IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

VILLAS AT THE POINTE OF SETTLERS WALK CONDOMINIUM ASSN., INC,	:	
Plaintiff,	:	CASE NO. CA2009-12-165
- vs -	:	O P I N I O N
COFFMAN DEVELOPMENT CO., INC., et al.,	:	6/21/2010
Defendants,	:	
RFSTH, LLC,	:	
Appellant,	:	
WELLS FARGO BANK, NA,	:	
Appellee.		

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 07CV69439

Kaman & Cusimano, Darcy Mehling Good, 50 Public Square, Suite 2000, Cleveland, Ohio 44113, for plaintiff

June E. and Ronald D. Coffman and Coffman Development Co., 460 Stolle Drive, Springboro, Ohio 45066, defendants, pro se

Flanagan, Lieberman, Hoffman & Swaim, Bradley C. Smith, Brock A. Schoenlein, 15 West Fourth Street, Suite 100, Dayton, Ohio 45402, for appellant

Wood & McDaniel, LLC, Frank G. Wood II, Sarah L. McDaniel, 1101 St. Gregory, Suite 345, Cincinnati, Ohio 45202, for appellee

RINGLAND, J.

{¶1} Cross-claim-defendant/appellant, RFSTH, LLC (RFSTH) appeals the

decision of the Warren County Court of Common Pleas granting summary judgment to cross-claim defendant/appellee, Wells Fargo Bank (Wells Fargo).

{¶2} Ron and June Coffman were the sole owners of Coffman Development Company (Coffman Development). Coffman Development owned a condominium, and delivered the condominium's deed to Ron and June so that they could mortgage it in their personal capacity. On June 19, 2002, Ron and June mortgaged the condominium to Ohio Savings Bank in exchange for the bank paying off prior mortgages on the condominium totaling $119,650. However, the deed conveying ownership from Coffman Development to Ron and June was lost or misplaced prior to recordation. In February 2006, Ohio Savings assigned the condominium's mortgage to Wells Fargo. A replacement deed showing the condominium's conveyance from Coffman Development to the Coffmans was eventually recorded on June 25, 2008.

{¶3} In separate actions, Community National Bank acquired a judgment lien for $1,179,854.28 against Coffman Development and filed the lien on August 8, 2007 against the condominium once owned by Coffman Development. The lien was later assigned to RFSTH on October 29, 2008.

{¶4} Ultimately, Wells Fargo instituted foreclosure proceedings against the Coffmans on August 3, 2009. Both Wells Fargo and RFSTH filed motions for summary judgment, each claiming a superior lien interest on the property. In granting summary judgment to Wells Fargo, the trial court found that Wells Fargo's lien was superior because RFSTH's judgment lien attached only to that which Coffman Development owned, which was nothing after it transferred its ownership of the condominium to the Coffmans. The court further found that neither Community National nor RFSTH were bona fide purchasers in good faith, as neither paid any funds toward the property and the judgment lien was merely attached to the condominium rather than any funds being

loaned against it.

{¶5} The trial court's entry granting judgment in favor of Wells Fargo was filed on November 17, 2009, and an order of sale was issued. The sale order was publicized and a report of publication was filed with the court on November 30, 2009. On December 15, 2009, RFSTH filed a notice of appeal with this court, but at no time requested a stay of the sale or a stay of the trial court's judgment in favor of Wells Fargo. With no stay requested, the condominium was sold on January 4, 2010, and the court filed a journal entry confirming the sale and ordering the distribution of sales proceeds on March 16, 2010.

{¶6} After RFSTH filed its notice of appeal, but before the case was set for consideration, Wells Fargo moved this court to dismiss the case because the condominium's sale and distribution of proceeds rendered the issue moot. RFSTH asserts that even though the property has since been sold, its challenge is not moot and now appeals the trial court's grant of Wells Fargo's motion for summary judgment, raising a single assignment of error.

{¶7} "THE TRIAL COURT ERRED WHEN IT DETERMINED THAT WELLS FARGO'S LIEN SHOULD BE PRIORITIZED AHEAD OF THE LIEN HELD BY RFSTH, LLC."

{¶8} RFSTH challenges the trial court's grant of summary judgment to Wells Fargo. Initially, this court must determine whether RFSTH's appeal is properly before us, or if the issue is moot as Wells Fargo asserts.

{¶9} A case is moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *State ex rel. Gaylor, Inc. v. Goodenow,* Slip Opinion No. 2010-0330, 2010-Ohio-1844, ¶10. Only two exceptions to the mootness doctrine exist; if the issues are capable of repetition or should the case

involve a matter of public or great general interest. *Bankers Trust Co. of Cal., N.A. v. Tutin*, Summit App. No. 24329, 2009-Ohio-1333.

{¶10} Neither of those exceptions exists in the present case. First, the issue is not capable of repetition because once the trial court determined the lien priorities this court would either affirm or reverse the trial court's finding, and the controversy would be extinguished at that point. Secondly, this issue is not of public or great general interest because several courts have decided similar issues in the past. Unlike a unique issue or case of first impression, the law is well-established regarding priority of liens.

{¶11} "In foreclose cases, as in all other civil actions, after the matter has been extinguished through satisfaction of the judgment, the individual subject matter of the case is no longer under the control of the court and the court cannot afford relief to the parties to the action." *Bankers Trust*, ¶16. See, also, *Dietl v. Sipka*, 185 Ohio App.3d 218, 2009-Ohio-6225 (finding case moot where proceeds were distributed after foreclosure and forced sale); *Aurora Loan Serv. v. Kahook*, Summit App. No. 24415, 2009-Ohio-2997, ¶7 (dismissing appeal as moot where trial court dispersed funds to satisfy a previous judgment so that "no live controversy exist[ed]"); *Charter One Bank v. Mysyk*, Geauga App. No. 2003-G-2528, 2004-Ohio-4391, ¶4 (dismissing appeal because "once the Sheriff's sale occurred, the merits of the trial court's foreclosure order became moot. No relief can be afforded once the property has been sold at foreclosure sale because an appellate court is unable to grant any effectual relief at that point"); and *Alegis Group v. Allen*, Portage App. No. 2002-P-0026, 2003-Ohio-3501, ¶10 (dismissing appeal because "appellant did not obtain a stay of the foreclosure order and the sheriff's sale has already been completed").

{¶12} According to the record, the trial court ordered the condominium's sale and rendered judgment that Wells Fargo's lien was superior to RFSTH's judgment lien.

Absent a request from RFSTH to stay the judgment and sale, the condominium was sold and its proceeds distributed. Therefore, the matter has been extinguished through satisfaction of the judgment and RFSTH's claim that its judgment lien was superior to Wells Fargo is no longer under the control of this court.

{¶13} We are aware that appellate courts have reached the merits of foreclosure issues even though the property in question was sold and proceeds distributed. However, those instances are distinguishable from the case at bar. In *Chase Manhattan v. Locker*, Montgomery App. No. 19904, 2003-Ohio-6665, the Second District Court of Appeals did not find the foreclosure issue moot because the trial court had granted a stay pending appellant posting a bond. When appellant failed to post the bond, the trial court permitted the sale of the property and disbursement of funds. In deciding whether the issue was mooted by the sale, the court focused on the principle that "an appellant's failure to obtain a stay cannot be predicated upon her own financial difficulties." Id. at ¶ 42.

{¶14} Following the Second District's reasoning, the Eleventh District Court of Appeals reached the merits of a foreclosure issue even though the property was sold and the proceeds distributed. *Ameriquest Mortgage v. Wilson*, Ashtabula App. No. 2006-A-0032, 2007-Ohio-2576. In finding that the issue was not moot, the court pointed to some uncertainty regarding multiple orders from the trial court and the lack of clarity regarding which entry was meant to be the final appealable order.

{¶15} The court also noted that the appellants were given the opportunity to post a bond to procure a stay, but neglected to do so because they could not afford it. In conjunction with the fact that confusion existed regarding the trial court's orders, the court held that the appellant might possibly be made whole via restitution should it find in appellant's favor.

{¶16} In both of these cases, the courts found that restitution was a possible means for recovery should the decision of the trial court be reversed on appeal. However, in the case at bar, and unlike the cases discussed above, there was no confusion regarding the trial court's orders, and RFSTH failed to request a stay of the judgment or the sale and distribution of funds. Unlike the appellants mentioned above who moved for a stay but were unable to post a bond, RFSTH did not request a stay and stood by idly as the property was sold and the proceeds distributed.

{¶17} We also note that the cases above were specific to the debtor seeking review of a trial court's ruling in favor of a foreclosing mortgagee. In the case at bar, however, a judgment lien holder is challenging the trial court's order of lien priority. The decision regarding who has a superior lien is different from a debtor challenging whether the foreclosure was proper or other issues that may arise between a mortgagor and mortgagee.

{¶18} When the Fifth District Court of Appeals was asked to reach the merits of an appeal after the judgment had been satisfied and the proceeds distributed, it found the appeal moot. *Meadow Wind v. McInnes*, Stark App. No. 2002CA00319, 2003-Ohio-979. In doing so, the court stated that it was unable to "unpeel the apple." Id. at ¶ 7. We too find that in the case at bar, the sale and distribution of funds has rendered the matter extinguished through satisfaction of the judgment, and like unpeeling the apple, this court cannot afford relief to the parties in the action.

{¶19} Because there is no live controversy before this court, the appeal is dismissed as moot.

{¶20} Appeal dismissed.

YOUNG, P.J., and BRESSLER, J., concur.