[Cite as *Countrywide Home Loans, Inc. v. Swayne*, 2010-Ohio-3903.]

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

COUNTRYWIDE HOME LOANS, INC.	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2009 CA 65
v.	:	T.C. NO. 06CV0771
MICHELE B. SWAYNE, et al.	:	(Civil appeal from Common Pleas Court)
Defendant-Appellant	:	
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O P I N I O N

Rendered on the 20th day of August, 2010.

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G. LASSON, P. O. Box 30, Donnelsville, Ohio 45319
Defendant-Appellant

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FROELICH, J.

G. Lasson, pro se, appeals from a judgment of the Greene County Court of Common Pleas, which granted summary judgment to Countrywide Home Loans on Lasson's counterclaim and entered a judgment and decree of foreclosure in favor

of Countrywide on its foreclosure claim. For the following reasons, the trial court's judgment will be affirmed.

I

In 2005, Michele Swayne executed an interest-only adjustable rate note to Countrywide in the amount of $86,400 to finance the purchase of the property located at 1562 Alameda Drive in Xenia, Ohio. The note was secured by a mortgage on the property; Swayne was the only signatory.

According to Lasson, in January 2006, Swayne entered into a "Standard Purchase Agreement" with Rent To Own Homes, Lasson's company, whereby Lasson apparently agreed to purchase the home for $115,000, to be paid in monthly installments. Lasson asserts that an affidavit attesting to this contract was recorded in Greene County. In April 2006, Lasson, acting as "Action Homes," entered into a "Guaranteed Purchase Agreement" to sell 1562 Alameda Drive to Karen Demeo for $129,932, to be paid in monthly installments. Although the record is unclear, we presume that Swayne was still the deedholder at the time of the "Agreement" between Lasson and Demeo.

On September 7, 2006, Countrywide initiated this foreclosure action, alleging that Swayne had defaulted on the note and on the mortgage securing the note. Lasson was not named as a party to the action nor was he served with the complaint. Swayne did not respond to the complaint, and the trial court subsequently entered a default judgment of foreclosure in favor of Countrywide.

In June 2007, Lasson, a vexatious litigator,[1] became aware that 1562 Alameda Drive was scheduled to be sold at a sheriff's sale due to the default judgment of foreclosure. He moved (without obtaining leave to proceed) to stop the sale, alleging that he had a recorded equitable interest in the property. The trial court granted the motion and stayed the sheriff's sale. In response to Lasson's assertion that he had an interest in the property, Countrywide moved to join Lasson as a party-defendant, which the trial court granted. Due to Lasson's joinder, the trial court later vacated its judgment of foreclosure.

On August 17, 2007, Lasson filed an Answer to Countrywide's complaint, and he brought a counterclaim against Countrywide and a cross-claim against Swayne. Lasson alleged that "Countrywide, at the beginning of the foreclosure, rebuffed any attempts by G. Lasson, through his Realtor, to (short) sell the property to him to help fulfill his agreement with his tenant/buyer, causing him to lose $18,500, plus rehab costs, management time, lost income, wages and gross profit, and court costs and potential attorney fees." With respect to his cross-claim, Lasson indicated that he did "not intend to seek more than $1 from Michelle

[1] On December 7, 2006, Lasson was declared a vexatious litigator,pursuant to R.C. 2323.52, by order of the Montgomery County Common Pleas Court in an unrelated case. *Lasson v. Coleman* (Dec. 7, 2006), Montgomery C.P. No. 2005 CV 3436, affirmed, Montgomery App. No. 21983, 2008-Ohio-4140. In accordance with R.C. 2323.52(D)(1), the Montgomery County court required Lasson to file a written request, in that court, for leave to proceed before (1) instituting legal proceedings in a common pleas court, court of claims, municipal court, or county court, (2) continuing any legal proceeding he previously had instituted in those courts, or (3) making any application, other than an application for leave to proceed, in any legal proceedings instituted by Lasson or another person in those courts.

Swayne, as she appears to not be collectable, and needs a fresh start in life."

Countrywide denied Lasson's allegations and moved for summary judgment on his counterclaim. Countrywide argued that there was no recorded agreement between Lasson and Swayne and that the recorded affidavit prepared by Lasson was not a valid agreement to purchase property. Countrywide further argued that any interest held by Lasson was junior to Countrywide's interest and did not preclude judgment in its (Countrywide's) favor. Finally, Countrywide argued that it had no duty to sell the property to Lasson and that any grievance he had was "collateral to the underlying foreclosure." No affidavit or other evidence was attached to the summary judgment motion.

Lasson opposed Countrywide's motion and sought summary judgment on his counterclaim. He argued that Countrywide failed to demonstrate that it had a defense to his counterclaim. Lasson further claimed that Countrywide did not serve the tenant residing in the property and that Swayne was a victim of predatory lending. Lasson stated that no significant facts were in controversy. Lasson attached a copy of the Affidavit and Memorandum of Agreement Concerning Real Estate, which was recorded in the Greene County Recorder's Office on August 3, 2006. The affidavit, prepared by Lasson, stated that there was a lease/purchase agreement between Swayne and Lasson, which could be obtained from Lasson "through due notice and procedure;" the lease/purchase agreement was not attached to the affidavit.

On November 26, 2007, Lasson filed a motion "to put following cases on hold" pending a ruling by the Montgomery County Common Pleas Court on his

motion for leave to file motions, pleadings, counterclaims, and cross-claims in several cases, which was filed in the Montgomery County Common Pleas Court that same day. Only the first page of this motion appears in the record, and this litigation was not among the two cases included on the first page as cases to be "put on hold." The trial court denied this motion.

On January 24, 2008, the trial court dismissed, sua sponte, Lasson's cross-claim and counterclaim on the ground that Lasson had been declared a vexatious litigator, and "[t]he record in this case does not indicate [Lasson] has been granted leave to file counterclaims or cross-claims." On February 6, 2008, Lasson sought reconsideration of the trial court's dismissal entry, arguing that the Montgomery County Common Pleas Court had ruled on September 11, 2007, and on December 5, 2007, in *Rountree v. Lasson*, Montgomery Case No. 07-CV-5344, that Lasson was not required to seek leave to file his counterclaims or cross-claims because he was the defendant in the action.[2] A copy of the ruling and a full copy of the motion "to put following cases on hold,"[3] among other documents, were attached to his motion for reconsideration. On February 14, 2008, the trial court denied Lasson's motion for reconsideration. Lasson appealed from the dismissal of his cross-claim and counterclaim. *Countrywide Home Loans v. Swayne*, Greene App. No. 08 CA 12.

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[2]The Montgomery County Common Pleas Court's September 11, 2007, order apparently concerned a motion by Lasson to file an answer, counterclaims, and cross-claims in that case. The December 5, 2007, order addressed Lasson's motion to file counterclaims and cross-claims in six other pending actions.

[3]This litigation was included, with an incorrect case number, on the second page

In December 2008, while the appeal was pending, Countrywide renewed its motion for a default judgment against Swayne. The court did not immediately rule on the motion. In May 2009, we dismissed Lasson's appeal for lack of a final appealable order. On July 30, 2009, after restoring the case to the active docket, the trial court vacated its decision dismissing Lasson's counterclaim and cross-claim.

On August 3, 2009, the trial court addressed Countrywide's renewed motion for default judgment against Swayne, Countrywide's motion for summary judgment on Lasson's counterclaim, and Lasson's motion for summary judgment on his counterclaim. The court entered a judgment and decree of foreclosure in favor of Countrywide, finding that Swayne had defaulted in the action and that Countrywide was due and owing the principal balance of $86,400 with interest at the rate of 6.5 percent from April 1, 2006, plus advances for taxes, insurance and other expenses. The court further found that Swayne was immune from personal liability on the note by virtue of a bankruptcy action.

With respect to Lasson, the court found:

"The Court finds that the defendant, G. Lasson aka Rent to Own Homes aka Action Homes, has filed an Answer, Counterclaim, and Cross Claim in response to Plaintiff's Complaint. The Court finds that the defendant's Answer was a general denial and asserted no affirmative defenses to this action. Therefore, there are no genuine issues of material fact and therefore Plaintiff is granted summary judgment

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of Lasson's motion.

as to said Defendant Lasson's Answer and Counterclaim. The Court finds that any interest that said defendant has in the property at issue is junior to that of the Plaintiff.

"The Court finds that the Defendant, G. Lasson aka Rent to Own Homes aka Action Homes has filed a Motion for Summary Judgment against the Plaintiff in this matter which Motion is without merit. Therefore, the court DENIES said Motion of the defendant."

The trial court found that Swayne's note was secured by a mortgage, which constituted a valid first lien on the property, and that Countrywide was entitled to have the equity of redemption be foreclosed. The court ordered that the property be sold and the proceeds distributed.

Lasson appeals from the judgment and decree of foreclosure.

Since the entry of the August 3, 2009, judgment and decree of foreclosure, two sheriff's sales have been scheduled. Both were cancelled prior to the scheduled sale. On December 7, 2009, the trial court stayed the case pending a ruling on Lasson's appeal.

Lasson raises eleven assignments of error. We will address them in a manner that facilitates our analysis.

II

Lasson's first assignment of error states:

"THE TRIAL COURT ERRED IN, SUA SPONTE, DISMISSING G. LASSON'S COUNTER CLAIMS AGAINST COUNTRYWIDE HOME LOANS."

Lasson claims that the trial court erroneously dismissed his counterclaim,

sua sponte, due to his failure to seek leave to file the counterclaim. Lasson acknowledges in his brief that the trial court subsequently vacated its order dismissing the counterclaim. Accordingly, Lasson's first assignment of error is overruled as moot.

III

Lasson's second and fourth assignments of error state:

"THE TRIAL COURT HAS ERRED BY NOT REQUIRING BA/CTWD[4] TO SHOW IRREFUTABLE PROOF THAT THEY ARE THE OWNER OF ALL PARTS OF THE TWO NOTES AND MORTGAGES ON THE PROPERTY INVOLVED IN THIS FORECLOSURE ACTION."

"THE TRIAL COURT ERRED BY NOT REQUIRING AN ON GOING VERIFICATION OF WHO TRULY OWNS THE PROPERTY IN QUESTION, THE NOTE(S) AND MORTGAGE(S) AS THE CASE UNFOLDS IN TIME."

In these assignments of error, Lasson claims that the trial court was required to ensure that Countrywide was the owner of the notes and mortgage, i.e., that it was the real party in interest in the action.

Civ.R. 17(A) requires that every civil action "be prosecuted in the name of the real party in interest." A "real party in interest" is "one who has a real interest in the subject matter of the litigation, and not merely an interest in the action itself, i.e., one who is *directly* benefitted or injured by the outcome of the case." *Shealy v.*

[4]BA appears to refer to Bank of America, and CTWD appears to be Lasson's abbreviation for Countrywide.

Campbell (1985), 20 Ohio St.3d 23, 24 (emphasis in original). See, e.g., *Countrywide Home Loans Servicing, L.P. v. Shifflet*, Marion App. No. 9-09-31, 2010-Ohio-1266, ¶12. Where the action has not been pursued by the real party in interest, Civ.R. 17(A) provides: "No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest. Such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest."

Because "[t]he issue of lack of standing 'challenges the capacity of a party to bring an action, not the subject matter jurisdiction of the court,' *** the issue of standing or the 'real-party-in-interest' defense is waived if not timely asserted." (Internal citations omitted) *Mid-State Trust IX v. Davis*, Champaign App. No. 07-CA-31, 2008-Ohio-1985, ¶56.

In its complaint, Countrywide alleged that it was the owner and holder of a note, which was attached as Exhibit A. Exhibit A was an interest-only adjustable rate note executed on July 14, 2005, by Michele Swayne in favor of Countrywide in the amount of $86,400. Countrywide further alleged that the note was secured by a mortgage, attached as Exhibit B. The attached mortgage, executed by Swayne to Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for Countrywide, secured payment of the note with the real property located at 1562 Alameda Drive in Xenia, Ohio. According to a subsequent filing by Countrywide, MERS later transferred its legal title to the mortgage to Countrywide.

Lasson did not challenge Countrywide's status as the real party in interest, either in his answer, in his counterclaim, or by motion. Accordingly, Lasson waived the argument that Countrywide was not the real party in interest. In the absence of a motion asserting that the action was not being prosecuted by the real party in interest, the trial court had no obligation to address the issue.

The second and fourth assignments of error are overruled.

IV

Lasson's third assignment of error states:

"THE TRIAL COURT ERRED BY NOT INSTRUCTING THE CLERK OF COURTS THAT PREPARES THE RECORD, TO LET LASSON KNOW WHEN THE RECORD WAS PREPARED, SO THAT LASSON MAY INSPECT IT BEFORE THE RECORD WAS SENT ON TO THE APPELLATE COURT."

Lasson claims that the trial court should have required the clerk of court to notify him that the record was complete and to afford him an opportunity to review it prior to its transmission to the court of appeals. Lasson states that he intended to review the record prior to transmission to the clerk of the court of appeals so that he could ensure that the record contained the order from the Montgomery County court indicating that he could defend himself without seeking prior leave of court.

Neither App.R. 10, which governs the transmission of the record by the clerk of the trial court to the clerk of the court of appeals, nor any other appellate rule obligates the clerk of the trial court to notify the appellant that the record is complete, prior to transmitting the record to the clerk of the court of appeals, so that the appellant can ensure that the record is, in fact, complete prior to transmission.

Even if there were such a requirement, Lasson does not allege any prejudice.

Lasson's third assignment of error is overruled.

V

Lasson's fifth assignment of error states:

"THE TRIAL COURT ERRED BY NOT HEARING LASSON'S COUNTER CLAIMS, YET."

With respect to his fifth assignment of error, Lasson's entire argument reads: "The trial Court erred by not hearing Lasson's counter claims, yet; not setting up the typical schedule for discovery and trial as the trial court typically does as of yet, perhaps since this Appellate Court now has sole jurisdiction in the case.

"Perhaps this is due process and equal protection."

At this juncture, the trial court has granted summary judgment to Countrywide on Lasson's counterclaim and has entered judgment in Countrywide's favor on the note and the mortgage. Because the trial court granted judgment in favor of Countrywide and against Lasson on his counterclaim, Lasson's counterclaim is now resolved on the merits, and the trial court need not order discovery or schedule a trial on Lasson's counterclaim.

The fifth assignment of error is overruled.

VI

Lasson's sixth, eighth and ninth assignments of error relate to the trial court's orders of sale of the property.

The sixth assignment of error argues that the trial court erred by "allowing the 2nd Sheriff's sale to go forward."

The eight assignment of error states:

"THE TRIAL COURT ERRED BY BELIEVING THAT LERNER [COUNSEL FOR COUNTRYWIDE] COPIED/SERVED LASSON ON THEIR PROPOSED ORDER TO MOVE FORWARD WITH THE 2ND SHERIFF'S SALE."

The ninth assignment of asserts that the trial court erred in "saying the order for sale was final and appealable *** and saying 'there was no just reason for delay.'"

Lasson has appealed from the judgment and decree of foreclosure, not an order confirming the sale of the property. Any issue related to the sale of the property is not properly before us.

The assignments of error are overruled.

VII

Lasson's seventh assignment of error states that the trial court erred "BY ALLOWING BA/CTWD/LERNER TO CLAIM LASSON WAS NOT GRANTED STANDING IN THE CASE."

Lasson claims that the trial court should not have permitted Countrywide to argue that Lasson lacked an interest in the litigation when Countrywide, through its counsel, "themselves granted Lasson standing very early in the case, 'to speed things along' in Lerner's own words."

In its July 3, 2007, motion to add Rent to Own Homes aka Action Homes as a party-defendant, Countrywide indicated that Rent to Own Homes "may claim an interest in the real estate which is the subject matter of this action by virtue of a Certified Judgment, being recorded on August 3, 2006 under Volume 2602, Page

112 in the Greene County Recorder's Office against Michele B. Swayne, and is therefore a necessary and proper party to these proceedings." The court granted the motion.

Lasson has been a party to this litigation since July 2007, and he has not been dismissed for lack of standing. Lasson has not cited to any portion of the record demonstrating that Countrywide argued that he lacked standing. See App.R. 16(A)(7), requiring, among other things, citations to "parts of the record on which appellant relies." Even if Countrywide had made such an argument, Lasson has not indicated how he was prejudiced by that argument.

The seventh assignment of error is overruled.

VIII

Although Lasson's brief indicates that he has tenth and eleventh assignments of error, he fails to articulate specific "statement[s] of the assignments of error presented for review," as required by App.R. 16(A)(3).

Under his tenth assignment of error, Lasson claims that trial court allowed Countrywide and its counsel "to continually present frivolous items in bad faith, with the resulting misrepresentations and needless delays and needless increase in the cost of litigation, seriously prejudicing Lasson and his business, allowing for other reasonable expenses and losses to be reimbursed to Lasson." Lasson cites, as an example, that Countrywide indicated that it was requesting cancellation of the second sheriff's sale "so that it could work with Swayne on modifying her loan," despite the fact that Swayne had no interest in the home and her debt under the note allegedly had been discharged in bankruptcy. Under his eleventh assignment

of error, Lasson simply states that "[a]ll this makes the trial court's granting summary judgment to CTWD in 2008, ridiculous and creates the next, 11th Assignment of error."

We find no indication in the record that Countrywide engaged in frivolous or fraudulent conduct during this litigation. In the absence of specific arguments by Lasson and specific references to the appellate record, we will not speculate regarding what he intends to claim as error. See App.R. 12(A)(2) (stating that the appellate court "may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A)").

The tenth and eleventh assignments of error are overruled.

IX

The trial court's judgment will be affirmed.

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BROGAN, J. and FAIN, J., concur.

Copies mailed to:

Adam R. Fogelman
Elizabeth S. Brashear
G. Lasson
Hon. J. Timothy Campbell