SUPERIOR COURT OF PENNSYLVANIA

Stop Blight Inc. v. Marcia M. Dinardo

2023 PA Super 188 (Superior Court of Pennsylvania 2023) · No. 251 WDA 2022 · Decided September 29, 2023

SUMMARY

The Pennsylvania Superior Court affirmed the dismissal of Stop Blight, Inc.'s petition to appoint a conservator over a blighted property under the Abandoned and Blighted Property Conservatorship Act. The court held that the mortgage foreclosure action remained pending because the foreclosure judgment had not been satisfied by a completed sheriff's sale, despite periods of delay and the absence of an active writ of execution when the conservatorship petition was filed. The court also rejected the trial court's waiver ruling based on deficiencies in the Rule 1925(b) order and the effect of the bankruptcy stay.

CASE DETAILS

COURT	Superior Court of Pennsylvania
WRITING FOR THE COURT	Bowes, J.; Bender, P.J.E.; Sullivan, J.
JURISDICTION	Pennsylvania
DECIDED	September 29, 2023
DOCKET	251 WDA 2022
DISPOSITION	affirmed
PROCEDURAL POSTURE	Stop Blight Inc. appealed from an order sustaining the preliminary objections of United States Financial Enterprises, LLC, an intervenor, and dismissing with prejudice its petition for appointment as conservator under the Abandoned and Blighted Property Conservatorship Act.
STANDARD OF REVIEW	The court reviewed the statutory-construction issue de novo. For the order granting preliminary objections, it applied the same standard as the trial court and reviewed for legal error.
PRECEDENTIAL VALUE	Published Pennsylvania Superior Court opinion; precedential.
PARTIES	Stop Blight Inc. v. Marcia M. Dinardo

TOPICS

foreclosure · statutory interpretation · appellate procedure · bankruptcy · standard of review

PRACTICE AREAS

civil procedure · appellate procedure · statutory interpretation · foreclosure · bankruptcy

QUESTIONS PRESENTED

1. Whether a mortgage foreclosure action remains pending under 68 P.S. § 1105(d)(3) after entry of a foreclosure judgment but before completion of a sheriff's sale.
2. Whether the absence of an active writ of execution at the time of the conservatorship petition caused the foreclosure action to cease being pending.
3. Whether Stop Blight waived its appellate issues by filing its Pa.R.A.P. 1925(b) statement late.

HOLDINGS

1. A mortgage foreclosure action remains pending until the sheriff's sale is concluded; entry of a foreclosure judgment alone does not terminate the action.
2. The foreclosure action remained pending despite the seven-month delay between dismissal of Dinardo's bankruptcy case and the intervenor's renewed request for a writ of execution because the delays were not so egregious or unreasonable as to render the action fatally inactive.
3. Stop Blight's issues were not waived because the trial court's Rule 1925(b) order did not strictly comply with the rule and was therefore unenforceable.

KEY QUOTATIONS

> *"Thus, both the judgment in foreclosure and the sheriff's sale to realize that judgment comprise the mortgage foreclosure action. Stated simply, until a sheriff's sale is concluded, the judgment remains unsatisfied and the action remains pending."* (2023 PA Super 188, at 9)

> *"Thus, we agree with the trial court's conclusion that SBI could not prove, at the time it filed the petition for appointment of a conservator, that a mortgage foreclosure action was not pending on the property."* (2023 PA Super 188, at 12)

FACTUAL BACKGROUND

Marcia M. Dinardo mortgaged the Pittsburgh property in 2009 and later defaulted. United States Financial Enterprises, LLC initiated mortgage foreclosure proceedings in 2015, obtained a judgment in 2018, and pursued writs of execution and a sheriff's sale, which was delayed by Dinardo's bankruptcy filings. Stop Blight filed its conservatorship petition during a seven-month gap after dismissal of one bankruptcy case and before the intervenor renewed its request for a writ of execution.

PROCEDURAL HISTORY

Stop Blight filed a conservatorship petition concerning Dinardo's property. The intervenor filed preliminary objections based on its pending mortgage foreclosure action. The Court of Common Pleas of Allegheny County sustained the objections and dismissed the petition with prejudice, then denied reconsideration. The Superior Court rejected the trial court's waiver analysis concerning the Rule 1925(b) statement but affirmed on the merits.

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Jones, 193 A.3d 957, 961 (Pa. Super. 2018)
- Citizens Bank of Pennsylvania v. Myers, 872 A.2d 827, 833 (Pa. Super. 2005)
- Richmond v. McHale, 35 A.3d 779, 783 (Pa. Super. 2012)
- Scioli Turco, Inc. v. Prioleau, 207 A.3d 346, 350-351 (Pa. Super. 2019)
- Financial Freedom, SFC v. Cooper, 21 A.3d 1229, 1231 (Pa. Super. 2011)
- New York Guardian Mortgage Corp. v. Dietzel, 524 A.2d 951, 953 (Pa. Super. 1987)
- Nationstar Mortgage, LLC v. Lark, 73 A.3d 1265, 1267 (Pa. Super. 2013)
- Erreichen, Inc. v. Dinardo, Docket No. GD 19-005962 (Ct. Com. Pl. Feb. 14, 2020)