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Aurora Loan Services v. Daniel and Frazier

AURORA LOAN SERVICES, LLC, Plaintiff,
v. MIRANDA M. DANIEL and HAYES Q. FRAZIER,
husband and wife, Defendants
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action — Law, No. 2008–251

Petition to open/strike default judgment in mortgage foreclosure action

1. A petition to strike a judgment is a common law proceeding and operates as a demurrer to the record; the court should grant the petition where a fatal defect in the judgment appears on the face of the record.

2. A petition to open a judgment invokes the court's equitable powers and is a matter of judicial discretion, which discretion will be exercised when the petition has been promptly filed, a meritorious defense can be shown, and the failure to appear can be excused.

3. If the petition to open is filed within 10 days after the entry of the judgment on the docket and the proposed answer states a meritorious defense, the court shall open the judgment; if a petitioner misses this deadline, there are no guidelines as to what constitutes prompt action by the debtor in filing the petition and this determination is an equitable one to be made by the court given what is reasonable under the circumstances.

4. There was a prima facie basis to find the pro se debtor acted promptly in asserting his right to relief where only 48 days elapsed between entry of the judgment and the petition to open being filed.

5. The defendant pled a potentially meritorious defense where he alleged that the judgment against him was defective because he was not a signatory on either the note or the mortgage, but that his name was simply added to the deed by his wife approximately 6 months after she refinanced the property, property which she owned before the marriage.

6. The defendant's filing of an answer to the complaint, though not in conformity with the rules of pleading, was timely filed of record, making it unclear why the judgment was entered and raising the possibility that a striking of the judgment might be warranted.

Appearances:

Kimberly A. Bonner, Esq., *Counsel for Plaintiff*

Stacy M. Pineo, Esq., *Counsel for Defendant Frazier*

Miranda Daniel, *Defendant*

OPINION SUR Pa.R.A.P. 1925(a)

Herman, J., August 7, 2008

Background

Miranda Daniel executed a note for $328,555 and a mortgage on the note in connection with the real estate located at 958 Alandale Drive, Chambersburg, Pennsylvania, on August 21, 2005. She and co-defendant Hayes Frazier were married on April 23, 2006. On January 18, 2007 Miranda Daniel refinanced the property. Hayes Frazier's signature does not appear on either the note or the mortgage.[1] Miranda Daniel added her husband's name to the deed as a tenant by the entirety approximately 6 months later on July 9, 2007.

The plaintiff mailed default notices to both defendants on or about October 4, 2007 indicating nonpayment of the mortgage on the Alandale Drive property. The plaintiff then filed a complaint in mortgage foreclosure against both defendants on January 16, 2008. The sheriff served a copy of the complaint on Miranda Daniel on February 8, 2008 at the Franklin County Courthouse at 157 Lincoln Way East in Chambersburg. Hayes Frazier was served with a copy of the complaint on February 22, 2008 at his residence at 3915 Main Street, Scotland, Franklin County.

Miranda Daniel did not answer the complaint. Frazier filed a pro se answer on March 6, 2008 in which he protested his liability on the debt because he had not signed either the note or the mortgage and his name was added to the deed by Miranda Daniel approximately 6 months after she refinanced the mortgage. Hayes Frazier filed his answer with the prothonotary and it was placed in the case file.

The defendants were both served by first class mail with the required 10-day notice on March 17, 2008 which advised: "You are in default because you have failed to enter a written appearance personally or by an attorney and file in writing with the court your defenses or objections to the claims set forth against you." Both Miranda Daniel and Hayes Frazier were served at 3915 Main Street, Scotland. Neither responded to the 10-day notice. We note the defendant's pro se answer to the complaint declares his address was "**2**915 Scotland Main St., P.O. Box 33, Scotland, PA," not **3**915 Main Street, Scotland. It is unclear to the court whether this discrepancy is relevant to this litigation.

The plaintiff filed a praecipe for default judgment on May 16, 2008. The prothonotary entered a "Notice of Order, Decree or Judgment" against Miranda Daniel and then a second identical "Notice of Order, Decree or Judgment" also against Miranda Daniel. Neither of these was specifically directed at Hayes Frazier.

Hayes Frazier retained counsel on June 6, 2008. His counsel filed a Notice of Appeal on June 13, 2008. The Notice indicated the appeal was from the "Order" entered on May 16, 2008. On June 16, 2008 the court issued an Order directing him to file a concise statement of matters complained of on appeal. On July 2, 2008 he filed a "Statement of Matters on Appeal and Alternative Motion to Open Default, and Strike Judgment." He then filed

an "Amendment to Matters on Appeal" on July 11, 2008.

Discussion

The law recognizes a difference between a petition to strike a judgment and a petition to open a judgment. A petition to strike is a common law proceeding and operates as a demurrer to the record. The court should grant the petition where a fatal defect in the judgment appears on the face of the record. Cintas Corp. v. Lee's Cleaning Services, Inc., 700 A.2d 915 (Pa. 1997). By contrast, a petition to open invokes the court's equitable powers and is a matter of judicial discretion. The court will exercise this discretion when (1) the petition has been promptly filed, (2) a meritorious defense can be shown, and (3) the failure to appear can be excused. Schultz v. Erie Insurance Exchange, 477 A.2d 471 (Pa. 1984). If the petition to open is filed within 10 days after the entry of the judgment on the docket and the proposed answer states a meritorious defense, the court shall open the judgment. Pa.R.C.P. 237.3(b). Frazier appears to be pursuing whichever approach might give him relief from the judgment.

Assuming a petitioner misses the 10-day deadline under Rule 237.3(b) (as Frazier concedes he did) and the court must decide whether to open the judgment regardless, there are no guidelines as to what constitutes "prompt" action by the debtor in filing a petition to open. Whether the petition is promptly filed is an equitable determination to be made by the court in light of what is reasonable under the circumstances. Reid v. Boohar, 856 A.2d 156 (Pa.Super. 2004). This principle applies also to petitions to strike. City of Philadelphia v. Campbell, 378 A.2d 1043 (Pa.Cmwlth. 1977).

The judgment here was entered on May 16, 2008. Only 29 days elapsed between entry of the judgment and the filing of the notice of appeal and only 48 days elapsed between entry of the judgment and the filing of the motion to open. Although the defendant's decision to file a notice of appeal simultaneously with a motion to open and/or strike places this matter in an awkward procedural posture, there is a prima facie basis to find the defendant acted promptly in asserting his right to relief against what he claims is a defective judgment.

The second question is whether the defendant has a meritorious defense to the judgment. A meritorious defense is one which is sufficient to be presented to the trier of fact. Iron Worker's Savings & Loan Association v. IWS, Inc., 622 A.2d 367 (Pa.Super 1993). The defendant alleges the judgment against him is defective because although his wife added his name to the deed approximately 6 months after she refinanced the property, he himself was not a signatory on either the note or the mortgage. It is his contention his wife is therefore solely responsible for the judgment and any interest he had in the property by virtue of his name appearing on the deed should be extinguished. Regions Mortgage, Inc. v. Muthler, 844 A.2d 580 (Pa.Super. 2004). In Muthler, property was titled in the names of both a husband and wife as tenants by the entireties but the lender issued a mortgage in the name of the husband only. The appellate court held the lender had failed to secure the mortgage debt and therefore the wife (by then a widow) was not obligated on the mortgage. We believe Muthler raises the potential of a meritorious defense and therefore Frazier's petition warrants further attention which can best be provided at the trial court level through the issuance of a rule to show cause and a hearing if necessary.

The third prong of Schultz is whether Frazier's failure to appear in this action can be excused. Although his answer to the complaint did not conform to the rules of pleading, it was timely filed and it is unclear why the prothonotary entered judgment despite the answer being part of the record and this may be relevant to whether the court should grant a petition to strike.

Based on our review of the record and the law, we would like the opportunity to issue a rule to show cause on the plaintiff as to why the judgment should not be opened and/or stricken and hold a hearing if necessary. We therefore request the Superior Court to remand the record to allow us to pursue this course of action.

ORDER OF COURT

Now this 7th day of August 2008, pursuant to Pennsylvania Rule of Appellate Procedure 1931(c), it is hereby ordered that the Prothonotary of Franklin County shall promptly transmit to the Prothonotary of the Superior Court the record in this matter, along with the attached Opinion sur Pa.R.A.P. 1925(a).

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[1] The note was executed in favor of Lehman Brothers Bank. The mortgage was given to Mortgage Registration Systems (Lehman's nominee). The note and mortgage were later assigned to Aurora Loan Services.