

THIRD DIVISION
AUGUST 27, 2014

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

U.S. BANK NATIONAL ASSOCIATION, as)	
Trustee for the Pooling and Servicing Agreement)	
dated as of March 1, 2006 MASTR, Asset-Backed)	Appeal from the Circuit Court
Securities Trust 2006-WMCI Mortgage Pass-)	of Cook County.
through Certificates, Series 2006-WMCI,)	
)	No. 11 CH 16021
Plaintiff-Appellee,)	
)	The Honorable
v.)	Alfred M. Swanson, Jr.,
)	Judge Presiding.
ALEXANDRA ARKUSZEWSKI,)	
)	
Defendant-Appellant.)	

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Neville and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* An order confirming a judicial sale was affirmed where defendant mortgagor did not appeal the final judgment entered on the order confirming the judicial sale within 30 days from the entry thereof, and her section 2-1401 petition for relief from a final judgment after 30 days was barred by section 15-1509(c) of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1509(c) (West2012)).

¶ 2

BACKGROUND

¶ 3

Plaintiff, U.S. Bank National Association (US Bank), filed its complaint to foreclose defendant's mortgage on the subject property at 4838 Prospect Avenue, Norridge, Illinois, on May 2, 2011. Defendant, Alexandra Arkuszewski, appeared and entered a general denial and affirmative defenses, including the fact that the mortgage company is Ocwen Loan Servicing, LLC and not WMC Mortgage Corporation or US Bank. WMC Mortgage Corporation was the original lender and the mortgage was assigned to US Bank. US Bank filed a motion for summary judgment, indicating that there is no genuine issue of material fact that Ocwen Loan Servicing, LLC is the loan servicing company acting as attorney-in-fact for plaintiff and that the mortgage was assigned to plaintiff, attaching a copy of the assignment to its motion.

¶ 4

After hearing, the circuit court entered judgment for foreclosure sale on December 8, 2011. The property sold at a public sale on March 19, 2012, to US Bank as the highest bidder.

¶ 5

US Bank filed a motion to confirm the sale. Before the hearing date for confirmation of the sale, defendant responded that that the subject property was transferred in fee simple to Rampart MMW, Inc. (Rampart) and Monica Sarzynski by a special warranty deed, and that Rampart filed for bankruptcy, which triggered an automatic stay preventing foreclosure of the property and rendering the sale void. US Bank replied that upon investigation and belief, US Bank believed that defendant entered into an agreement with Rampart to delay foreclosure proceedings on the property as Rampart filed for bankruptcy a total of three times to prevent creditors from reaching this and other properties by using the automatic stay provision. Two of Rampart's prior bankruptcy proceedings were dismissed. US Bank argued that there was no automatic stay of the foreclosure proceedings in this case because, under the Bankruptcy Code, if a party files two or more bankruptcies within the previous year which were dismissed, the

automatic stay "shall not go into effect upon the filing of the later case," citing 11 U.S.C. 362(c)(4)(A)(1). US Bank also replied that it did not have notice of the alleged bankruptcy proceeding at the time of the sale.

¶ 6 On January 8, 2013, the court entered an order approving report of sale and distribution, confirming sale and order of possession. A judicial deed was executed and delivered by Nancy R. Vallone, the Chief Executive Officer of the Judicial Sales Corporation. The judicial deed was recorded on February 15, 2013.

¶ 7 Defendant did not appeal within 30 days.

¶ 8 Instead, on August 2, 2013, defendant filed a petition to vacate the judgment under section 2-1401 of the Illinois Code of Civil Procedure. See 735 ILCS 5/2-1401 (West 2012). The court denied her section 2-1401 petition on September 27, 2013. Plaintiff filed her notice of appeal from this order on October 2, 2013.

¶ 9 ANALYSIS

¶ 10 Plaintiff appeals from the court's denial of her section 2-1401 petition, raising several arguments to vacate the judgment on the final order confirming the judicial sale of the subject property. Although US Bank argues we have no jurisdiction and that this appeal should be dismissed because defendant did not appeal the final judgment within 30 days, plaintiff is appealing the denial of her section 2-1401 petition, and she timely filed her appeal from this order within 30 days. We therefore have jurisdiction.

¶ 11 Where, as in this case, the circuit court disposes of a section 2-1401 petition on the pleadings, our review is *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007).

¶ 12 Section 15-1509(c) of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1509 (West 2012)) and *U.S. Bank National Association v. Prabhakaran*, 2013 IL App (1st) 111224 are

dispositive of this case. Section 15-1509(c) explicitly provides that all claims are barred after vesting of title by deed pursuant to section 15-1509(b):

¶ 13 "(c) Claims Barred. Any vesting of title by a consent foreclosure pursuant to Section 15-1402 or by deed pursuant to subsection (b) of Section 15-1509, unless otherwise specified in the judgment of foreclosure, shall be an entire bar of (i) all claims of parties to the foreclosure and (ii) all claims of any nonrecord claimant who is given notice of the foreclosure in accordance with paragraph (2) of subsection (c) of Section 15-1502, notwithstanding the provisions of subsection (g) of Section 2-1301 to the contrary. Any person seeking relief from any judgment or order entered in the foreclosure in accordance with subsection (g) of Section 2-1301 of the Code of Civil Procedure may claim only an interest in the proceeds of sale." 735 ILCS 5/15-1509(c) (West 2012).

¶ 14 Subsection (b) of Section 15-1509 provides:

¶ 15 "(b) Effect Upon Delivery of Deed. Delivery of the deed executed on the sale of the real estate, even if the purchaser or holder of the certificate of sale is a party to the foreclosure, shall be sufficient to pass the title thereto." 735 ILCS 5/15-1509(b) (West 2012).

¶ 16 Here, the judicial deed was executed and delivered, thereby vesting title in US Bank under section 15-1509(b), and under section 15-1509(c), this vesting of title operates as an entire bar of all of plaintiff's claims.

¶ 17 Further, *Prabhakaran* held that a party may not "circumvent" the Illinois Mortgage Foreclosure Law by filing a section 2-1401 petition to vacate a final judgment entered on an order confirming a sale in foreclosure. *Prabhakaran*, 2013 IL App (1st) 111224 at ¶ 30. Section 15-1508(b) of the Illinois Foreclosure Law provides that, after the foreclosure judgment and

judicial sale, the circuit court shall confirm the sale unless the court finds that (i) a required notice was not given, (ii) the terms of the sale were unconscionable, (iii) the sale was conducted fraudulently, or (iv) that justice was otherwise not done. 735 ILCS 5/15-1508(b) (West 2008). Plaintiff did not appeal. In *Prabhakaran*, this court noted that "[a] section 2-1401 petition is not a timely appeal; it is a new action in the circuit court that seeks vacation of a final judgment." *Prabhakaran*, 2013 IL App (1st) 111224 at ¶ 28 (citing *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002)). This court made clear that "[t]here is simply no Illinois authority to support the defendant's argument that she can utilize section 2-1401 to circumvent section 15-1509(a) or section 15-1509(c) of the Foreclosure Law after the circuit court confirmed the sale of the property." *Prabhakaran*, 2013 IL App (1st) 111224 at ¶ 30. As in *Prabhakaran*, plaintiff "cannot rely upon section 2-1401 as an alternative remedy once the circuit court confirmed the sale of the property. The clear and unambiguous language of section 15-1509(c) of the Foreclosure Law bars the defendant's claims in her section 2-1401 petition and is dispositive." *Id.*

¶ 18 Because section 15-1509(c) of the Foreclosure Law bars defendant's claims in her section 2-1401 petition, we need not address the substance of any of defendant's arguments in her petition, as they are moot because her petition is barred.

¶ 19 CONCLUSION

¶ 20 Because section 15-1509(c) of the Foreclosure Law bars defendant's claims in her section 2-1401 petition, we affirm the decision of the circuit court denying defendant's section 2-1401 petition.

¶ 21 Affirmed.