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2014 IL App (3d) 140091-U

Order filed November 20, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

WELLS FARGO BANK, N.A.,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois.
)	
v.)	Appeal No. 3-14-0091
)	Circuit No. 11-LM-2802
CECIL W. WATSON,)	
)	The Honorable
Defendant-Appellant.)	Raymond E. Rossi,
)	Judge, Presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and Wright concurring in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in granting the bank's motion to voluntarily dismiss its forcible entry and detainer action without ruling on occupant's motion to review because occupant's motion was not a dispositive pleading.

¶ 2 Plaintiff, Wells Fargo Bank, N.A., obtained summary judgment in a forcible entry and detainer action brought against defendant, Cecil W. Watson, and other unknown occupants. Postjudgment proceedings resulted in an appeal in which this court vacated the summary

judgment order and remanded for further proceedings. On remand, the trial court granted Wells Fargo's motion for voluntary dismissal. Watson appeals, claiming that the trial court's decision to dismiss the bank's case was an abuse of discretion. We affirm.

¶ 3

FACTS

¶ 4

In May of 2008, Watson sold his single family residence to Darryl Coburn. Coburn financed the purchase with a note and mortgage through Wells Fargo. After the sale, Coburn allowed Watson to remain at the residence with him.

¶ 5

Coburn defaulted on the loan, and Wells Fargo filed a foreclosure action. The trial court approved a foreclosure sale and entered a final order for possession and deed.

¶ 6

Thereafter, Wells Fargo filed a forcible entry and detainer complaint seeking possession of the property from Watson and unknown occupants. One month later, Wells Fargo filed a motion for summary judgment, and the trial court entered an order granting judgment in the bank's favor. The order provided that Wells Fargo was entitled to possession of the premises and that such possession was wrongfully withheld by Watson.

¶ 7

Watson appealed and we affirmed, holding that the foreclosure judgment clearly entitled plaintiff to possession and that Watson had presented no evidence to establish that he was rightfully entitled to possession. *Wells Fargo Bank, N.A., v. Watson*, 2012 IL App (3d) 110930. Wells Fargo did not take possession of the property within the period of enforcement during the appeal.

¶ 8

After the mandate issued, Wells Fargo filed a motion to extend the period of enforcement. The trial court held a hearing and granted the motion, allowing Wells Fargo an additional 120 days. Approximately thirty days later, Watson filed a motion to vacate the summary judgment order in the forcible entry and detainer action and the order granting the

extension of enforcement, claiming that new evidence of events that occurred after the judicial sale defeated the bank's right to possession. The trial court denied the motion under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)).

¶ 9 Watson appealed and filed an emergency motion to stay eviction pending appeal, which was denied. Watson was evicted from the property on October 12, 2012.

¶ 10 On August 16, 2013, this court held that because Watson alleged new facts challenging Wells Fargo's right to possession, the trial court abused its discretion in denying his motion to vacate. We reversed the order denying the motion to vacate, vacated the summary judgment order and remanded for further proceedings. *Wells Fargo, N.A., v. Watson*, 2013 IL App (3d) 120867-U.

¶ 11 On remand, Watson filed a motion for review of the appellate court's order. Wells Fargo subsequently moved to voluntarily dismiss the forcible entry and detainer action because Watson was no longer in possession of the property.

¶ 12 At a status hearing on Wells Fargo's motion to dismiss, Watson objected to the bank's request for dismissal, arguing that the motion lacked any basis because the appellate court had vacated and reversed the prior judgment and he had filed a motion for review. The trial court set the case for hearing, requiring Wells Fargo to file a written motion to dismiss and allowing Watson to file a motion in response. Wells Fargo filed its written motion and Watson filed a motion for sanctions and a motion seeking compensatory and punitive damages.

¶ 13 Following a hearing, the trial court granted Wells Fargo's motion. The court ruled that because Watson's motions were not dispositive motions or counterclaims, Wells Fargo had the right to dismiss the action. The court's order noted that "the dismissal of this action does not affect Mr. Watson's rights to pursue any other relief in a different cause of action/complaint."

¶ 14

ANALYSIS

¶ 15

Watson argues that the trial court abused its discretion in granting Wells Fargo's request to dismiss because the case had already been decided by the appellate court on August 16, 2013.

¶ 16

Section 2-1009(a) of the Code confers on a plaintiff an unfettered right to voluntarily dismiss its claim without prejudice, upon proper notice and payment of costs, at any time before a trial or hearing begins. 735 ILCS 5/2-1009(a) (West 2012). However, "where a previously filed defense motion could result in a final disposition of the cause of action if ruled upon favorably by the court, the court has the discretion to hear and decide that motion before ruling on the plaintiff's motion for voluntary dismissal." *Morrison v. Wagner*, 191 Ill. 2d 162, 165 (2000).

¶ 17

Here, to be entitled to voluntary dismissal under section 2-1009(a), Wells Fargo was only required to provide notice of its motion and pay Watson's costs in the action. Wells Fargo sent Watson a formal notice of motion when it filed its written motion to dismiss, and the record contains no objection before the trial court regarding costs. Thus, Wells Fargo met the requirements for voluntary dismissal.

¶ 18

Watson argues that the trial court abused its discretion by failing to rule on his dispositive motion to review our decision which, among other things, vacated the summary judgment order entered in Wells Fargo's favor and remanded for further proceedings. Watson's argument misinterprets this court's previous order. In our previous ruling, we stated: "[W]e reverse the denial of Watson's section 2-1401 motion to vacate, vacate the summary judgment order, and remand for further proceedings." *Wells Fargo, N.A.*, 2013 IL App (3d) 120867-U, ¶ 10. We did not enter judgment for either party; we remanded the case for further development. On remand, Wells Fargo's forcible entry and detainer complaint remained before the trial court, and the

parties were allowed to proceed to a hearing or trial on the merits. At no point in the proceedings prior to Wells Fargo's motion to dismiss did Watson file a dispositive motion or counterclaim as to the original complaint. Thus, the trial court properly granted Wells Fargo's motion for voluntary dismissal.

¶ 19

CONCLUSION

¶ 20

The judgment of the circuit court of Will County is affirmed.

¶ 21

Affirmed.