

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Flagstar Bank, F.S.B.

Court of Appeals No. L-10-1085

Appellee

Trial Court No. CI0200806871

v.

Chere R. Olvera, et al.

Defendants

DECISION AND JUDGMENT

[Gary Czerniakowski-Appellant]

Decided: December 3, 2010

* * * * *

Douglas A. Dymarkowski, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the February 25, 2010 judgment of the Lucas County Court of Common Pleas, which denied appellant's, Gary Czerniakowski, emergency motion to stay the writ of possession. Upon a review of the record, we find that the appeal is moot and we must dismiss the appeal.

{¶ 2} In 2008, appellee, Flagstar Bank, F.S.B., brought an action against Chere R. Olvera and John Doe, and others under the Fair Debt Collection Act. Appellee alleged that Olvera had defaulted on the note and, therefore, appellee sought to foreclose on the mortgage securing the note. Summary judgment was granted by the trial court to appellee on April 7, 2009. An order confirming the foreclosure sale was entered on September 17, 2009. Appellee then sought a writ of possession to have Olvera and her family evicted from the home. On February 9, 2010, appellant, Gary Czerniakowski, filed an emergency motion to stay the writ of possession. The trial court granted the emergency motion on February 11, 2010, and gave appellant until February 23, 2010 to vacate the premises. On February 22, 2010, appellee filed a second emergency motion to stay the writ of possession. On February 23, 2010, the trial court denied the motion. Appellant then sought a timely appeal to this court on March 24, 2010. The trial court granted a stay of execution of its judgment on March 30, 2010. However, on August 9, 2010, appellee voluntarily withdrew its writ of possession and indicated that it would proceed in the Toledo Municipal Court with a forcible entry and detainer complaint.

{¶ 3} Since appellee has withdrawn its writ of possession, there is no controversy between the parties and no issue for this court to resolve. Appellant's appeal is hereby dismissed. Appellant is hereby ordered to pay the costs of this appeal pursuant to App.R. 24.

APPEAL DISMISSED.

Flagstar Bank, F.S.B.
v. Olvera
C.A. No. L-10-1085

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.