

District of Columbia
Court of Appeals

No. 18-CV-560

CLIFTON A. GRANT,

Appellant,

v.

CAR666-16

MTGLQ INVESTORS, L.P.,

Appellee.

BEFORE: Fisher and McLeese, Associate Judges, and Nebeker, Senior Judge.

O R D E R

On consideration of appellant's petition for rehearing and appellant's motion to stay appeal, it is

ORDERED that appellant's petition for rehearing is denied. It is

FURTHER ORDERED that appellant's motion to stay is denied.

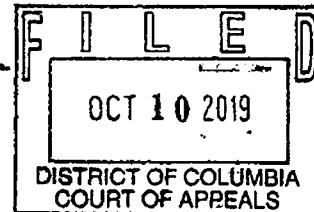
PER CURIAM

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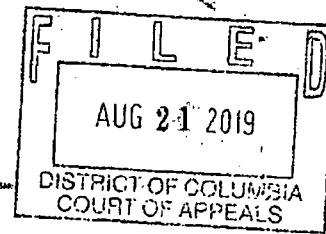
Honorable William Jackson

Director, Civil Division
Quality Management Unit

Clifton A. Grant
4505 15th Street, NW
Washington, DC 20011



District of Columbia
Court of Appeals



No. 18-CV-560

CLIFTON A. GRANT,
Appellant,
v.

2016 CAR 666

MTGLQ INVESTORS, L.P.,
Appellee.

BEFORE: Fisher and McLeese, Associate Judges, and Nebeker, Senior Judge.

JUDGMENT

On consideration of appellee's motion to dismiss this appeal as untimely, appellant's motion for leave to file his lodged opposition thereto, appellant's brief and limited appendix, and the record on appeal, it is

ORDERED that appellant's motion for leave is granted and his lodged opposition is hereby filed. It is

FURTHER ORDERED that appellee's motion to dismiss is granted to the extent, in substance, it seeks summary affirmance on the ground that appellant has raised no claims of error with respect to the trial court's final-accounting order. *See Oliver T. Carr Mgmt., Inc. v. Nat'l Delicatessen, Inc.*, 397 A.2d 914, 915 (D.C. 1979). A motions division of this court expressly limited the scope of this appeal to the final-accounting order and denied appellant's motion to reconsider that ruling. Appellant's brief nevertheless raises claims of error only with respect to the underlying foreclosure judgment, his prior appeal of which (Appeal No. 18-CV-127) was dismissed as untimely. Contrary to appellant's assertion, his prior appeal was dismissed not because the judgment was not yet appealable, but rather because he appealed too late after the denial of his motion for relief from that judgment. *See* D.C. App. R. 4(a)(1), 4(a)(4)(A)(v), 4(a)(6) (providing thirty-five days to appeal a judgment following the disposition of a motion for relief from the judgment, where such motion is filed within ten days of the judgment). The dismissal of Appeal No. 18-CV-127 was therefore "a final disposition of it," and we perceive no "exceptional circumstances" to exist that would overcome the general bar to re-litigating any issue

inhering in the judgment pursuant to the law of the case doctrine. *See Lynn v. Lynn*, 617 A.2d 963, 969-70 (D.C. 1992).

Appellant's claims that (1) the loan's principal balance contains fraudulent overcharges and (2) one of appellee's predecessors-in-interest waived the right to collect interest that accrued after it wrote the loan off as "bad debt," although nominally challenges to the final accounting, amount to waived defenses to the foreclosure itself. *See Henderson v. Snider Bros., Inc.*, 439 A.2d 481, 486 (D.C. 1981) (en banc) (holding that fraud arising out of "the underlying agreement and the obligation sued upon . . . is a defense which is lost if not raised in the foreclosure proceeding"); *Bank-Fund Staff Fed. Credit Union v. Cuellar*, 639 A.2d 561 (D.C. 1994) (holding that an inaccurate cure amount is a defense to a notice of foreclosure). Even assuming appellant's fraud and waiver claims were cognizable under the final-accounting order, he fails to show error because he does not even specify the amounts of either the allegedly fraudulent overcharges or waived interest, much less explain why they are, respectively, fraudulent and waived. *See Cobb v. Standard Drug Co.*, 453 A.2d 110, 111 (D.C. 1982) ("A losing party . . . bears the burden of 'convincing the appellate court that the trial court erred.' In meeting that burden, it is appellant's duty to present this court with a record sufficient to show affirmatively that error occurred."); *Wagner v. Georgetown Univ. Med. Ctr.*, 768 A.2d 546, 554 n.9 (D.C. 2001) ("Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. . . . [A] litigant has an obligation 'to spell out its arguments squarely and distinctly[.]'"). It is

FURTHER ORDERED and ADJUDGED that the order on appeal is affirmed.

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO
Clerk of the Court

FILED
D.C. Superior Court
12/08/2017 16:04PM
Clerk of the Court

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MTGLQ INVESTORS, L.P. *et al.*,
Plaintiffs,

v.

Case No. 2016 CA 000666 R(RP)
Calendar 8
Judge William M Jackson

CLIFTON GRANT, et al.,
Defendants.

ORDER DENYING DEFENDANT'S MOTION TO SET ASIDE JUDGMENT

This matter is before the Court on Defendant's Motion to Set Aside Judgment, filed on November 6, 2017. Plaintiff filed its Opposition on November 15, 2017. For the reasons stated below, Defendant's Motion will be denied.

It is well-settled that any decision concerning a motion for relief from judgment under Sup. Ct. Civ. R. 60(b) rests within the sound discretion of the trial court. *Macci v. Allstate Ins. Co.*, 917 A.2d 634, 637-38 (D.C. 2007); *Debose v. Ramada Renaissance Hotel*, 710 A.2d 880, 881 (D.C. 1998); *Reid v. District of Columbia*, 634 A.2d 423, 424 (D.C. 1993); *Starling v. Lawrence & Assoc.*, 495 A.2d 1157, 1159 (D.C. 1985). The trial court is required to consider the *Starling* factors, including (1) whether the movant had actual notice of the proceedings; (2) whether the movant acted in good faith; (3) whether the movant took prompt action; (4) whether the movant presented an adequate defense; and (5) whether the non-moving parties would suffer prejudice if the motion were granted. *Macci*, 917 A.2d at 637 (citing *Starling*, 495 A.2d at 1159-60). A more recent case elaborated on the Rule 60(b) prejudice analysis to include more factors rooted in the Court of Appeals' approach towards Rule 60(b) motions in cases dismissed for

procedural reasons. *Macci*, 917 A.2d at 637-38. These factors include (6) prejudice to the movant if the motion were denied; (7) the lack of prejudice to the non-movant if the motion were denied, and (8) reasonable diligence in the movant's attempts to comply with the court's rules. *Macci*, 917 A.2d at 637 (citing *Debose*, 710 A.2d at 882).

Upon consideration of the motion, the opposition thereto, and the entire record herein, this Court does not believe that Defendant has satisfied their burden of showing the *Starling* factors, or those articulated in *Macci*, persuade the Court to grant relief from judgment under Sup. Ct. Civ. R. 60(b).

Accordingly, it is this 8th day of December, 2017, hereby:

ORDERED that Plaintiff's Motion to Set Aside Judgment is **DENIED**.

SO ORDERED.

Copies to:

Patrick Jules, Esq.
Michael T. Cantrell, Esq.
Counsel for Plaintiff

Darryl F. White, Esq.
Counsel for Defendant



William M. Jackson
Associate Judge
(Signed in Chambers)

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

MTGLQ INVESTORS, L.P.,
Plaintiff,

v.

CLIFTON GRANT, et al.,
Defendants.

Case No. 2016 CA 000666 R(RP)
Calendar 8
Judge William M Jackson
Status Hearing: 10/27/2017

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on Plaintiff's Motion for Summary Judgment, filed on May 9, 2017. No response has been filed, however, the Court finds that it is in the interests of justice to consider the Motion on the merits. Upon consideration of the motion, the lack of opposition thereto, and the entire record herein, Plaintiff's Motion shall be granted.

I. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is the record owner of the property located at 4505 15th Street NW, Washington, D.C., 20011 ("the Property"). Pl. Mem. Summ. J at 1.; Compl. Ex. A. On December 11, Defendant obtained a mortgage loan in the amount of \$417,000.00 and executed both a promissory note ("Note") evidencing the terms of the Loan and a Deed of Trust ("Deed of Trust") encumbering the Property. Pl. Mem. Sum. J. at 2; Compl. Ex. C. Plaintiff is the current holder of the Note and beneficiary of the Deed of Trust. *Id.*

On September 1, 2008, Defendant defaulted on the Note and Deed of Trust by failing to make the required monthly payments. P. Mem. Summ. J. at 2. Thereafter, on August 20, 2014, pursuant to the terms of the Deed of Trust, the lender caused a demand letter to be mailed to

Defendant stating the total amount needed to cure the default. Compl. ¶ 12; Ex. E. Defendant failed to cure the default and pursuant to the terms of the Deed of Trust, the Loan was accelerated. Compl. ¶ 13.

On January 25, 2016, Plaintiff filed its Verified Complaint asserting one count for judicial foreclosure against Defendants. On February 25, 2016, filed an Answer to the Verified Complaint, stating in its entirety: "The Plaintiff (Ditech Financial, LLC) does not have the rights to foreclosure on the Defendant (Clifton A. Grant) property. Ownership of the Note is in dispute." Def. Answer at 1. The Answer did not dispute the default nor did it assert any affirmative defenses. Defendant was served with Plaintiff's First Set of Interrogatories, Requests for Admission, and Request for Production of Documents on December 15, 2016. Plaintiff received no response or objection to these discovery requests. On May 9, 2017, Plaintiff filed the instant motion seeking judgment in its favor and against Defendant.

II. STANDARD OF REVIEW

Under Rule 56(c), summary judgment shall be granted if the record shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. *See Osbourne v. Capital City Mortgage Corp.*, 667 A.2d 1321, 1324 (D.C. 1995); *Smith v. Washington Metropolitan Area Transit Authority*, 631 A.2d 387, 390 (D.C. 1993). "A genuine issue of material fact exists if the record contains 'some significant probative evidence . . . so that a reasonable fact-finder would return a verdict for the non-moving party.'" *Brown v. 1301 K Street Limited Partnership*, 31 A.3d 902, 908 (D.C. 2011) (citing *1836 S Street Tenants Ass'n v. Estate of Battle*, 965 A.2d 832, 836 (D.C. 2009) (footnote omitted)). To determine which facts are "material," a court must look to the substantive law on which each claim rests. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The moving party has the burden to establish that

there is no genuine issue of material fact and that it is entitled to judgment as a matter of law.

Osborne, 667 A.2d at 1324. If the moving party carries this burden, the burden shifts to the non-moving party to show the existence of an issue of material fact. *Bruno v. Western Union Financial Services, Inc.*, 973 A.2d 713, 716 (D.C. 2009) (quotations and citations omitted); *Osbourne*, 667 A.2d at 1324. The non-moving party may not carry this burden merely with conclusory allegations, *Greene*, 164 F.3d at 675; rather he or she “must produce at least enough evidence to make out a *prima facie* case in support of his [or her] position.” *Bruno*, 973 A.2d at 717.

III. DISCUSSION

Plaintiff seeks to enforce the Note and Deed of Trust under D.C. Code § 42-816, which authorizes judicial foreclosure and sale of real property as an equitable remedy for a debtor’s breach of his or her obligations under the note secured by a deed of trust. Defendant’s Answer does not deny the default in the Complaint and does not allege any affirmative defenses.

Pursuant to Rule 8(d) of the Superior Court Rules of Civil Procedure, when the plaintiff has filed a complaint and the defendant is required to file an answer, as in this case, any averments in the complaint that are not denied by the defendant are deemed admitted. Super. Ct. Civ. R. 8(d).

The central issue in a judicial foreclosure proceeding is whether the party is in default. *Johnson v. Fairfax Vill. Condo. Unit. IV Owners Ass’n*, 641 A.2d 495, 506 (D.C. 1994). Defendant does not dispute he defaulted under the Note and Deed of Trust on September 1, 2008. The Plaintiff’s submissions establish that it is entitled to judgment as a matter of law based on the undisputed facts set forth in the complaint and supporting documentation. As Defendant failed to object or respond to the Admissions, the Court may deem these matters admitted pursuant to Superior Court Civil Rule 36(a)(1)B)(3). The Court finds that the Plaintiff has

established that it is entitled to judgment as a matter of law, based on the undisputed facts. In the absence of any genuine issue of material fact, the Motion for Summary Judgment shall be granted.

of the Motion for Summary Judgment filed by the Plaintiff, and any response thereto, it is this **26th day of October, 2017**, hereby:

FINDS, This action was filed seeking a judicial foreclosure under D.C. Code § 42-816; and

THAT, D.C. Code § 42-815.02, only applies to a non-judicial foreclosure proceeding under the power of sale clause of the deed of trust, which in this instant case does not apply; and

THAT, Based upon the foregoing, neither mediation nor any mediation certificate shall be required herein; and

THAT, Plaintiff has a valid Note executed by the Defendant and secured by a Deed of Trust on 4505 15th St. NW, Washington, D.C. 20011; and

THAT, Defendant failed to pay the monies that came due under the Deed of Trust and Note; and

THAT, Defendant is in default under the terms of the Note and Deed of Trust; and

THAT, Plaintiff as the holder of the Note and Deed of Trust is entitled to enforce said instruments; and thus it is

ORDERED, that the Motion for Summary Judgment is **GRANTED**; and

ORDERED, that judgment as a matter of law is hereby entered in favor of Plaintiff MTGLQ Investors, L.P.; or any entity substituted as plaintiff by this Court, and against Defendant Clifton Grant on all Counts of Plaintiff's Complaint; and

ORDERED, that Plaintiff is granted judgment on its claim for judicial foreclosure of the real property located at 4505 15th Street NW, Washington, DC 20011 (the "Property"), which is more fully described as follows:

Lot 64 in Francis A. Blundon and William C. Blundon's Subdivision of part of Lot Numbered (4) "Indolence" and part of Lot Numbered (7) in Square 2703 as per plat recorded in Liber 52 at folio 59 in the Office of the Surveyor for the District of Columbia now known for taxation and assessment purposes as Lot 64 in Square 2703.

It is **FURTHER ORDERED**, that Foreclosure of the Plaintiff's lien and sale of the Property shall be conducted on the following terms and conditions:

To the extent Laura H. G. O'Sullivan, Abby Moynihan, Chasity Brown, Yolanda Clarke, and Erin Shaffer have been named Substitute Trustees as to the Property, the same is ratified and confirmed, or, in the alternative, Laura H.G. O'Sullivan, Abby Moynihan, and Chasity Brown are appointed as Substitute Trustees for purposes of foreclosure. Upon posting a bond in the amount of \$25,000 into the Court, any of them, acting alone or in concert, may proceed to foreclose on the Property by public auction in accordance with the Deed of Trust and the following additional terms:

- a) In accordance with the contractual provisions in the Deed of Trust and *BFP v.*

Resolution Trust Corp., 511 U.S. 531, 543 (1994), the Trustees shall mail notice of the time, place, and terms of the auction to all junior lienholders, owners of record, and occupants, by certified mail, return receipt requested and by first class mail, no more than 30 days and no less than 10 days before the auction date.

- b) In accordance with the contractual provisions in the Deed of Trust and Rule 308(b)(1) of the Superior Court Rules of Civil Procedure, the Trustees shall

advertise the time, place, and terms of the auction, in a newspaper of general circulation, once a week, for four consecutive weeks leading up to the auction.

- c) Pursuant to the contractual provisions in the Deed of Trust and Rule 308(b)(3) of the Superior Court Rules of Civil Procedure, the Trustees may employ an auctioneer for the sale process and incur reasonable costs associated therewith.
- d) In accordance with the contractual provisions in the Deed of Trust, the Trustees may appoint an Attorney to appear on behalf of the Trustees to supervise and attend the sale.
- e) In accordance with the contractual provisions in the Deed of Trust, the Trustees may require a purchaser to post a nonrefundable deposit of up to 10% of the unpaid principal balance in certified funds, may condition the right to bid or acceptance of bids upon a showing of said deposits, and reserve the right to reject any bid made by anyone who does not have the deposit in hand at the auction.
- f) Pursuant to D.C. Code §42-817, the *Philadelphia Newspaper* cases, and *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 U.S. 845 (2011), the deposit required to bid at the auction is waived for the Noteholder and any of its successors or assigns.
- g) Pursuant to D.C. Code §42-817, the *Philadelphia Newspaper* cases, and *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 U.S. 845 (2011), the Noteholder may bid up to the amount owed on the Note plus all costs and expenses of sale on credit and may submit a written bid to the Trustee which shall be announced at sale.

h) Based on the custom and practice in the District of Columbia, the Trustees shall hold any deposit in a non-interest bearing trust account.

i) In accordance with the contractual provisions in the Deed of Trust and *Perry v. Virginia Mortgage and Investment Co., Inc.*, 412 A.2d 1194, 1197 (D.C.1980), the Trustees may establish additional terms of sale as may be appropriate in their judgment to promote the best price at the auction, so long as any additional terms remain consistent with, and do not alter, the specific terms and conditions of the Deed of Trust and this Order and Decree of Sale.

j) In accordance with the contractual provisions in the Deed of Trust, Rule 308(b)(2) of the Superior Court Rules of Civil Procedure, and D.C. Code §42-816, the Trustees may enter into a contract of sale with the highest qualified bidder subject to ratification by the Court, and any memorandum of sale must indicate that the sale is subject to said ratification.

k) In accordance with Rule 308(b)(2) of the Superior Court Rules of Civil Procedure, if a Third Party is successful at auction the bond shall be increased to the full amount of the purchase price, which shall be posted prior to ratification by this Court.

l) Pursuant to Rule 308(b)(4) of the Superior Court Rules of Civil Procedure, the Trustees shall file a Verified Report of Sale with the Court within thirty (30) days of the auction. The Verified Report of Sale shall specify the time, place, terms of the sale, the Purchaser, the purchase amount, and deposit held, together with an affidavit and documentation establishing that the Trustees complied with the notice and advertisement requirements set forth above.

m) In accordance with the contractual provisions in the Deed of Trust, and unless otherwise ordered at the time of ratification, settlement shall occur by payment of all sums due under the bid in certified funds to the trustees within thirty (30) days from the entry of an Order ratifying the Sale. If the purchaser fails or refuses to settle within the allotted time frame, the deposit will be forfeited and the Trustees may apply the deposit toward costs, fees or their compensation associated with the initial auction and the resale process. Any remaining amount shall be credited to the underlying debt.

n) Pursuant to the contractual provisions in the Deed of Trust, after the purchaser's funds submitted to the Trustees have cleared, the Trustees shall execute and deliver a Trustees' Deed, transferring title to the purchaser. The costs of recording the Deed shall be the responsibility of the purchaser.

o) In compliance with the contractual provisions in the Deed of Trust and Rule 308(b) and (d) of the Superior Court Rules of Civil Procedure, within sixty (60) days of settlement, the Trustees shall file evidence of the settlement including a copy of the Trustee's Deed, a proposed accounting and distribution of funds, and a proposed order ratifying the distribution. A copy of those documents shall be sent to the borrower and to all junior lien holders, together with a notice that any claim or dispute with regard to the accounting and distribution of funds must be filed with the Court within fourteen (14) days, and that if no claim or objection is filed, the accounting and distribution may be ratified by the Court without further hearing.

p) In accordance with the Deed of Trust, any unclaimed funds due to the junior
lienholders, owners, or any other party, may be identified for payment into the
Court registry, and upon payment thereof, the Trustees may request a
determination that their duties have been discharged and that the case be closed
and the bond released.

q) In compliance with the Deed of Trust, the Trustees shall be entitled to recover
their costs incurred, including reasonable attorney's fees and commissions as
authorized by the Deed of Trust for the execution of duties performed in
accordance with the foreclosure and this Decree as part of the settlement.

It is **FURTHER ORDERED** that the Status Hearing set for October 27, 2017 is
CONTINUED to February 2, 2018, at 9:30 a.m. in Courtroom 219, in anticipation that by that
time, a motion to ratify the terms of the sale will have been filed. That status hearing may be
continued, at the parties' request, should a motion to ratify the terms of the sale not be ripe as
of that date.

SO ORDERED.



William M. Jackson
Associate Judge
(Signed in Chambers)

Copies to:

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McCabe Weisberg & Conway, LLC
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Laurel, Maryland 20707