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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-639

Filed: 2 February 2016

Ashe County, No. 12 SP 18

IN THE MATTER OF THE FORECLOSURE OF A DEED OF TRUST EXECUTED BY WILLIAM GERALD PRICE in the original amount of \$190,000.00 dated December 12, 2002, recorded in Book 286, Page 113, Ashe County Registry. SUBSTITUTE TRUSTEE SERVICES, INC., Substitute Trustee.

Appeal by respondent from order entered 9 March 2015 by Judge David L. Hall in Ashe County Superior Court. Heard in the Court of Appeals 18 November 2015.

William Gerald Price, pro se, respondent-appellant.

HUTCHENS LAW FIRM, by Natasha M. Barone, for petitioner-appellee.

ELMORE, Judge.

William Gerald Price (respondent) appeals from an order denying his motion to vacate and imposing a gatekeeping injunction against him. We dismiss the appeal as moot.

I. Background

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On 12 December 2002, respondent executed a Promissory Note in the principal amount of \$190,000.00, payable to SunTrust Mortgage, Inc. (SunTrust). The Note was secured by a Deed of Trust pledging certain real property located at 300 Bronze Turkey Lane in Zionville, North Carolina (Subject Property), as security for the repayment of the Note. The Deed of Trust granted SunTrust the power to foreclose upon the Subject Property through a power of sale in the event of default.

After the period ending 1 May 2010, respondent failed to make timely payments and defaulted on his obligations under the Note. On 21 November 2011, SunTrust appointed Substitute Trustee Services, Inc. (STS) as substitute trustee of the Deed of Trust. STS initiated foreclosure proceedings against respondent on 6 February 2012, by filing the Notice of Hearing Prior to Foreclosure of Deed of Trust. On 10 May 2012, the Clerk of Superior Court of Ashe County entered an order allowing foreclosure (First Order Allowing Foreclosure), finding that SunTrust was the holder of the Note, the Note evidenced a valid debt owed by respondent, the Note was in default and gave SunTrust the right to foreclose under a power of sale, proper notice had been given, and respondent showed no valid legal reason why foreclosure should not commence.

On 14 May 2012, respondent appealed the First Order Allowing Foreclosure pursuant to N.C. Gen. Stat. § 45-21.16(d). The matter was heard on 16 August 2012, before the Honorable R. Stuart Albright in Ashe County Superior Court. After

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reviewing the evidence and hearing testimony of the parties, the court entered an order allowing foreclosure (Second Order Allowing Foreclosure). Based on its findings, the court concluded that each element of N.C. Gen. Stat. § 45-21.16 had been satisfied, dismissed respondent's appeal, and ordered the foreclosure to proceed.

On 13 September 2012, respondent appealed the Second Order Allowing Foreclosure entered by the Superior Court. The matter was heard on 6 January 2014, before the Honorable Andrew R. Hassell in Wilkes County Superior Court. Upon SunTrust's motion, the court entered an order dismissing the appeal based on respondent's failure to timely file the record on appeal and properly docket the matter.

On 11 February 2014, SunTrust purchased the Subject Property at a foreclosure sale conducted pursuant to N.C. Gen. Stat. § 45-21.16, *et seq.* No upset bids were filed, and the sale was confirmed on 21 February 2014. SunTrust subsequently assigned its bid to Federal National Mortgage Association (petitioner). STS recorded the Trustee's Deed on 5 March 2014, conveying the Subject Property to petitioner, in Book 448 at Page 1933 of the Ashe County Register of Deeds.

On 30 December 2014, after a series of subsequent motions and appeals, respondent filed a motion to vacate in Ashe County Superior Court, seeking to void all orders and judgments entered in this foreclosure proceeding. Petitioner opposed

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the motion and requested that the court impose a gatekeeping order and sanctions against respondent.

On 9 March 2015, the Honorable David L. Hall entered an order denying respondent's motion to vacate and imposing a gatekeeping order against him. The court concluded, *inter alia*, that “[n]o good cause exists to set aside any of the orders entered in this action,” and “[d]espite many orders denying [respondent's] frivolous motions, [respondent] continues to file motions seeking to undue the foreclosure; however the rights of the parties are now fixed.” Respondent appeals from the order.

II. Discussion

The issues raised by respondent in his motion to vacate and, consequently, this appeal, are moot because the parties' rights to the Subject Property are fixed. “[T]he rights of the parties to a foreclosure sale become fixed upon either the expiration of the period for filing an upset bid, the provision of injunctive relief precluding the consummation of the foreclosure sale, or the occurrence of some similar event.” *Goad v. Chase Home Fin., LLC*, 208 N.C. App. 259, 263, 704 S.E.2d 1, 4 (2010); *see also* N.C. Gen. Stat. § 45-21.29A (2013) (“If an upset bid is not filed following a sale, resale, or prior upset bid within the period specified in this Article, the rights of the parties to the sale or resale become fixed.”). Thereafter, unless the sale was stayed, “any attempt to disturb the foreclosure sale is moot.” *In re Foreclosure of Cornblum*, 220 N.C. App. 100, 106, 727 S.E.2d 338, 342 (2012); *see also In re Foreclosure of Hackley*,

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212 N.C. App. 596, 605–06, 713 S.E.2d 119, 125 (2011) (dismissing appeal as moot where the property was sold, the trustee’s deed was recorded, and the sale was not stayed).

In the present case, the foreclosure sale was completed and the Subject Property was sold to SunTrust. No upset bids were filed within ten days of the sale, and respondent failed to obtain a temporary restraining order, preliminary injunction, or other stay of the proceeding. The Trustee’s Deed was subsequently recorded on 5 March 2014. Therefore, the rights of the parties in this action have been fixed, and respondent’s challenge to the foreclosure is moot.

III. Conclusion

The rights of the parties to the Subject Property have been fixed. We dismiss the appeal as moot.

DISMISSED.

Judges CALABRIA and ZACHARY concur.

Report per Rule 30(e).