

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

BAC Home Loans Servicing, LP, etc.

Court of Appeals No. L-11-1195

Plaintiff

Trial Court No. CI0200906186

v.

Ronald M. Blankenship

Cross-Appellee

v.

The Mortgage Firm, Inc., et al.

DECISION AND JUDGMENT

Cross-Appellant

Decided: June 21, 2013

* * * * *

Andrew D. Neuhauser and Richard Alston, for cross-appellee Ronald M. Blankenship.

Robert H. Eddy, Eric Wineland and Colleen A. Mountcastle, for cross-appellant Shore Financial Services, d.b.a. United Wholesale Mortgage.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is the second of two appeals considered by this court from a July 11, 2011 judgment of the Lucas County Court of Common Pleas in foreclosure proceedings brought by BAC Home Loans Servicing, LP (“BAC”) against Ronald M. Blankenship. A detailed history of the litigation is set forth in our earlier decision and judgment in *BAC Home Loans Servicing, LP v. Blankenship*, 6th Dist. No. L-11-1199, 2013-Ohio-2360.

{¶ 2} This appeal is brought by third-party defendant/cross-appellant Shore Financial Services d.b.a. United Wholesale Mortgage (“Shore Financial”) against Ronald M. Blankenship (the defendant/third-party plaintiff and cross-appellee).

{¶ 3} The dispute arises out of a mortgage loan used to refinance Blankenship’s home. Shore Financial was the original mortgagee on Blankenship’s loan. Mortgage Firm, Inc. (“Mortgage Firm”) was the loan broker. The loan was an FHA loan. Blankenship borrowed \$87,290 and executed an FHA Multistate Fixed Rate Note and an FHA Ohio Open-end Mortgage with MERS. The Federal Housing Administration (“FHA”) insures the note and mortgage.

{¶ 4} In its complaint, BAC asserted rights as a holder of the note and alleged that Blankenship was in default of his obligations under the note and mortgage securing the note. Blankenship filed a counterclaim against BAC and a third-party complaint against Shore Financial and Mortgage Firm.

{¶ 5} In a judgment filed on March 24, 2011, the trial court ruled on a series of motions filed by the parties. In the judgment, the trial court:

1. Granted Blankenship's motion to dismiss, with prejudice, BAC's action for foreclosure;
2. Dismissed, with prejudice, the counterclaim of Blankenship against BAC;
3. Dismissed, with prejudice, the third party complaint brought by Blankenship against Shore Financial and Mortgage Firm;
4. And overruled the motion for summary judgment filed by Shore Financial against Blankenship as moot.

{¶ 6} In the July 11, 2011 judgment, the trial court found no just cause for delay with respect to the March 24, 2011 judgment. Afterwards BAC, Blankenship, and Shore Financial each filed notices of appeal from the judgment. By stipulation, BAC and Blankenship dismissed their appeals against each other on May 14, 2012. The stipulated dismissal left two appeals for determination: Blankenship's cross-appeal in appeal No. L-11-1199 and Shore Financial's cross-appeal in this appeal, No. L-11-1195.

{¶ 7} We issued a decision and judgment in Blankenship's cross-appeal against Shore Financial and Mortgage Firm on June 7, 2013. In the judgment we affirmed the trial court's judgment dismissing the third-party complaint against Shore Financial and Mortgage Firm on the basis that the claims were not of the type specified under Civ.R. 14(A) for third-party complaints. We modified the trial court judgment to provide that the dismissal is without prejudice.

{¶ 8} Shore Financial asserts two assignments of error in its cross-appeal:

I. The trial court's decision granting the motion to dismiss in Shore Financial's favor was proper, however, the trial court incorrectly determined that Shore Financial owed Blankenship a legal duty under 24 C.F.R. 203.604(B) and that it attempted to avoid that duty by assigning the note and mortgage to BAC.

II. The trial court's decision granting the motion to dismiss in Shore Financial's favor was proper, however, the trial court's decision should be corrected on appeal to alleviate any confusion regarding its dismissal of Blankenship's TILA claim against Shore Financial with prejudice.

{¶ 9} As we discussed in Blankenship's cross-appeal in appeal No. L-11-1199, the trial court did not consider the merits of the claims asserted in the third party-complaint by Blankenship against Shore Financial in its decision to dismiss the third-party complaint. Rather, the trial court agreed with the third-party defendants and granted their motions to dismiss on Civ.R. 14(A) procedural grounds—determining that the claims asserted by Blankenship were not of the type under Civ.R. 14(A) that could be brought by third-party complaint.

{¶ 10} In appeal No. L-11-1199, we affirmed the trial court's determination that dismissal of the third-party complaint was appropriate under Civ.R. 14(A) but modified the judgment to make the dismissal without prejudice. After dismissing the third-party

complaint, the trial court overruled Shore Financial's motion for summary judgment on the merits of the claims in the third-party complaint because the motion was moot.

{¶ 11} Accordingly, the trial court made no ruling in any claim against Shore Financial (1) on whether it owed Blankenship a legal duty under 24 C.F.R. 203.604(B), (2) on whether it attempted to avoid that duty by assigning the note and mortgage to BAC, or (3) on the merits of Blankenship's TILA claim against Shore Financial. Under the trial court's judgment, Shore Financial was improperly joined to the litigation by third-party complaint.

{¶ 12} The issues raised in the cross-assignments of error were directly or indirectly addressed in the trial court's rulings on claims between BAC and Blankenship. With the dismissal of the third-party complaint, Shore Financial is not a party to this litigation in any capacity. As a stranger to the foreclosure litigation it lacks standing to appeal claimed error in the trial court's rulings on motions between BAC and Blankenship concerning defenses to BAC's action in foreclosure or merits of Blankenship's counterclaim against BAC.

{¶ 13} Accordingly, we dismiss this cross-appeal for lack of standing and order Shore Financial to pay the costs of this cross-appeal pursuant to App.R. 24.

Cross-appeal dismissed.

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Firm, Inc.
C.A. No. L-11-1195

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.