EFiled: Dec 30 2013 02:14PM EST
Filing ID 54768220
Case Number 506,2012

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEUTSCHE BANK NATIONAL TRUST COMPANY, as trustee for Morgan Stanley ABS CAPITAL I, INC. TRUST 2005-HE2,	)	No. 506, 2012
Plaintiff-Below Appellant	)	
v.	)	
NANCY GOLDFEDER c/o EMIL MIKHAIL, Guardian ad Litem,	)	
Defendant-Below Appellee	)	

Appellee's Supplement Memorandum

The Honorable Charles E. Butler had a hearing on October 17, 2013 and heard testimony and issued his decision in accordance with the Remand on November 12,2013. The lower Court found that the following on the four questions asked:

QUESTION:

1. Whether Goldfeder was given adequate notice of the sheriff's sale, and if so,the record support for that finding.

RESPONSE:

Goldfeder was given "adequate notice" under the rules, but was not given "actual notice"

The lower Court after hearing testimony from Dr. Mikhail and found that Goldfeder was not given actual notice which was not disputed by the Appellant the Court stated at page 2 of its decision "[w] hile the bank remains skeptical, there is really no reason to doubt that neither Dr. Mikhail nor Ms. Goldfeder had actual notice of the impending sheriff's sale of the property at 1601 N. Union Street." It is the Appellee's position actual notice should control in this situation and it is clear from the record that actual notice was not given in this case.

QUESTION:

2. Whether the delay in seeking relief was caused, in whole or in part, by Goldfeder's incompetence.

RESPONSE:

Yes

The Appellant takes issue with the lower Court's finding but clearly the Court relied on the decision by the Social Security Administration's Office of Disability Adjudication and Review which found that Ms. Goldfeder was disabled due to her mental condition. In fact the lower Court further found that if the Court was called upon to make a ruling on the evidence presented "the Court would find that she is incompetent". The lower Court was clear on this issue and the Appellant takes great exception to the Court finding arguing that there was no medical testimony and ignores the Social Security decision that found her disabled based on several reports from medical personnel and a score of 25 on the Global Assessment of Functioning scale which according to the Diagnostic and Statistical Manual of Mental Disorders – Fourth Edition, "a 'GAF' score of 21-30 reflects an 'inability to function in almost all areas'" (Lower Court's decision at page 4). There can be no question that Ms. Goldfeder incompetence was in whole part the reason for the delay in seeking relief.

QUESTION:

3. Whether the delay is excusable despite the fact that a medical professional was aware of Goldfeder's medical condition and was involved in helping her avoid defaulting on her mortgage.

RESPONSE:

Yes

The lower Court heard the testimony of Dr. Mikhail and found that he first became aware of the Sheriff Sale in January 2012 based on his testimony and exhibits and the Court stated at page 8 of its decision "if the Court accepts that Dr. Mikhail learned of the sale in January 2012, the Court must accept that he acted with due diligence thereafter". Again the Appelant takes exception to the Court's ruling based on the fact that Dr. Mikhail has a personal interest in the outcome and not a disinterested party. However, the Court addresses those issues in his decision and correctly finds on page 9 of its decision that until the filing of the guardian ad Litem in July 2012 "Dr. Mikhail had no legally cognizable relationship to Ms. Goldfeder or the property".

QUESTION:

Whether Deutsche Bank was prejudiced and, if so, the basis for the finding that the prejudice was relatively limited.

RESPONSE:

The lower Court ruled that the Appellant's " prejudice is the understandable Frustration at having a flawed sheriff's sale, a pesky legal dispute and a property of Dubious value as collateral. These elements are hardly cause for celebration, but neither do they constitute 'prejudice' warranting some different result (at page 10 of the Lower

Court's decision). The Appellant's arguments were all addressed by the Lower Court's Decision and it is the Appellee's position that they have a valid defense to the foreclosure action and there were numerous procedural and factual defects in the action.

On or about October 22, 2008 the Appellant filed a complaint in this Court for a mortgage foreclosure against the Appellee Nancy Goldfeder and alleged in paragraph three that Appellant was the originator of the mortgage. (See complaint paragraph 3). However, the lender was "Home Funds Direct" which was a division of Accredited Home Lenders, a sub-prime lender which collapsed and filed Bankruptcy here in Delaware in 2009 (Book Case 09-111516 MFW, District of Delaware). However, at the time Appellant had no interest in the mortgage it was not the originator of the mortgage and it was learned later that they were assigned the mortgage on June 22, 2009. The problem with that is that Accredited Home Lender filed for Bankruptcy on May 1, 2009 and the alleged assignment was signed after that dated but there was an automatic stay and Appellant did not obtain a relief or stay order nor is there from information and belief any record of David Perry who signed the assignment as "Asst. Vice President." Therefore, it is Appellee's position that Plaintiff had no interest in the mortgage at the time the complaint was filed and therefore the whole action is in question and should be considered void. These are issues that should be addressed by the Lower Court so her underlying merits of the claim can be addressed.

Respectfully Submitted,

/s/ Leo John Ramunno, Esquire
LEO JOHN RAMUNNO, ESQUIRE
Bar Id No. 2003
5149 W. Woodmill Drive, Suite 20
Wilmington, DE 19808
302-654-0660
Attorney for Appellees'