

2013 IL App (2d) 121273-U
No. 2-12-1273
Order filed August 2, 2013

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
SECOND DISTRICT

WALLACE BLACK FUNDING, LTD.,)	Appeal from the Circuit Court
)	of Kendall County.
Plaintiff and Defendant-Appellee,)	
)	
v.)	Nos. 06-CH-162
)	09-CH-1292
UWE MULLER and RENEE MULLER,)	
)	
Defendants and Plaintiffs-Appellants)	
)	
(David A. Minnis, Norma L. Minnis,)	
JPMorgan Chase Bank, N.A., Chase)	
Equipment Leasing, and The United States)	
of America, Defendants-Appellees; The John)	
Wonais Partnership, The Illinois Department)	
of Revenue, MBNA America Bank, N.A.,)	
Citibank (South Dakota), N.A., Rentrak)	
Corporation, American National Bank, as)	Honorable
Trustee under Trust No. 1468, Unknown)	Alan W. Cargerman and
Owners, and Nonrecord Claimants,)	Melissa S. Barnhart,
Defendants).)	Judges, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed the trial court's confirmation of a judicial sale: although appellants asserted that the court erred in prioritizing the subordinate liens, the proceeds of the

sale were exhausted by the lien with top priority, so any error asserted by appellants provided no basis for disturbing the sale.

¶2 Uwe Muller and Renee Muller are competing-lienholder defendants in one of two foreclosure actions relating to a parcel of undeveloped land in Kendall County (the property) and substituted plaintiffs in the other foreclosure action. They appeal after the court confirmed the judicial sale. Wallace Black Funding, Ltd. (WBF), the complementary plaintiff (also substituted) and competing-lienholder defendant in the two actions, is the only appellee that has filed a brief on appeal. The Mullers seek vacatur of the order confirming the judicial sale and reversal of an earlier nonfinal order giving their lien lowest priority. However, their argument goes to the propriety of the nonfinal order only. Because reversal of the nonfinal order could not be a basis for vacating the confirmation order, we affirm.

¶3 I. BACKGROUND

¶4 In the background of this case is a suit that a now-dissolved corporation tied to the Mullers, Video Partners Inc., filed against Logical Investments Inc. (case No. 00-CH-124). On May 19, 2003, the court in that case entered a “Stipulated Judgement” in favor of the Mullers (who were not otherwise parties to the case) and against David and Norma Minnis (also not parties to the case) and Logical Investments. The Mullers recorded a memorandum of judgment that day.

¶5 Nothing more happened in case No. 00-CH-124 until years into the foreclosure suits involved in this appeal: on April 19, 2011, Video Partners filed a petition to revive the judgment. On May 3, 2011, the court entered an order that stated that “the time period within which Plaintiff may revive its judgment is tolled commencing with the filing of the petition to revive herein on April 19, 2011 until the resolution by this court of the petition to revive.” On May 31, 2011, the court granted the petition to revive the judgment.

¶ 6 Approximately three years after the Mullers got their judgment in case No. 00-CH-124, Video Partners (not the Mullers) sued, seeking to foreclose the judgment lien. This was case No. 06-CH-162, and the property-owner defendants were the Minnises. Video Partners also named competing lienholders. Among these was Old Second National Bank, which was the predecessor in interest to WBF. Old Second appeared and asked that the court dismiss it as a party. It asserted that its lien was superior to Video Partners so that foreclosure of the subordinate lien would not change its rights in the property. The court granted this motion, thus ruling that the mortgage lien was senior to the Mullers' judgment lien.

¶ 7 On May 29, 2009, the court learned that the Minnises had filed for chapter 7 bankruptcy protection, resulting in the automatic stay of actions against the Minnises and their property. The bankruptcy court lifted that stay in May 2010 as to actions by Video Partners directed against the property. After a few further filings in the case, the court consolidated it with case No. 09-CH-1292, described below.

¶ 8 On November 12, 2009, Old Second sued to foreclose on the property. It named as defendants the Minnises and 13 competing lienholders or potential competing lienholders, including Video Partners and the Mullers. The mortgage instrument attached to the complaint had an execution date of June 28, 2002, and bore a recording date of October 2, 2002. The court consolidated the case with the case described above and allowed WBF, to which Old Second had assigned its interest, to substitute for Old Second as plaintiff.

¶ 9 WBF then filed a "Motion to Dismiss or, in the Alternative, Motion for Summary Judgment" against Video Partners and another defendant. It asserted that—for reasons not relevant to the disposition of this appeal—the lien of the Mullers or Video Partners was invalid, so that they should

be dismissed as parties. In the alternative, it argued that the lien of the Mullers or Video Partners had expired by operation of law seven years after the judgment (that is, it had expired on May 19, 2010) and neither the Mullers nor Video Partners had taken the legal steps necessary to revive it.

¶ 10 Next, the court granted the Mullers' motion for leave to be substituted for Video Partners. The Mullers responded to WBF's motion to dismiss or for summary judgment. They argued, *inter alia*, that the running of the lien's effective period had been tolled while the automatic stay of bankruptcy protected the Minnises and their property. Alternatively, they asserted that, even when a lien would otherwise expire, if a foreclosure case is in process, revival is not necessary.

¶ 11 On September 12, 2011, the court, agreeing with WBF, ruled that the Mullers' lien had lasted only until it expired by operation of law seven years after the judgment. It granted "Plaintiff's motion to dismiss with respect to the Judgment lien of Uwe & Renee Muller/Video Partners" and ruled that "the judgment lien of the Mullers shall be subordinated to all others."

¶ 12 The court entered a foreclosure judgment on October 3, 2011. That judgment gave WBF's mortgage lien top priority. The court ruled that the mortgage was made on June 28, 2002, and was recorded on October 2, 2002—that is, it was both made and recorded before the Mullers obtained or recorded their judgment lien. The judgment listed all other liens as "subordinate" and stated that, except for WBF and "subject to [the] Order of September 12, 2011," any "other party claiming an interest in the premises or the proceeds of the judicial sale *** is deferred in proving priority until the hearing to confirm the sale." The judgment required that the sheriff use the sale proceeds first for "fees, disbursements and commissions, if any, required for such sale of all parcels," with the remainder going first to WBF for the judgment amount of \$109,876.36 and then to subordinate lienholders as stated.

¶ 13 On November 2, 2011, the Mullers obtained a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) with respect to the foreclosure judgment. They did not file a notice of appeal then.

¶ 14 A sheriff's sale took place on September 24, 2012. WBF bought the property, bidding \$119,026.11, which was effectively the amount of the indebtedness—no funds went to lower-priority lienholders. The court confirmed the sale on October 16, 2012. The Mullers filed a notice of appeal on November 14, 2012.

¶ 15 II. ANALYSIS

¶ 16 On appeal, the Mullers argue that the trial court erred in the priority it assigned to their lien. They ask this court to reverse the September 12, 2011, ruling in favor of WBF and to vacate the order confirming the sale. However, they do not assert that their lien should have had higher priority than WBF's lien.

¶ 17 The Mullers, contrary to the requirements of Illinois Supreme Court Rule 341(h)(3) (eff. Feb. 6, 2013), have failed to include in their brief a statement of the applicable standard of review. However, they structure their argument as a claim that the court reached the wrong result as a matter of law.

¶ 18 WBF is the only appellee that has filed a brief. Its arguments also parallel those it made to the trial court. It, like the Mullers, does not explicitly state a standard of review. However, again as the Mullers do, it addresses the issue as one of law.

¶ 19 The Mullers' argument is misdirected: even assuming that it is correct, it fails to entitle them to relief. An appellate court reviews the trial court's judgments, not its reasoning in reaching those

judgments.¹ *City of Chicago v. Holland*, 206 Ill. 2d 480, 492 (2003). The Mullers have failed to explain how the asserted error is of more than academic concern. As a result, they have failed to state a basis for reversal.

¶ 20 The problem is most evident on considering what would follow from our agreeing with the Mullers' argument. The only point of contention concerns the priority of the Mullers' lien: the argument's implied claim is, "Our lien has the priority implied by its May 19, 2003, recording date." Even if this were true, it would not vault their lien ahead of WBF's. Thus, the outcome of the sale, from which WBF received effectively all of the proceeds, would remain the same. That is, even if the trial court erred in its order of September 12, 2011, its confirmation of the sale was correct.

¶ 21 Crucially, the Mullers do not assert that the trial court erred when it gave WBF's lien top priority. Thus, a reordering of the subordinate liens would do nothing to the way in which the sale was conducted. All that the reordering would do is allow the Mullers greater rights in seeking any sale proceeds left after payment to WBF, of which there were none. Therefore, the subordinate lien's relative priorities are moot. As the Mullers provide no basis to disturb the trial court's final judgment, we affirm it.

¶ 22

III. CONCLUSION

¶ 23 For the reasons stated, we affirm the order confirming the judicial sale.

¶ 25 Affirmed.

¹This, of course, would not be entirely true if the arguments addressed the trial court's use of its discretion. However, clearly, where issues are considered as ones of law, the overarching concern is whether the court has reached the correct result. Here, as we noted, the parties argue the issue as one of law.