

[Cite as *CitiMortgage v. Arnold*, 2011-Ohio-1350.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

CITIMORTGAGE, INC.

C.A. No. 25186

Appellee

v.

JACK G. ARNOLD, aka JACKIE
ARNOLD, et al.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV-2006-05-2785

Appellees

and

FIRST CLASS TITLE AGENCY, INC.

Appellant

DECISION AND JOURNAL ENTRY

Dated: March 23, 2011

CARR, Presiding Judge.

{¶1} Appellant, First Class Title Agency, Inc. (“First Class”) appeals from a judgment of the Summit County Court of Common Pleas that determined priority of mortgage liens, ordered foreclosure on a property, and granted summary judgment to appellee, CitiMortgage, Inc., on its negligence claim against First Class. The appeal is dismissed for lack of jurisdiction.

{¶2} In 2002, Jack and Brenda Arnold borrowed money from two separate lenders, ABN Amro Mortgage Group, Inc., CitiMortgage’s predecessor in interest, and National City Bank, now known as PNC (“National City”). Each loan was secured by a mortgage on the Arnolds’ property. Although the National City Mortgage was recorded shortly before ABN’s,

First Class did not disclose that fact to ABN, apparently because it conducted a title search before the National City Mortgage was recorded. Consequently, ABN believed its mortgage had first priority in the event of default.

{¶3} The Arnolds eventually defaulted on the ABN mortgage and ABN, now CitiMortgage, filed this action. First Class was added as a defendant in the action after CitiMortgage learned that the National City Mortgage had been recorded first in time. It alleged claims against First Class for negligence, breach of fiduciary duty, and breach of contract for failing to disclose to CitiMortgage that National City already held a mortgage on the Arnolds' property at the time it advanced over \$150,000 to the Arnolds and recorded its mortgage. CitiMortgage eventually moved for summary judgment against First Class.

{¶4} The trial court granted it summary judgment on the issue of liability against First Class, first on its claim of negligence and later on the remaining claims, but it did not indicate the amount of damages that First Class owed CitiMortgage. Instead, because it had determined that National City's mortgage had first priority, the trial court ordered that First Class pay the balance due on the National City Mortgage, but it did not specify the amount due on the mortgage or the rate of interest that would apply. First Class appealed and CitiMortgage later moved to dismiss the appeal for lack of jurisdiction.

{¶5} Initially, this court must determine whether it has jurisdiction to hear this appeal. Although the parties have made several arguments for and against appellate jurisdiction in this case, this Court will focus on a point raised by National City. National City maintains that the trial court's judgment is not final and appealable because, among other reasons, it fails to set forth the amount of the judgment owed by First Class to National City.

{¶6} Section 3(B)(2), Article IV of the Ohio Constitution limits this Court’s appellate jurisdiction to the review of final judgments of lower courts. For a judgment to be final and appealable, it must satisfy the requirements of R.C. 2505.02 and, if applicable, Civ.R. 54(B). *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, 88. Although the trial court included an express Civ.R. 54(B) finding that “there is no just reason for delay[.]” such a finding does not make appealable an otherwise non-appealable order. *Chef Italiano Corp.*, 44 Ohio St.3d at 88.

{¶7} Generally, an order that determines liability but not damages is not a final, appealable order. *Walburn v. Dunlap*, 121 Ohio St.3d 373, 2009-Ohio-1221, at ¶31. There is an exception to this general rule, however, “where the computation of damages is mechanical and unlikely to produce a second appeal because only a ministerial task similar to assessing costs remains.” *State ex rel. White v. Cuyahoga Metro. Hous. Auth.* (1997), 79 Ohio St.3d 543, 546. Thus, if “only a ministerial task similar to executing a judgment or assessing costs remains” and there is a low possibility of disputes concerning the parties’ claims, the order can be appealed without waiting for performance of that ministerial task. *Id.*

{¶8} The trial court ordered First Class to “satisfy the National City Mortgage within ten (10) days” and later indicated that “First Class is to satisfy any and all amounts due and owing National City in connection with the National City Mortgage[.]” The trial court never set forth the dollar amount of the balance due on the National City Mortgage, however, nor did it reference any documents in the record that did. The only reference to the balance due on the National City mortgage is the balance that was owed in 2002 when it was executed. Because more than a mere ministerial task is required to determine the amount of the judgment owed by First Class to National City, the trial court’s order is not final or appealable.

{¶9} Moreover, to the extent First Class is attempting to challenge the trial court's foreclosure order, a judgment entry that orders a foreclosure sale must determine the amounts due to all claimants to constitute a final, appealable order. See *Third Natl. Bank of Circleville v. Speakman* (1985), 18 Ohio St.3d 119, 120, citing *Oberlin Sav. Bank v. Fairchild* (1963), 175 Ohio St. 311. Although the trial court found that National City's mortgage had first priority, it indicated the balance due CitiMortgage but failed to specify the amount due to National City. Because the trial court's order is not final or appealable, the appeal is dismissed for lack of jurisdiction.

Appeal dismissed.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

WHITMORE, J.
MOORE, J.
CONCUR

APPEARANCES:

SHAWN W. MAESTLE and DANA A. ROSE, Attorneys at Law, for Appellant.

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MICHAEL J. SIKORA, III, ANN M. JOHNSON, and DAVID J. SIPUSIC, Attorneys at Law, for Appellee.

JILL L. FEALKO, Attorney at Law, for Appellee.