OHIO COURT OF APPEALS, TENTH APPELLATE DISTRICT

Wells Fargo Fin. Ohio 1, Inc. v. Doe(s)

2018-Ohio-1472 (Ohio Ct. App. 2018) · No. 17AP-727 · Decided April 17, 2018

SUMMARY

The Ohio Tenth District Court of Appeals reviewed a default-judgment ruling in a mortgage foreclosure action. The court held that the trial court should consider whether an amendment to Ohio Revised Code 5301.07 cured a defect in the mortgage acknowledgment, while noting potential retroactivity issues involving the decedent's heirs and other beneficiaries. It affirmed the default judgment on the promissory-note claim, reversed the denial of default judgment on the foreclosure claim, and remanded for further proceedings.

CASE DETAILS

COURT	Ohio Court of Appeals, Tenth Appellate District
WRITING FOR THE COURT	Dorrian, J.; Luper Schuster, J.; Horton, J.
JURISDICTION	Ohio
DECIDED	April 17, 2018
DOCKET	17AP-727
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Wells Fargo appealed the trial court's partial grant and partial denial of its motion for default judgment in an action seeking judgment on a promissory note and foreclosure of a mortgage.
STANDARD OF REVIEW	The grant or denial of a motion for default judgment is reviewed for abuse of discretion. An abuse of discretion occurs when the trial court's decision is unreasonable, arbitrary, or unconscionable.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals decision
PARTIES	Wells Fargo Financial Ohio 1, Inc. v. John Doe(s), names unknown et al.

TOPICS

foreclosure · default judgment · real estate · appellate procedure · civil procedure

PRACTICE AREAS

real estate law | foreclosure | civil procedure | appellate procedure | remedies

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by denying default judgment on the mortgage foreclosure claim based on a defective acknowledgment clause.
2. Whether the amended version of R.C. 5301.07(C), which provides that certain defects in recorded real-property instruments are cured after four years, should be considered in determining whether the mortgage acknowledgment defect was cured.
3. Whether the appellate court should decide in the first instance whether the amended statute applies retroactively in light of R.C. 5301.07(G) and potential vested rights of the decedent's heirs or beneficiaries.

HOLDINGS

1. Because it was unclear whether the trial court had considered the recently amended R.C. 5301.07(C), the appellate court declined to resolve the statute's effect in the first instance and remanded for the trial court to consider that issue.
2. The judgment was affirmed insofar as it granted default judgment on the promissory-note claim and reversed insofar as it denied default judgment on the mortgage-foreclosure claim.
3. A party may seek default judgment under Civ.R. 55(A) when the opposing party fails to plead or otherwise defend, and the trial court's grant or denial of default judgment is reviewed for abuse of discretion.

KEY QUOTATIONS

> *"Under Civ.R. 55(A), when a party against whom a judgment is sought fails to plead or otherwise defend as provided in the rules, the opposing party may apply to the court for a default judgment in its favor."* (¶ 5)

> *"As it is unclear whether the trial court considered the effect of the recent amendment to R.C. 5301.07(C) on its conclusion that the Mortgage was not a valid first lien on the property due to the defective acknowledgment clause, we decline to do so in the first instance here. Rather, we find it appropriate to remand to the trial court for consideration of that issue."* (¶ 9)

FACTUAL BACKGROUND

Whittington executed a promissory note and mortgage in 2007 for property in Columbus, Ohio. The mortgage was recorded on July 2, 2007, and the complaint alleged that the note and mortgage were in default; Whittington was deceased and potential estate representatives and heirs were unknown. The mortgage acknowledgment clause contained a blank instead of the mortgagor's name and referred to the person as "Mortgagor" rather than "Borrower."

PROCEDURAL HISTORY

Wells Fargo filed a complaint in the Franklin County Court of Common Pleas alleging default on a promissory note and mortgage and seeking foreclosure. After defendants failed to answer or otherwise defend, Wells Fargo moved for default judgment. The trial court granted default judgment on the note but denied default judgment on the foreclosure claim, concluding that the mortgage acknowledgment clause was defective and that the mortgage was not a valid lien. The appellate court affirmed the judgment on the note, reversed the denial of default judgment on the foreclosure claim, and remanded for consideration of the amended version of R.C. 5301.07(C) and related retroactivity issues.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Franklin County Court of Common Pleas was instructed to consider the effect of the amended R.C. 5301.07(C) on whether the defective mortgage acknowledgment was cured, including any applicable retroactivity limitations under R.C. 5301.07(G), and to conduct further proceedings consistent with law and the appellate decision.

CASES CITED

- Bank of Am., N.A. v. Malone, 10th Dist. No. 11AP-860, 2012-Ohio-3585, ¶ 18
- Blakemore v. Blakemore, 5 Ohio St.3d 217, 219 (1983)