

SUPREME COURT OF THE STATE OF DELAWARE

Shaw v. Bank of America, N.A.

No. 552, 2014 · No. No. 552, 2014 · Decided April 21, 2015

SUMMARY

The Delaware Supreme Court affirmed the Superior Court’s summary dismissal of Corrine Shaw’s motion for relief from a mortgage-foreclosure judgment under Superior Court Civil Rule 60(b). The Court held that Shaw’s arguments concerning Bank of America’s standing and the bankruptcy discharge of the debt had already been rejected and could not be used to substitute for a timely appeal.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Leo E. Strine, Jr., Chief Justice; Valihura, Justice; Vaughn, Justice
JURISDICTION	Delaware
DECIDED	April 21, 2015
DOCKET	No. 552, 2014
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Superior Court's summary dismissal of Shaw's motion for relief from judgment under Delaware Superior Court Civil Rule 60(b) in a mortgage foreclosure action.
STANDARD OF REVIEW	Abuse of discretion; the Court found no error or abuse of discretion in the Superior Court's summary dismissal of the Rule 60(b) motion.
PRECEDENTIAL VALUE	Published Delaware Supreme Court order; precedential status is not expressly characterized in the opinion text.
PARTIES	Corrine Shaw v. Bank of America, N.A., successor by merger with BAC Home Loans Servicing, LP, formerly known as Countrywide Home Loans, assignee of Mortgage Electronic Registration Systems, Inc., as nominee for Hamilton National Mortgage Company

TOPICS

- motion for reconsideration
- appellate procedure
- foreclosure
- bankruptcy
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Shaw could use a motion for relief from judgment under Rule 60(b) as a substitute for a timely appeal from the prior foreclosure judgment.
2. Whether Shaw demonstrated a Rule 60(b) ground warranting relief from the Superior Court's foreclosure judgment.

HOLDINGS

1. A party may not use a Rule 60(b) motion to relitigate claims previously decided in an unappealed order or as a substitute for a timely appeal from that order.
2. Shaw was not entitled to relief under Rule 60(b) because she failed to demonstrate mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, misrepresentation, misconduct, voidness, satisfaction, release, discharge, reversal or vacation of a prior judgment, or another equitable reason justifying relief.

KEY QUOTATIONS

“Under Delaware law, Shaw is prohibited from using her Rule 60(b) motion as a substitute for a timely-filed appeal from the Superior Court’s July 8, 2014 order.” (¶ 12)

FACTUAL BACKGROUND

In 2005, Corrine Shaw executed a mortgage securing a \$325,000 loan on her Delaware residence, and the note and mortgage were later transferred or assigned to Bank of America. Shaw stopped making payments in 2009, after which Bank of America accelerated the debt and filed an in rem mortgage foreclosure action. Shaw later filed for Chapter 7 bankruptcy, but after the stay was lifted the foreclosure proceeded and judgment was entered for Bank of America. Shaw's subsequent Rule 60(b) motion repeated claims that Bank of America lacked standing and that the debt had been discharged in bankruptcy.

PROCEDURAL HISTORY

Bank of America obtained a judgment in an in rem mortgage foreclosure action after the Superior Court Commissioner found that the mortgage was valid, unpaid, and supported by Bank of America's entitlement to foreclose. The Superior Court affirmed the Commissioner's orders, and Shaw did not appeal that July 8, 2014 order. Shaw instead filed a Rule 60(b) motion raising previously rejected arguments concerning Bank of America's standing and the effect of her bankruptcy; the Superior Court dismissed the motion as frivolous. The Delaware Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Bank of America v. Shaw, 2014 WL 4956672 (Del. Super. July 8, 2014)
- White v. State, 2007 WL 604723 (Del. Feb. 28, 2007)
- State v. Skinner, 632 A.2d 82, 84 (Del. 1993)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE CORRINE SHAW No. 552, 2014 Defendant Below, Appellant, Court Below — Superior Court of the State of Delaware in and v. for New Castle County BANK OF AMERICA, N.A., successor by merger with BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS assignee of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC, as nominee for HAMILTON NATIONAL MORTGAGE COMPANY, CA.

No. N11L-08—086 Plaintiff Below, Appellee. mmmmmmmmmmmmmmmmmmmmmmmmm Submitted: February 6, 2015 Decided: April 21, 2015 Before STRINE, Chief Justice, VALIHURA and VAUGHN, Justices. 0 R D E R This 21St day of April 2015, upon consideration of the briefs of the parties and the Superior Court record, it appears to the Court that (1) The defendant/appellant, Corrine Shaw, filed this appeal from the Superior Court’s order dated September 17, 2014 that summarily dismissed her “motion for relief from judgment” in a mortgage foreclosure action.

We find no merit to the appeal. Accordingly, we AF FIRM. (2) In 2005, Shaw entered into a mortgage agreement with Hamilton National Mortgage Company. The mortgage secured a \$325,000.00 loan against Shaw’s residential property in Bear, Delaware (hereinafter “the Property”).

Under the terms of the mortgage, Shaw promised to pay the loan in monthly installments. The mortgage also provided that if Shaw defaulted, the mortgage company could require immediate payment in full on the loan secured by the mortgage.

In 2006, the mortgage was assigned and the note was transferred to the plaintiff/appellee, Bank of America (“BOA”). (3) In September 2009, Shaw stopped making the monthly mortgage payments. Thereafter, Shaw was notified that she was in default and that if the default was not cured, BOA would accelerate the balance due on the loan secured by the mortgage.

(4) In August 20] 1, BOA filed an in rem scirefacias sur mortgage action against Shaw, seeking all sums due under the mortgage. In December 2012, at BOA’s request, the matter was transferred to the dormant docket. In July 2013, at BOA’s request, the matter was transferred back to the active docket, and BOA filed a motion for judgment.

In August 2013, Shaw filed an answer in opposition to the motion, claiming that the mortgage was “void” because BOA was “not the holder in due course of the Original Note.”. w (5) In September 2013, Shaw filed for Chapter 7 bankruptcy, which effectively stayed the Superior Court action.

In 2014, when the stay was lifted, BOA revived its motion for judgment. (6) The Superior Court Judge assigned to the case referred BOA’s motion for judgment to a Commissioner for consideration and disposition. At a hearing held on February 28, 2014, Shaw’s son, Levance Richardson (“Richardson”), asked to appear on behalf of Shaw who, he said, was unable to attend due to illness.

Richardson also asked to intervene in the action, contending that Shaw had recently signed a quitclaim deed that purported to assign her interest in the Property to him. When BOA objected, arguing that a quitclaim deed was in violation of the terms of Shaw’s mortgage, the Commissioner denied Richardson’s request to intervene as a party to the action.

As a “courtesy,” however, the Commissioner allowed Richardson to participate in the hearing on behalf of Shaw. At the hearing, Richardson argued that the mortgage was void because BOA was not the “holder in due course,” and that the debt secured by the mortgage was discharged in bankruptcy.

(7) At the conclusion of the February 28, 2014 hearing, the Commissioner granted BOA’s motion for judgment. The Commissioner concluded that there was a valid mortgage that was not paid, and that Shaw had not pled a meritorious defense to the action brought by BOA as the proper party in interest.

In a written 3 order entered on February 28, 2014, the Commissioner entered a judgment in BOA’s favor in the amount of \$412,542.70. (8) Thereafter, between February 28, 2014 and March 13, 2014, Shaw and Richardson filed motions and amended motions asking the Commissioner to “reconsider” the February 28, 2014 order. By orders dated March 12 and March 17, 2014, the Commissioner denied the motions and amended motions.

(9) Shaw and Richardson appealed the Commissioner’s February 28, 2014, March 12 and March 17, 2014 orders to the Superior Court Judge assigned to the case. In motions and amended motions filed between March 25, 2014 and May 5, 2014, Shaw and Richardson argued that Richardson should be allowed to intervene in the action, that the mortgage was void due to BOA’S lack of standing to bring the action, and that the debt secured by the mortgage was discharged in bankruptcy.

After granting Shaw additional time to obtain the transcript of the February 28, 2014 hearing, the Superior Court entered an order on July 8, 2014 that affirmed the Commissioner’s February 28, 2014 and March 12 and 17, 2014 orders.

The court ruled that BOA had met its “burden of proving that it is legally entitled to foreclosure,” and that Shaw “did not present evidence to the contrary.”¹ (10) Shaw did not appeal the Superior Court’s July 8, 2014 order to this Court, as she had a right to do. Instead, on August 15 and August 25, 2014, Shaw I Bank of America v. Shaw, 2014 WL 4956672, at 119 (Del.

Super. July 8, 2014). 4 filed a motion and an amended motion for relief from judgment under Superior Court Civil Rule 60(b) (“Rule 60(b)"). (11) Under Rule 60(b), the Superior Court has discretion to relieve a party from a final judgment upon a showing of mistake, inadvertence, surprise, excusable neglect, newly-discovered evidence, fraud, misrepresentation or other misconduct, voidness, satisfaction, release, discharge, reversal or vacation of a prior judgment, or any other equitable reason justifying relief from judgment.² Shaw sought relief under Rule 60(b) on the basis of her previously rejected claims that BOA lacked standing to bring the action, and that the debt was discharged in bankruptcy.

By order dated September 17, 2014, the Superior Court dismissed Shaw’s Rule 60(b) motion as frivolous, noting that Shaw was “not entitled to litigate and re-litigate this mortgage foreclosure as she [sees] fit.” This appeal followed.

(12) On appeal from the dismissal of her Rule 60(b) motion, Shaw continues to claim that BOA lacked standing to file the action, and that the debt was discharged in bankruptcy. Having carefully considered the parties’ briefs on appeal and the Superior Court record, we find no error or abuse of discretion in the Superior Court’s summary dismissal of Shaw’s Rule 60(b) motion.

It is clear from the record that Shaw’s Rule 60(b) motion raised claims that were considered by the 3 Del. Super. Ct. Civil R. 60(b). Superior Court and denied as without merit in the court’s order of July 8, 2014, which Shaw did not appeal.

Under Delaware law, Shaw is prohibited from using her Rule 60(b) motion as a substitute for a timely-filed appeal from the Superior Court’s July 8, 2014 order.³ On appeal from the Superior Court’s September 17, 2014 order, Shaw has failed to demonstrate the existence of mistake, inadvertence, surprise, excusable neglect, newly-discovered evidence, fraud, misrepresentation or other misconduct, voidness, satisfaction, release, discharge, reversal or vacation of a prior judgment, or any other equitable reason justifying relief from judgment, as required by Rule 60(b).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED. BY THE COURT: 3 White v. State, 2007 WL 604723 (Del. Feb. 28, 2007) (citing State v. Skinner, 632 A.2d 82, 84 (Del. 1993)). 6