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CALENDAR

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

WELLS FARGO BANK, N.A.,

Plaintiff,

v.

LISA TUCKER,

Defendant.

Cause No. ADV-2015-989

ORDER ON PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

Before the Court is Plaintiff Wells Fargo Bank, N.A.'s (Wells Fargo) October 7, 2016 motion for summary judgment. On October 27, 2016, Defendant Lisa Tucker (Tucker) filed a brief in opposition to the motion and asked the Court to schedule a hearing on the matter. Erika R. Peterman represents Wells Fargo. Brian Miller represents Tucker. Upon consideration of the parties' arguments, the Court denies Wells Fargo's motion for summary judgment.

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1 **ISSUE**

2 Is Wells Fargo entitled to a judgment as a matter of law because there
3 are no genuine issues of material fact?

4 **STATEMENT OF FACTS**

5 This matter concerns real property located at 2580 Tea Road, Helena,
6 Montana 59601. Wells Fargo claims it purchased the property at a trustee sale
7 conducted on the front steps of the Lewis and Clark County Courthouse, 228
8 Broadway, Helena, Montana 59601 on October 5, 2015 at 11:00 a.m. At that
9 time, Tucker resided on the property. On October 19, 2015, Wells Fargo sent an
10 eviction notice to Tucker. On December 28, 2015, Wells Fargo filed an eviction
11 action for possession of the property, upon which Tucker continues to reside.

12 Tucker disputes whether the trustee sale actually occurred at the
13 scheduled time and place. In support of her argument, Tucker submitted an
14 affidavit of Carl Garcia, who states he was at the Lewis and Clark County
15 Courthouse on October 5, 2015 at 11:00 a.m., when the sale is alleged to have
16 occurred. According to Garcia, the sale did not take place. Wells Fargo
17 contends the GPS tracking data and photograph from Paul Rudd, the process
18 server who conducted the sale, demonstrates the sale did in fact occur at the
19 scheduled time and place.

20 Tucker also disputes whether Wells Fargo complied with federal
21 HUD regulations by failing to arrange a face-to-face meeting with Tucker prior
22 to accelerating her mortgage payments.

23 **PRINCIPLES OF LAW**

24 Summary judgment is appropriate when “the pleadings, the discovery
25 and disclosure materials on file, and any affidavits show that there is no genuine

1 issue as to any material fact and that the movant is entitled to judgment as a
2 matter of law.” Mont. R. Civ. P. 56(c)(3). The party moving for summary
3 judgment must establish the absence of any genuine issue of material fact and
4 the party is entitled to judgment as a matter of law. *Tin Cup County Water &/or*
5 *Sewer Dist. v. Garden City Plumbing*, 2008 MT 434, ¶ 22, 347 Mont. 468, 200
6 P.3d 60. Once the moving party has met its burden, the party opposing
7 summary judgment must present affidavits or other testimony containing
8 material facts which raise a genuine issue as to one or more elements of its case.
9 *Id.* ¶ 54 (citing *Klock v. Town of Cascade*, 284 Mont. 167, 174, 943 P.2d 1262,
10 1266 (1997)). Conclusory statements and assertions are not enough to defeat a
11 motion for summary judgment. *Id.* The mere denial of a fact does not satisfy
12 the non-moving party’s burden of establishing a genuine issue of material fact
13 and is not a proper basis for denial of a motion for summary judgment. *Vettel-*
14 *Becker v. Deaconess Med. Ctr. of Billings, Inc.*, 2008 MT 51, ¶ 27, 341 Mont.
15 435, 177 P.2d 1034.

16 ANALYSIS

17 This case presents a clear issue of material fact – whether Wells Fargo
18 conducted a valid trustee sale at the Lewis and Clark County Courthouse on
19 October 5, 2015. Tucker has presented more than mere conclusory statements
20 and assertions to support her position. Whether the trustee sale took place is a
21 question of fact which must be decided by the finder of fact. It is not a matter of
22 law to be decided by the Court. Accordingly, summary judgment is not
23 warranted. Although Tucker asked for a hearing on the matter, a hearing is
24 unnecessary give the Court’s decision.

25 ////

1 **ORDER**

2 IT IS HEREBY ORDERED Wells Fargo's motion for summary
3 judgment is DENIED.

4 DATED this 17th day of November 2016.

5
6 
7 **MIKE MENAHAN**
8 District Court Judge

9 pc: Erika R. Peterman, PO Box 294, Missoula MT 59806
10 Brian Miller, 401 North Last Chance Gulch, Helena MT 59601

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