

[Cite as *Huntington Natl. Bank v. Mtge. Zone, Inc.*, 2010-Ohio-3316.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93840

HUNTINGTON NATIONAL BANK

PLAINTIFF-APPELLEE

vs.

THE MORTGAGE ZONE, INC., ET AL.

DEFENDANTS-APPELLANTS

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-606485

BEFORE: McMonagle, J., Rocco, P.J., and Dyke, J.

RELEASED: July 15, 2010

JOURNALIZED:

ATTORNEY FOR APPELLANT

Michael L. Thal
1785 East 47th Street
Cleveland, OH 44103

ATTORNEYS FOR APPELLEE

Donald A. Mausar
Amanda Rasbach Yurechko
Weltman, Weinberg & Reis
323 W. Lakeside Avenue, Suite 200
Cleveland, OH 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

CHRISTINE T. McMONAGLE, J.:

Beckett & Chambers, Inc. appeals the trial court's judgment granting the motion of plaintiff-appellee, Huntington National Bank, for turnover of proceeds. We dismiss.

Procedural History

In November 2006, Huntington filed this replevin action against Mortgage Zone, Inc. and Smart Choice Marketing, Inc. The bank simultaneously filed a motion for possession of personal property. In March 2007, the trial court granted the bank's motion for possession of personal property, finding that the bank was entitled to immediate possession of the collateral upon posting bond in the amount of \$115,000.

Default judgment was granted against Mortgage Zone and Smart Choice in May 2007. In January 2008, the bank filed a motion for turnover of property directed at non-party Beckett & Chambers. Beckett & Chambers opposed the bank's motion. In December 2008, Huntington Bank filed a motion for turnover of proceeds and Beckett & Chambers filed a motion for allocation of proceeds of sale. The bank's motion was granted and Beckett & Chamber's motion was denied.

Facts

Huntington Bank was the holder of a promissory note executed by Mortgage Zone and Smart Choice Marketing. In order to secure the obligation represented by the note, Mortgage Zone and Smart Choice Marketing executed a security agreement in favor of the bank. Under the agreement, certain business equipment was pledged as collateral for repayment of the note. Uniform Commercial Code (“UCC”) financing statements, filed with the Ohio Secretary of State by Huntington Bank in February 2006, also described the collateral. The defendants defaulted on the note and Huntington Bank sought to enforce its right to possession of the collateral.

The record shows that the defendants operated a business in Beachwood, Ohio. The business was eventually closed and its landlord filed forcible entry and detainer actions against it in the Shaker Heights Municipal Court in January 2007 (against Smart Choice) and April 2007 (against Mortgage Zone). Beckett & Chambers states that it became involved as a result of those actions, although it was not a party to the eviction proceedings.

In a July 11, 2007 letter, the bank asked the landlord for access to the property that was used for collateral. The bank also wrote a letter, dated July 12, 2007, to an agent of Beckett & Chambers, stating in relevant part the following: “This letter confirms our discussions on July 11, 2007. Based upon those discussions, I [the bank’s attorney] am enclosing the Journal

Entry concerning the specific collateral that we are interested in taking possession of.”

Beckett & Chambers opposed the bank’s efforts to take possession of the property, asserting that it had a warehouseman’s lien over the property. Beckett & Chambers also claimed that it was ordered by the Shaker Heights Municipal Court through the forcible entry and detainer actions to remove the property from the business to its premises.

By agreement of the parties, the property was sold at a public sale held in September 2008. The proceeds of the sale were \$1,000. After the sale, Huntington Bank filed a motion for turnover of the proceeds and Beckett & Chambers filed a motion for allocation of proceeds of sale; the trial court granted the bank’s motion and denied Beckett & Chambers’ motion.

Analysis

The Ohio Rules of Civil Procedure provide the means by which a non-party can become a party in an action, by joinder (Civ.R. 19 and 20) or intervention (Civ.R. 24). This action was filed by Huntington National Bank against Mortgage Zone, Inc. and Smart Choice Marketing, Inc. Beckett & Chambers was never joined nor intervened in the case and, therefore, was never a party in this action, despite the trial court’s treating it as if it were. “It is well settled that ‘only parties to a lawsuit, or those that properly become parties, have standing to appeal an adverse judgment.’” *Sutherland v. ITT*

Residential Capital Corp. (1997), 122 Ohio App.3d 526, 537, 702 N.E.2d 436, quoting *Marino v. Ortiz* (1988), 484 U.S. 301, 304, 108 S.Ct. 586, 98 L.Ed.2d 629. Because Beckett & Chambers was not a party in this case, it did not have standing below, and does not now have it here on appeal.

Appeal dismissed.

It is ordered that the parties equally share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

CHRISTINE T. McMONAGLE, JUDGE

KENNETH A. ROCCO, P.J., and
ANN DYKE, J., CONCUR