from the time when a copy of the motion has been served.” Iowa R. Civ. P. 1.981(3). Wells Fargo served Ghobashi with the motion for summary judgment on March 14, 2006. Ghobashi did not submit affidavits in resistance to the motion until May 8, 2006, well over fifteen days after the motion was served.¹ There is no indication that Ghobashi received court permission for this late submission. Nor is there any indication that Ghobashi filed a rule 1.904(2) motion for expanded findings and conclusions to clarify the status of his affidavits. *See Bill Grunder’s Sons Constr., Inc. v. Ganzer*, 686 N.W.2d 193, 198 (Iowa 2004) (stating party obligated to file such motion if the party believed summary judgment was inappropriately granted). Under Rule 1.981(3), these affidavits were untimely. As they were not properly a part of the summary judgment record, we decline to consider them in reviewing the summary judgment ruling.

Examining the balance of the summary judgment record, we conclude Wells Fargo was entitled to judgment as a matter of law. An employee of Wells Fargo attested that notices of right to cure were mailed to Ghobashi’s “residence mailing address.” The foreclosure petition was served by publication after personal service failed. Ghobashi had notice of the sheriff’s sale, as he filed a demand to delay the sale. Finally, there were no excess funds to distribute to Ghobashi following the sheriff’s sale.

¹ These affidavits were not filed with the clerk of court, although they appear in the court file.

As there exist no genuine issues of material fact and Wells Fargo established it was entitled to judgment as a matter of law, we conclude the district court did not err in granting the summary judgment motion.

AFFIRMED.