

2016 IL App (1st) 151004-U
No. 1-15-1004
February 2, 2016

SECOND DIVISION

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

WELLS FARGO BANK, N.A.,)	Appeal from the Circuit Court
)	Of Cook County.
Plaintiff-Appellee,)	
)	
v.)	Nos. 10 CH 43518
)	
THELMA JEANNE JOHNSON LUTHER)	The Honorable
a/k/a Thelma Johnson,)	Robert E. Senechalle, Jr.,
)	Judge Presiding.
Defendant-Appellant,)	
)	
and)	
)	
HIOLA G. ALSTON, CITY OF CHICAGO,)	
UNKNOWN HEIRS AND LEGATEES OF)	
THELMA JEANN JOHNSON LUTHER, IF)	
ANY, UNKNOWN OWNERS and NON-)	
RECORD CLAIMANTS,)	
)	
Defendants.)	

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Pierce and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Section 15-1509 (c) of the Illinois Mortgage Foreclosure Law is a complete bar to a section 2-1401 petition, if the petition is filed after the circuit court confirms the foreclosure sale and after the deed is conveyed to the purchaser.

¶ 2 On October 6, 2010, the plaintiff, Wells Fargo¹, filed a mortgage foreclosure action against the defendants, Hiola Alston, Thelma Johnson, Johnson's heirs, and the city of Chicago, involving the property located at 8156 South Throop Street, Chicago, Illinois 60620 (the property), because the defendants' failed to make payments on the note and mortgage after August 2009. On February 7, 2013, the circuit court granted Wells Fargo's motion for summary judgment and entered a judgment for foreclosure and sale. On May 13, 2014, the circuit court entered an order and approved the report of sale and granted possession. The deed was subsequently conveyed to the purchaser.

¶ 3 On January 21, 2015, Johnson filed a section 2-1401 petition to vacate the judgment. At the March 20, 2015 hearing on the petition, the circuit court denied the petition. On April 7, 2015, Johnson filed a timely notice of appeal seeking review of the March 20, 2015 order and the orders entered prior to that date.

¶ 4 We find that all claims in section 2-1401 petitions are barred by section 15-1509 (c) of the Mortgage Foreclosure Law if they are raised after the circuit court confirms the foreclosure sale and after the deed is conveyed to the purchaser. *U.S. Bank National Association v. Prabhakaran*, 2013 IL App (1st) 111224, ¶ 30; 735 ILCS 5/15-1509 (c) (West 2010). Therefore, we affirm the circuit court's order denying Johnson's section 2-1401 petition.

¶ 5 **BACKGROUND**

¶ 6 On October 6, 2010, Wells Fargo filed a mortgage foreclosure action against the defendants because they failed to make payments after August 2009 on their note and

¹ The mortgage was assigned to Wells Fargo prior to February 11, 2010.

mortgage. After failed attempts to acquire jurisdiction by personal service on Johnson on October 9, 2010, October 15, 2010, and October 18, 2010 and, after filing an affidavit that Johnson could not be found upon a due and diligent search, Wells Fargo served Johnson by publication on October 29, 2010. 735 ILCS 5/2-206 (West 2010). The notice was published in the Chicago Daily Law Bulletin on October 27, 2010, November 3, 2010, and November 10, 2010. On December 30, 2010, Johnson filed her appearance, *pro se*.

¶ 7 On March 30, 2011, Wells Fargo filed a motion for an order of default against Johnson, but an order was entered withdrawing the motion from the call on May 10, 2011. On May 10, 2011, Johnson filed a motion to vacate the "order entered May 10, 2011" to give her time to "file an answer [and] find an attorney to file [a] lawsuit."

¶ 8 We reviewed the record but did not find Johnson's answer to the complaint. On October 15, 2012, Wells Fargo filed a motion for summary judgment and a motion for judgment of foreclosure and sale against Johnson.

¶ 9 On February 7, 2013, the circuit court granted Wells Fargo's motion for summary judgment and entered a judgment of foreclosure and sale against the mortgagors, including Johnson.

¶ 10 On April 16, 2013, the selling officer, Judicial Sales Corporation, filed a proof of mailing notice of sale to Johnson. On July 8, 2013, the property was sold at auction. On July 24, 2013, Wells Fargo filed a motion for entry of an order approving the selling officer's report of sale and distribution and for entry of an order of possession.

¶ 11 On October 4, 2013, Jon Michelle Richardson filed an appearance as counsel for Johnson. On November 27, 2013, Johnson filed a motion to enter and continue Wells Fargo's

motion to approve sale in order to acquire a reverse mortgage. On November 27, 2013, Johnson also filed an answer to Wells Fargo's motion for entry of an order approving sale and distribution and for entry of an order for possession. In her answer, Johnson admitted all of the allegations in the motion, except the fact that the property was inspected on July 9, 2013. Johnson requested strict proof thereof and a continuance of the motion. On May 13, 2014, after several continuances on the motion, the circuit court entered an order approving the report of sale and distribution, confirmed the sale and entered an order of possession. On October 22, 2014, the circuit court entered an order staying the order of possession against Johnson until December 31, 2014.

¶ 12 On January 21, 2015, Johnson filed a "Petition to Vacate Judgment and Vacate Orders Motion to Set Aside for Misrepresentation Pursuant to 735 ILCS 5/2-1401(f)" and attached her affidavit to the petition. In her petition, Johnson argued that the foreclosure orders are void for "lack of plea of assignee pursuant to IMFL § 15-1107 (a)." After a hearing on March 20, 2015, the circuit court denied the section 2-1401(f) petition "for reasons stated in open court on the record."

¶ 13 At the hearing on March 20, 2015, the circuit court stated:

"[T]he order confirming the judicial sale was entered in this case, as I said, May 13, 2014. And this 214.01 [sic] Petition was filed in January of 2015.

*** [T]he court does not have the ability to set aside the judgment of foreclosure and vacate the order confirming the judicial sale on the basis of the arguments that Ms. Johnson makes in her 214.01 [sic] Petition that there were defenses or that there were errors committed during the course of the case.

None of that can be revisited by the Court in this case after the judicial officer, the selling officer, issued the selling officer's deed, which has happened some time ago in this case."

¶ 14 On April 7, 2015, Johnson filed a timely notice of appeal seeking review of the March 20, 2015 order and the orders entered prior to that date.

¶ 15 ANALYSIS

¶ 16 A section 2-1401 petition provides relief from final orders and judgments after 30 days from the entry of the judgment. 735 ILCS 5/2-1401 (a) (West 2010). Subsection (f) permits a litigant to challenge a void order or judgment. 735 ILCS 5/2-1401 (f) (West 2010). Void orders or judgments can be challenged at any time. *People v. Thompson*, 209 Ill. 2d 19, 25 (2004). We review a trial court's order denying a section 2-1401 (f) petition *de novo*. *Warren County Soil and Water Conservation District v. Walters*, 2015 IL 117783, ¶ 29; *People v. Vincent*, 226 Ill. 2d 1, 18 (2007).

¶ 17 Johnson raised a number of arguments in her brief and maintained that the circuit court erred when it denied her section 2-1401 petition that challenged the February 7, 2013 order granting Wells Fargo's motion for summary judgment and the May 13, 2014 order confirming the sale and granting possession. We find that Johnson's section 2-1401 petition was filed on January 21, 2015, after the court confirmed the sale and issued the order of possession on May 13, 2014 and later conveyed the deed to the purchaser, and therefore, the section 2-1401 petition is barred by section 15-1509 of the Illinois Mortgage Foreclosure Law. *Prabhakaran*, 2013 IL App (1st) 111224, ¶ 30; 735 ILCS 5/-15-1509 (West 2010).

¶ 18 Section 15-1509 (a) of the Mortgage Foreclosure Law provides:

"After (i) confirmation of the sale, and (ii) payment of the purchase price and any other amounts required to be paid by the purchaser at sale, the court *** shall upon the request of the holder of the certificate of sale *** promptly execute a deed to the holder or purchaser sufficient to convey title. Such deed shall identify the court and the caption of the case in which judgment was entered authorizing issuance of the deed. Signature and the recital in the deed of the title or authority of the person signing the deed as grantor, of authority pursuant to the judgment and of the giving of the notices required by this Article is sufficient proof of the facts recited and of such authority to execute the deed***." 735 ILCS 5/15-1509 (a) (West 2010).

Further, section 15-1509 (c) provides: "Any vesting of title 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 ***." 735 ILCS 5/15-1509 (c) (West 2010).

¶ 19 The record reveals that Johnson was served by publication on October 29, 2010 and has been a party in this case since that date. The record also reveals that an order confirming the foreclosure sale was entered and that a deed was conveyed to the purchaser long before Johnson filed her section 2-1401 petition. As this court previously held in *Prabhakaran*, Johnson 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." *Prabhakaran*, 2013 IL App (1st) 111224, ¶ 30. Accordingly, we need not reach

the remaining issues on appeal and we affirm the circuit court's order denying Johnson's section 2-1401 petition. *Prabhakaran*, 2013 IL App (1st) 111224, ¶ 30.

¶ 20

CONCLUSION

¶ 21

Johnson's section 2-1401 petition challenging the foreclosure orders, which was filed after the circuit court confirmed the foreclosure sale and after the deed was conveyed to the purchaser, is barred by section 15-1509 (c) of the Mortgage Foreclosure Law. *Prabhakaran*, 2013 IL App (1st) 111224, ¶ 30; 735 ILCS 5/15-1509 (c) (West 2010). Accordingly, we affirm the circuit court's order denying Johnson's section 2-1401 petition.

¶ 22

Affirmed.