

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

OLD REPUBLIC INSURANCE CO.,	:	
Plaintiff-Appellant,	:	CASE NO. CA2009-03-080
- vs -	:	<u>OPINION</u> 10/13/2009
VICKI POSER,	:	
Defendant-Appellee.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV2008-01-0571

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for defendant-appellee

YOUNG, P.J.

{¶1} Plaintiff-appellant, Old Republic Insurance Co. (Old Republic), appeals from the decision of the Butler County Court of Common Pleas granting judgment in favor of defendant-appellee, Vicki Poser, in an action involving the repayment of money she allegedly owed after opening a line of credit. We affirm.

{¶2} On November 7, 2002, Poser entered into a "Credit Agreement and

Disclosure" contract (Agreement) with Guaranty Home Equity Corporation d/b/a GB Home Equity (GB Equity). The Agreement, which was secured by a junior mortgage on her Butler County residence, allowed Poser to obtain a line of credit of up to \$17,500. Flagstar Bank (Flagstar) held the first mortgage on Poser's Butler County residence. On June 24, 2003, GB Equity assigned the Agreement to Marshall & Ilsley Bank (M&I Bank).

{¶3} On August 27, 2003, Poser filed for bankruptcy and included both the debt she owed to Flagstar on her first mortgage, as well as the debt she owed to M&I Bank on the Agreement. Through the bankruptcy proceedings, Poser agreed to continue making payments on her first mortgage to Flagstar, and entered into a "Reaffirmation Agreement" that continued her obligation to M&I Bank. However, in August of 2005, over a year after receiving a bankruptcy discharge, Poser defaulted on her first mortgage with Flagstar, as well as on her obligation to M&I Bank.

{¶4} On November 4, 2005, Flagstar filed a complaint in the Butler County Court of Common Pleas seeking to foreclose on Poser's Butler County residence. The complaint named both Poser and M&I Bank as defendants. On November 17, 2005, M&I Bank was served with summons and the complaint, but did not file an answer. On February 14, 2006, a judgment entry and decree of foreclosure was filed by the court, which, among other things, rendered a default judgment against M&I Bank. On April 13, 2006, Poser's residence was sold at a Sheriff's sale for \$84,000.

{¶5} On June 8, 2006, the court filed another judgment entry confirming the sale of Poser's residence. In that entry, the court ordered the clerk to "issue a cancellation of the mortgage originally from Poser to [GB Equity], dated November 7, 2002, * * * and ultimately assigned to [M&I Bank] by separate instrument dated June

24, 2003 * * *." The court's June 8 entry makes no mention of any other assignments of the Agreement.

{¶16} Over 18 months later, on January 25, 2008, Old Republic filed a complaint alleging that "[Poser was] liable to [Old Republic] under the [c]ontract filed herewith as Exhibit A." Attached to the complaint as "Exhibit A" was a photocopy of the Agreement. Both Old Republic and Poser then filed motions for summary judgment, which the trial court denied in its decision dated December 18, 2008.

{¶17} In addition to denying both parties' motion for summary judgment, the trial court also concluded that "in all likelihood an evidentiary hearing or trial [was] not necessary in order for [it] to render a final decision * * *." The trial court then ordered the parties to file "any properly authenticated documents [they wanted] the court to consider in support of their respective positions," as well as supplemental briefs, on or before January 9, 2009. Neither party objected to the trial court's order. Several weeks later, on January 7, 2009, Poser filed several authenticated documents and a supplemental brief. Old Republic, however, did not file any additional materials.

{¶18} Thereafter, in its decision dated February 6, 2009, the trial court granted judgment in favor of Poser. In so holding, the trial court found that Old Republic was not the real party in interest as "there [was] no admissible evidence in the record from which [it could] conclude that Old Republic [was] a valid assignee of the Agreement." Old Republic now appeals, raising one assignment of error.

{¶19} "THE TRIAL COURT ERRED TO THE PREJUDICE OF THE PLAINTIFF/APPELLANT IN GRANTING DEFENDANT/APPELLEE'S MOTION FOR SUMMARY JUDGMENT."

{¶110} In its sole assignment of error, Old Republic argues that the trial court

"erred in *granting* [Poser's] Motion for Summary Judgment * * *." However, contrary to Old Republic's claim, the trial court did not *grant* Poser's motion for summary judgment. Instead, after a thorough review of the record, which includes the trial court's December 18, 2008 decision titled "Order *Denying* Motions of Plaintiff and Defendant for Summary Judgment," it is readily apparent that the trial court actually *denied* her motion. (Emphasis added.) In fact, in the first paragraph of its December 18 decision, something that Old Republic attached to and cited throughout its appellate brief, the trial court stated:

{¶11} "This matter is before the court on the cross motions for summary judgment filed by [Old Republic] and [Poser]. Upon consideration of the motions and the pleadings and other matters of record herein, both motions are DENIED."

{¶12} Therefore, Old Republic's claim that the trial court erred by *granting* Poser's motion for summary judgment is simply not supported by the record.

{¶13} Furthermore, even if we were to construe Old Republic's assignment of error as a challenge to the trial court's February 6 decision granting judgment to Poser, Old Republic explicitly states that it "does not dispute *any* of the trial court's findings of fact, including the [trial court's] finding that no admissible evidence was in the record before the court to establish [it as] a valid assignee." (Emphasis added.) As a result, since Old Republic essentially concedes that all of the trial court's factual findings were supported by some competent credible evidence, including the trial court's finding Old Republic was not the real party in interest, we find no reason to disturb the trial court's decision granting judgment in Poser's favor. See *Discover Bank v. Brockmeier*, Warren App. No. CA2006-057-078, 2007-Ohio-1552, ¶7 ("a civil action must be prosecuted by the real party in interest"); see, also, *Berry v. Mullins*,

Butler App. No. CA2006-07-173, 2008-Ohio-1475, ¶10, citing *Owens v. Haurert* (2000), 137 Ohio App.3d 507, 513-514; *Aurora Credit Services, Inc. v. Foliano*, Summit App. No. 20952, 2002-Ohio-5423, ¶24, citing *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 19. Accordingly, appellant's sole assignment of error is overruled.

{¶14} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.