

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOAN R. and HENRY M. OSOWIECKI,	§
	§
Defendants Below-	§ No. 264, 2012
Appellants,	§
	§
v.	§
	§ Court Below—Superior Court
WELLS FARGO, NATIONAL	§ of the State of Delaware,
ASSOCIATION as trustee for the	§ in and for Sussex County
certificateholders of STRUCTURED ASSET	§ C.A. No. S09L-05-056
MORTGAGE INVESTMENTS II, INC.,	§
GREENPOINT MTA TRUST 2006-AR2,	§
MORTGAGE PASS-THROUGH	§
CERTIFICATES, SERIES 2006-AR2,	§
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 12, 2012  
Decided: November 15, 2012

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

**ORDER**

This 15<sup>th</sup> day of November 2012, upon consideration of the appellants' opening brief, the appellee's motion to affirm,<sup>1</sup> and the record below, it appears to the Court that:

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<sup>1</sup> The appellee filed its motion to affirm on October 12, 2012. The appellants filed a request to respond to the motion to affirm on November 9, 2012. A response to a motion to affirm is not permitted unless requested by the Court. *See* Del. Supr. Ct. R. 25(a) (2012). The Court finds no cause to permit a response in this case. Accordingly, the appellants' request is denied.

(1) The appellants, Joan and Henry Osowiecki, filed this appeal from an order of the Superior Court, dated April 26, 2012, which denied their motion for reconsideration of a prior court order refusing to set aside a Sheriff's sale. The appellee, Wells Fargo, NA, has filed a motion to affirm the judgment below on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) In May 2009, Wells Fargo filed a foreclosure action against property owned by the Osowieckis in Delmar, Delaware. The record reflects that attempts were made to serve the Osowieckis personally, by certified and first class mail, and by posting on the property.<sup>2</sup> The certified mail receipts were returned unclaimed. A default judgment was entered in Wells Fargo's favor in March 2010. The property ultimately was sold at a Sheriff's sale on February 21, 2012. The Osowieckis moved to set aside the Sheriff's sale on the ground that they were never personally served with notice of the foreclosure action. Following a hearing on March 30, 2012, the Superior Court denied the Osowieckis' motion to set aside the sale, holding that Wells Fargo had properly effectuated service on the Osowieckis pursuant to Superior Court Civil Rule 4(f)(4). On April 9, 2012, the

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<sup>2</sup> The Osowieckis apparently lived in Mardela Springs, Maryland and rented their Delaware property. One of Wells Fargo's attempts in July 2009 to serve the Osowieckis at their Maryland address included an incorrect post office box number. That error was later corrected and service was again attempted by certified and first class mail. The certified receipt again was returned unclaimed.

Osowieckis filed a motion for rehearing/reargument. The Superior Court denied that motion on the ground that it was not timely filed and because it lacked merit.

(3) We find no error in the Superior Court’s ruling. Pursuant to Superior Court Civil Rule 59(e), a motion for reargument “shall be served and filed within 5 days after the filing of the Court’s opinion or decision.”<sup>3</sup> The record reflects that the Superior Court’s decision denying the motion to set aside the Sheriff’s sale was docketed on March 30, 2012. The Osowieckis did not file their motion for reargument until April 9, 2012. Accordingly, we find no error in the Superior Court’s denial of the Osowieckis’ motion on the ground that it was untimely.

(4) Moreover, it is clear that the motion for reargument lacked merit. The Osowieckis attempted to reargue that they had never been personally served with notice of the foreclosure action. As the Superior Court held, however, Wells Fargo’s compliance with the requirements of Superior Court Civil Rule 4(f)(4) constituted legal and sufficient service of the complaint on the Osowieckis. The record supports this conclusion.

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

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>3</sup> Del. Super. Ct. Civ. R. 59(e) (2012).