

UNPUBLISHED  
**UNITED STATES COURT OF APPEALS**  
FOR THE FOURTH CIRCUIT

DARLENE CURTIS,  
*Plaintiff-Appellant,*

v.

PRINCIPAL RESIDENTIAL MORTGAGE  
CORPORATION; FIRST PRESTON  
MANAGEMENT CORPORATION,  
*Defendants-Appellees,*

and

SECRETARY OF HOUSING AND URBAN  
DEVELOPMENT; GEORGE McMILLAN,  
Sheriff of Roanoke,  
*Defendants.*

No. 02-1237

Appeal from the United States District Court  
for the Western District of Virginia, at Roanoke.  
James C. Turk, Senior District Judge.  
(CA-01-869-7)

Submitted: January 31, 2003

Decided: March 6, 2003

Before LUTTIG, WILLIAMS, and TRAXLER, Circuit Judges.

---

Affirmed by unpublished per curiam opinion.

---

**COUNSEL**

Gary M. Bowman, Roanoke, Virginia, for Appellant. Kevin W. Holt,  
GENTRY, LOCKE, RAKES & MOORE, Roanoke, Virginia;

Michael F. Urbanski, John Cotton Richmond, WOODS, ROGERS & HAZELGROVE, P.L.C., Roanoke, Virginia, for Appellees.

---

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

---

### OPINION

PER CURIAM:

Darlene Curtis appeals the district court's final order granting summary judgment to the Defendants. Curtis contends First Preston Management Corporation erred by denying her application for an occupied conveyance. We find First Preston's denial of Curtis' application for an occupied conveyance was not "plainly erroneous or inconsistent with the regulation." *Auer v. Robbins*, 519 U.S. 452, 461 (1997) (internal quotation marks omitted). Curtis also contends the district court erred by granting summary judgment to Principal Residential Mortgage Corporation prior to her receiving notice of the motion. We find any error harmless. *See Fender v. General Elec. Co.*, 380 F.2d 150, 152 (4th Cir. 1967) (concluding that district court's consideration of summary judgment before counter-affidavits were due was harmless error because, among other reasons, there was "no material surprise," and Fender did not contradict General Electric's proof); *see also Powell v. United States*, 849 F.2d 1576, 1580 (5th Cir. 1988) (applying a harmless-error analysis to a district court's grant of summary judgment sua sponte without ten-day notice); *Harrington v. Vandalia-Butler Bd. of Educ.*, 649 F.2d 434, 436-37 (6th Cir. 1981) (same).

Accordingly, we affirm the district court's final order. Having granted the Appellees' motion to submit the case on briefs, we dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

*AFFIRMED*