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ATTORNEYS FOR APPELLANT:

**CHRISTINE M. STACH**  
**SUSAN E. TRENT**  
Rothberg Logan & Warsco LLP  
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEES:

**MARK R. GALLIHER**  
**CRAIG D. DOYLE**  
Doyle & Friedmeyer, P.C.  
Indianapolis, Indiana  
Attorneys for U. S. Bank, N.A.  
Successor by Merger to FIRSTAR, N.A.

**EARL C. MULLINS, JR.**  
Louisville, Kentucky  
Attorney for Anna R. Mullins

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**IN THE**  
**COURT OF APPEALS OF INDIANA**

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ROSWELL PROPERTIES, LLC, LTD, successor )  
in Interest to Fifth Third Bank (Louisville), )  
successor in interest to Citizens Bank of Kentucky, )

Appellant-Plaintiff, )

vs. )

No. 10A05-0701-CV-2

EARL C. MULLINS, JR., PHYLLIS J. MULLINS, )  
FIRSTAR BANK, N.A., EARL C. MULLINS, )  
and ANNA RAGENA MULLINS, )

Appellee,-Cross-Claimant )

vs. )

EARL C. MULLINS, JR., and )  
PHYLLIS J. MULLINS, )

Appellees-Cross-Defendants. )

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APPEAL FROM THE CLARK CIRCUIT COURT  
The Honorable Daniel F. Donahue, Judge  
Cause No. 10C01-0601-MF-40

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**August 30, 2007**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Roswell Properties, LLC, successor in interest to Fifth Third Bank, successor in interest to Citizens Bank of Kentucky (“Roswell”), appeals the Clark Circuit Court’s denial of its motion for summary judgment and grant of cross-motion for summary judgment in favor of US Bank, NA, successor in interest to Firststar Bank, NA (“US Bank”). We affirm.

**Facts and Procedural History**

On August 29, 1996, Earl and Phyllis Mullins (“Borrowers”) borrowed \$230,000 from Roswell’s predecessor,<sup>1</sup> secured by a mortgage on their property located at 10221 Stricker Road in Memphis, Indiana (“the Stricker Road property”). The 1996 mortgage did not contain a dragnet clause. The Borrowers executed a series of additional notes for the principal balance of \$230,000 on September 29, 1997; April 23, 1999; April 23, 2000; October 23, 2000; October 23, 2001; October 23, 2002; January 23, 2003; April 23, 2003; October 23, 2003; and April 23, 2004. Appellant’s App. pp. 233-73.

Meanwhile, on June 25, 2001, the Borrowers executed a mortgage note to US Bank’s predecessor<sup>2</sup> for the sum of \$725,000, secured by the Stricker Road property. Prior to closing the loan, US Bank’s attorney requested and received mortgage payoff information from Roswell. The balance was “paid to \$0.00 but never closed by [Borrowers].” Appellant’s App. p. 82. In addition to a check for the payoff amount of

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<sup>1</sup> The Mullinses borrowed the sum from Central Bank of Kentucky, which was later acquired by Fifth Third Bank. Roswell is successor in interest to Fifth Third. For simplicity’s sake, we will refer to the lender as Roswell throughout this opinion.

<sup>2</sup> Again for the sake of simplicity, we will refer to this lender as US Bank throughout this opinion.

\$231,793.54, US Bank sent Roswell a closing letter requesting that Roswell “release your lien of record in the Clark County Recorder’s Office to: Mortgage Dr. 28, Instrument # 15318.” Appellant’s App. p. 322. However, the mortgage was never released.

On January 18, 2006, Roswell filed a complaint for foreclosure based on the Borrowers’ default on April 23, 2004 note in Clark Superior Court. In response, US Bank filed an answer, cross-claim, and counterclaim for foreclosure on its 2001 mortgage. Following a hearing on cross-motions for summary judgment, the trial court granted summary judgment and a decree of foreclosure to US Bank. Roswell now appeals.<sup>3</sup>

### **Standard of Review**

On review of a trial court’s decision to grant or deny summary judgment, we apply the same standard as the trial court: we must decide whether there is a genuine issue of material fact that precludes summary judgment and whether the moving party is entitled to judgment as a matter of law. Keaton & Keaton v. Keaton, 842 N.E.2d 816, 819 (Ind. 2006) (citing Carie v. PSI Energy, Inc., 715 N.E.2d 853, 855 (Ind. 1999)). When the parties have filed cross-motions for summary judgment we consider each motion separately to determine whether the moving party is entitled to judgment as a matter of law. Id.

### **Discussion and Decision**

Roswell contends that the trial court erred in granting summary judgment and foreclosure to US Bank. Specifically, Roswell argues that its 2004 note is a renewal of a

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<sup>3</sup>Anna Mullins, the mother of Earl C. Mullins, was named as a defendant in Roswell’s complaint for foreclosure. She argues on appeal that the trial court “should not have entered a Summary Judgment against the interest of Anna R. Mullins in light of the absence of appropriate evidence.” Br. of Appellee Mullins at 3. Mullins contends that “there is a conflict in the property descriptions[.]” Br. of Appellee Mullins at 2. The issue raised by her brief is not properly before us; accordingly we do not address it.

revolving line of credit secured by the 1996 mortgage. As such, Roswell argues, its 1996 mortgage takes priority over US Bank's 2001 mortgage.

Indiana Code section 32-28-1-1(b) (2002) provides “[w]hen the debt or obligation and the interest on the debt or obligation that the mortgage...secures has been fully paid, lawfully tendered, and discharged, the owner, holder, or custodian shall: (1) release; (2) discharge; and (3) satisfy of record; the mortgage[.]” In Dreibelbiss Title Company, Inc. v. Fifth Third Bank, 806 N.E.2d 345 (Ind. Ct. App. 2004), trans. denied, we held that the lender was not required to release its mortgage after receiving payoff funds because the lender had not received written notification from the borrower to close the account, as required by the loan agreement. Here, there was no such additional requirement in order to “discharge” the lender’s obligation to release the mortgage. The 1996 mortgage document itself clearly provides “[u]pon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower.” Appellant’s App. p. 29. Thus, upon receiving the payoff amount from US Bank in 2001, Roswell was required, under the terms of the mortgage and Indiana Code section 32-28-1-1, to release the mortgage.<sup>4</sup>

Thus, as a matter of law, US Bank is entitled to foreclosure on its 2001 mortgage and the trial court properly granted summary judgment in its favor and denied summary judgment on Roswell’s foreclosure complaint.

Affirmed.

DARDEN, J., and KIRSCH, J., concur.

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<sup>4</sup> Roswell also argues that the trial court improperly relied upon unauthenticated and untimely designations from US Bank. In light of our conclusion that the mortgage document itself required that it be released upon payoff, we do not address these arguments.