

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

WELLS FARGO BANK, N.A., SOLELY AS	:	IN THE SUPERIOR COURT OF
TRUSTEE FOR THE RMAC REMIC	:	PENNSYLVANIA
TRUST SERIES 2009-10,	:	
	:	
Appellee	:	
	:	
v.	:	
	:	
MARK S. RESSLER AND	:	
ADELE M. RESSLER,	:	
	:	
Appellants	:	No. 910 EDA 2012

Appeal from the Judgment entered February 14, 2012,
Court of Common Pleas, Delaware County,
Civil Division at No. 10-15930

BEFORE: DONOHUE, OLSON and FITZGERALD*, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED MAY 17, 2013

Appellants, Mark S. Ressler and Adele M. Ressler (the "Resslers") appeal from the judgment entered in favor of Appellee, Wells Fargo Bank, N.A. ("Wells Fargo") on February 14, 2012. We affirm.

The trial court summarized the pertinent facts as follows:

This case involves a Mortgage on the property at 213 Darlington Road, Media, PA 19603 ('The Property'), a private residence located in Delaware County, PA. The [Resslers] executed the Mortgage in 1996 and the Mortgage was subsequently assigned several times. The record shows that the Mortgage was last assigned to [Wells Fargo] by Assignment of Mortgage dated January 15, 2010.

[The Ressler] defaulted under the Mortgage in 2003. Due to [the Ressler]' default, [Wells Fargo] sent [the Ressler], at [the Ressler]' last known address, the Combined Notice via regular and certified mail, as required by Act 6 of 1974, 41 P.S.

*Former Justice specially assigned to the Superior Court.

§ 403(a) ("Act 6"), and Act 91 of 1983, 35 P.S. § 1680.401(c) ("Act 91"). [The Resslerers] failed to cure the default and [Wells Fargo] initiated this foreclosure action.

Trial Court Opinion, 7/30/12, at 2.

Wells Fargo's foreclosure action commenced on December 14, 2010. The Resslerers filed a *pro se* answer on February 22, 2011. Wells Fargo filed a motion for summary judgment on March 16, 2011, and the Resslerers filed a *pro se* response on April 18, 2011. The trial court granted Wells Fargo's motion as to liability on July 8, 2011 and reserved its decision on damages for a later date. On December 27, 2011, Wells Fargo filed a second summary judgment motion pertaining to damages. The Resslerers filed a counseled motion to strike the judgment as to liability of July 8, 2011. On February 14, 2012, the trial court granted summary judgment in favor of Wells Fargo on damages. The court denied the Resslerers' motion to strike on day later. This timely appeal followed.

The Resslerers raise a single issue for our review:

Can a summary judgment in an *in rem* mortgage foreclosure be affirmed where the incorporated record demonstrates that no valid assignment to plaintiff had been executed and recorded until four months after the entry of judgment by the lower court?

The Resslerers' Brief at 4.

We review an order granting a summary judgment as follows:

This Court's scope of review of an order granting summary judgment is plenary. Our

standard of review is clear: the trial court's order will be reversed only where it is established that the court committed an error of law or clearly abused its discretion. Summary judgment is appropriate only in those cases where the record clearly demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Pa.R.Civ.P. 1035.2[.] The reviewing court must view the record in the light most favorable to the nonmoving party, resolving all doubts as to the existence of a genuine issue of material fact against the moving party. When the facts are so clear that reasonable minds cannot differ, a trial court may properly enter summary judgment.

Atcovitz v. Gulph Mills Tennis Club, 571 Pa. 580, 585-86, 812 A.2d 1218, 1221-22 (2002) (citations omitted).

The Resslerers assert that Wells Fargo had not received an assignment of the subject mortgage prior to entry of judgment. They rely on ***U.S. Bank N.A. v. Mallory***, 982 A.2d 986 (Pa. Super. 2009), and ***Wells Fargo Bank N.A. v. Lupori***, 8 A.3d 919 (Pa. Super. 2010), in support of their argument. Those cases address Pennsylvania Rule of Civil Procedure 1147(a)(1), which requires a complaint in mortgage foreclosure to allege "the parties to and the date of the mortgage, and of any assignments, and a statement of the place of record of the mortgage and assignments." Pa.R.C.P. 1147(a)(1). Since the Resslerers do not allege any deficiency in Wells Fargo's complaint, ***Mallory*** and ***Lupori*** are inapposite. Indeed, Wells Fargo alleged in its complaint that it received an assignment of the subject mortgage dated January 15, 2010 and recorded the assignment on March 5, 2010. The

Ressler's admitted as much in their answer. Complaint, 12/14/10, at ¶ 3; Answer, 2/23/11, at ¶ 3.

The Ressler's also rely on documentation purportedly disproving Wells Fargo's allegation that it received an assignment of the subject mortgage. The Ressler's argue that the February 14, 2012 summary judgment as to damages cannot stand because the trial court should have granted their petition to strike the July 11, 2011 summary judgment as to liability.

In filing a petition to strike a partial summary judgment, however, the Ressler's committed a procedural error. Petitions to strike a judgment typically follow a judgment by confession or a default judgment. **See** Pa.R.C.P. 2959; **Mallory**, 982 A.2d at 988. In this case, Wells Fargo obtained summary judgment, rather than a default judgment or judgment by confession.¹ Since partial summary judgment is an interlocutory order, the Ressler's should have filed a petition for reconsideration. Pa.R.C.P. 1035.2, *note*; **Rohr v. Keystone Ins. Co.**, 439 A.2d 809 (Pa. Super. 1982). Moreover, our Supreme Court has held that a petition to strike a judgment cannot rely on matters that were outside the record at the time of judgment. **Resolution Trust Corp. v. Copely Qu-Wayne Assocs.**, 546 Pa. 98, 106,

¹ As set forth in the main text, Wells Fargo filed its summary judgment motion on March 16, 2011, only weeks after the Ressler's' answer to the complaint was filed. Wells Fargo's motion includes an affidavit confirming the amount of the debt and documentation of the loan history, but in many respects it is similar to a motion for judgment on the pleadings.

683 A.2d 269, 273 (1996). "If the record is self-sustaining, the judgment will not be stricken." *Id.*²

In summary, the Resslerers failed to create a record in support of their contention that Wells Fargo had no valid assignment of the subject mortgage. Furthermore, the Resslerers' answer to Wells Fargo's complaint contains an admission that a valid assignment existed. For that reason, we believe that the trial court properly found no genuine issue of material fact concerning the issue the Resslerers raise on appeal. Since the Resslerers failed to seek reconsideration of the partial summary judgment, and since they failed to create a record that would warrant reconsideration, we affirm the judgment.

Judgment affirmed.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambetta", written over a horizontal line.

Prothonotary

Date: 5/17/2013

² The trial court ignored the procedural error and simply decided the issue the Resslerers placed before it: "[The Resslerers] suggest that there is a defect outside the record, namely the purported inconsistency in the chain of mortgage assignments. Such matters are external to the record of this foreclosure case." Trial Court Opinion, 7/30/12, at 5.