

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 23-0033

SHARON McCREA,

Appellant and Plaintiff,

v.

CONNIE SUE LARSON, ESTATE OF
MARTINNE E. CHEW, CHICAGO
TITLE INSURANCE COMPANY,
LOANCARE ACCOUNT SERVICING,
and any other Parties, i.e. John Doe,

Appellees and Defendants,

On Appeal from the Eighth Judicial District Court, Cascade County
Judge John A. Kutzman

APPELLEE CONNIE SUE LARSON'S ANSWER BRIEF

Appearances:

Sharon McCrea
P.O. Box 405
Black Eagle, MT 59414
Appellant, pro se

William J. Levine
Marra, Evenson & Levine, P.C.
2 Railroad Square, Suite C
P.O. Box 1525
Great Falls, MT 59403-1525
Phone: (406) 268-1000
Email: wlevine@marralawfirm.com
Attorney for Appellee Connie Sue Larson

(Appearances continued next page)

Appearances (continued):

Christopher T. Sweeney
Moulton Bellingham, PC
27 N 27th Street, Suite 1900
P.O. Box 2559
Billings, MT 59103
Phone: (406) 248-7731
Email:
christopher.sweeney@moultonbellingham.com
Attorney for Appellees Chicago Title Insurance
Company and LoanCare Account Servicing

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I. Statement of Issues

This appeal presents the following issue:

1. Did the District Court properly grant Larson's motion for summary judgment because the trustee's sale was proper under the Small Tract Financing Act of Montana?
2. Has McCrea raised any issue of law or question of fact that might affect the outcome of this appeal?

II. Statement of the Case

Plaintiff and Appellant Sharon McCrea ("McCrea") commenced this action to claim that a trustee's sale under the Small Tract Financing Act of Montana was invalid. Defendant and Appellee Connie Sue Larson ("Larson") answered the complaint and moved for summary judgment. McCrea had refused for over 18 months to make the payments she owed to Larson under a promissory note that was secured by a trust indenture because McCrea objected to the transfer of the payment processing from Chicago Title to LoanCare. Larson eventually gave notice of a trustee's sale, and the trustee's sale was completed because McCrea did not reinstate her payments or pay off the note. The district court granted summary judgment to Larson and the other defendants because the trustee's sale complied with the Small Tract Financing Act of Montana.

III. Statement of the Facts

In 1988, Martinne and Frank Chew acquired a vacant lot located at 3123 3rd Avenue North in Great Falls, more particularly described as Lot 9, Block 219, Twelfth Addition to Great Falls Townsite, Cascade County, Montana (“Lot 9”). *Affidavit of Connie Sue Larson in Support of Motion for Summary Judgment*, filed January 13, 2021 (“*Larson Affidavit*”), ¶ 2. Frank Chew died on February 5, 2007, and Martinne Chew died on May 20, 2007. *Id.*, ¶¶ 3-4. They had owned Lot 9 as joint tenants with rights of survivorship, and so Martinne Chew became its sole owner upon her husband’s death. *Id.*, ¶¶ 2, 4, and 5 and Exs. A and D. Following Martinne Chew’s death, her close friend Larson was appointed as the personal representative of her estate in Fergus County Probate No. DP-2007-64. *Id.*, ¶ 4 and Ex. C. As PR of Martinne Chew’s estate, Larson sold Lot 9 to McCrea on November 9, 2009. *Id.*, ¶¶ 7-8 and Ex. F. Because McCrea did not have the money to pay for Lot 9 all at once, McCrea and Larson agreed to seller financing for the sale of Lot 9. At the closing, Larson as PR of Martinne Chew’s estate deeded Lot 9 to McCrea, and McCrea signed a promissory note for the purchase price of \$35,000 and granted a trust indenture to secure her payment of the promissory note. *Id.*, ¶¶ 7-9 and Exs. E-H. As is common in seller financing, rather than having the buyer make the monthly payments directly to the seller,

Larson and McCrea hired a professional escrow agent—in this case, Chicago Title Insurance Company—to process the payments, keep track of principal and interest, and hold certain documents pending McCrea’s performance of her obligations under the promissory note and trust indenture. *Id.*, ¶ 10 and Ex. I. After the closing of the sale of Lot 9, the promissory note was distributed to Larson, and the estate of Martinne Chew was closed. *Id.*, ¶ 11.

McCrea had difficulty making her monthly payments. Larson did her best to work with McCrea to allow McCrea to successfully pay off the promissory note and trust indenture. Larson lowered the monthly payment amounts twice, from the original amount of \$676.75 to \$400, and then from \$400 to \$200. *Id.*, ¶ 12 and Exs. J-L. Recognizing that much of McCrea’s payments were going to interest instead of principal, Larson agreed to suspend interest for a year, and then to lower it to 5% going forward. *Id.* Despite these accommodations, McCrea continued to struggle to make her payments. In total, not counting the escrow servicing fees and late fees, McCrea paid a total of \$24,039.63 under the promissory note. *Id.*, ¶ 17 and Ex. N. Of that amount, \$12,663.55 was applied to interest and \$11,376.92 was applied to the principal. *Id.* The end result was that a promissory note for the original principal amount of \$35,000 in November of 2009 and that was supposed

to be paid in full in November of 2014, still had a remaining balance of \$23,623.92 in April of 2020. *Id.*

In September 2018, Chicago Title informed Larson and McCrea that their escrow account was being transferred to a subsidiary, a company called LoanCare, and that LoanCare would serve as the escrow agent going forward. *Id.*, ¶ 14 and Ex. M. The transfer of the escrow account from one payment processor to another was expressly allowed by the “Collection Escrow Instructions” that McCrea and Larson signed at the closing of the sale of Lot 9 in 2009: “The ‘escrow holder’ reserves the right at any time to transfer, set over and assign its rights, obligations and duties as ‘escrow holder’ to a successor ‘escrow holder.’” *Larson Affidavit*, Ex. I, page 3, ¶ 1. Although the transfer of the escrow account was expressly allowed by the escrow instructions she signed, McCrea believed that it was somehow improper for the escrow account to be transferred from Chicago Title to LoanCare, and so she refused to make any further payments. *Id.*, ¶ 15. She made one final payment on October 8, 2018, *Id.*, ¶ 21 and Ex. N, and then simply stopped making any further payments. *Id.*, ¶ 15 and Ex. N. Faced with a borrower who refused to pay, Larson was forced either to give up what she was owed or to proceed with a trustee’s sale under the trust indenture.

In accordance with § 71-1-306, MCA, Larson, as the beneficiary under the trust indenture, appointed a successor trustee to complete the trustee's sale. *Larson Affidavit*, ¶ 18 and Ex. O. The successor trustee obtained a special title report, a trustee's sale guarantee, to identify the owners, lienholders, and other interested persons who might be entitled to notice of a trustee's sale. *Id.*, ¶ 19 and Ex. P. The successor trustee then sent out an initial notice of trustee's sale on April 20, 2020. *Id.*, ¶ 20 and Exs. Q and R. Unexpectedly, McCrea had made a \$200 payment on April 17, 2020, but this payment was not accounted for in the initial notice of trustee's sale, and the trustee's sale also incorrectly stated that the monthly payments were \$250 per month instead of \$200 per month. *Id.*, ¶ 21. The initial notice of trustee's sale was therefore cancelled, *Id.*, ¶ 21 and Ex. S, and a new, corrected notice of trustee's sale was sent out on April 27, 2020. *Id.*, ¶ 22 and Exs. T and U. On that date, McCrea was in default for two reasons: first, she was 18 months behind on her payments under the promissory note, meaning that she had failed to pay \$3,600.00 in principal and interest; and second, she had failed to pay \$902.09 in property taxes on Lot 9 that Larson had wound up paying instead. *Id.*, ¶ 22 and Ex. T.

The notice of trustee's sale was mailed by certified mail, return receipt requested, to all interested persons identified in the trustee's sale guarantee on

April 27, 2020, and it was recorded in the Cascade County Clerk and Recorder's Office on April 29, 2020. *Id.*, ¶¶ 22-23 and Ex. T. It was posted on Lot 9 on July 28, 2020. *Id.*, ¶ 24 and Ex. V. It was published in the Cascade Courier newspaper on July 9, 16, and 23, 2020. *Id.*, ¶ 25 and Ex. W. In accordance with § 71-1-315(2), MCA, affidavits of mailing, posting, and publication were recorded in the Cascade County Clerk and Recorder's Office. *Larson Affidavit*, ¶¶ 23-25 and Exs. U-W.

The trustee's sale occurred as scheduled on September 3, 2020 at 10:00 a.m. at the West Entrance to the Cascade County Courthouse. The only bid at the sale came from Larson, for \$28,560.17, which was the total amount of principal and interest she was then owed under the promissory note, plus the amount of her costs and attorney fees. *Id.*, ¶ 26. The successor trustee therefore sold Lot 9 to Larson, and a trustee's deed conveying Lot 9 was recorded with the Cascade County Clerk and Recorder. *Id.*, ¶ 26 and Ex. X. McCrea, who had not made any payments since April 17, 2020 and who had not appeared at the trustee's sale, commenced this civil action about an hour after the conclusion of the trustee's sale.

IV. Standards of Review

"The standard of review for a district court's granting of summary judgment is de novo." *Farmers Ins. Exch. v. Johnson*, 2009 MT 442, ¶ 7, 354 Mont. 192,

224 P.3d 613. “[T]he facts presented are reviewed to determine whether the prevailing party is entitled to judgment as a matter of law.” *Id.* Summary judgment is appropriate when “...the pleadings, discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” *J.L.G. v. M.F.D.*, 2014 MT 114, ¶12, 375 Mont. 16, 324 P.3d 355. To satisfy the standard, a moving party must demonstrate “both the absence of a genuine issue of material fact and entitlement to judgment as a matter of law.” *Id.* If the moving party does so, then the burden shifts to the party opposing summary judgment, who “must present material and substantial evidence, rather than mere conclusory or speculative statements, to raise a genuine issue of material fact.” *McConkey v. Flathead Elec. Co-op.*, 2005 MT 334, ¶ 19, 330 Mont. 48, 125 P.3d 1121.

V. Summary of the Arguments

1. The District Court properly granted Larson’s motion for summary judgment because the undisputed facts showed that the trustee’s sale was proper under the Small Tract Financing Act of Montana. McCrea defaulted on her obligations by refusing to make any further payments under the promissory note that was secured by the trust indentured she had granted to Larson. Larson gave a notice of trustee’s sale in compliance with the Act by mailing, posting, and

publishing. McCrea did not pay the delinquent payments or pay off the debt within the required time, and so the trustee's sale was completed, and the property was sold to Larson.

2. McCrea has not raised any issue of law or question of fact that might affect the outcome of this appeal. McCrea alleges some sort of conspiracy against her but does not address the key issues that entitled to Larson to summary judgment: McCrea's default, Larson's compliance with the notice requirements for a trustee's sale under the Small Tract Financing Act of Montana, McCrea's failure to reinstate or pay off her obligations, and the completion of the trustee's sale.

VI. Argument

1. The District Court properly granted Larson's motion for summary judgment because the trustee's sale was proper under the Small Tract Financing Act of Montana.

When McCrea purchased Lot 9, she did not have the money to pay for it, and so she did what most buyers do: she borrowed and granted a mortgage to secure her repayment of the loan. As with any other mortgage, it would be released if she paid off the underlying loan, but she would lose the property if she did not repay the loan. McCrea did not make her payments—indeed, refused to do so—despite Larson's attempts to accommodate her. Larson therefore initiated and completed a trustee's sale of Lot 9, and Larson is now the owner of Lot 9.

The type of mortgage that McCrea granted was a trust indenture, under the Small Tract Financing Act of Montana, Title 71, Chapter 1, Part 3, Montana Code Annotated. The purpose of the Small Tract Financing Act was to make financing for the purchase of real property of less than 40 acres more readily available. § 71-1-302, MCA. Whereas most traditional mortgages were foreclosed through judicial proceedings, property that is subject to a trust indenture under the Small Tract Financing Act can be foreclosed through advertisement and sale, so long as the procedures of the Act are followed. § 71-1-313, MCA. In exchange for making it easier for lenders to foreclose, borrowers benefit because a lender has no right to a deficiency judgment, i.e. to collect damages for any difference between the sale price at the trustee's sale and the remaining amount due on the underlying loan. § 71-1-317, MCA, *see also e.g. First State Bank of Forsyth v. Chunkapura*, 226 Mont. 54, 57, 734 P.2d 1203, 1205 (1987).

A trust indenture is “an indenture executed in conformity with this part [i.e. the Small Tract Financing Act of Montana] and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.” § 71-1-303(6), MCA. To enforce the security created by the trust indenture, “a power of sale is conferred upon the trustee to be exercised after a breach of the obligation for which the transfer is

security.” § 71-1-304(2), MCA. If the grantor of the trust indenture performs the underlying obligation, such as by paying off the underlying loan, then the trustee is obligated to reconvey the property to the grantor. § 71-1-307, MCA. If the grantor defaults, then the trustee can sell the real property at a trustee’s sale, with the sale proceeds then being used to pay off the costs of the sale and the underlying obligation, and any balance going to the grantor. § 71-1-316(1), MCA. The beneficiary has the right to appoint a successor trustee. § 71-1-306(2), MCA. This allows the beneficiary to install a trustee who will proceed with a trustee’s sale if the grantor defaults, since the initial trustee is usually the title company that completed the closing and will generally not initiate and complete a trustee’s sale.

To protect the grantor, the Small Tract Financing Act provides procedural safeguards and preconditions to a trustee’s sale. First, and perhaps most importantly, the grantor must be in default. § 71-1-313(2), MCA. As long as the grantor stays current on her obligations, a trustee’s sale is not allowed. Second, a notice of trustee’s sale must be prepared, and notice of the sale must be given, in the manner required by the Small Tract Financing Act. The notice of trustee’s sale must be recorded with the county clerk and recorder and must contain the following information:

- (a) the names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;
- (b) a description of the property covered by the trust indenture;
- (c) the book and page of the mortgage records where the trust indenture is recorded;
- (d) the default for which the foreclosure is made;
- (e) the sum owing on the obligation secured by the trust indenture;
- (f) the trustee's or beneficiary's election to sell the property to satisfy the obligation;
- (g) the date of sale, which shall not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which shall be between the hours of 9 a.m. and 4 p.m., mountain standard time;
- (h) the place of sale which shall be at the courthouse of the county or one of the counties where the property is situated or at the location of the property or at the trustee's usual place of business if within the county or one of the counties where the property is situated.

§ 71-1-313(3), MCA. The trustee must also give notice of the trustee's sale: (a) by mailing copies of the notice of trustee's sale by certified mail to those specified by statute to receive the notice at least 120 days before the sale, § 71-1-315(1)(a), MCA; (b) by posting the notice of trustee's sale on the property itself at least 20 days before the sale, § 71-1-315(1)(b), MCA; and (c) by publishing the notice of trustee's sale in the newspaper once a week for three weeks, with the final publication occurring at least 20 days before the sale, § 71-1-315(1)(c). Affidavits showing the trustee's compliance with the mailing, posting, and publication requirements must be recorded prior to the trustee's sale. § 71-1-315(2), MCA.

The third protection that the grantor has is the right to reinstatement, meaning that

a trustee's sale must be discontinued if the grantor remedies the default prior to the sale. § 71-1-312, MCA. Thus, a property owner can prevent a trustee's sale from being completed if she brings her payments current in the 120 or more days between when the notice of trustee's sale is first given and when it occurs. Moreover, even if a property owner does not have the resources to get reinstated, she can also sell the property prior to the trustee's sale to pay off the underlying obligation and realize whatever equity she might have in the property. If the trustee properly gives notice of the sale and the grantor does not reinstate prior to the time of the sale, then the trustee may complete the sale. § 71-1-315(3), MCA. Whoever purchases the property at the sale then becomes the owner of the property. §§ 71-1-315(4) and 71-1-318, MCA. Following the sale, the grantor no longer has any right, title, or interest in the property, but the grantor is also protected against a judgment on the remaining amounts that would otherwise be due on the underlying obligation. § 71-1-317, MCA.

All of the requirements for a trustee's sale of Lot 9 were met in this case. When she purchased Lot 9, McCrea granted a trust indenture, conveying Lot 9 to the original trustee, Chicago Title, to secure her payment of a promissory note payable to the estate of Martinne Chew. *Larson Affidavit*, ¶ 9 and Exs. G-H. The trust indenture was recorded in the Cascade County Clerk and Recorder's Office.

Id.; § 71-1-313(1), MCA. The promissory note was then distributed to Larson who became the successor beneficiary. *Larson Affidavit*, ¶ 11. McCrea struggled to make the payments due under the promissory note. Larson agreed to modify the payments to try to help McCrea meet her obligations—reducing the monthly payments from \$676.65 to \$400 to \$200, suspending the 6% interest for a year and then reducing it to 5%—but McCrea continued to struggle to make her payments. *Id.*, ¶ 12. Ultimately, McCrea stopped making any payments at all. *Id.*, ¶¶ 14-17 and Ex. N. She was 18 months behind when the notice of trustee’s sale was given, and she made no payments after that. *Id.*, ¶¶ 21-22 and Ex. T.

In order to enforce her rights under the promissory note and trust indenture, Larson decided to proceed with a trustee’s sale. In March 2020, Larson appointed attorney William J. Levine as the successor trustee, replacing Chicago Title.

Larson Affidavit, ¶ 18 and Ex. O; § 71-1-306(2), MCA. On April 27, 2020, the successor trustee prepared the notice of trustee’s sale that is the basis for this civil action, and it was recorded on April 29, 2020. *Larson Affidavit*, ¶ 22 and Ex. T.

The following table summarizes the notice’s compliance with the content requirements of § 71-1-313(3), MCA:

Requirements by subsection of § 71-1-313(3)	Compliance by the notice of trustee's sale
(a) the names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;	On page 1, the notice identifies the grantor as Sharon McCrea, the trustee as Chicago Title Insurance Company, the beneficiary as the Estate of Martinne C. Chew, the successor trustee as William J. Levine, and the successor beneficiary as Connie Sue Larson
(b) a description of the property covered by the trust indenture;	On page 1, the notice identifies the subject property as Lot 9, Block 219, Twelfth Addition to Great Falls Townsite, Cascade County, Montana, according to the official plat or map thereof on file in the office of the County Clerk and Recorder of said County.
(c) the book and page of the mortgage records where the trust indenture is recorded;	On page 1, the notice provides the recording reference for the trust indenture as the trust indenture dated November 9, 2009 and recorded on November 13, 2009, as Document Number R0205790
(d) the default for which the foreclosure is made;	On page 2, the notice identifies McCrea's default as her failure to pay \$3,600 in principal and interest that had come due and her failure to pay \$902.09 in property taxes

<p>(e) the sum owing on the obligation secured by the trust indenture;</p>	<p>On page 2, the notice states that the remaining principal balance is \$23,623.92, that the balance of then-accumulated interest was \$1,606.50, and that McCrea was also responsible for other fees and costs under the Small Tract Financing Act</p>
<p>(f) the trustee's or beneficiary's election to sell the property to satisfy the obligation;</p>	<p>On page 2, the notice states: "The beneficiary hereby elects to sell the property to satisfy the aforesaid obligations."</p>
<p>(g) the date of sale, which shall not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which shall be between the hours of 9 a.m. and 4 p.m., mountain standard time;</p>	<p>On page 2, the notice states that the sale will occur on Thursday, September 3, 2020 at 10:00 a.m. There are 129 days between the date of the notice, April 27, 2020, and the date of the sale, September 3, 2020.</p>
<p>(h) the place of sale which shall be at the courthouse of the county or one of the counties where the property is situated or at the location of the property or at the trustee's usual place of business if within the county or one of the counties where the property is situated.</p>	<p>On page 2, the notice identifies the place of the sale as the West Entrance of the Cascade County Courthouse, 415 2nd Avenue North, Great Falls, Montana.</p>

The successor trustee gave the notice by mailing, posting and publication as required by the Small Tract Financing Act. As required by § 71-1-315(1)(a), MCA, the successor trustee mailed the notice of trustee's sale on April 27, 2020 by certified mail to McCrea (the grantor), the occupant of Lot 9 (if any), Chicago Title (the original trustee), and those who had been identified as lienholders (the

Cascade County Treasurer, the Montana Department of Revenue, and CB1, Inc., d/b/a CBM Collections). *Larson Affidavit*, ¶ 23 and Ex. U. As required by § 71-1-315(1)(b), MCA, the successor trustee posted the notice of trustee's sale on Lot 9 on July 28, 2020. *Larson Affidavit*, ¶ 24 and Ex. V. The posting on July 28, 2020 was 37 days before the trustee's sale on September 3, 2020, more than the 20 day minimum requirement. § 71-1-315(1)(b), MCA. As required by § 71-1-315(1)(c), MCA, the successor trustee had the notice of trustee's sale published in the Cascade Courier newspaper on July 9, 16, and 23, 2020. *Larson Affidavit*, ¶ 25 and Ex. W. The third and final publication on July 23, 2020 was 42 days before the trustee's sale on September 3, 2020, more than the 20 day minimum requirement. § 71-1-315(1)(c), MCA. As required by § 71-1-315(2), MCA, affidavits of mailing, posting, and publication were all recorded in the Cascade County Clerk and Recorder's Office on August 31, 2020, before the trustee's sale on September 3, 2020. *Larson Affidavit*, ¶¶ 23-25 and Ex. U-W.

Having prepared a proper notice of trustee's sale and given that notice in the manner required by the Small Tract Financing Act, the successor trustee proceeded with and completed the trustee's sale. Although McCrea had the right to reinstatement, and also the ability to sell the property and pay off the promissory note, McCrea made no payments after the notice of trustee's sale was

given on April 27, 2020. *Larson Affidavit*, ¶¶ 21-22. Because Larson had not remedied her default, the successor trustee was authorized to proceed with the trustee's sale, and did so as scheduled on Thursday, September 3, 2020 at 10:00 a.m. at the West Entrance to the Cascade County Courthouse. *Id.*, ¶ 26 and Ex. X. Larson submitted the only bid for Lot 9, in the amount of \$28,560.17, which was the total amount of principal and interest McCrea then owed to Larson under the promissory note, plus the amount of Larson's costs and attorney fees at that time. *Id.* As Larson's bid was the highest bid, the successor trustee sold Lot 9 to her and executed and recorded a trustee's deed conveying Lot 9 to Larson. *Id.*, and § 71-1-318, MCA. This deed conveyed to Larson all of the "the trustee's title and all right, title, interest, and claim of" McCrea to Lot 9. § 71-1-318(3), MCA. McCrea therefore is no longer the owner of Lot 9, and Larson is now the sole owner of Lot 9. Presented with these undisputed facts, the district court correctly concluded that the trustee's sale had been properly noticed and completed under the Small Tract Financing Act of Montana and granted summary judgment to Larson.

2. McCrea has not raised any issue of law or question of fact that might affect the outcome of this appeal.

In her opening brief, McCrea does not clearly identify what issues she wishes to raise with this Court or what errors she believes the district court made.

Instead, she presents a narrative brief that does not cite the record, statutes, or case law. Larson will attempt to address McCrea's arguments in the order raised.

A. The District Court Record.

McCrea alleges the record presented to this Court is not the correct record from the district court. *Appellant's Brief*, dated August 2, 2023, pages 1-2. She does not identify what documents were supposedly removed from the district court file or what bearing those documents might have had on the outcome of Larson's motion for summary judgment. The key facts for the case concern McCrea's default, the notice of the trustee's sale, McCrea's failure to remedy her default after the notice, and the completion of the trustee's sale. McCrea did not address or dispute those facts in her opening brief. Moreover, Rule 8(6) of the Rules of Appellate Procedure provides an avenue to correct the record if a party believes the district court record is incorrect or incomplete. McCrea did not seek to correct the district court's record under Rule 8(6), M. R. App. P., and so the record transmitted to this Court is the record on which this Court is to decide this case.

B. Trust indenture vs. contract for deed.

McCrea claims that she "was surprised to have been asked at closing to sign a trust indenture instead of a contract for deed," and that this was something she wanted to bring up at the pretrial conference and, presumably, at trial. *Appellant's*

Brief, page 3. Whether she was expecting to sign a contract for deed or a trust indenture, the undisputed fact is that she signed a trust indenture. *Larson Affidavit*, ¶ 9 and Ex. G. Moreover, though the security mechanisms vary between a contract for deed and a trust indenture, the same basic principle applies to each: as long as the payments are made, the buyer gets to keep the property, but if the payments are not made, then the seller or lender can get the property back.

C. Newspaper headline.

McCrea states that she went through with her purchase because of an auspicious newspaper headline. *Appellant's Brief*, pages 3-4. Whatever her reasons for signing the documents, what matters is that she signed them.

D. Supposed dropped payments.

McCrea states that she was “not behind on payments” and that some of her payments were supposedly not being recorded. *Appellant's Brief*, page 4. She does not identify what specific payments she supposedly made that were not reflected in the payment history that Larson provided to the district court. *See Larson Affidavit*, ¶ 16 and Ex. N. McCrea’s statement is the exact kind of conclusory statement that is insufficient to prevent summary judgment because it lacks the details that would be needed to analyze it. She also made this same conclusory statement to the district court. As McCrea’s description of these

supposed payments to the district court makes clear, she was talking about payments made prior to “September/October of 2018.” *Response to Brief in Support of Connie Sue Larson and Chicago Title’s Motion for Summary Judgment*, filed March 8, 2021, pages 1-2. The defaults which prompted the trustee’s sale was her decision to stop making payments after October 8, 2018, and her failure to pay the property taxes. *Larson Affidavit*, ¶¶ 16, 21, and 22 and Exs. N and T. Her statement now on appeal that she was not behind must be read in light of her statement to the district court: “I was not delinquent in the fall of 2018. I chose not to pay LoanCare Account Servicing, as you can see by a previous document that they claim they had the loan clear back at the beginning of 2018.” *Response to Brief in Support of Connie Sue Larson and Chicago Title’s Motion for Summary Judgment*, filed March 8, 2021, page 2. McCrea’s stubborn choice not to send payments to LoanCare after they took over the payment processing for her loan is precisely what resulted in her default, Larson’s decision to proceed with a trustee’s sale, and the trustee’s sale being completed. Even the documents McCrea submits with her own appeal brief confirm that she still owed on the promissory note when she abruptly ceased making payments. The 2018 IRS Form 1098 that she wants this Court to consider shows the unpaid balance of her loan was \$23,623.92, which is the exact same amount stated by Larson in the notice of

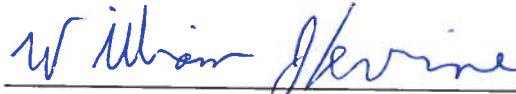
trustee's sale. *Larson Affidavit*, ¶ 22 and Ex. T, page 2. The undisputed facts before the district court were that McCrea was in default because she did not make any payments after payment processing was transferred to LoanCare.

VII. Conclusion

As detailed above, McCrea defaulted under the promissory note that was secured by the trust indenture she had granted on Lot 9. A notice of trustee's sale was prepared and given in accordance with the Small Tract Financing Act of Montana, McCrea did not remedy her default after Larson gave the notice, the trustee's sale was properly held, and Lot 9 was sold to Larson. The district court's order granting summary judgment to Larson should be affirmed.

Dated October 2, 2023.

MARRA, EVENSON & LEVINE, P.C.



William J. Levine

Attorney for Appellee Connie Sue Larson

Certificate of Compliance

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Appellee's Brief is proportionately spaced in Times New Roman typeface of 14 points and, and I further certify that, this Appellee's Brief contains 5,093 words, excluding the certificates of compliance and service, as counted by my WordPerfect 11 word processing software.

Dated October 2, 2023.



William J. Levine
Attorney for Appellee Connie Sue Larson

CERTIFICATE OF SERVICE

I, William Joseph Levine, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 10-02-2023:

Christopher Thayne Sweeney (Attorney)

P O Box 2559

Billings MT 59103

Representing: Connie Sue Larson, The Estate of Martinne C. Chew, Chicago Title Insurance Company, Loancare Account Servicing

Service Method: eService

Sharon McCrea (Appellant)

P.O. Box 405

Black Eagle MT 59414

Service Method: Conventional

Electronically signed by Brenda McGee on behalf of William Joseph Levine
Dated: 10-02-2023