

No. 1-15-2314

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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BANK OF AMERICA, N.A.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	
SIMON GIVENS, JR.; CAPITAL ONE BANK (USA),	)	
N.A. f/k/a CAPITAL ONE BANK; SIMON GIVENS;	)	
UNKNOWN HEIRS AND LEGATEES OF SIMON	)	No. 14 CH 11203
GIVENS, JR., if any; UNKNOWN HEIRS AND	)	
LEGATEES OF SIMON GIVENS, if any;	)	
UNKNOWN OWNERS AND NON RECORD	)	
CLAIMANTS,	)	
	)	
Defendants	)	Honorable
	)	Bridget A. Mitchell,
(Simon Givens, Jr., Defendant-Appellant).	)	Judge Presiding.

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JUSTICE CUNNINGHAM delivered the judgment of the court.  
Justices Rochford and Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's appeal is dismissed for lack of appellate jurisdiction as the order appealed was not from a final order or judgment.

¶ 2 *Pro se* defendant-appellant, Simon Givens, Jr. (Givens), appeals the circuit court's entry of summary judgment in favor of plaintiff-appellee Bank of America (the bank) and its corresponding judgment of foreclosure. On appeal, Givens argues that the circuit court erred in granting summary judgment because there was a genuine issue of material fact as to whether or not the bank committed fraud. The bank counters that we do not have jurisdiction to consider Givens' appeal because the foreclosure judgment was not a final order and did not contain language pursuant to Supreme Court Rule 304(a) (eff. Feb. 26, 2010). The bank argues in the alternative that the motion for summary judgment was properly granted as there was no genuine issue of material fact which could prohibit a judgment of foreclosure. We agree with the bank that we lack jurisdiction to consider the merits of this case and dismiss this appeal.

¶ 3 BACKGROUND

¶ 4 It is undisputed that Givens, together with his mother (who passed away in 2010), executed a mortgage on October 2, 1997 related to the property located at 6525 South Mozart Avenue, Chicago, Illinois. That mortgage secured a loan to Givens and his mother in the amount of \$86,500 from St. Paul Federal Bank for Savings. The bank is in possession of the endorsed note, executed by Givens and his mother as evidence of the loan.

¶ 5 The bank filed its foreclosure complaint on July 8, 2014, alleging that Givens failed to make the required payments, and that the current balance of the unpaid principal is \$64,208.20.

¶ 6 Givens filed his answer on January 2, 2015, admitting all seven paragraphs alleged in the bank's foreclosure complaint, but asserted an affirmative defense that alleged the bank committed fraud related to the modification of his mortgage in 2011. In the trial court he further argued that pursuant to an insurance policy allegedly purchased by his mother, the bank should have paid off the remaining balance on the mortgage when his mother passed away in 2010.

¶ 7 On January 30, 2015, the bank filed a motion for summary judgment, arguing that it was entitled to summary judgment because Givens' affirmative defense failed to assert any specific conduct by the bank demonstrating fraud, so as to raise a genuine issue of material fact.

¶ 8 On April 7, 2015, the bank filed a motion for judgment of foreclosure.

¶ 9 On April 14, 2015, Givens filed his opposition to the motion for summary judgment, in which he again asserted that the bank had committed fraud related to the modification of his mortgage. In that filing, he claimed that he had been unsuccessful so far in trying to locate the insurance policy allegedly purchased by his mother for the mortgage.

¶ 10 On May 26, 2015, the bank filed a reply brief, again arguing that Givens had failed to state any specific conduct by the bank demonstrating fraud.

¶ 11 On July 14, 2015, the circuit court granted the bank's motion for summary judgment and motion for a judgment of foreclosure. The judgment of foreclosure ordered a redemption period set to expire on October 14, 2015, and stated that a judicial sale would occur after the redemption period had expired.

¶ 12 On August 11, 2015, Givens filed a notice of appeal from both the order for summary judgment and the judgment of foreclosure.

¶ 13 ANALYSIS

¶ 14 This court has an obligation to determine whether cases brought before us for resolution are within our jurisdiction. Accordingly, we first address whether we have jurisdiction to reach the merits of the case.

¶ 15 Our supreme court has stated "[i]t is well settled that a judgment ordering the foreclosure of mortgage is not final and appealable until the trial court enters an order approving the sale and directing the distribution." *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419 ¶ 11. A judgment

ordering the foreclosure of mortgage is not final and appealable "because it does not dispose of all the issues between the parties." *Id.* While a judgment of foreclosure is final as to the matters it adjudicates, the trial court still must consider whether to enter a later order approving the foreclosure sale. *Id.*

¶ 16 Accordingly, it is the order confirming the sale that operates as the final and appealable order in a foreclosure case. *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 12 (quoting *Kemp*, 2012 IL 113419 ¶ 11). The judgment of foreclosure does not terminate litigation and does not operate as the final and appealable order. *Kemp*, 2012 IL 113419 ¶ 11.

¶ 17 Rule 304(a) allows interlocutory judgments to be appealable if the trial court makes an express finding that there is no just reason for delaying enforcement or appeal. Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). Therefore, without Rule 304(a) (Ill. S. Ct. R. 304(a)) language added to a judgment of foreclosure, the judgment is interlocutory and not appealable. *Kemp* at ¶ 12.

¶ 18 In this case, there was only a judgment of foreclosure. There was no order approving the sale, in fact, no sale had been scheduled or held at the time Givens filed his notice of appeal. Givens filed his notice of appeal on August 11, 2015, but the redemption period on the foreclosure was not to expire until October 14, 2015. As noted, the circuit court did not enter language pursuant to Rule 304(a) which would make the judgment of foreclosure appealable. Therefore, we do not have jurisdiction to hear this case.

¶ 19 **CONCLUSION**

¶ 20 Without a final judgment or a proper Rule 304(a) finding, we lack jurisdiction to consider the merits of this case. For the reasons stated, we dismiss this appeal for lack of jurisdiction.

¶ 21 Appeal dismissed.