

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

WELLS FARGO BANK, NA AS TRUSTEE	:	IN THE SUPERIOR COURT OF
FOR ABFC 2006-OPT1 TRUST, ABFC	:	PENNSYLVANIA
ASSET-BACKED CERTIFICATES	:	
SERIES 2006 OPT1,	:	
	:	
Appellee	:	
	:	
v.	:	
	:	No. 420 EDA 2013
ALLISON STRAKER,	:	
	:	
Appellant	:	

Appeal from the Order Entered January 10, 2013
in the Court of Common Pleas of Carbon County
Civil Division at No(s): Case No. 12-0080

BEFORE: BENDER, P.J., OTT, and STRASSBURGER,* JJ.

MEMORANDUM BY STRASSBURGER, J.: **FILED DECEMBER 23, 2013**

Allison Straker (Straker) appeals *pro se* from an order denying her motion for summary judgment and granting the motion for summary judgment of Wells Fargo Bank, NA as trustee for ABFC 2006-OPT1 Trust, ABFC Asset-Backed Certificates Series 2006-OPT1 (Wells Fargo). In addition, Wells Fargo has filed in this Court a “Motion to Quash Appeal.” We deny the motion to quash and affirm the order.

On January 12, 2012, Wells Fargo filed a complaint in ejectment against Straker or occupants. According to the complaint, Wells Fargo is “the owner of the premises known as 223A Chestnut Lane, Jim Thorpe, PA 18229[.]” Complaint, 1/12/2012, at ¶ 1. Wells Fargo claimed title to this property “by virtue of a Sheriff’s sale held on September 09, 2011, in the

* Retired Senior Judge assigned to the Superior Court.

execution of a judgment in mortgage foreclosure obtained in the Court of Common Pleas of Carbon County, Docket No. 07-1895 where [Wells Fargo] was the successful bidder.” **Id.** at ¶ 2. Wells Fargo averred that it “became the owner of said property by sheriff’s deed recorded on December 22, 2011 in the Office of Recorder of Carbon County at Book No. 1948, Page 746.” **Id.** at ¶ 3. Wells Fargo lastly averred that it, “by virtue of the aforesaid title, is the owner in fee of the said premises, and is entitled to possession thereof. [Straker] or Occupants are occupying the said premises without right, and so far as [Wells Fargo] is informed, without claim of title.” **Id.** at ¶ 4. Wells Fargo sought possession of the premises.

Straker filed a response to the complaint.¹ Straker maintained that Wells Fargo is not the owner of the property at issue in this case. Straker stated that she never was served the default judgment in the mortgage foreclosure action and that the judgment, therefore, is defective and void. She further averred that Wells Fargo’s title to the property is defective.

While the parties employed a fair amount of procedural tactics, it is sufficient to highlight for purposes of this appeal that the parties eventually filed competing motions for summary judgment. The trial court granted

¹ Straker represented herself in the trial court, and as noted above, she continues to represent herself on appeal. Regarding Straker’s *pro se* status, we highlight that “[a]lthough this Court is willing to liberally construe materials filed by a *pro se* litigant, *pro se* status confers no special benefit upon the Straker. To the contrary, any person choosing to represent himself [or herself] in a legal proceeding must, to a reasonable extent, assume that his lack of expertise and legal training will be his [or her] undoing.” **Wilkins v. Marsico**, 903 A.2d 1281, 1284-85 (Pa. Super. 2006) (citations omitted).

Wells Fargo's motion for summary judgment and denied Straker's motion for summary judgment.

Straker timely filed a notice of appeal. The trial court directed Straker to comply with Pa.R.A.P. 1925(b), and Straker subsequently filed a Pa.R.A.P. 1925(b) statement. In that statement, Straker raised eight issues. The thrust of those issues was that, in this ejectment action, she can collaterally attack the default judgment in the mortgage foreclosure action by claiming that the judgment is void.

In its Pa.R.A.P. 1925(a) opinion, the trial court stated, "This instant appeal is the most recent dilatory tactic being undertaken by [] Straker in the long life of this litigation." Trial Court Opinion, 4/1/2013, at 1. The court then outlined these tactics, which included several bankruptcy filings by Straker and her husband. Lastly, the court addressed Straker's Pa.R.A.P. 1925(b) statement as follows.

As to the issues raised in [Straker's] concise statement, those issues were raised and disposed of in the underlying foreclosure action and are not proper nor timely appealed in this current action. As a result, [Wells Fargo] is entitled to recover possession of the subject property by virtue of our granting [Wells Fargo's] motion for summary judgment.

Id. at 5 (footnote omitted).

Before we turn to Straker's issues, we briefly address Wells Fargo's motion to quash. According to Wells Fargo, "[o]n May 22, 2013[,] the Sheriff of Carbon County executed [Wells Fargo's] Writ and delivered possession of the property at issue to [Wells Fargo]." Motion to Quash

07/22/13, at ¶ 2. Wells Fargo takes the position that the case is now moot and should be quashed. Wells Fargo fails to support its position with citation to legal authority. Moreover, to the extent Wells Fargo's position is legally sound, we note that it failed to supplement the certified record to substantiate its factual assertions. For these reasons, we deny the motion.

Straker frames the issues she wishes to raise on appeal in the following manner.

1. Was [Wells Fargo] required to provide proof that there were [*sic*] an assignment of the note and mortgage between Option One and [Wells Fargo], in June 13, 2006?
2. Was [Wells Fargo] the Real Owner of the note and mortgage on June 13, 2006?
3. Was the assignment of mortgage that was made by [Wells Fargo] on or about August 28, 2007, retroactive prior to a Default Judgment?
4. Did the assignment of the mortgage that was made by [Wells Fargo] on or about August 28, 2007, violate substantive rights of [Straker] in prior Foreclosure and Ejectment proceedings?
5. Did a chain of title of the assignment of the note and mortgage existed [*sic*] between the real owner of the note and mortgage and [Wells Fargo]?

Straker's Brief at 3 (suggested answers omitted).

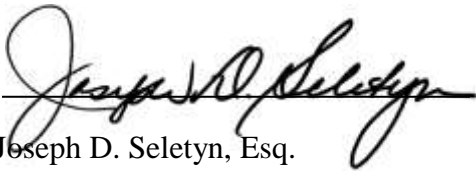
The only reason the trial court supplied in support of its decision to grant summary judgment in favor of Wells Fargo was that Straker previously litigated her jurisdictional issues in the foreclosure action. Trial Court Opinion, 4/1/2013, at 5. In her brief to this Court, Straker fails to address this rationale. Consequently, she has failed to convince us that the trial

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court erred; she, therefore, is not entitled to relief. **See *Commonwealth v. Wrecks***, 931 A.2d 717, 722 (Pa. Super. 2007) (“An appellant also has the burden to convince us that there were errors and that relief is due because of those errors.”). Accordingly, we affirm the trial court’s order.

Motion to Quash denied. Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/23/2013