

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-5128

LYNDA A. RUSSELL,

Appellant,

v.

WELLS FARGO BANK, N.A.,

Appellee.

On appeal from the Circuit Court for Duval County.
A.C. Soud, Jr., Judge.

June 22, 2020

PER CURIAM.

Appellant, Lynda A. Russell, appeals a foreclosure judgment, arguing that Appellee, Wells Fargo Bank, N.A., failed to prove that it satisfied conditions precedent to bringing the foreclosure action and that the trial court erred in allowing into evidence an email describing an attempt to make contact with her on the mortgaged property. We reject the latter argument without further comment.

As for Appellant's first argument, we find no merit in her position that Appellee bore the burden to prove that it satisfied the conditions precedent. Because Appellant raised Appellee's alleged failure to satisfy the conditions as an affirmative defense rather than denying Appellee's allegation that it satisfied all conditions in her answer, it was Appellant's burden to prove that Appellee

failed to satisfy such. See *Chruszcz v. Wells Fargo Bank, N.A.*, 250 So. 3d 766, 770 (Fla. 1st DCA 2018) (noting that a defendant who raises an affirmative defense bears the burden of proving that affirmative defense and holding that where the appellee bank asserted in the complaint that all conditions precedent had been satisfied, but the appellant borrower denied that assertion with the specific claim that the bank failed to meet the face-to-face counseling requirement rather than raising the issue as an affirmative defense, the burden of proving the condition precedent was shifted back to the bank); *McIntosh v. Wells Fargo Bank, N.A.*, 226 So. 3d 377, 379 (Fla. 5th DCA 2017) (explaining that the burden to prove compliance with conditions precedent rests with the plaintiff if asserted in the complaint and denied in the answer but with the defendant if raised instead as an affirmative defense in the answer); see also *Harris v. U.S. Bank Nat'l Ass'n*, 223 So. 3d 1030, 1031–32 (Fla. 1st DCA 2017) (explaining that a defending party's assertion that a plaintiff has failed to satisfy conditions precedent necessary to trigger contractual duties is generally viewed as an affirmative defense for which the defensive pleader has the burden of pleading and persuasion and noting that the appellants did not raise the appellee's noncompliance "in their answer, affirmative defenses, or at any time prior to closing argument, which amounts to a waiver and failure to preserve the issue"). Given that Appellant did not meet her burden, affirmance of the foreclosure judgment is warranted.

AFFIRMED.

LEWIS, WINOKUR, and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Malcolm E. Harrison and Michelle Moore, Wellington, for Appellant.

Sara F. Holladay-Tobias, Emily Y. Rottmann, and C.H. Houston III, of McGuire Woods LLP, Jacksonville, for Appellee.