

No. 1-18-0092

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

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| FIRST HORIZON HOME LOANS, a Division of First |) | |
| Tennessee Bank National Association, |) | |
| |) | |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | |
| |) | |
| RENATO GARCIA a/k/a RENATO D. GARCIA; |) | |
| MORTGAGE ELECTRONIC REGISTRATION |) | |
| SYSTEMS, INC., AS NOMINEE FOR RBS CITIZENS, |) | |
| N.A.; WELMA GARCIA a/k/a WELMA C. GARCIA; and |) | |
| UNKNOWN OWNERS AND NON-RECORD |) | |
| CLAIMAINTS, |) | |
| |) | |
| Defendants |) | |
| |) | |
| (Renato Garcia and Welma Garcia, Defendants- |) | |
| Appellants). |) | |

Appeal from the
Circuit Court of
Cook County

No. 12 CH 9576

The Honorable
John J. Curry, Jr.,
Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Justices Griffin and Walker concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed. Defendants’ appeal is moot, as the subject property has been conveyed to a nonparty and defendants failed to perfect a stay under Rule 305(b).

¶ 2 Defendants Renato and Welma Garcia (collectively, defendants) appeal from the circuit court’s confirmation of a judicial sale in this mortgage foreclosure action, as well as from various

circuit court orders entered during the litigation. Plaintiff First Horizon Home Loans, a division of First Tennessee Bank National Association,¹ has moved to dismiss defendants' appeal as moot because after the final judgment, the subject property was conveyed to a nonparty to the litigation and defendants failed to perfect a stay of enforcement of the judgment in accordance with Illinois Supreme Court Rule 305(b) (eff. July 1, 2017). For the reasons that follow, we dismiss this appeal as moot.

¶ 3

I. BACKGROUND

¶ 4 We set forth only those facts necessary to understand our disposition. In July 2003, defendants executed a promissory note in favor of First Horizon Home Loan Corp., the repayment of which was secured by a mortgage on defendants' home. In March 2012, plaintiff initiated this mortgage foreclosure action, alleging that defendants had defaulted on their payment obligations under the mortgage and note. Copies of the mortgage and note were attached to plaintiff's complaint. The copy of the note reflects that First Horizon Home Loan Corp. indorsed the note in blank. Through counsel, defendants moved to dismiss the complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2014)), arguing that the complaint identified plaintiff as the mortgagee, but that the note attached to plaintiff's complaint identified First Horizon Home Loan Corp. as the mortgagee. Defendants argued that "there is no evidence in the record" indicating that plaintiff and First Horizon Home Loan Corp. were the same entity, and therefore plaintiff lacked standing. After briefing and a hearing, the circuit court denied defendants' motion to dismiss.

¹In the circuit court, MTGLQ Investors, L.P. was substituted as the party plaintiff after First Horizon assigned the judgment of foreclosure and sale to MTGLQ. All subsequent orders entered in the circuit court—as well as the plaintiff's motion to dismiss this appeal—identify First Horizon as the plaintiff. While confusing, this discrepancy has no bearing on our disposition.

¶ 5 Defendants filed an answer to plaintiff's complaint and raised several affirmative defenses. The affirmative defenses asserted that (1) plaintiff lacked standing; (2) there was no evidence to show how plaintiff obtained the note indorsed in blank; (3) plaintiff failed to send an acceleration notice; and (4) plaintiff was not a holder in due course. Federal National Mortgage Association ("Fannie Mae") filed "Plaintiff's Response to Defendant's [*sic*] Affirmative Defenses." Plaintiff also filed a motion for summary judgment on its complaint. Defendants filed their own motion for summary judgment, arguing that plaintiff failed to file a response to defendants' affirmative defenses, since Fannie Mae was "not the Plaintiff and thus, [has] no authority to file anything is [*sic*] this case."

¶ 6 The circuit court denied defendants' motion for summary judgment, and found that defendants' affirmative defenses would not be deemed admitted because they were not well-pleaded. Plaintiff withdrew its first motion for summary judgment and filed a second motion for summary judgment, along with a motion for a judgment of foreclosure and sale, motion to appoint a selling officer, and other related motions, along with supporting affidavits. After briefing and a hearing, the circuit court entered summary judgment in favor of plaintiff, entered a judgment of foreclosure and sale, and appointed a selling officer. The property was sold at a judicial auction on September 11, 2017, and plaintiff was the highest bidder. Plaintiff moved to confirm the judicial sale. On December 11, 2017, after briefing and a hearing, the circuit court confirmed the judicial sale and entered an order of possession in favor of plaintiff. Defendants filed a timely notice of appeal. Plaintiff filed a motion to dismiss this appeal, which we ordered to be taken with the case. Plaintiff has not filed an appellee brief. We ordered this appeal to be taken on the record and defendants' brief only.

¶ 7

II. ANALYSIS

¶ 8 Plaintiff's motion to dismiss asserts that after the circuit court confirmed the judicial sale, the property was conveyed to a nonparty. Plaintiff's motion is supported by documents reflecting that on February 7, 2018, plaintiff recorded the judicial sale deed with the Cook County recorder of deeds. On April 17, 2018, plaintiff executed a special warranty deed in favor of Wee Builders Corp., which was recorded on May 1, 2018. On November 20, 2018, Wee Builders executed a warranty deed in favor of William Rivera, which was recorded on December 27, 2018. Publically available documents on the Cook County recorder of deeds's website—of which we may take judicial notice (*City of Chicago v. Soludczyk*, 2017 IL App (1st) 162449, ¶ 3 n.1)—are consistent with the representations in plaintiff's motion. Plaintiff argues that defendants failed to seek or perfect a stay of the confirmation of sale under Rule 305(b), and that this appeal is now moot and should be dismissed.

¶ 9 A different panel of this court initially granted the motion to dismiss, as defendants had not filed a response. Defendants moved to vacate the dismissal and sought leave to file a response, which we granted. In their response, defendants do not contest that the property has been conveyed to a nonparty. Defendants argue that their appeal is not moot, however, because they are seeking “money damages against [plaintiff] for the wrongfully taken of [*sic*] their property.” Defendants further contend that they “are not seeking possession or ownership of the subject property.”²

¶ 10 We have carefully examined defendants' appellant's brief and conclude that nowhere in their brief do they seek money damages as relief on appeal. Instead, their brief states:

²They further contend that settlement negotiations between the parties contemplated money damages, but they fail to substantiate this argument with any citations to the record or to any properly authenticated nonrecord materials.

“[We] respectfully request of this Honorable Court that you reverse and vacate the findings of the Trial Court and find that [the subject] property was wrongfully taken thereby reversing the Orders granting Summary Judgment and Confirming the Sale and granting Defendant Steward [*sic*] any further relief that this Honorable Court deems fair, just and equitable.”

¶ 11 It is clear that defendants are seeking reversal of the orders granting summary judgment and confirming the judicial sale. Their brief does not request money damages, does not request that we remand this matter to the circuit court in the event that we reverse the judgment, and does not request that we enter judgment in their favor. Nor do defendants direct our attention to any portion of the record that might demonstrate that they have ever pursued any counterclaims against plaintiff for any money damages under any theory of relief. We therefore reject defendants’ assertion that their purported request for money damages is a sufficient basis to support a finding that this appeal is not moot.

¶ 12 We find that this appeal is moot because we cannot provide defendants with any meaningful relief. Supreme Court Rule 305(k) provides

“If a stay is not perfected within the time for filing the notice of appeal, *** the reversal or modification of the judgment does not affect the right, title or interest of any person who is not a party to the action or to any real or personal property that is acquired after the judgment becomes final and before the judgment is stayed; nor shall the reversal or modification affect any right of any person who is not a party to the action under or by virtue of any certificate of sale issued pursuant to a sale based on the judgment and before the judgment is stayed.” Ill. S. Ct. R. 305(k) (eff. July 1, 2017).

¶ 13 Rule 305(k) protects a third-party purchaser of property from the reversal or modification of a judgment regarding that property, absent a stay of judgment pending the appeal, if: (1) the property passed pursuant to final judgment, (2) the right, title, and interest of the property passed to a party who is not a party to the action, and (3) the litigating party failed to perfect a stay of judgment within the time allowed for filing a notice of appeal. *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 523-34 (2001); *Deutsche Bank National Trust Co. v. Roman*, 2019 IL App (1st) 171296, ¶ 23.

¶ 14 All three conditions are met here. The property was sold at a judicial sale, which was subsequently confirmed in a final judgment. The property was conveyed twice after final judgment to nonparties, and defendants never perfected or even sought a stay of the circuit court's judgment. And as noted above, defendants have not requested money damages as their relief. Therefore, we cannot vacate or reverse either the judgment of foreclosure and sale or the order confirming the judicial sale, as William Rivera's rights in the property are protected under Rule 305(k). Because we cannot provide defendants any meaningful relief, this appeal is moot.

¶ 15

III. CONCLUSION

¶ 16 For the foregoing reasons, we dismiss defendants' appeal as moot.

¶ 17 Appeal dismissed.