

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 16, 2023 Session

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JCR, LLC ET AL. v. VICKI HANCE ET AL.

Appeal from the Circuit Court for Knox County
No. 2-421-17 William T. Ailor, Judge

No. E2022-00765-COA-R3-CV

Purchaser of real property at a non-judicial foreclosure sale brought an unlawful detainer action against the original homeowners when they refused to vacate the property after the sale. The homeowners brought a separate action against their mortgage servicer and the purchaser alleging, *inter alia*, wrongful foreclosure. The trial court dismissed the homeowners’ complaint against the purchaser and granted the purchaser’s motion for summary judgment with regard to the detainer action because there was no genuine issue of material fact as to whether the purchaser was entitled to possession of the property. Finding no error, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed;
Case Remanded**

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which W. NEAL MCBRAYER, J., joined. D. MICHAEL SWINEY, C.J., filed a separate dissenting opinion.

James R. Moore, Knoxville, Tennessee, for the appellants, Vicki Hance and Ernest Hance.

A. Scott McCulley, Maryville, Tennessee, for the appellees, JCR, LLC.

OPINION

This is an appeal from a detainer action following a foreclosure sale of a parcel of real property owned by Vicki Hance (“Mrs. Hance”) and Ernest Hance (“Mr. Hance”). The Hances purchased a home in 2007 and financed the purchase by executing a Deed of Trust securing their obligations under a promissory note for \$80,000. In 2017, following a series of assignments of the Deed of Trust and promissory note, the mortgage was owed to U.S. Bank National Association and was serviced by Nationstar Mortgage, LLC (“Nationstar”).

The Hances defaulted on their payment obligations under the promissory note in 2017. As a result of their default, the property was scheduled to be sold at a foreclosure sale on August 8, 2017. On July 7, 2017, the Hances received notice of the foreclosure sale from the foreclosing Substitute Trustee, Shapiro & Ingle, LLP (“Substitute Trustee”). The notice provided that all future inquiries or written requests regarding the matter should be directed to Substitute Trustee.

Section 19 of the Deed of Trust provides:

19. Borrower’s Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time *prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower’s right to reinstate; or (c) entry of a judgment enforcing this Security Instrument.* Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys’ fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender’s interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender’s interest in the Property and rights under this Security Instrument, and Borrower’s obligation to pay the sums secured by this Security Instrument, shall continue unchanged. . . .

(Emphasis added). Following their receipt of the notice from the Substitute Trustee, Mrs. Hance communicated with multiple Nationstar agents at various times between July 10 and August 7. These communications involved attempts by Mrs. Hance to obtain a letter from Nationstar that would allow the Hances to make a withdrawal from Mr. Hance’s 401(k) plan to cure their default and exercise the right of reinstatement provided in Section 19 of the Deed of Trust. There is nothing in the record to suggest that either of the Hances ever communicated – or attempted to communicate – with the Substitute Trustee during this time. Ultimately, the Hances wired \$6,771.16 to Nationstar late in the day on August 7, 2017.

The foreclosure sale proceeded as scheduled on August 8, and the property was purchased by JCR, LLC (“JCR”). The Hances refused to vacate the property after the sale, and JCR filed a detainer action seeking possession of the property in Knox County General Sessions Court on October 9, 2017 (the “Detainer Action”).

On November 13, 2017, the day before the Detainer Action was set to be heard, the Hances filed suit against Nationstar and JCR (the “Lawsuit”) in the Knox County Circuit Court (the “trial court”). The Hances’ Complaint filed in the Lawsuit included claims of: (1) wrongful foreclosure, (2) fraudulent and/or negligent misrepresentation, (3) breach of contract and breach of implied covenant of good faith and fair dealing, (4) violation of the Tennessee Consumer Protection Act, (5) intentional or reckless infliction of emotional distress, and (6) libel of title. The Hances also filed a lien *lis pendens* with respect to the property. The Hances do not dispute that they were in default of their obligations under the Deed of Trust, nor do they dispute that they received the requisite notice of the acceleration of the amounts owed and the pending foreclosure sale. Instead, the Hances allege that Nationstar intentionally hampered the Hances’ attempts to reinstate under Section 19 of the Deed of Trust in order to foreclose on the property.

Nationstar and JCR each filed a motion to dismiss the Lawsuit pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure. JCR argued that it was a bona fide purchaser of the property and that, as a result, the Lawsuit should be dismissed as to JCR and the lien *lis pendens* should be released. In response to JCR’s motion, the Hances argued that they had “clearly ple[d] that Nationstar violated the terms of the Deed of Trust and thus JCR’s deed is void.” In response to Nationstar’s motion, the Hances conceded that “[t]here is no dispute that the [Hances] were behind on their mortgage payments or that they had the right to reinstate the mortgage.” After a hearing, the trial court denied Nationstar’s motion to dismiss and, in a separate order entered June 4, 2018, granted JCR’s motion to dismiss. In its order granting JCR’s motion, the trial court found that JCR was a bona fide purchaser of the property and dismissed the Lawsuit against JCR with prejudice.

By agreed order of the Knox County General Sessions Court, the Detainer Action was removed to the trial court pursuant to Tennessee Code Annotated section 16-15-732. Thereafter, JCR filed a “Motion for Judgment Based on Res Judicata and in the alternative Motion for Summary Judgment” in the Detainer Action. The portion of JCR’s motion based on res judicata was premised upon the trial court’s June 4, 2018 order wherein the trial court found that JCR was a bona fide purchaser of the property and dismissed the Lawsuit against JCR with prejudice. Alternatively, JCR argued that it was entitled to summary judgment because it purchased the property at the foreclosure sale, it is a bona fide purchaser of the property, and title to the property is now vested in JCR. In response, the Hances argued that the June 4, 2018 order was not a final order and therefore had no res judicata effect. The Hances also argued that the “foreclosure did not comply with the terms of the Deed of Trust” because the Hances “were thwarted and defrauded out of their right to cure the default according to the terms contained in their Deed of Trust.” The Hances also denied that JCR was a bona fide purchaser of the property. Therefore, the Hances argued, the foreclosure sale should be set aside as JCR “does not have sufficient

title . . . to force [the Hances] from their home[.]” While JCR’s motion was pending, the Detainer Action and the Lawsuit were consolidated by order of the trial court.

Following a hearing on JCR’s motion, the trial court found that JCR, “pursuant to a foreclosure,” purchased the property at a publicly conducted trustee’s sale, that the Hances did not appear at the foreclosure sale or otherwise put any potential buyers on notice that they had a claim against the property, that JCR was the successful purchaser and was a bona fide purchaser of the property, and that nothing in the public record would put anyone on notice of a claim on behalf of the Hances. Therefore, the trial court granted summary judgment in JCR’s favor and granted JCR possession of the property. The Hances moved the trial court “to expand upon its findings to specifically state that their defense of Wrongful Foreclosure is not applicable to a detainer lawsuit filed by JCR, LLC because it is a Bona Fide Purchaser for Value.” The trial court denied the Hances’ motion to expand upon its findings. Following additional motion practice,¹ the Hances timely appealed the trial court’s dismissal of JCR from the Lawsuit and grant of summary judgment in favor of JCR in the Detainer Action to this Court.

ISSUES

The Hances raise the following issues on appeal, which we have restated slightly:

1. Whether the trial court erred in dismissing JCR from the Hances’ lawsuit in which the Hances asserted wrongful foreclosure against Nationstar.
2. Whether the trial court erred in granting summary judgment and possession of the real property to JCR when the Hances asserted wrongful foreclosure as an affirmative defense to JCR’s detainer action.

¹ The “Order of Dismissal” dismissing the Lawsuit as to JCR was entered by the trial court on June 4, 2018. The “Order Granting Plaintiff, JCR, LLC.’s Motion for Summary Judgment, Findings of Fact & Conclusions of Law” was entered September 1, 2021, and was later amended by the entry of an “Amended Order Granting Plaintiff’s, JCR, LLC.’s Motion for Summary Judgment, Findings of Fact & Conclusions of Law” on May 13, 2022. However, none of these orders were appealable final judgments until the trial court entered the “Agreed Order Granting Hances’ Motion for Final Judgment” on December 7, 2022. The December 7, 2022 Agreed Order provided “[t]here being no just reason for delay,” both the order dismissing JCR from the Lawsuit and the order granting JCR summary judgment in the Detainer Action “are hereby, pursuant to Tennessee Rule of Civil Procedure 54.02(1), directed to be entered as a final judgment as to JCR, LLC.”

STANDARD OF REVIEW²

The portion of this appeal that arises out of the Lawsuit filed by the Hances against Nationstar and JCR was resolved by the dismissal of JCR pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure. “Our standard of review on appeal from a trial court’s grant of a motion to dismiss is de novo, with no presumption of correctness as to the trial court’s legal conclusions, and all allegations of fact in the complaint below are taken as true.” *Brown v. Ogle*, 46 S.W.3d 721, 726 (Tenn. Ct. App. 2000) (citing *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997)). A trial court’s judgment of dismissal is entitled to be affirmed so long as the trial court reaches the correct result “irrespective of the reasons stated.” *Clark v. Metro. Gov’t of Nashville and Davidson Cnty.*, 827 S.W.2d 312, 317 (Tenn. Ct. App. 1991) (citing *Benson v. U.S. Steel Corp.*, 465 S.W.2d 124 (Tenn. 1971)).

The portion of this appeal that arises out of the Detainer Action filed by JCR was resolved by summary judgment. A trial court may grant summary judgment only if the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . 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.” Tenn. R. Civ. P. 56.04. The propriety of a trial court’s summary judgment decision presents a question of law, which we review de novo with no presumption of correctness. *Kershaw v. Levy*, 583 S.W.3d 544, 547 (Tenn. 2019).

“The moving party has the ultimate burden of persuading the court that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.” *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 83 (Tenn. 2008). As our Supreme Court has instructed,

when the moving party does not bear the burden of proof at trial, the moving party may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party’s claim or (2) by demonstrating that the nonmoving party’s evidence at the summary judgment stage is insufficient to establish the nonmoving party’s claim or defense.

Rye v. Women’s Care Ctr. of Memphis, 477 S.W.3d 235, 264 (Tenn. 2015). “[I]f the moving party bears the burden of proof on the challenged claim at trial, that party must

² The Hances’ appellate brief “did not comply with Rule 27(a)(7)(B) of the Tennessee Rules of Appellate Procedure in that it failed to include a statement of the standard of review. Regardless, we proceed with our consideration of the . . . issue[s] raised on appeal, but ‘caution litigants that we may not be so forgiving in the future.’” *S. Steel & Concrete, Inc. v. S. Steel & Constr., LLC*, No. W2020-00475-COA-R3-CV, 2022 WL 1115033, at *6 n.6 (Tenn. Ct. App. Apr. 14, 2022) (quoting *Garrard v. Tenn. Dep’t of Corr.*, No. M2013-01525-COA-R3-CV, 2014 WL 1887298, at *3 (Tenn. Ct. App. May 8, 2014)).

produce at the summary judgment stage evidence that, if uncontroverted at trial, would entitle it to a directed verdict.” *TWB Architects, Inc. v. Braxton, LLC*, 578 S.W.3d 879, 888 (Tenn. 2019) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986)).

When a party files and properly supports a motion for summary judgment as provided in Rule 56, “to survive summary judgment, the nonmoving party may not rest upon the mere allegations or denials of its pleading, but must respond, and by affidavits or one of the other means provided in Tennessee Rule 56, set forth specific facts . . . showing that there is a genuine issue for trial.” *Rye*, 477 S.W.3d at 265 (internal quotation marks and brackets in original omitted). “Whether the nonmoving party is a plaintiff or a defendant – and whether or not the nonmoving party bears the burden of proof at trial on the challenged claim or defense – at the summary judgment stage, ‘[t]he nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party.’” *TWB Architects*, 578 S.W.3d at 889 (quoting *Rye*, 477 S.W.3d at 265).

“This court will affirm the trial court’s summary judgment if it finds that the trial court reached the correct result, ‘irrespective of the reasons stated.’” *Wood v. Parker*, 901 S.W.2d 374, 378 (Tenn. Ct. App. 1995) (quoting *Clark*, 827 S.W.2d at 317 (Tenn. Ct. App. 1991)).

ANALYSIS

Without clearly raising the issue elsewhere, in the conclusion of their appellate brief the Hances ask this Court to reverse the dismissal of JCR from the Lawsuit filed by the Hances against Nationstar and JCR. However, the Complaint that forms the basis of the Lawsuit only asserts claims against Nationstar, despite also naming JCR as a defendant. While the Complaint purports to assert causes of action against Nationstar for (1) wrongful foreclosure, (2) fraudulent and/or negligent misrepresentation, (3) breach of contract and breach of implied covenant of good faith and fair dealing, (4) violation of the Tennessee Consumer Protection Act, (5) intentional or reckless infliction of emotional distress, and (6) libel of title, it does not purport to assert any causes of action against JCR. Furthermore, the only relief the Complaint seeks with regard to JCR is “to have the [sale of the property to JCR] declared void and a Judgment entered divesting JCR of all right, title or interest in the [property].” Given this failure by the Hances to state a cause of action against JCR, and for the reasons stated below, we conclude that the Hances failed to state a claim against JCR for which relief could be granted; this, the dismissal of JCR from the Lawsuit was proper pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure.

Turning to the Detainer Action, on appeal the Hances contend that “[t]he fact that the Hances were both defrauded and wrongfully foreclosed upon is and should be a defense to a detainer in Tennessee.” Despite this, they concede in their principal appellate brief

that the only material fact in dispute with regard to their Lawsuit against Nationstar is what was said in the final telephone conversation between a Nationstar employee and Mrs. Hance approximately 18 hours prior to the foreclosure sale.

The Hances also contend that “[t]he only fact in dispute with regard to [JCR] being a [bona fide purchaser] is whether it was required to investigate that the foreclosure was properly conducted.” However, that is a question of law and not a question of fact. It is well-established that “where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.” *Hyatt v. Adenus Grp., LLC*, 656 S.W.3d 349, 373 (Tenn. Ct. App. 2022) (quoting *Sneed v. Bd. of Pro. Resp. of S. Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010)). Because the Hances have failed to develop any argument in their brief regarding whether a bona fide purchaser has a duty to investigate that a foreclosure sale is properly conducted, the issue is waived. Similarly, any other issues the Hances purported to raise but did not develop as an argument are waived.³

³ The entirety of the Argument included in the Hances’ principal appellate brief is as follows:

This appeal asks for this Court to once again issue an opinion finding that a wrongful foreclosure, done in violation of the terms of a Deed of Trust, is a defense to a detainer and voids the foreclosure. As this Court recently stated in *Bank of N.Y. Mellon v. Chamberlain*, No. M2019-00876-COA-R3-CV, at p 8 (Tenn. Ct. App. Feb. 5, 2020):

This Court has previously held that a defendant may defend against an unlawful detainer action by showing wrongful foreclosure under the deed of trust. *See CitiMortgage, Inc. v. Drake*, 410 S.W.3d 797, 808 (Tenn. Ct. App. 2013) (quoting *Davis v. Williams*, No. E2010-01139-COA-R3-CV, 2011 WL 335069, at *3 (Tenn. Ct. App. Jan. 31, 2011) (“There is absolutely no doubt that wrongful foreclosure can be raised as an affirmative defense to an unlawful detainer action brought by the purchaser of property in foreclosure.”)); *CitiFinancial Mortg. Co. v. Beasley*, No. W2006-00386-COA-R3-CV, 2007 WL 77289, at *9 (Tenn. Ct. App. Jan. 11, 2007) (holding that wrongful foreclosure due to a violation of the express terms of a deed of trust is a defense to a detainer action). Moreover, “[a] foreclosure sale held pursuant to the applicable deed of trust requires ‘strict compliance for the conveyance to be valid.’” *Wells Fargo Bank, N.A. v. Lockett*, No. E2013-02186-COA-R3-CV, 2014 WL 1673745, at *3 (Tenn. Ct. App. Apr. 24, 2014) (quoting *CitiFinancial*, 2007 WL 77289, at *9). When the undisputed facts do not resolve questions as to whether the foreclosure was conducted pursuant to the terms contained in the deed of trust, summary judgment on the Bank’s wrongful detainer action is inappropriate. *Id.* The Bank does not dispute that it was required to comply with the requirements of the Deed of Trust in order to ultimately prevail this action.

Without citing to any authority, the trial court has ruled that the unwritten exception for BFPs to this Court’s numerous rulings regarding void foreclosure sales. The trial court held that since JCR was a BFP at the foreclosure sale the Hances’ assertions and proof of a wrongful foreclosure were no defense to either the detainer [TR 232] or dismissal of their lawsuit against JCR. [TR 80].

“When a detainer action is ‘brought against the maker of a deed of trust who, after default and foreclosure, refused to surrender possession of the property,’ the party seeking to gain possession by way of a summary detainer proceeding must rely on the action of ‘unlawful detainer.’” *Biles v. Roby*, No. W2016-02139-COA-R3-CV, 2017 WL 3447910, at *2 (Tenn. Ct. App. Aug. 11, 2017), *perm. app. denied* (Tenn. Jan. 22, 2018) (quoting *CitiFinancial Mortg. Co. v. Beasley*, No. W2006-00386-COA-R3-CV, 2007 WL 77289, at *7 (Tenn. Ct. App. Jan. 11, 2007)). To prevail in a post-foreclosure detainer action, the plaintiff must “establish (1) its constructive possession of the property and (2) its loss of possession by [the defendant’s] act of unlawful detainer.” *Fed. Nat’l Mortg. Ass’n v. Daniels*, 517 S.W.3d 706, 712 (Tenn. Ct. App. 2015) (citing *CitiFinancial Mortg. Co.*, 2007 WL 77289, at *7). “When a deed of trust establishes that, in the event of a foreclosure, a landlord/tenant relationship is created between the foreclosure sale purchaser and the mortgagor in possession of the property, constructive possession is conferred on the foreclosure sale purchaser upon the passing of title; that constructive possession provides the basis for maintaining the unlawful detainer.” *Id.*

“[Detainer] actions concern only the right to possession, *Newport Hous. Auth. v. Ballard*, 839 S.W.2d 86, 89 (Tenn. 1992), and in such proceedings, ‘[t]he estate, or merits of the title, shall not be inquired into.’” *Fed. Nat’l Mortg. Ass’n v. Robilio*, No. W2007-01758-COA-R3-CV, 2008 WL 2502114, at *5 (Tenn. Ct. App. Jan. 7, 2008) (quoting Tenn. Code Ann. § 29-18-119(c)). “Where title bears directly upon the right of possession, however, a party may legitimately interpose the issue.” *Id.* (citations omitted). “In the unique situation of foreclosures conducted under a power of sale, the requisite landlord/tenant relationship may not arise when the trustee has exercised the power of sale in violation of the deed of trust.” *Id.* (citing *CitiFinancial Mortg. Co.*, 2007 WL 77289, at *6).

Section 22 of the Deed of Trust in this case gives rise to the Substitute Trustee’s power of sale and controls when a landlord/tenant relationship arises between the mortgagors and a foreclosure sale purchaser. Specifically, it provides:

The facts as set forth in Vicki Hance’s affidavit and Nationstar’s Statement of Undisputed Material Facts [TR 524] reveal that this is not a situation of a technical error but one where the Hances efforts to reinstate their mortgage were actively thwarted by Nationstar. Further, they were defrauded out of the \$6,771.16 that they were wired to Nationstar in order to stop the foreclosure and reinstate their mortgage.

This is a case where the note holder and purchaser are sophisticated commercial entities. The Hances are normal consumer mortgagees who entered into a standard Fanny Mae mortgage agreement. The fact that the Hances were both defrauded and wrongfully foreclosed upon is and should be a defense to a detainer in Tennessee. A ruling that a wrongful foreclosure is not a defense to a detainer filed by a BFP will result in this Court having to rule upon who is and who is not a foreclosure BFP for years to come.

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. . . .

. . . Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. . . . If the Property is sold pursuant to this Section 22, Borrower, or any person holding possession of the Property through Borrower, shall immediately surrender possession of the Property to the purchaser at the sale. If possession is not surrendered, Borrower or such person shall be a tenant at will of the purchaser and hereby agrees to pay the purchaser the reasonable rental value of the Property after sale.

(Emphasis added). Pursuant to this section, the Substitute Trustee delivered a Substitute Trustee's Deed conveying title in the property to JCR following the foreclosure sale. On appeal, the Hances do not argue that the Substitute Trustee did not comply with Section 22 of the Deed of Trust or that the Substitute Trustee did not have the power to sell the property to JCR. Instead, the Hances rely only on the affirmative defense of wrongful foreclosure based on Nationstar's purported interference with the Hances' right to reinstate provided by Section 19 of the Deed of Trust.

In support of their defense of wrongful foreclosure, the Hances rely upon *Bank of N.Y. Mellon v. Chamberlain*, No. M2019-00876-COA-R3-CV, 2020 WL 563527 (Tenn. Ct. App. Feb. 5, 2020). However, the Hances ignore this Court's statement in that case that "[t]he burden to show the failure of any condition precedent under the Deed of Trust,

however, falls to [the party alleging the wrongful foreclosure].” See *Bank of N.Y. Mellon*, 2020 WL 563527, at *5.

In *Bank of N.Y. Mellon*, a foreclosure sale purchaser filed an unlawful detainer action against a homeowner when the homeowner refused to vacate the purchased property after the sale. *Id.* at *2. The homeowner filed an answer raising two defenses to the detainer action: (1) that the foreclosure violated certain statutory rules, and (2) that the foreclosure violated the provision of the deed of trust giving rise to the trustee’s power of sale. *Id.* The homeowner also filed a counterclaim based on those theories. *Id.* The purchaser filed a motion for summary judgment as to its detainer action and the homeowner’s counterclaim for breach of the deed of trust. *Id.* The trial court found the purchaser was entitled to possession of the property and granted summary judgment in the purchaser’s favor. *Id.* at 4. On appeal, the homeowner argued “that the foreclosure was faulty because it did not comply with an express condition contained in the Deed of Trust.” *Id.* at *5. Specifically, the homeowner argued that the notices required by the provision of the deed of trust giving rise to the trustee’s power of sale were not properly delivered. *Id.* at *6. This Court found that because the parties had “presented evidence from which the fact-finder [could] draw conflicting inferences” as to whether the notice provided satisfied the requirements of the provision in the deed of trust giving rise to the power of sale, “summary judgment in favor of either party was inappropriate.” *Id.* at *10.

Conversely, in this case, the Hances do not dispute on appeal that the Substitute Trustee strictly complied with Section 22 of the Deed of Trust, which set forth the conditions precedent to foreclosure. They also do not dispute that they did not timely exercise their right to reinstate and avoid the foreclosure as provided in Section 19 of the Deed of Trust. Instead, they make the conclusory statement that they were “defrauded and wrongfully foreclosed upon,” without citation to the record, and argue only that their right to reinstate was interfered with by Nationstar. Per the only case cited by the Hances, “[t]he burden to show the failure of any condition precedent under the Deed of Trust, . . . falls to [the party alleging the wrongful foreclosure].” *Bank of N.Y. Mellon*, 2020 WL 563527, at *5.

Because it is undisputed that the Substitute Trustee provided the notice to the Hances required by Section 22 of the Deed of Trust and had the power to sell the property, we conclude the foreclosure sale was effective to transfer constructive possession to JCR. This constructive possession by JCR was then sufficient to maintain the Detainer Action. Furthermore, JCR was not able to exercise its right of possession of the property because the Hances refused to vacate the property following the foreclosure sale, an act of unlawful detainer satisfying the second element of JCR’s claim. In summary, JCR has established its right to possession, and the Hances have failed to establish the existence of any genuine issues of material fact. Accordingly, we affirm the trial court’s grant of summary judgment in favor of JCR with regard to its Detainer Action.

CONCLUSION

For the aforementioned reasons, we affirm the judgment of the Circuit Court for Knox County, and this case is remanded for proceedings consistent with this opinion. Costs of this appeal are taxed to the Appellants, Vicki Hance and Ernest Hance, for which execution may issue if necessary.

KRISTI M. DAVIS, JUDGE