2012 WL 3822403 (Ala.Civ.App.) (Appellate Brief)
Court of Civil Appeals of Alabama.

David SPARKS, as Administrator of the Estate of Joe Sparks, Appellant,
v.
REVERSE MORTGAGE SOLUTIONS, INC., Appellee.

No. 2110721.
July 23, 2012.

On Appeal from the Circuit Court of Talladega County, Alabama
Civil Action No. CV-10-388
No Oral Argument Requested

Brief of the Appellee

Of Counsel: Sirote & Permutt, P.C., 2311 Highland Avenue South, Post Office Box 55727, Birmingham, AL 35255-5727, Tel.: (205) 930-5100, Fax: (205) 930-5101, E-Mail Addresses: sporterfield@sirote.com, rdaugherty@sirote.com

Stephen B. Porterfield (POR014), R. Ryan Daugherty (DAU008), Attorneys for Appellee, Reverse Mortgage Solutions, Inc.

*I STATEMENT REGARDING ORAL ARGUMENT

Appellee Reverse Mortgage Solutions, Incc does not request oral argument. The issues in this appeal can be decided by reference to well-established law and the record as submitted. Therefore, Reverse Mortgage Solutions, Inc. does not believe that oral argument would aid the Court in deciding the issues raised in this appeal.

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*iii STATEMENT OF JURISDICTION

This appeal is from a civil case where the amount involved, exclusive of interest and costs, did not exceed $50,000. Therefore, jurisdiction is proper in this Court pursuant to Ala. Code § 12-3-10 (1975).

*iv TABLE OF AUTHORITIES

*1 STATEMENT OF THE CASE

Appellee Reverse Mortgage Solutions, Inc. (“RMS”) sets forth its own Statement of the Case as follows:

This action was filed as a breach of contract action by the Appellant, David Sparks, and was filed in David Sparks's capacity as the Administrator of the Estate of Joe Sparks (David Sparks is referred to hereinafter as “the Administrator”). (C. 5-6.) The Administrator contended that his father, Joe Sparks (“Sparks”), entered into a reverse mortgage contract with RMS's predecessor in interest and that RMS breached that contract prior to Sparks's death. (*Id.*) Specifically, the Administrator claimed that RMS was obligated to fund a draw request made by the Administrator on behalf of Sparks, but that RMS improperly denied the request. (*Id.*)

RMS answered the Complaint, denying the allegations and contending that, due to Sparks's intervening death, the Administrator's power of attorney had lapsed and RMS consequently had no obligation to fund the request. (C. 12-14.) RMS filed a Motion for Summary Judgment, attaching the affidavit of its President and Chief Operating Officer, ***2** Marc Helm, which in turn attached the evidence supporting to RMS's arguments. (C. 18-66.)

The Administrator filed a Response in Opposition to the motion, contending that because RMS had never sent a “notice of default” upon Sparks's death, RMS was obligated to fund the draw. (C. 67-97.) The Response in Opposition also included the Administrator's own Motion for Summary Judgment on the Administrator's affirmative claim. (*Id.*)

RMS filed a Response in Opposition to the Administrator's Motion for Summary Judgment. (C. 101-04.) The trial court held a hearing on both motions for summary judgment and entered an order requesting further letter briefs from the parties. (C. 105-06.)

Pursuant to the trial court's order, RMS filed its letter brief (C. 107-09), the Administrator responded (C. 110-13), and RMS filed a further reply (C. 114-15). After considering these filings, the trial court rendered and entered a final order granting

RMS's Motion for Summary Judgment and denying the Administrator's Motion for Summary Judgment. (C. 116-17.) The Administrator did not file any post judgment motions, and this appeal followed. (C. 118-21.)

*4 STATEMENT OF THE ISSUES

I. Whether the trial court properly granted summary judgment in favor of RMS on the Administrator's claims that RMS wrongfully denied a draw request where the Administrator's principal died prior to RMS's receipt of the draw request.

*5 STATEMENT OF THE FACTS

The Statement of the Facts provided by the Administrator does not adequately reflect all of the facts pertinent to this appeal. Therefore, RMS sets forth its own Statement of the Facts as follows:

On January 26, 2009, Sparks executed an Adjustable-Rate Note ("Note") in favor of Urban **Financial** Group. (C. 29-32.) The Note was secured by an Adjustable Rate Home Equity Conversion Mortgage ("Mortgage"), also executed and delivered by Sparks on January 26, 2009. (C. 33-43.) On the same date, Sparks also executed a Home Equity Conversion Loan Agreement ("Loan Agreement"), which set forth further terms for the disbursement of funds loaned pursuant to the Note and secured by the Mortgage. (C. 44-52.)

The Note, Mortgage, and Loan Agreement, when taken together, are commonly known as a "reverse mortgage." In a reverse mortgage, the lender disburses loan proceeds to the borrower and in return takes a mortgage on the borrower's real property. The loan proceeds can be disbursed all at once, or can be disbursed periodically in draw requests made by the borrower. (See C. 44-52.) This **financing** ***5** arrangement permits **elderly** individuals with a fixed income, or no income, to utilize the equity accumulated in their real property. *See Cooper v. Fed. Nat'l Mort., Ass'n*, No. 2090983, 2011 WL 2573462 at * 1 (Ala. Civ. App. June 30, 2011)("Reverse mortgages are designed to enable **elderly** homeowners to convert the equity in their homes to monthly streams of income or lines of credit."). Upon the borrower's death, the loan balance is due and the property may be foreclosed unless the loan is satisfied in full. (C. 35-36.)

The Note executed by Sparks states in pertinent part as follows:

7. IMMEDIATE PAYMENT-IN-FULL

(A) Death or Sale

Lender may require immediate payment-in-full of all outstanding principal and accrued interest if:

(i) Borrower dies and the Property is not the principal residence of at least one surviving Borrower; or

(ii) All of a Borrower's title in the Property (or his or her beneficial interest in a trust owning all or part of the Property) is sold or otherwise transferred and no other Borrower retains title to the Property in fee simple or retains a leasehold under a lease for not less than 99 years which is renewable or a lease having a remaining period of not less than 50 years beyond the beneficial ***6** interest in a trust with such an interest in the Property).

(C. 30-31.)

The Mortgage executed by Sparks provides in pertinent part as follows:

9. Grounds for Acceleration of Debt.

(a) Due and Payable. Lender may require immediate payment-in-full of all sums secured by this Security Instrument if:

(i) A Borrower dies and the Property is not the principal residence of at least one surviving Borrower; or

(ii) All of a Borrower's title in the Property (or his or her beneficial interest in a trust owning all or part of the Property) is sold or otherwise transferred and no other Borrower retains title to the Property in fee simple or retains a leasehold under a lease for not less than 99 years which is renewable or a lease having a remaining period of not less than 50 years beyond the beneficial interest in a trust with such an interest in the Property).

(C. 35-36.)

15. Successors and Assigns Bound; Joint and Several Liability. The covenants and agreements of this Security Instrument **shall bind and benefit the successors and assigns of Lender**. Borrower may not assign any rights or obligations under this Security Instrument or under the Note, except to a trust that meets the requirements of the Secretary....

(C. 38)(emphasis added.)

***7** On June 17, 2010, Sparks purportedly executed a "Durable Power of Attorney" in favor of the Administrator. (C. 58-61.) On June 18, 2010, the Administrator "as Attorney in fact," executed and sent to RMS [1] via United States Postal Service Priority Mail a "Line of Credit Draw Request Form." (C. 63-64.) The Line of Credit Draw Request Form ("Draw Request") was for $30,936.67. (*Id.*) Sparks passed away on June 21, 2010 at 11:13 AM. (C. 66) (Certificate of Death.) The Draw Request was received by RMS on June 21, 2010. (C. 26; 63.) The Confirmation Receipt provided by the United Sates Postal Service indicates that the Draw Request was received by RMS at 11:42 AM, after the time of Sparks's death. (C. 89.)

The Loan Agreement and Draw Request form both provide that any draw requests do not have to be made until five business days after a draw request is received by RMS. (C. 47) (Section 2.6.2); (C. 63.) Marc Helm, RMS's President and ***8** Chief Operating Officer, testified that for all draw requests over $25,000.00, RMS is required to conduct an Internet search for death notices regarding the borrower. (C. 26)) Helm also testified that "[n]o draw requests are processed once RMS becomes aware that the last surviving borrower is deceased because the loan has become due and payable." (*Id.*)

On June 23, 2010, two days after receiving the Draw Request, RMS discovered that Sparks had died on June 21, 2010. (C. 26)) Therefore, RMS informed the Administrator that RMS could not fund the Draw Request and that it would be denied, (*Id.*) On November 8, 2010, RMS's attorney served a notification that RMS would be foreclosing on the Mortgage. (C. 91-93.) The Administrator filed the underlying Complaint in this action on November 19, 2010. (C. 2.)

***9 STATEMENT OF THE STANDARD OF REVIEW**

Appellate review of a summary judgment granted by the trial court is de novo. *Ex parte Ballew*, 771 So. 2d 1040 (Ala. 2000). A motion for summary judgment is to be granted when no genuine issue of material fact exists and the moving party is entitled to a judgment as a matter of law. Ala. R. Civ. P. 56(c)(3). RMS filed its properly supported Motion for Summary Judgment, and thereby made a prima facie showing that there was no genuine issue as to any material fact and that it was entitled to a judgment as a matter of law. *See Ex parte Generll Motoss Corp.*, 769 So. 2d 903, 909 (Ala. 1999). The burden was thereafter upon the Administrator to submit some **substantial evidence** to defeat RMS's Motion for Summary Judgment. *Id.*; Ala. Code § 12-21-12.

When a non-movant fails to submit substantial evidence in opposition to a Motion for Summary Judgment, as the Administrator has failed to do in this case, then the trial court must enter summary judgment for the movant, because a trial would be useless. *Ex parte General Motors Corp.*, 769 So. 2d at 909.

***10** Additionally, while the entry of summary judgment is subject to *de novo* review, this Court will "affirm the trial court on any valid legal ground presented by the record, regardless of whether that ground was considered, or even if it was rejected, by the trial court." *Liberty Nat'l Life Ins. Co. v. Univ. of Ala. Health Serv. Found., P.C.*, 881 So. 2d 1013, 1020 (Ala. 2003).

*11 SUMMARY OF THE ARGUMENT

The trial court properly granted summary judgment in favor of RMS on the Administrator's claims. The Draw Request submitted by the Administrator was improper due to fact that Sparks died before RMS received the Draw Request.

The Administrator does not dispute this. Instead, the Administrator's sole argument on appeal is that RMS was obligated to serve a "notice of default" on Sparks prior to denying the Draw Request. The Administrator's argument is factually and legally incorrect. This Court has made clear that in the event of the death of the only Borrower under a reverse mortgage, where that death is considered an event of default, there is no legal obligation to serve a notice of a default prior to enforcing the terms of the loan. *See Cooper v. Fed. Nat'l Morg. Ass'n*, No. 2090983, 2011 WL 2573462 at *3-4 (Ala. Civ. App. June 30, 20111 *cert. denied*, No. 1110587 (Ala. May 11, 2012). Thus, RMS properly denied the Draw Request, and proceeded to enforce the terms of the Mortgage.

Moreover, it is undisputed that Sparks's death preceded RMS's receipt of the Draw Request. Thus, RMS did not have an obligation to disburse the funds pursuant to the loan ***12** documents. The loan documents provide a five day window in which RMS researches the propriety of the Draw Request. It was during this time that RMS discovered Sparks's death and thereafter properly denied the Draw Request.

In addition, the Draw Request was made pursuant to a power of attorney in favor of the Administrator. The power of attorney absolutely and instantaneously terminated upon Sparks's death. Therefore, at the time RMS received the Draw Request, it was considered as being made pursuant to a terminated power of attorney and was, consequenty,, void.

*13 ARGUMENT

The Administrator argues that RMS was obligated to pay $30,936.67 to him, despite the fact that the borrower under the loan, Sparks, was deceased. Once RMS became aware of Sparks's death, it had to consider the loan in default and due and payable. RMS was consequently unable to fund the Draw Request. The Administrator has no rights under the Note, the Mortgage, or the Loan Agreement, and is not entitled to the requested funds.

The Administrator's primary argument is that RMS did not send a notice of default prior to denying the Draw Request. This argument is misplaced, however, because no such notice was required under the loan documents. Sparks's death was the event of default, and the Mortgage provides that no notice of default is required in that event. *See Cooper v. Fed. Nat'l Mortg. Ass'n*, No. 2090983, 2011 WL 2573462 at * 3-4 (Ala. Civ. App. June 30, 2011).

In addition, immediately upon Sparks's death, the power of attorney in favor of the Administrator immediately terminated. Therefore, once RMS discovered the death, it could not fund the Draw Request as the power pursuant to which the request was being made had terminated.

*14 I. Because the loan was in default immediately upon Spark's death, RMS could not fund the Draw Request.

The Mortgage and Note both provide that the loan would be considered in default and subject to immediate payment in full upon the death of the only Borrower. (C. 35-36; 30-31.) Sparks was the only Borrower on the loan and upon his death the loan was consequently considered in default. (*Id.*) It is undisputed that RMS did not receive the Draw Request until after Sparks's death. (C. 26; 63; 89.)

The Draw Request form executed by the Administrator specifically provided that RMS had up to five business days in which to make the requested disbursement. (*See* CC 6363 The Loan Agreement similarly provides this five day window for disbursement. (C. 47.) This policy is in place so that RMS may make the appropriate investigation of the request, including an investigation into whether the borrower is deceased. (*See* CC 24-277)(Hem Affidavit testifying to RMS's policies and procedures.) The record is clear, and the Administrator does not dispute, that Sparks died prior to RMS's receipt of the Draw Request. (C. 26; 63; 89.)

Even though Sparks's death preceded RMS's receipt of the Draw Request by a matter of minutes, the legal effect is the same. While it is true that RMS could not have known ***15** of Sparks's death at the instant of its receipt of the Draw Request, this circumstance illustrates the exact purpose of the five day investigation period. The investigation permitted RMS to look back and construe the status of the parties at the time the Draw Request was **received** by RMS. *(See* C. 47)(duty to disburse does not arise until request is "received"). The Administrator does not dispute this, but contends instead that the Draw Request could not be denied until a notice of default was sent. As explained below, that argument is misplaced.

A. the Loan documents do not require a notice of default where the event of default is the dealth of the only borrower.

The Administrator's entire argument, both in the trial court and on appeal, is that after becoming aware of Sparks's death, RMS was obligated to send a notice of default prior to denying the Draw Request. (Appellant's Brief at pp. 9-14.)[2] P The Administrator's argument ignores ***16** the clear language of the Mortgage stating that where the event of default is death, no such notice of default is required prior to proceeding with enforcement of the loan agreement. (C. 35-36.) *See also, e.g.*, *Cooper v. Fed. Nat'l Mortg. Ass'n*, No. 2090983, 2011 WL 2573462 at * 3-4 (Ala. Civ. App. June 30, 2011), *cert. denied*, No. 1110587 (Ala. May 11, 2012).

The Mortgage specifies events of default in Paragraph 9. (C. 35-36.) There, it is stated that the Lender may require payment in full of the loan if "(i) A Borrower dies and the Property is not the principal residence of at least one surviving borrower...." (C. 35.) (*See also* CC 30-31) (similar language used in Note.) Sparks was the only "Borrower" under the Mortgage, therefore, immediately upon his death the loan was considered in default.

This Court has already addressed the Lender's requirement to send a notice of default where the event of default is the only Borrower's death. In *Cooper*, this Court held that prior to the Lender enforcing the terms of an identical reverse mortgage a notice of default was not required if the default was the death of the only remaining Borrower. *See Cooper*, 2011 WL 2573462 at * 3-4. *Cooper* was ***17** a post-foreclosure ejectment case where the Borrower's heir contended that the Lender improperly enforced the Mortgage by foreclosure. The heir contended that a notice of default was not served by the Lender after her father's death, and therefore that the foreclosure was unlawful. *Id.* This Court considered the terms of the reverse mortgage at issue in that case in depth and held that a notice of default was not required if the event of default is under Paragraph 9(a) (i) (death of only Borrower), but would only be required under Paragraph 9 (a) (ii) (sale of property by Borrower to third party). *Id.* The Court's holding was as follows:

However, Fannie Mae was entitled to a summary judgment regardless of whether the lender delivered the October 3 letter to the house because (1) the default upon which the lender based its acceleration of the debt and its invoking of the power of sale was Mason's death, which resulted in the house not being the principal residence of at least one Borrower and (2) **Paragraph 9 of the mortgage does not require the lender to give the borrower notice of such a default**. Paragraph 9(a)(i) of the mortgage provides that the lender could require immediate payment of all sums secured by the mortgage if "[a] Borrower dies and the [house] is not the principal residence of at least one surviving Borrower." However, Paragraph 9(d) of the mortgage does not require the lender to give the borrower notice of a default under Paragraph 9(a)(i). Paragraph 9(d), which states in pertinent part that "Lender shall notify the ... Borrower whenever the loan becomes due and payable under Paragraph 9 (a) (ii) ...." (emphasis added), **requires *18 the lender to give the borrower notice of a default under Paragraph 9(a) only if the default was under Paragraph 9(a)(ii)**.

Id. at *3 (emphasis added).

The Court's decision in *Cooper* was legally and factually correct. A notice of default is not required under Paragraph 9(a)(i) because if the only Borrower is deceased, there is **no way to cure the default**. The **only** option to preserve the property after the death of the last Borrower is for an interested party to pay off the loan in full. Moreover, it would be impossible to serve the notice upon the deceased individual. The notice requirements were clearly written into the Mortgage with these facts in mind.

Wells Fargo's actions in *Cooper* constituted enforcement of the reverse mortgage at issue in that case. In the present case, RMS's denial of the Administrator's Draw Request was also its beginning step in enforcing the terms of the Mortgage. RMS in fact proceeded to foreclose the Mortgage, and the Administrator did not attempt to stop the foreclosure or purchase the property to preserve whatever equity may have existed in the property.

The Court's decision in *Cooper* was sound, and the Administrator has not asked the Court to overrule that ***19** decision. Instead, the Administrator attempts to distinguish *Cooper* by contending that a provision in the **Loan Agreement** requires a notice of default. (See Appellant's Brief at p. 10.) The Administrator cites Article 4.1 of the Loan Agreement for his position. Article 4.1, however, states that the notice must be sent only if "required under one or more of the Loan Documents." In other words, Article 4.1 does not establish an independent basis for a notice, but requires a notice only where "required under one or more of the Loan Documents." The Mortgage and Note are the only other "Loan Document[s]," and neither requires a notice of default in the event of death. *See Cooper*, 2011 WL 2573462 at * 3-4; (C. 35-36; 30-31.)

Even though the Administrator insists that a notice is required, he fails to provide the Court with any source for the allegedly required notice. Therefore, the distinction drawn by the Administrator that *Cooper* reviewed the "Mortgage," instead of the "Loan Agreement" is ultimately a distinction without a difference. Pursuant to *Cooper*, no notice of default and demand for immediate payment was required prior to enforcement of the mortgage where the ***20** event of default is death. Consequently, Article 4.1, which relies on the Mortgage, also does not require a notice and the Administrator's argument is misplaced. Therefor,, the trial court was correct in denying the Administrator's Motion for Summary Judgment, and in granting RMS's Motion for Summary Judgment. (C. 116-17.)

B. The terms of loan documents did not inure to the benefit of the Administrator after Sparks' death.

Upon Sparks's death, any rights under the loan contract to receive funds immediately terminated. These rights could not be assigned by Sparks. The Mortgage specifically states that "[t]he covenants and agreements of this [Mortgage] shall bind and benefit the successors and assigns of Lender. Borrower may not assign any rights or obligations under this [Mortgage] or under the Note, except to a trust that meets the requirements of the Secretary." (C. 38)) The Loan Agreement provides similar language and states that the "Borrower may not assign any rights or obligations under this Loan Agreement." (C. 51.)

Upon Sparks's death, the Administrator, in neither his administrative nor personal capacity, had the right to demand the Draw Request. The terms of the loan agreement ***21** did not inure to his benefit, and it would have been impossible for RMS to fund the payment to Sparks, who at that time was deceased.

II. Immediately upon Spark's death the power of attorney terminated and the Draw Request was improperly made.

The Administrator made the Draw Request premised upon his purported authority under a power of attorney. (C. 58-61; 63.) RMS was not obligated to disburse the funds because the death of a principal "operates as an instantaneous revocation of the power conferred" by a power of attorney. [3] *See Scruggs v. Driver*, 31 Ala. 274 ((857). Once RMS learned of Sparks's death during the five day investigation period, it could not consider the Draw Request as a valid exercise of the power, even though the Draw Request was executed prior to the date of death. The Draw Request was not **received** until after Sparks's death, therefore the obligation was not completed.

***22** In the *Scruggs* case two parties were negotiating an agreement for the purchase of property belonging to Ms. Driver. Ms. Driver was negotiating the sale of the property through her agent, who had been appointed by a power of attorney. The parties exchanged terms for the sale, agreed in principle on the terms, and later signed contracts for the sale of the property on February 10, 1853. Ms. Driver, however, had died the day before the contracts were executed and completed. The purchasers sought to rescind the contracts of purchase and the trial court granted the rescission, holding the contracts void due to the death of the agent's principal. The Alabama Supreme Court affirmed the chancellor's decision, holding that regardless of the negotiations and apparent agreement preceding the written contract, the contract was not "completed" until after the principal's death, at which time the agent was without power to act on behalf of his principal. *Id.* at 286. Particularly relevant to this case, the Court noted that the principal's "death on the 9th February, 1853, operated an **instantaneous** revocation of the power conferred by her letter of attorney on" her agent, thereby making the contracts completed the next day void and unenforceable. ***23** *Id.* at 284 (emphasis added). *See also Bush v. Flynt*, 257 F. App'x 241, 243 (11th Cir. 2007) (recognizing an identical rule under Georgia law and affirming trial court's ruling that agent did not have authority to mail change of beneficiary forms after principal's death); *Saltmarsh v. Smith*, 32 Ala. 404 (1858) (deed executed by agent after principal's death void because death revoked power of attorney).

The parties in *Driver* did not know of the principal's death at the time the contract was signed. Regardless, the contract had to be invalidated because of the legal effect of the principal's death. A similar circumstance presents itself in this case. Here, the agreement to fund the balance of the Line of Credit was not complete until after RMS had received the request form and the five day period for investigation had passed. During this time period, it was discovered that the principal had died prior to RMS's receipt of the Draw Request. As such, RMS had to consider the Administrator's power revoked, the request void, and consequently could not fund the disbursement.

It is true that under Alabama's power of attorney statute if RMS had acted upon the Draw Request in ignorance ***24** of Sparks's death then the action would be binding on Sparks's successors in interest. *See* Ala. Code § 26-1-2.[4] In other words, the other heirs, devisees, or claimants of Sparks's estate could not have asserted that RMS wrongly disbursed the funds to the Administrator if RMS had acted in ignorance. RMS was not ignorant of the principal's death in this case, however, where RMS became aware that the principal had died and had become so aware prior to the time that it was obligated to fund the request. To have funded the request under these circumstances would have exposed RMS to potential suits or claims from Sparks's successors in interest. *See Ferrentino v. Dime Sav. Bank of New York, F.S.B.*, 159 Misc. 2d 690, 692, 606 N.Y.S.2d 554, 555 (Sup. Ct. 1993)(holding that death terminates agency, attorney in fact had no right to withdraw funds, and bank would be liable for allowing withdrawal).

***25 CONCLUSION**

The right to the funds demanded in the Complaint does not exist. Sparks's intervening death caused the right to the funds to never vest, and RMS correctly and legally denied the request. No notice of default was required to be sent prior to this denial, as evidenced by the contract documents and this Court's decision in *Cooper v. Fed. Nat'l Mortg. Assn*, No. 2090983, 2011 WL 2573462 (Ala. Civ. App. June 30, 2011). Moreover, Sparks's death immediately terminated the Administrator's power of attorney, rendering the Draw Request void. The trial court was therefore proper in denying the Administrator's Motion for Summary Judgment, and in granting RMS's Motion for Summary Judgment. That decision is due to be affirmed.

***26** s/ R. Ryan Daugherty

Stephen B. Porterfield (POR014)

R. Ryan Daugherty (DAU008)

Attorneys for Appellee

REVERSE MORTGAGE SOLUTIONS,INC.

OF COUNSEL:

SIROTE & PERMUTT, P.C.

2311 Highland Avenue South

Post Office Box 55727

Birmingham, AL 35255-5727

Tel.: (205) 930-5100

Fax: (205) 930-5101

E-mail addresses:

sporterfield@sirote.com

rdaugherty@srote.ccom

Footnotes

1 The loan was originally in favor of "Urban **Financial** Group." At all times pertinent to this action, the loan had already been transferred to RMS. Sparks was communicating with RMS prior to his death and the Administrator sent the Draw Request directly to RMS. It was undisputed by the Administrator in the trial court, and is not disputed in this appeal, that RMS properly held Sparks's loan and had the right to enforce the loan obligations.

2 The parties' arguments were clearly focused on the "notice of default" issue in the trial court. To the extent any other arguments were alluded to in the trial court by the Administrator, those arguments have not been made on appeal and have therefore been abandoned. *See Ware v. Deutsche Bank Nat'l Trust Co.*, 75 So. 3d 1163, 1171 (Ala. 2011)("An argument not made on appeal is abandoned or waived. 'Issues not argued in the appellant's brief are waived."') (citations omitted).

3 The trial court initially rejected this termination argument. (See C. 105-06.) The trial court was unclear in its final order as to whether its final order in favor of RMS was premised, in whole or in part, on this argument. (C. 116-17.) Regardless, this Court may "affirm the trial court on any valid legal ground presented by the record, regardless of whether that ground was considered, or even if it was rejected, by the trial court." *Liberty Nat'l Life Ins. Co. v. Univ. of Ala. Health Servs. Found., P.C.*, 881 So. 2d 1013, 1020 (Ala. 2003).

4 Alabama has adopted a new statutory scheme applicable to powers of attorney executed after January 1, 2012. *See* Ala. Code § 26-1A-101 through § 26-1A-404. The new statutes are not applicable to Administrator's power of attorney as it was executed prior to January 1, 2012. *See* Ala. Code § 26-1A-103.

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