

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7297
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALICE C. STAPLETON,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 2:91-CV-112
- - - - -
(March 24, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

When Alice C. Stapleton defaulted on her Rural Housing Loan from the U.S. Department of Agriculture, Farmer's Home Administration ("FmHA"), foreclosure proceedings were instituted. The property securing the loan was sold by substitute trustee at a private sale to the United States on September 11, 1989. Because Stapleton failed to vacate the property, the United States filed a complaint demanding that Stapleton be evicted and requesting reasonable rent for the period following the sale.

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

The district court granted the United States' motion for summary judgment and Stapleton has appealed.

This Court reviews a district court's grant of summary judgment de novo. Topalian v. Ehrman, 954 F.2d 1125, 1131 (5th Cir.), cert. denied, 113 S. Ct. 82 (1992). Summary judgment under Fed. R. Civ. P. 56 is proper 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 judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322-24, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). If the moving party meets the initial burden of establishing that there is no genuine issue, the burden shifts to the non-moving party to produce evidence or set forth specific facts showing the existence of a genuine issue for trial. Id.; Fed. R. Civ. P. 56(e). The mere allegation of a factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

Stapleton does not contend that the Government failed to carry its initial burden. Instead, Stapleton contends that she would have demonstrated at trial that the FmHA "did not allow her to exercise any of the options for reclaiming her home after the foreclosure that are available under FmHA guidelines." She does not suggest what options were available to her, and she made no showing in the district court, by affidavit or otherwise, of her ability to cure the default on the promissory note. See

generally, McCachren v. U.S. Dept. of Agriculture Farmers Home Admin., 599 F.2d 655, 657 (5th Cir. 1979) (agency's record of bailing out farmers after bad years did not justify borrower's expectation of receiving a reorganization loan to prevent foreclosure).

Stapleton argues that summary judgment should not be granted unless the facts are sufficiently developed to enable the district court to be reasonably certain that there are truly no genuine issues of material fact. Stapleton conducted no discovery and admitted to all of the facts alleged by the Government. As Stapleton candidly admits, her arguments on appeal are "based upon facts and law not on record or otherwise in evidence." The judgment of the district court is AFFIRMED.