

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2005

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
Appellant,

v.

VICTORIA MAHLER, et al.,
Appellees.

No. 4D04-2801

[November 9, 2005]

STEVENSON, C.J.

Appellant, Mortgage Electronic Registration Systems (MERS), appeals the trial court's order finding that Everett and Joshlyn Daley (the Daleys) satisfied the final judgment of foreclosure and are bona fide purchasers of the property in question. We affirm, finding the trial court did not err in determining that the Daleys could properly utilize section 55.141, Florida Statutes (2003), prior to the issuance of a certificate of sale, to satisfy a mortgage foreclosure judgment burdening the property they had contracted to purchase.

Section 55.141(1) provides:

All judgments and decrees for the payment of money rendered in the courts of this state and which have become final, may be satisfied at any time prior to the actual levy of execution issued thereon by payment of the full amount of such judgment or decree, with interest thereon, plus the costs of the issuance, if any, of execution thereon into the registry of the court where rendered.

A mortgage foreclosure judgment is one for the payment of money. The core of a mortgage foreclosure judgment is the mortgagor's obligation to pay the underlying debt secured by the mortgaged property. Once the money judgment underlying the mortgage is paid, the accompanying order to sell the property is of no effect. Several cases have noted instances where section 55.141 has been used as a method to satisfy a

mortgage foreclosure judgment. See *Canakaris v. Hammond*, 455 So. 2d 486 (Fla. 5th DCA 1984); see also *Sec’y of Veteran Affairs v. Tejedo*, 774 So. 2d 709 (Fla. 3d DCA 1999) (on rehearing en banc). We agree with the Daleys that section 701.04, Florida Statutes,¹ entitled “[c]ancellation of mortgages, liens, and judgments,” which directs the mortgagor to request in writing the amount of the unpaid principal balance and specifies the mortgagee’s duties after receiving the request and the amount satisfying the judgment, is not the exclusive method by which a mortgage foreclosure judgment may be satisfied. We do not find that sections 55.141 and 701.04 are in conflict; rather, the two statutes may operate together.

The Daleys purchased the property from the mortgagee, Victoria Mahler, in the midst of the foreclosure and prior to the sale. The foreclosure judgment was for a sum of \$213,986.73, plus

subsequent interest at the statutory rate and such further costs as may be incurred by the Plaintiff in this action, including, but not limited to, the sale fee and publication of the Notice of sale, and any reasonable advances made by the Plaintiff subsequent to the date of execution of the Affidavit of Indebtedness filed in this action which are proper under the terms of the note and mortgage foreclosed herein.

When the Daleys paid into the court registry the total sum of the judgment plus statutory interest, the additional amount of \$7,581.85, which MERS incurred, had not been added into the foreclosure judgment. MERS complains that by allowing the Daleys to utilize section

¹ Section 701.04(1) provides in part:

Whenever the amount of money due on any mortgage, lien, or judgment shall be fully paid to the person or party entitled to the payment thereof, the mortgagee, creditor, or assignee, or the attorney of record in the case of a judgment, to whom such payment shall have been made, shall execute in writing an instrument acknowledging satisfaction of said mortgage, lien, or judgment and have the same acknowledged, or proven, and duly entered of record in the book provided by law for such purposes in the proper county. Within 60 days of the date of receipt of the full payment of the mortgage, lien, or judgment, the person required to acknowledge satisfaction of the mortgage, lien, or judgment shall send or cause to be sent the recorded satisfaction to the person who has made the full payment.

55.141 to satisfy the judgment, it has been prevented from collecting this additional money it was entitled to pursuant to the judgment. While that may be a by-product of the application of section 55.141 to the facts of this case, that result alone does not render the statute inapplicable. Here, MERS did not seek to amend the final judgment to include additional costs and expenses as they became known. Further, neither side argues that the foreclosure judgment in this case was not a final judgment; therefore, the amount liquidated in the judgment was the amount which needed to be paid to satisfy it. *Cf. Bee Bee Med. Ctr., Inc. v. Strategic Consulting & Managing, Inc.*, 677 So. 2d 84 (Fla. 2d DCA 1996) (holding that setting aside a redemption because the attorney's fees and costs were unknown at the time of the redemption was impermissible). MERS may have some recourse by way of a deficiency judgment against the mortgagor, but that is not an issue in this case.

Affirmed.

TAYLOR and HAZOURI, JJ., concur.

* * *

Appeal of a non-final order from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Leroy H. Moe, Judge; L.T. Case No. 03-449 13.

Joseph J. Circelli of Codilis & Stawiarski, P.A., Tampa, for appellant.

Cary A. Lubetsky and Joseph J. Huss of Krinzman, Huss & Lubetsky, Miami, for appellees Everett and Joshlyn Daley.

Not final until disposition of timely filed motion for rehearing.