

Background

In 2005, Denis J. Henk executed a promissory note, which was secured by a mortgage, to Paragon Home Lending LLC. The note and mortgage were later transferred to Green Tree.

In 2013, Green Tree commenced a foreclosure action against Denis J. Henk and his son Denis C. Henk.² Henk, *pro se*, filed an answer.

Green Tree subsequently moved for summary judgment and Henk responded. In an affidavit, Henk averred that upon receiving a Notice of Default from Green Tree, he attempted to cure it. However, instead of using the funds he submitted for that purpose, Henk asserted that Green Tree “purposefully misapplied [them] to an improperly established escrow account balance.”

In a reply brief, Green Tree pointed to the lack of documentation to substantiate Henk’s claim that he had made the requisite payments and cured the default. According to Green Tree, an escrow account was established when Henk failed to timely pay his 2011 taxes and make subsequent payments. Green Tree submitted affidavits and supporting documentation for its position.

The circuit court found no genuine issue of material fact, noting an absence of any documentation showing that Henk had paid the 2011 taxes. Green Tree, in contrast, submitted documentation substantiating the payments it had made for the taxes; consequently, the court

² We refer to Denis C. Henk by his full name. We refer to Denis J. Henk by his last name only.

found that Green Tree was entitled to repayment. Because there were inadequate funds to cover the principle, interest, and the escrow amounts that were owed, the court concluded that a default had occurred. It awarded summary judgment of foreclosure to Green Tree.

Discussion

“The purpose of summary judgment is to avoid trial when there are no issues to be tried.” *Ixonia State Bank v. Schuelke*, 171 Wis. 2d 89, 94, 491 N.W.2d 772 (Ct. App. 1992). A party is entitled to summary judgment “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.” WIS. STAT. § 802.08(2). We review a grant of summary judgment *de novo*. *Chapman v. B.C. Ziegler & Co.*, 2013 WI App 127, ¶2, 351 Wis. 2d 123, 839 N.W.2d 425.

We need not engage in a lengthy recitation of the well-known methodology governing a motion for summary judgment. Here, Green Tree submitted affidavits and documentation that established a *prima facie* case for summary judgment. When a motion for summary judgment is made and properly supported by affidavit, “an adverse party may not rest upon the mere allegations or denials of the pleadings but the adverse party’s response ... must set forth specific facts showing that there is a genuine issue for trial.” WIS. STAT. § 802.08(3).

Henk presented no evidence to counter Green Tree’s motion for summary judgment. In his appellant’s brief, he points to no portion of the record that shows otherwise, and he declined

to file a reply brief.³ Accordingly, we, like the circuit court, conclude that there are no genuine issues of material fact. Summary judgment for Green Tree was appropriate.

Upon the foregoing reasons,

IT IS ORDERED that the circuit court's order is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals

³ Henk's appellate brief to this court is difficult to understand. The arguments are not cogently developed. In addition, he fails to provide citations to the record on appeal or to legal authority, in contravention of the requirements of WIS. STAT. RULE 809.19(1)(d) and (e); *see also State v. McMorris*, 2007 WI App 231, ¶30, 306 Wis. 2d 79, 742 N.W.2d 322 ("we may choose not to consider arguments unsupported by references to legal authority, arguments that do not reflect any legal reasoning, and arguments that lack proper citations to the record"). To the extent he includes documents outside the record, they are improper. *See generally South Carolina Equip., Inc. v. Sheedy*, 120 Wis. 2d 119, 125-26, 353 N.W.2d 63 (Ct. App. 1984) ("An appellate court can only review matters of record in the [circuit] court and cannot consider new matter[s] attached to an appellate brief outside that record.").

Moreover, by not filing a reply brief, Henk conceded Green Tree's responsive arguments. *See United Coop. v. Frontier FS Coop.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (appellant's failure to respond in reply brief to an argument made in respondent's brief may be taken as a concession).