

Judgment rendered June 25, 2014.
Application for rehearing may be filed
within the delay allowed by art. 2166,
La. C.C.P.

No. 48,983-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

JAMES A. ROUNTREE

Plaintiff-Appellant

Versus

FORSYTHE HOLDINGS, INC.

Defendant-Appellee

* * * * *

Appealed from the
Second Judicial District Court for the
Parish of Claiborne, Louisiana
Trial Court No. 39,440

Honorable Jenifer Ward Clason, Judge

* * * * *

ROUNTREE LAW OFFICES

By: James A. Rountree

Counsel for

Appellant

NEWELL & NEWELL, APLC

By: Daniel W. Newell

Counsel for

Intervenors-Appellees, G&Y
Still Limited Partnership, John
Michael Merritt, and Susan K.
Merritt

* * * * *

Before BROWN, DREW and MOORE, JJ.

DREW, J.

James A. Rountree seeks relief from a preliminary injunction enjoining the sheriff's sale of a piece of property owned by G&Y Limited Partnership and John and Susan Merritt and purportedly encumbered by a mortgage in Rountree's name. We affirm.

FACTS

James Rountree extended credit to Fred Bayles and Joanne Caldwell-Bayles that was secured by property located in Claiborne Parish and owned by Forsythe Holdings, Inc. Joanne Caldwell-Bayles is Forsythe's president. The mortgage was executed by Fred Bayles and Joanne Caldwell-Bayles on November 7, 2006, and recorded in Claiborne Parish on November 15, 2006, with the property described as:

The NW 1/4 of the SE 1/4 of Section 31, Township 19,
Range 7 West, Claiborne Parish, Louisiana.

The mortgage was amended on February 13, 2008, to exclude a tract located in Ouachita Parish. The amendment was signed by Rountree, Fred Bayles, and Joanne Caldwell-Bayles, individually and as agent for Forsythe. The amendment was filed in Claiborne Parish on March 7, 2008.

The mortgage arose out of an earlier case in which Rountree represented Fred Bayles, the owner of ScenicLand Construction Corporation. ScenicLand brought suit against St. Francis Medical Center in Ruston alleging that the medical center defaulted on a contract to renovate patient rooms. *ScenicLand Const. Co., LLC v. St. Francis Med. Ctr., Inc.*, 41,147 (La. App. 2d Cir. 7/26/06), 936 So. 2d 247. The court found in favor of ScenicLand, awarding damages of \$218,000.00. Rountree offered to purchase the judgment from Scenicland for \$200,000.00, advising Fred

Bayles to seek independent counsel before accepting the offer. Fred Bayles accepted the offer, and Rountree purchased the judgment for \$200,000.00, less \$50,000.00 he was owed legal services rendered. It is out of this settlement that indebtedness to Rountree arises.¹

On May 7, 2009, Fred Bayles and Joanne Caldwell Bayles presented an affidavit of lost promissory note to the clerk of court and had the above mortgage canceled. The property was then sold to G&Y Limited Partnership and John and Susan Merritt approximately a week later by a cash deed for \$50,000.00. The deed was signed by Joanne M. Caldwell, president of Forsythe Holdings. A title examination done in the course of this sale detected the existence of the 2006 mortgage, though it was in the name of Fred Bayles and Joanne Caldwell-Bayles, who had not owned the property for close to two decades.

On November 17, 2011, Rountree filed a petition against Forsythe Holdings in which he prayed for a money judgment of \$200,000.00, interest, attorney fees of 25% of the principal, and court costs. The petition made no prayer for the recognition, validation, or enforcement of the mortgage. Forsythe Holdings did not respond to the petition. A preliminary default judgment was entered on September 6, 2012. On September 18, 2012, Rountree filed a motion to confirm the default judgment. Among the documents attached to Rountree's motion were the collateral mortgage note

¹Under cross-examination, Rountree was questioned as follows:

“Q: (By Daniel Newell) And at some point during your career as an attorney, you acquired Fred Bayles and Joanne Caldwell Bayles as clients?

A: I'm sorry to say, you're right.

Q: And at some point in that relationship, they allegedly became indebted, they being Fred Bayles and Joanne Bayles. Is that your testimony?

A: They became indebted to a very substantial extent. Yes.”

and the hand note. Rountree's motion makes reference to the mortgage, but not to the 2008 amended mortgage.

An order confirming the default judgment was granted. The order granted relief not prayed for in the petition, namely that of recognizing and maintaining the mortgage from Fred Bayles and Joanne Caldwell-Bayles. A notice of judgment was sent by Claiborne Parish Clerk of Court to Forsythe through Joanne Bayles, its agent for service of process.

On November 15, 2012, Rountree filed a motion for sale without appraisal for the affected tract of land, specifically requesting that the property be sold under a writ of fieri facias. On January 4, 2013, a notice of seizure pursuant to a writ of fieri facias was entered and signed by a deputy sheriff.

G&Y Limited Partnership and John and Susan Merritt became aware of the judgment and impending sheriff's sale and hired Daniel W. Newell to protect their interests. On April 17, 2013, Newell emailed Rountree, asking him to voluntarily cancel the sheriff's sale, or otherwise Newell would be forced to seek an injunction. Rountree's response was to let the courts decide the issue. Newell then sent a certified letter, which was received by Rountree on April 19, 2013, outlining the deficiencies in Rountree's case and again attempting to persuade Rountree to voluntarily cancel the sale of the property.

On May 10, 2013, G&Y Limited Partnership and John and Susan Merritt ("interveners") filed a petition for intervention claiming that the sheriff's sale of the property at issue should be enjoined because they are

the record owners of the property. The trial court issued a temporary restraining order to halt the sheriff's sale scheduled for May 15, 2013.

On May 30, 2013, the trial court heard the interveners' rule to show cause why a preliminary injunction should not be issued.

We have attached as an appendix and adopted the trial court's excellent and thorough reasons for judgment, in which the trial court concluded that the default judgment was legally defective for two reasons:

- (1) A default judgment can grant only the relief prayed for in the petition. The judgment included relief not prayed for in the petition, namely that of recognizing and maintaining the Bayleses' mortgage.
- (2) The original petition named neither the Bayleses nor the interveners.

The court concluded that since the default judgment was defective, the sheriff's sale could not be allowed to proceed. Accordingly, the court enjoined the sale. Rountree has appealed from that ruling.

DISCUSSION

Rountree asserts the validity of the default because:

- his original petition clearly sought enforcement of the mortgage;
- neither Mr. or Mrs. Bayles nor the interveners were necessary parties;
- Forsythe Holdings, as owner and mortgagor, was the only necessary defendant; and
- it is very plain on the face of his petition that the object of the suit was the enforcement of the mortgage.

Rountree urges that the judgment of default is valid and the judgment granting the preliminary injunction should be reversed.

La. C.C.P. art. 1703 states that a judgment by default shall not be different in kind from that demanded in the petition. The main purpose of

this article is to put the defendant on notice of the object of the suit because a defendant has a due process right to know what is at stake when a default is threatened. “A defendant may decide not to defend as to a particular prayer for relief, whereas he would defend if relief beyond the prayer were available.” *Lake v. Lake*, 460 So. 2d 1130, 1131 (La. App. 2d Cir. 1984).

It is undisputed that the prayer for relief in plaintiff’s November 2011 petition requested only a money judgment against Forsythe for \$200,000.00 in principal with other monetary awards. However, the ex parte order plaintiff submitted for confirmation of the default judgment expanded the relief to include the recognition and enforcement of the mortgage executed by the Bayleses. A default judgment can grant only the relief prayed for in the petition.

Moreover, neither Rountree’s November 2011 petition nor his motion for a sheriff’s sale a year later named the interveners as parties to those pleadings, despite knowing that the interveners were the record owners of the property. The interveners purchased the land in question from Forsythe Holdings, the record owner, in 2009, two years before Rountree filed his lawsuit. It is also undisputed that Rountree’s mortgage was granted by Fred Bayles and Joanne Caldwell-Bayles, who did not own the property. Forsythe Holdings was not party to the 2006 mortgage.

A person is required to be joined as a party when he claims an interest relating to the subject matter of the action and is so situated that the adjudication of the action in his absence may, as a practical matter, impair or impede his ability to protect that interest. La. C.C.P. art. 641.

An annulment of a judgment for vice of form under La. C.C.P. art. 2002 is proper when the judgment was “[a]gainst a defendant who has not been served with process as required by law and who has not waived objection to jurisdiction[.]” This court has held that the record owner of property was an indispensable party when a note holder filed suit to enforce the promissory note and the property was allegedly the value given for the note. *See West v. East Town & Country Drainage Dist.*, 26,538 (La. App. 2d Cir. 3/1/95), 651 So. 2d 907.

Citing La. C.C.P. art. 2701, Rountree contends that he was not required to name anyone other than Forsythe Holdings as defendant.

However, we note that La. C.C.P. art. 2298 provides, in part:

Injunctive relief prohibiting the sheriff from proceeding with the sale of property seized under a writ of fieri facias shall be granted to the judgment debtor or to a third person claiming ownership of the seized property:

...

(4) When the judgment sought to be executed is absolutely null.

La. C.C.P. art. 1092 provides that a third person claiming ownership of property seized may assert his claim by intervention, and the court may grant him injunctive relief to prevent judicial sale of the seized property before an adjudication of his claim of ownership.

Accordingly, not only was the default judgment defective as a matter of law for granting relief not prayed for in the petition, but it was also absolutely null because the interveners were not put on notice of the adverse claim to their property. Moreover, the mortgage had been granted by Fred Bayles and Joanne Caldwell-Bayles, not Forsythe Holdings. The 2008

amendment to the mortgage did not state in the act why Forsythe appeared in the amendment. Because Forsythe Holdings' appearance is not explained on the face of the instrument, it was not sufficient to put interveners on notice. In addition, the original petition also failed to name the Bayleses as defendants even though Rountree was asserting rights against their mortgage.

The trial court has discretion in determining whether or not to issue a preliminary injunction and its ruling will not be disturbed absent an abuse of discretion. *Meredith v. Tram Investments, Inc.*, 48,570 (La. App. 2d Cir. 12/30/13), 130 So. 3d 469. Based on the foregoing, we find no abuse of the court's discretion in granting injunctive relief to the interveners.

DECREE

At the cost of James A. Rountree, the judgment is AFFIRMED.

APPENDIX