

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D2024-0153

FLORIDA DEPARTMENT OF
REVENUE,

Appellant,

v.

BANK OF AMERICA, N.A.,

Appellee.

On appeal from the Circuit Court for Leon County.
John C. Cooper, Judge.

November 12, 2025

OSTERHAUS, C.J.

The Florida Department of Revenue appeals the denial of its summary judgment motion filed in response to Bank of America's lawsuit seeking refunds of overpaid state stamp and intangibles taxes on thousands of refinanced home loan transactions. The Department asks that we reverse and direct the circuit court to enter judgment in its favor. We affirm, however, seeing no error in the trial court's decision to deny the Department's summary judgment motion.

I.

When a person purchases a home in Florida, the state assesses both a stamp and an intangible tax on the amount of the mortgage

and corresponding loan. *See* §§ 201.01, 199.135, Fla. Stat. (2018). The stamp tax is imposed on obligations and renewals of obligations to pay money in Florida, including on promissory notes. § 201.08(1)(a), Fla. Stat. For mortgage transactions, because home mortgages travel with a loan, the tax is “paid on the mortgage . . . at the time of recordation” instead of on the loan. § 201.08(1)(b), Fla. Stat. “A notation [is then] made on the [loan] that the tax has been paid on the mortgage.” *Id.* Banks record mortgages with the “clerk of circuit court.” § 28.222(1), (3)(a), Fla. Stat. Florida also assesses a “nonrecurring” intangible tax on home loans. § 199.133(1), Fla. Stat. The State levies the intangible tax on debts secured by a mortgage, which banks pay to the clerk of court when the mortgage is recorded. § 199.135(1), Fla. Stat.

In the case of refinanced home loans, the newly created mortgage and loan may be exempt from these two taxes to the extent that the lender provides no new money to the borrower. For the stamp tax exemption to apply, the new loan must be a “renewal” of the old loan. § 201.09, Fla. Stat. For the intangible-tax exemption, the new loan must “refinance” the old loan with the same lender. § 199.145(4)(b), Fla. Stat.

In this case, for a couple of years ending in 2018, Bank of America refinanced home loans for thousands of Florida customers with new loans secured by mortgages on the same real property involved with their original mortgage-backed loans. The money from the new loans repaid debts from the original loans.

In recording these loans and mortgages, the Bank paid documentary stamp taxes and nonrecurring intangible taxes on each loan. Where the new loans were refinanced at amounts greater than the original loans, the Bank agreed that it owed additional documentary stamp and intangible taxes corresponding to “new money” borrowed that exceeded the original home loan amount. But the Department additionally insisted that the Bank must pay stamp and intangible taxes over and above the amount of “new money” it lent to cover the full maximum face amount of the refinanced loan, including amounts rolled over from the original loan. Although the Bank paid what the Department required, it sought refunds for overpayments of the stamp and intangibles taxes under the tax exemption provisions, § 201.09(1)

and § 199.145(1), in the amount of \$3,272,523.50 and \$1,868,301.83 respectively, plus interest.

In response to the Bank's refund claim, the Department investigated and audited about ten percent of the roughly 9800 subject home loans. During the audit, it created a spreadsheet reporting the facts and figures involved with some 900+ refinancings. After reviewing the information, the Department concluded that the Bank had to pay stamp and intangibles tax on the full amount of the refinanced loans because the Department considered them to be wholly new loans and not renewals or refinancings under § 201.09(1) and § 199.145(1).

In the wake of the Department's decision to deny its refund claims, the Bank filed a lawsuit seeking refunds. After the parties filed competing motions for summary judgment and confirmed that no contested facts existed, the trial court ruled mostly for the Bank. The trial court decided that most of the Bank's loans qualified as renewal and refinanced loans under the applicable statutes, thereby qualifying the Bank to avoid the stamp and intangible taxes fully or in part. The court granted summary judgment for the Bank and denied the Department's summary judgment motion.

The Department filed a timely notice of appeal and challenges the denial of its motion. It asks that we direct the trial court to enter summary judgment for the Department.

II.

The trial court's order denying the Department's motion for final summary judgment is reviewed de novo. *Johnson v. Johnson*, 413 So. 3d 872, 875 (Fla. 1st DCA 2025). Issues of statutory interpretation are also reviewed de novo. *Crapo v. Univ. Cove Partners, Ltd.*, 298 So. 3d 697, 700 (Fla. 1st DCA 2020) (citing *Coastal Creek Condo. Ass'n v. Fla. Tr. Servs. LLC*, 275 So. 3d 836, 838 (Fla. 1st DCA 2019)). Summary judgment is appropriate when the moving party shows the absence of any genuine issues of material fact—where “facts are so crystallized that nothing remains but questions of law” and the moving party is entitled to judgment as a matter of law. *Washington v. Fla. Dep't of Rev.*, 337 So. 3d 502,

508 (Fla. 1st DCA 2022). However, “[o]nce a court determines the summary judgment record contains conflicting evidence on a material issue of fact from which a factfinder could reach different conclusions by crediting some evidence over other evidence, the court . . . simply denies summary judgment and allows the case to proceed to trial.” *CG Tides LLC v. SHEDDF3 VNB, LLC*, 388 So. 3d 1081, 1084 (Fla. 3d DCA 2024).

Here we must assess whether the Bank supplied admissible summary judgment evidence sufficient to prevent the trial court from granting the Department’s motion. The Department’s first argument in support of its summary judgment motion involves the Bank’s stamp-tax refund claim*. The Department asserts that the

* The applicable stamp tax provision in § 201.09, Florida Statutes, provides that when a loan renews for more than the unpaid balance of the original loan, a tax is due only on the “increase” or new money associated with the renewal note:

(1) When any promissory note is given in renewal of any existing promissory note, which renewal note only extends or continues the identical contractual obligations of the original promissory note and evidences part or all of the original indebtedness evidenced thereby, not including any accumulated interest thereon and without enlargement in any way of the original contract and obligation, such renewal note shall not be subject to taxation under this chapter if such renewal note has attached to it the original promissory note with the proper notation thereon as required by s. 201.133. In order to be exempt from taxation under this section, a renewal note evidencing a term obligation shall not be executed by any person other than the original obligor and must renew and extend only the unpaid balance of the original contract and obligation. In order to be exempt from taxation under this section, a renewal note evidencing a revolving obligation shall not be executed by any person other than the original obligor and must renew and extend no more than the original face amount of the original contract and obligation. *A renewal note evidencing a term obligation which increases the unpaid*

new home loans given to borrowers by the Bank were not “given in renewal of” the borrowers’ earlier loans and mortgages as required by § 201.09(1). Instead, the Department views the Bank’s new loans to be “novations” in which the Bank discharged the borrowers’ original debts and entered new, unconnected loan agreements with them.

The problem with this argument is that, whereas the Department asserts no link between the borrowers’ original and new home loans, the Bank supplied admissible summary judgment evidence to establish that the borrowers’ prior home loans were renewed with new home loans from the Bank. Specifically, the Bank filed summary judgment exhibits—including the Department-prepared spreadsheet with the 980-loan sample together with an affidavit from its Senior Vice President, Home Equity Manager explaining and documenting how the loans were refinanced. The Department conceded in its summary judgment motion that the spreadsheet of loan information provided evidence from which the Court could evaluate all 9800 loans in the case:

balance of the original contract and obligation but which otherwise meets the exemption criteria of this section is taxable only on the face amount of the increase. A renewal note evidencing a revolving obligation which increases the original face amount of the original contract and obligation but which otherwise meets the exemption criteria of this section is taxable only on the amount of the increase.

(2) When any mortgage, trust deed, security agreement, or other evidence of indebtedness evidences a promissory note which would not be subject to taxation pursuant to subsection (1), then such mortgage, trust deed, security agreement, or other evidence of indebtedness shall not be subject to taxation under this chapter.

§ 201.09, Fla. Stat. (emphasis added).

6. The Department and [Bank] agreed to review a sample of 980 loans to make a determination for the full refund request of 9800 loans. The parties have agreed to use this sampling as the evidence in this case.

The 980-loan spreadsheet supported the Bank's case that the new home loans were linked to the prior home loans made from the Bank to identical borrowers. This data together with the Bank's affidavit identified loans that extended the contractual obligations from the borrowers' original mortgages and notes through to the new home loans. And even though the Bank recorded "satisfactions" of the original home loans once the new loans were finalized, the evidence indicated that the borrowers' obligations to pay the balance on their original loans to the Bank did not vanish. Rather, the obligations of the old loans listed on the spreadsheet were rolled into the new loans listed on the spreadsheet consistent with the loans being renewed. Thus, the Bank's summary judgment evidence showed that it refinanced loans that could qualify for the stamp tax exemption under § 201.09. We see no error in the trial court's decision to deny the Department's summary judgment motion.

Nor do the Department's definitional arguments about the terms "renewal" and "renewal notes," as used in § 201.09, alter this result. The Department distinguishes the statute's reference to renewal notes with its view that the Bank's home loans were novation-type agreements involving "the making of a new loan . . . and the satisfaction of the prior loan." But again here, the agreed summary judgment record lends substantial evidentiary support to the trial court's conclusion that the borrowers' obligations under the prior home loans were not satisfied but were extended and rolled into new mortgage-backed loans. § 201.09(1), Fla. Stat. (exempting from tax the renewal note that "extends or continues the identical contractual obligations); *see also* Fla. Adm. Code R. 12B-4.052(12)(a) (referring to a "renewal" obligation as a written agreement "that alters or modifies the contract or obligation of a previous promissory note, mortgage, . . . or other evidence of indebtedness by [changing various terms]"; *Renewal Note*, Black's Law Dictionary 1273 (12th ed. 2024) (defining "renewal note" as "[a] note that continues an obligation that was due under a prior note"). According to the Bank's evidence, the loans involved here were refinanced by exchanging the existing balances on debts for new debts; repaying existing loans

with money acquired from new loans; replacing old contracts with new contracts; and producing notes that continued the obligations due under prior notes.

The Department next argues that its summary judgment motion should be granted because the Bank didn't show that it could meet the statutory attachment and proper notation requirement of the stamp-tax exemption. *See* § 201.09(1), Fla. Stat. (exempting renewal notes from taxation "if such renewal note has attached to it the original promissory note with the proper notation thereon as required by s. 201.133"). According to the Department, the original notes with proper notation must have been attached to the renewal notes for the Bank to prevail. But we see no error in the trial court's application of this statute given how notations operate in the mortgage context. The trial court explained that attaching notes bearing the § 201.133 notation does not fit in the mortgage-loan context because tax-payment notations are made only on the mortgage (the document that requires the payment of tax) instead of on the note. *See* § 201.08(1)(b), Fla. Stat. ("When there is both a mortgage . . . and a note . . . , the tax shall be paid on the mortgage . . . at the time of recordation."); *see also* § 201.133 (requiring a notation "shall be made on each individual document requiring tax"). Because mortgage-backed notes lack a "proper notation thereon," the Bank couldn't have violated § 201.09(1)'s attachment-with-proper-notation requirement by not attaching the un-notated notes involved in this case. As discussed above, the Bank did supply other evidence linking the loans. When the Bank requested refunds, the summary spreadsheet shows that it supplied evidence to the Department linking the borrowers' original home loans to the renewal loans and showing that stamp taxes were paid. The spreadsheet includes a column indicating if taxes were paid on each borrowers' loan transactions. All to say, because mortgage-backed notes aren't notated in accordance with § 201.133, and because the summary judgment evidence indicated that the "new promissory notes [were] given in renewal of existing promissory notes" under § 201.09(1), we do not see error in the trial court's decision related to the notated-note attachment provision or in the transaction-related proof supplied by the Bank.

The remainder of the Department's arguments for reversal revolve around its view that the Bank failed to support its refund

claims with admissible evidence and loan-specific documentation. But the Department did not make these same challenges below. In fact, both parties assured the trial court multiple times that no factual disputes existed in the case, only legal questions. Nor did the Department seek rehearing to dispute the trial court's conclusions that "[b]oth parties agree that there are no material facts in dispute," or that the "Court's own review confirms that there are no material facts in dispute by the parties." Consequently, we conclude that the Department waived arguments involving the veracity and sufficiency of the Bank's evidence by not making them below, as well as by agreeing in its summary judgment motion "to use [the spreadsheet] sampling [of the loans] as the evidence in this case."

III.

For these reasons, the judgment of the circuit court is AFFIRMED.

M.K. THOMAS and NORDBY, JJ., concur.

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

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