

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

WELLS FARGO BANK, N.A.,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
DOUGLAS A. MONINGER AND	:	
LORI L. MONINGER,	:	
	:	
Appellants	:	No. 663 WDA 2012

Appeal from the Order March 16, 2012,
Court of Common Pleas, Westmoreland County,
Civil Division at No. 8454 of 2010

BEFORE: DONOHUE, SHOGAN and WECHT, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: February 26, 2013

This is an appeal from an order denying a petition to set aside a sheriff's sale. For the reasons below, we affirm the trial court's decision.

On November 22, 2010, Wells Fargo Bank, N.A. ("Wells Fargo") commenced an *in rem* mortgage foreclosure action against Douglas and Lori Moninger ("the Moningers") in the Westmoreland County Court of Common Pleas. On or about July 7, 2011, Wells Fargo caused a default judgment to be entered against the Moningers because they failed to file a timely answer to the complaint. On November 14, 2011, the mortgaged property was sold at a sheriff's sale to Federal National Mortgage Association ("Fannie Mae").

On or about December 9, 2011, the Moningers filed a petition to set aside the sheriff's sale.¹ The trial court issued a rule to show cause why the Moningers were not entitled to the relief requested. It provided that Wells Fargo must file an answer within 20 days, that depositions shall be completed within 60 days of the filing of the answer, and that the Moningers' petition will be decided under Pennsylvania Rule of Civil Procedure 206.7 ("Rule 206.7"). Wells Fargo filed its Answer and New Matter on January 9, 2012,² which raised numerous factual disputes. Trial Court Order, 12/9/11. No depositions were taken. Following oral argument on March 16, 2012, the trial court denied the Moningers' petition and confirmed the sheriff's sale.

The Moningers filed this timely appeal, challenging the trial court's denial of their petition to set aside the sheriff's sale. "When reviewing a trial court's ruling on a petition to set aside a sheriff's sale, it is recognized that the court's ruling is a discretionary one and it will not be reversed on appeal unless there is a clear abuse of that discretion." **Blue Ball Nat. Bank v. Balmer**, 810 A.2d 164, 167 (Pa. Super. 2002), citing **Federal Sav. Bank v. CPM Energy Sys. Corp.**, 619 A.2d 371 (Pa. Super. 1993).

¹ Pennsylvania Rule of Civil Procedure 3132 governs the procedure for setting aside a sheriff's sale, and it provides as follows: "Upon petition of any party in interest before delivery of the personal property or of the sheriff's deed to real property, the court may, upon proper cause shown, set aside the sale and order a resale or enter any other order which may be just and proper under the circumstances." Pa.R.C.P. 3132.

² Although this pleading was filed past the 20-day deadline provided by the trial court, the Moningers did not object to the late filing.

The trial court relied on Rule 206.7 in reaching its ruling. **See** Trial Court Opinion, 4/18/12. This rule provides as follows:

Rule 206.7. Procedure After Issuance of Rule to Show Cause

(a) If an answer is not filed, all averments of fact in the petition may be deemed admitted for the purposes of this subdivision and the court shall enter an appropriate order.

(b) If an answer is filed raising no disputed issues of material fact, the court on request of the petitioner shall decide the petition on the petition and answer.

(c) If an answer is filed raising disputed issues of material fact, the petitioner may take depositions on those issues, or such other discovery as the court allows, within the time set forth in the order of the court. ***If the petitioner does not do so, the petition shall be decided on petition and answer and all averments of fact responsive to the petition and properly pleaded in the answer shall be deemed admitted for the purpose of this subdivision.***

(d) The respondent may take depositions, or such other discovery as the court allows.

Pa.R.C.P. No. 206.7 (emphasis added).

On appeal, the Moningers do not dispute that resolution of their petition was governed by Rule 206.7. They argue only that the trial court erred in its application of this rule, as they contend that statements contained in Wells Fargo's Answer entitle them to relief. Appellants' Brief at

6. However, the Moningers do not indicate which statements in Wells Fargo's Answer it believes entitle them to relief.

Rather, the Moningers' true argument appears to be that Wells Fargo was required to stay any efforts to sell their property under federal "HAMP regulations and special directives," specifically HAMP Supplemental Directive 10-02.³ Appellants' Brief at 6. The Moningers contend that under HAMP, Wells Fargo is prohibited from listing a property for sheriff's sale unless "certain circumstances" exist, but that none of these circumstances exists in their case. *Id.* at 6-7.

However, one of the "circumstances" that the Moningers allege would permit a sheriff's sale is if "[t]he borrower is evaluated for HAMP and is determined to be ineligible for the program[.]" *Id.*⁴ In its Answer, Wells Fargo averred that it had reviewed the Moningers' account for a loan modification pursuant to HAMP and that they were declined because they did not meet the eligibility criteria. Answer and New Matter, 1/9/12, at ¶ 6. Because the Moningers did not take depositions, Rule 206.7 provides that this statement by Wells Fargo shall be deemed admitted by the Moningers.

³ "HAMP" is an acronym for the Home Affordable Modification Program, which is a program of the United States Departments of the Treasury & Housing and Urban Development. See <http://www.makinghomeaffordable.gov/programs/lower-payments/Pages/hamp.aspx>

⁴ The Moningers recite language from two provisions of Directive 10-02, both of which state that there can be no relief where the borrower has been determined to be ineligible for the HAMP program. Appellants' Brief at 6-7.

Pa.R.C.P. 206.7. This admission, that the Moningers were deemed ineligible for relief under the HAMP, defeats the Moningers' argument that they were entitled to relief thereunder.

Because the Moningers failed to establish that Wells Fargo could not proceed with the sheriff's sale, the trial court did not err in denying their petition to set aside the sheriff's sale. We therefore find no error in the learned trial court's decision, and so we affirm.

Order affirmed.