

IN THE SUPREME COURT OF THE STATE OF DELAWARE

U.S. BANK NATIONAL)
ASSOCIATION,) No. 663, 2012
)
Denied–Intervenor,)
Appellant.) Court Below: Superior Court
) of the State of Delaware in
v.) New Castle County
)
RICHARD HARMS) CA. No. 08-L-01-036
)
Plaintiff–Below,)
Appellee.)
)
DONALD W. EARLEY AND)
SHELLEY M. EARLEY)
)
Defendant–Below,)
Appellee.)

Submitted: August 28, 2013

Decided: October 15, 2013

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY** Justices.

ORDER

This 15th day of October, 2013, it appears to the Court that:

1. Denied–Intervenor/Appellant U.S. Bank National Association appeals the Superior Court’s Orders (1) denying U.S. Bank’s motion to set aside a Sherriff’s sale; (2) denying U.S. Bank’s motion to intervene; and (3) granting Shelley M. Earley’s consent to judgment.

2. Richard Harms and Donald Earley were business partners in D&R Swim Shop. Harms made a loan to D&R, secured by personal guarantees given by Donald Earley and his wife, Shelley, and a mortgage on the Earleys' residence. After D&R defaulted on the loan, Harms sought to enforce this mortgage, which the Earleys claimed was void. The dispute was settled in arbitration, which found that even though the mortgage was void, the Earleys were liable for the value of the loan because of their personal guarantees. After attempting to reach a settlement, Harms sought to enforce the arbitration award in the Court of Chancery and Superior Court. Donald Earley passed away, and Shelley Earley filed for bankruptcy during the Superior Court proceedings, which automatically stayed an evidentiary hearing that was to be scheduled. The arbitration award was never enforced in a Delaware court, so Harms' mortgage remained in the records of the Recorder of Deeds.

3. Harms then attempted to foreclose on Shelley Earley's residence, and moved for relief from the automatic stay on the proceedings, which the Bankruptcy Court granted. Notice of the motion was sent to Earley's creditors, including U.S. Bank, which failed to object. Earley then consented to judgment in favor of Harms, which the Superior Court approved and entered.

4. Accordingly, Harms filed a writ of *levari facias* directing the sheriff to sell Earley's residence. Notice was sent to all lienholders of the property, including

U.S. Bank. U.S. Bank then filed a motion to intervene and a motion to stay the sale in the Superior Court, both of which the Court denied on October 8, 2012. U.S. Bank also filed an emergency motion for reconsideration of the Bankruptcy Court's Order granting Harms relief from the automatic stay, which the Court denied. The sale was conducted on October 9, 2012. On November 21, 2012, U.S. Bank filed a motion asking the Superior Court to set aside the sale, or alternatively for an order that the property was sold subject to its mortgage. The Court denied the motion on December 17, 2012, for untimeliness. U.S. Bank filed a notice of appeal on December 20, 2012.

5. U.S. Bank now appeals to this Court, alleging that the Superior Court erred by denying its motions to intervene, to stay and to set aside the sale. U.S. Bank argues that its motion to intervene should have been granted because of its mortgage on the Earleys' residence. It further argues that its motions to stay and set aside the sale should have been granted because an arbitrator found Harms' mortgage on the Earleys' residence void, and because U.S. Bank's mortgage takes priority over Harms' mortgage.

6. U.S. Bank's appeal of the denial of its motions to intervene and stay the sale must be rejected because it is untimely. Delaware Supreme Court Rule 6 requires notices of appeal in civil cases to be filed within 30 days after the relevant

judgment, order, or decree is final.¹ The Superior Court denied U.S. Bank's motions to intervene and stay the sale on October 8, 2012. For U.S. Bank's appeal to be timely, its notice of appeal would have had to be filed by November 7, 2012. But the record reflects that U.S. Bank filed the notice of appeal on December 20, 2012, which is 72 days after the Superior Court's Order denying U.S. Bank's motions to intervene and stay the sale.

7. U.S. Bank argues that, nonetheless, its appeal from the Superior Court's Order denying its motion to set aside the sale is timely. The Superior Court's Order denying U.S. Bank's motion to set aside the sale became final on December 17, 2012, and U.S. Bank filed its notice of appeal three days later, on December 20, 2012. This is within the 30-day time limit set out in Delaware Supreme Court Rule 6. Therefore, this Court must consider whether the Superior Court properly denied U.S. Bank's motion to set aside the sale.

8. The Superior Court properly treated U.S. Bank's motion to set aside the Sheriff's sale as a motion for reargument and found it to be untimely. Any attempt to seek reconsideration of a trial court's decision must be filed as a motion for reargument.² Under Delaware Superior Court Rules of Civil Procedure, Rule

¹ De. Supr. Ct. R. Rule 6.

² *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969). ("A motion for reargument is the proper device for seeking reconsideration by the Trial Court of its findings of fact, conclusions of law, or judgment, after a non-jury trial.").

59(e), “[a] motion for reargument shall be served and filed within 5 days after the filing of the Court’s opinion or decision.”³ Here, U.S. Bank requested reargument of an Order entered on October 8, 2012. U.S. Bank did not file its motion for reargument until November 21, 2012. The Superior Court therefore properly denied U.S. Bank’s motion to set aside the sale as untimely.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

³ De. Supr. Ct. Civ. R., Rule 59(e).