

APPENDIX-A

WELLS FARGO BANK, N.A.

: IN THE SUPERIOR COURT OF
PENNSYLVANIA

v.

: Philadelphia County Civil
Division
: No. 151001609

ANN S. BORIS AND VAMSIDHAR R.
VURIMINDI

: No. 2590 EDA 2019

APPEAL OF: VAMSIDHAR R.
VURIMINDI

ORDER

Upon consideration of Appellee's Application to Dismiss, the application is hereby **GRANTED** and this appeal is **DISMISSED** as moot. *See Deutsche Bank Nat'l Co. v. Butler*, 868 A.2d 574 (Pa. Super. 2005) (dismissing as moot appeal in mortgage foreclosure case where appellant failed to obtain supersedeas, property was sold at sheriff's sale, and deed was delivered to buyer); *Insilco Corp. v Rayburn*, 543 A.2d 120 (Pa. Super. 1988) (parties who no longer owned real property lacked standing to appeal *in rem* judgment in mortgage foreclosure); **Pa.R.A.P. 1972(a)(4)**.

PER CURIAM

APPENDIX-B

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION - CIVIL

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WELLS FARGO BANK, N.A.,

v.

ANN S. BORIS and
VAMSIDHAR VURIMINDI

2590 EDA 2019

October Term, 2015

Case No. 151001609

OPINION

On appeal is the Court's July 30, 2019 order denying the June 17, 2019 motion to set aside sheriff's sale of *pro se* defendant/appellant Vamsidhar R. Vurimindi in a mortgage foreclosure action. Pursuant to Rule 1925(a) of the Pennsylvania Rules of Appellate Procedure, this Court sets out its reasons for denying the motion below.

FACTS

On December 26, 2012, defendant Ann S. Boris¹ and defendant/appellant Vamsidhar R. Vurimindi executed and delivered a mortgage and promissory note to Wells Fargo Bank, N.A. ("Wells Fargo") securing a property located at 309-313 Arch Street, Unit 607, Philadelphia, Pennsylvania 19106 (the "Property"). (Mortgage, *attached as* Exhibit C to Answer to Preliminary Objections, Trial Court Docket 151001609 ("Dkt.") at 3/24/16; Note, *attached as* Exhibit A to Complaint, Dkt. at 10/15/15).

On October 15, 2015, Wells Fargo commenced this mortgage foreclosure action against Ms. Boris and Mr. Vurimindi for failing to make payments under the terms of the note and the mortgage on the Property. (Complaint, ¶ 9, Dkt. 10/15/15). On February 2, 2016, Mr. Vurimindi

Wells Fargo Bank, N.A. Vs Boris Etal-OPFLD

¹ Ms. Boris has not appeared in this action. (See Dkt.).



was served with the mortgage foreclosure complaint relating to this action at the Pine Grove State Correctional Institution (“SCI Pine Grove”), where he was incarcerated at the time. (Sheriff’s Service, Dkt. at 2/12/16). Mr. Vurimindi timely responded to the complaint with preliminary objections. (Preliminary Objections, Dkt. at 3/3/16). Wells Fargo answered Mr. Vurimindi’s preliminary objections on March 24, 2016. (Answer to Preliminary Objections, Dkt. at 3/24/16). The Court overruled his preliminary objections and allowed him 20 days leave to answer the complaint. (Order, Dkt. at 4/25/16). Mr. Vurimindi did not answer the complaint. (See Dkt.).

On July 18, 2016, the Court’s Office of Judicial Record, on Wells Fargo’s praecipe, entered a default judgment against Mr. Vurimindi and Ms. Boris. (Praecipe for Judgment, Dkt. at 7/18/16). On July 26, 2016, Mr. Vurimindi promptly petitioned the Court to open and/or strike the default judgment. (Initial Petition to Open/Strike, Dkt. at 8/1/16). On April 26, 2017, after a hearing, the Court entered an order denying both Mr. Vurimindi’s petition to strike and his petition to open. (See April 19, 2017 Notes of Testimony (“N.T.”); Order, Dkt. at 4/26/17). The Court held that though Mr. Vurimindi stated a meritorious defense to the complaint, he did not provide a reasonable excuse for his failure to answer the complaint as ordered. (*Id.*) Mr. Vurimindi appealed that order.²

On August 1, 2017, the Property was sold at a sheriff’s sale for \$190,000.00. (Dkt. at 8/1/17). On January 11, 2018, on a motion by Wells Fargo to either confirm or set aside the sale, this Court entered an order vacating the August 1, 2017 sheriff’s sale and staying any further sales

² Mr. Vurimindi filed multiple appeals of the April 26, 2017 order, which were consolidated under Docket Number 3905 EDA 2017. On July 12, 2019, the Superior Court dismissed Mr. Vurimindi’s appeal, citing *Deutsche Bank Nat’l Co. v. Butler*, 868 A.2d 574 (Pa. Super. 2005) (dismissing as moot appeal in mortgage foreclosure case where appellant failed to obtain supersedeas, property was sold at sheriff’s sale, and deed was delivered to buyer). (Order, Superior Court Docket, 3905 EDA 2017, 7/12/19).

of the Property until the disposition of Mr. Vurimindi's appeal. (Dkt. at 1/11/18). On November 1, 2018, Wells Fargo moved to lift this stay. (Motion, Dkt. at 11/1/18). The Court scheduled a hearing for Wells Fargo's motion on January 8, 2019. (Order, Dkt. at 11/30/18). Because Mr. Vurimindi failed to appear at the hearing despite due notice, the Court granted Wells Fargo's motion to lift the stay on January 9, 2019. (Order, Dkt. at 1/9/19). On January 19, 2019, Wells Fargo filed a writ of execution listing the sale of the Property on April 2, 2019. (Praecept, Dkt. at 1/19/2019). On February 19, 2019, the Sheriff of Pike County personally served Mr. Vurimindi with notice of the writ. (Answer to Motion to Set Aside Sheriff's sale ("Answer"), Ex. B, Dkt. at 7/8/2019.). At the April 2, 2019 sheriff's sale, the Property was sold to a third party, Mikhail Paskar, for \$234,000. (Dkt. at 4/2/19). On May 2, 2019, the Sheriff of Philadelphia executed and delivered a deed conveying the Property to Mr. Paskar. (Supplement to Answer, Ex. C, Dkt. at 7/18/2019). The deed was recorded on May 14, 2019 under document I.D. 53511622. (*Id.*) On June 17, 2019, Mr. Vurimindi moved to set aside the April 2, 2019 sale, and on July 30, 2019 this Court denied his motion. (Order, Dkt. at 7/30/19). Mr. Vurimindi now appeals that denial.

STANDARD OF REVIEW

"When reviewing a trial court's ruling on a petition to set aside a sheriff's sale, it is recognized that the trial court's ruling is one of discretion, thus a ruling will not be reversed on appeal absent a clear demonstration of an abuse of that discretion." *Provident Nat. Bank, N.A. v. Song*, 832 A.2d 1077, 1081 (Pa. Super. 2003):

DISCUSSION

Pennsylvania Rule of Civil Procedure 3132 governs the setting aside of sheriff's sales and provides:

Upon petition of any party in interest before delivery of the personal property or of the sheriff's deed to real property, the court may, upon

proper cause shown, set aside the sale and order a resale or enter any other order which may be just and proper under the circumstances.

Pa.R.C.P. No. 3132. Rule 3135(a) requires the sheriff to promptly execute and deliver a deed for a property sold at sheriff's sale. It provides:

When real property is sold in execution and no petition to set aside the sale has been filed, the sheriff, at the expiration of twenty days but no later than 40 days after either the filing of the schedule of distribution or the execution sale if no schedule of distribution need be filed, shall execute and acknowledge before the prothonotary a deed to the property sold. The sheriff shall forthwith deliver the deed to the appropriate officers for recording and for registry if required. Confirmation of the sale by the court shall not be required.

Pa.R.C.P. No. 3135(a). "Taken together, Rule 3132 and 3135(a) make clear a party must raise a challenge to a sheriff's sale within a period of time after the sale, but before the deed is delivered." *Mortg. Elec. Registration Sys., Inc. v. Ralich*, 982 A.2d 77, 80 (Pa. Super. 2009). After this time bar, a sheriff's sale can be set aside only in cases of "fraud or lack of authority to make the sale." *Id.* (citing *Knox v. Noggle*, 196 A. 18, 19 (Pa. 1938)).

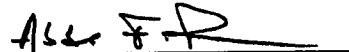
Mr. Vurimindi failed to comply with Rule 3132 because he took exception to the sheriff's sale only after the deed already had been delivered. The Property was sold to Mr. Paskar on April 2, 2019, and the sheriff delivered the deed on May 2, 2019. (Supplement to Answer, Ex. C, Dkt. at 7/18/2019). At 30 days, the lapse between the sheriff's sale and the delivery of the deed complied with Rule 3135(a), giving Mr. Vurimindi ample time to object to the sale. Mr. Vurimindi did not file his motion to set aside the sheriff's sale until June 17, 2019, more than a month after the sheriff had delivered the deed to Mr. Paskar. As such, this Court could set aside the April 2, 2019 sale only upon a finding that Wells Fargo engaged in fraud or lacked authority to make the sale. *Ralich*, 982 A.2d at 80.

In his motion, Mr. Vurimindi puts forth numerous arguments for setting aside the April 2, 2019 sale, none of which establishes fraud or absence of authority. These include (1) Wells Fargo's alleged failure to serve an Act 91 Notice of Intent to Foreclose; (2) the Office of Judicial Records' alleged failure to serve notice of orders under Pa.R.C.P. 236; (3) Wells Fargo's failure to join an indispensable party; (4) the divestment of Wells Fargo's mortgage lien; and (5) the inadequacy of the sheriff's sale price, among other alleged procedural deficiencies. (*Id.* at ¶¶ 27-35). In essence, Mr. Vurimindi again makes the same arguments this Court rejected when he petitioned to open or strike the underlying default judgment.³ These are not grounds on which to set aside the April 2, 2019 sale, because, after a deed has been delivered, a sheriff's sale cannot be set aside "based on allegations of procedural deficiencies." *Ralich*, 982 A.2d at 80.

CONCLUSION

For the foregoing reasons, the Court respectfully requests that the Superior Court affirm the Court's July 30, 2019 order denying the June 17, 2019 motion to set aside sheriff's sale of pro se defendant/appellant Vamsidhar R. Vurimindi.

BY THE COURT:


Fletman, J.

October 2, 2019

³ The Court addressed these issues in its 1925(a) opinion for Mr. Vurimindi's appeal of the underlying default judgment. (1925(a) Opinion, 3905 EDA 2017, Dkt. at 11/27/2018).

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL**

WELLS FARGO BANK, N.A., : **3905 EDA 2017**
v. :
ANN S. BORIS : **October Term, 2015**
: **Case No. 151001609**

OPINION

On appeal is the Court's April 26, 2017 order denying the Motion to Open/Strike Default Judgment (the "Petition") of *pro se* defendant/appellant Vamsidhar R. Vuriminidi in a mortgage foreclosure action. The Court declined to strike the default judgment because the numerous errors Mr. Vuriminidi raised were either unsupported by the record or did not render the default judgment void. The Court did not open the default judgment because Mr. Vuriminidi provided no credible excuse for failing to answer the complaint. For these reasons, as set forth in more detail below, the Court respectfully requests that the Superior Court affirm the Court's decision.

BACKGROUND

On December 26, 2012, defendant Ann S. Boris¹ and defendant/appellant Vamsidhar R. Vuriminidi executed and delivered a mortgage and promissory note to Wells Fargo Bank, N.A. ("Wells Fargo"), securing a property located at 309-313 Arch Street, Unit 607, Philadelphia, Pennsylvania 19106 (the "Property"). (Mortgage, *attached as* Exhibit C to Answer to Preliminary Objections, Dkt. at 3/24/16; Note, *attached as* Exhibit A to Complaint, Dkt. at 10/15/15).

On March 13, 2015, in a separate action, Hoopskirt Lofts Condominium Association (the "Condominium Association"), the condominium association at the Property, won a judgment

¹ Ms. Boris has not appeared in this action. (See Dkt.)



against Ms. Boris and Mr. Vuriminidi to enforce a lien it put on the Property to recover delinquent condominium assessments. (See Complaint, Tr. Ct. Dkt. 131201973 at 12/13/13; Final Disposition, Tr. Ct. Dkt. 131201973 at 3/13/15).

On October 15, 2015, Wells Fargo commenced this mortgage foreclosure action against Ms. Boris and Mr. Vuriminidi for failing to make payments under the terms of the note and the mortgage on the Property. (Complaint ¶ 9).

On November 11, 2015, to satisfy the March 13, 2015 judgment in favor of the Condominium Association, the Philadelphia Sheriff sold the Property to Zimilong LLC (“Zimilong”). (Sheriff’s Sale, Tr. Ct. Dkt. 131201973 at 11/11/15).

On February 2, 2016, Mr. Vuriminidi was served with the mortgage foreclosure complaint relating to this action at the Pine Grove State Correctional Institution (“SCI Pine Grove”), where he was incarcerated at the time. (Sheriff’s Service, Dkt. at 2/12/16). Mr. Vuriminidi timely responded to the complaint with preliminary objections.² (Preliminary Objections, Dkt. at 3/3/16; Cash Slip,³ *attached as Exhibit D to Petition*, Dkt. at 2/21/17, at PDF p. 88). Wells Fargo

² Mr. Vuriminidi stated in the Petition that he attempted to file another set of preliminary objections on July 14, 2016, but the Office of Judicial Records rejected his filing. (Petition, Dkt. at 2/21/17, at PDF p. 48). Mr. Vuriminidi cited to a cash slip dated June 29, 2016. (Cash Slip, *attached as Exhibit H to Petition*, Dkt. at 2/21/17, at PDF p. 92). Exhibit H shows that the mailing contained a letter addressed to “Phelan Hallinan Diamond & Jones, LLP.” (*Id.*) No office of this Court is listed as an addressee on the cash slip. (*Id.*) The proffered cash slip therefore does not support Mr. Vuriminidi’s statement that he attempted to file another set of preliminary objections. (See Dkt.; *see also* Cash Slips, *attached as Exhibit A to Praecipe to Supplement Initial Petition to Open/Strike*, Dkt. at 8/12/16; Cash Slips, *attached as Exhibits A–J to Petition*, Dkt. at 2/21/17; Cash Slips, *attached to Reply to Answer to Petition*, Dkt. at 3/23/17).

³ Mr. Vuriminidi is entitled to application of the prisoner mailbox rule. *Thomas v. Elash*, 781 A.2d 170, 176 (Pa. Super. 2001) (“We find . . . an incarcerated, *pro se* litigant in a civil action is faced with the same difficulties in tracking his filings as an incarcerated defendant pursuing relief, *pro se*, from a criminal conviction. Therefore, we hold that the prisoner mailbox rule applies to all *pro se* legal filings by incarcerated litigants.”) Mr. Vuriminidi’s papers are, consequently, deemed filed on the day they were delivered to corrections personnel.

answered Mr. Vuriminidi's preliminary objections on March 24, 2016.⁴ (Answer to Preliminary Objections, Dkt. at 3/24/16). The Court overruled his preliminary objections and allowed him 20 days leave to answer the complaint. (Order, Dkt. at 4/25/16). Mr. Vuriminidi did not answer the complaint.⁵ (See Dkt.)

On July 18, 2016, the Court's Office of Judicial Record, on Wells Fargo's praecipe, entered a judgment of default against Mr. Vuriminidi and Ms. Boris. (Praecipe for Judgment, Dkt. at 7/18/16). Peter Wapner, lawyer for Wells Fargo, certified in Wells Fargo's praecipe that a Rule 237.1 notice of intent to enter default judgment was sent to Mr. Vuriminidi at SCI Pine Grove and 1782 Frankford Avenue, Apartment 1, Philadelphia, PA 19125.⁶ (*Id.*)

On July 26, 2016, Mr. Vuriminidi promptly petitioned the Court to open and/or strike the default judgment. (Initial Petition to Open/Strike, Dkt. at 8/1/16; Cash Slip, *attached as* Exhibit I to Petition, Dkt. at 2/21/17, at PDF p. 93). The Court denied Mr. Vuriminidi's petition without prejudice because he failed to attach a proposed answer to the complaint. (Amended Order, Dkt. at 12/27/16). The Court allowed him 30 days leave to re-file with an answer, which he did on

⁴ Christina Zern, lawyer for Wells Fargo, certified that, on March 23, 2016, Wells Fargo's answer to Mr. Vuriminidi's preliminary objections was mailed to Mr. Vuriminidi at PCI Pine Grove. (Certificate of Service, *attached to* Answer to Preliminary Objections, Dkt. at 3/24/16). Mr. Vuriminidi states that he did not receive Wells Fargo's answer. (See Statement of Errors; Petition, Dkt. at 2/21/17).

⁵ Mr. Vuriminidi stated that he was never served with the Court's order directing him to answer the complaint because his entry of appearance listed his 1782 Frankford Avenue address and not his address at SCI Pine Grove. (Petition, Dkt. at 2/21/17, at PDF pp. 49–50; April 19, 2017 Notes of Testimony ("N.T.") at 10:12–18). The Office of Judicial Records noted on the docket that it sent notice of the Court's order overruling his preliminary objections and directing him to answer the complaint to Mr. Vuriminidi. (Rule 236 Notice, Dkt. at 4/25/16). Mr. Vuriminidi's address of record is his SCI Pine Grove address. (See Dkt.) This is the same address where Mr. Vuriminidi was served the complaint. (Sheriff's Service, Dkt. at 2/12/16). It is also the same address Mr. Vuriminidi listed on his preliminary objections to Wells Fargo's complaint. (Preliminary Objections, Dkt. at 3/3/16, at PDF p. 3).

⁶ Mr. Vuriminidi resided at 1782 Frankford Avenue immediately before his incarceration. (Preliminary Objections, Dkt. at 3/3/16, at ¶ 6).

January 3, 2017. (*Id.*; Petition, Dkt. at 2/21/17; Cash Slips, *attached to* Reply to Answer to Petition, Dkt. at 3/23/17, at PDF p. 35).

On April 26, 2017, after a hearing, the Court entered an order denying both Mr. Vuriminidi's petition to strike and his petition to open. (*See* April 19, 2017 Notes of Testimony ("N.T."); Order, Dkt. at 4/26/17). The Court held that, although Mr. Vuriminidi stated a meritorious defense to the complaint, he did not provide a reasonable excuse for his failure to answer the complaint as ordered. (*Id.*)

On September 19, 2017, Mr. Vuriminidi sought leave to appeal the April 26, 2017 order *nunc pro tunc*. (Motion to Appeal *Nunc Pro Tunc*, Dkt. at 9/19/17). The Court granted Mr. Vuriminidi leave to appeal *nunc pro tunc* and, on November 20, 2017, he promptly filed this appeal. (Order, Dkt. at 11/3/17; Notice of Appeal, Dkt. at 11/20/17).

On January 30, 2018, Mr. Vuriminidi filed a statement of errors complained of on appeal. (Statement of Errors, Dkt. at 1/30/18). Mr. Vuriminidi claims that the following defects render the July 18, 2016 default judgment void:

1. Wells Fargo "failed to serve pre-suit Act 91 Notice of Intent to Foreclose upon defendant at least sixty (60) days prior to commencing foreclosure action";
2. "Wells Fargo failed to state a cause of action by failing to join Hoopskirt Lofts Condominium Association, the indispensable party";
3. "Wells Fargo failed to serve Pa.R.Civ.P. 237.1 notice of default after actual default, and not before default";
4. "Wells Fargo violated defendant's due process right, by failing to serve its responsive pleading to defendant's preliminary objections upon defendant at SCI Pine Grove"; and
5. "prothonotary lacked power to reject a responsive pleading" before entry of default judgment."

(Statement of Errors, Dkt. at 1/30/18).

Mr. Vuriminidi also claims that the Court erred in denying defendant's motion to open default judgment where his motion was: (1) timely; (2) provided a reasonable excuse for failure to file a responsive pleading; and (3) pled several meritorious defenses. Specifically he claims:

1. "prothonotary violated defendant's due process notice, by failing to serve 04-25-2016 Judge Wright-Padilla's order overruling defendant's preliminary objections, and directing defendant to file answer to the complaint, upon defendant at SCI Pine Grove"; and
2. "On 04-25-2017 Hon. Judge Abbe Fletman made an error by sustaining the presumption of the entirety, where defendant adduced evidence that Ann Boris is not authorized to act on defendant's behalf, and defendant did not gain any benefit out of Ann Boris signing the mortgage contract";
3. "Wells Fargo failed to meet its burden to plead equitable estoppel and unjust enrichment and equitable lien against" the Property; and
4. "defendant do not owe any money to Wells Fargo, and promissory note attached to the foreclosure complaint is void *ab initio*, because defendant cannot sign a valid mortgage contract by the reason of his mental illness and being adjudicated as legally incompetent as of 12-06-2012."

(Statement of Errors, Dkt. at 1/30/18).

STANDARD OF REVIEW

A petition to open a default judgment and a petition to strike a default judgment seek distinct remedies and are generally not interchangeable. *Stauffer v. Hevener*, 881 A.2d 868, 870 (Pa. Super. 2005). The standard of review on a petition to strike is *de novo* and the appellate court's scope of review is plenary. *Oswald v. WB Public Square Associates, LLC*, 80 A.3d 790, 793 (Pa. Super. 2013). In contrast, the Superior Court will not reverse a trial court's decision to deny a petition to open a default judgment absent an abuse of discretion. *Fink v. Gen. Acc. Ins. Co.*, 594 A.2d 345, 346 (Pa. Super. 1991).

DISCUSSION

A. The Court did not err by denying Mr. Vuriminidi's petition to strike the judgment.

"A petition to strike a judgment is a common law proceeding which operates as a demurrer to the record." *Bank of New York Mellon v. Johnson*, 121 A.3d 1056, 1060 (Pa. Super. 2015)(quoting *Green Acres Rehabilitation and Nursing Center v. Sullivan*, 113 A.3d 1261, 1267–68 (Pa. Super. 2015)). "A petition to strike is aimed at defects that affect the validity of the judgment and that entitle the petitioner, as a matter of law, to relief." *Id.*

A petition to strike is not a chance to review the merits of the allegations of a complaint. *Bank of New York Mellon*, 121 A.3d at 1060. Rather, in considering a petition to strike, a trial court must review all well pled facts as admitted and test conclusions of law drawn from those facts. *Cintas Corp. v. Lee's Cleaning Services, Inc.*, 700 A.2d 915, 918–19 (Pa. 1997). If a petitioner wishes to dispute factual averments or to raise facts outside of the record when the judgment was entered, the appropriate procedural mechanism is a petition to open and not a petition to strike. *Manor Bldg. Corp. v. Manor Complex Assocs., Ltd.*, 645 A.2d 843, 846 (Pa. Super. 1994).

A petition to strike a default judgment must be granted if a fatal defect exists on the face of the record at the time default judgment is entered, rendering the default judgment void. *Sullivan*, 113 A.3d at 1267. A fatal defect exists where one or more of three jurisdictional elements is missing when a judgment is entered: (1) jurisdiction over the parties; (2) subject matter jurisdiction; or (3) the power or authority to render the particular default judgment. *Id.* at 1268. A fatal defect also exists where the prothonotary⁷ lacked authority to enter the

⁷ The Philadelphia Court of Common Pleas prothonotary was renamed the Office of Judicial Records. See Phila. Civ. R. 2039.

judgment. *Erie Ins. Co. v. Bullard*, 839 A.2d 383, 388 (Pa. Super. 2003). When a prothonotary enters judgment without such authority, that judgment is void *ab initio*. *Id.*

1. Wells Fargo provided Mr. Vuriminidi with notice of its intent to foreclose.

Mr. Vuriminidi argues that Wells Fargo did not provide him with notice of its intent to foreclose on the Property as required by the Homeowner's Emergency Assistance Act ("Act").⁸ (See Statement of Errors; Petition, Dkt. at 2/21/17). The record shows, however, that Wells Fargo did provide him with notice.

The Act requires a mortgagee who desires to foreclose upon a mortgage to send to the mortgagor, at his or her last known address, a notice of intent to foreclose on the mortgage at least 30 days before commencing a foreclosure action.

The Act provides:

(a) Any mortgagee who desires to foreclose upon a mortgage shall send to such mortgagor at his or her **last known address** the notice provided in subsection (b): Provided, however, [t]hat such mortgagor shall be at least sixty (60) days contractually delinquent in his mortgage payments or be in violation of any other provision of such mortgage.

(b)(1) The agency shall prepare a notice which shall include all the information required by this subsection and by section 403 of the ... Loan Interest and Protection Law and referred to commonly as the Usury Law.

(2) The notice under paragraph (1) must be sent by a mortgagee **at least thirty (30) days before the mortgagee**: (i) asks for full payment of any mortgage obligation; or (ii) **begins any legal action, including foreclosure**, for money due under the mortgage obligation or to take possession of the mortgagor's security.

35 Pa.C.S.A § 1680.403c(West 2008)(emphasis added).

⁸ Act of July 8, 2008, P.L. 841, No. 60.

If a mortgagor's last known address is different from that of the mortgaged property, the Act, incorporating requirements set out in the Loan Interest and Protection Law,⁹ requires that the mortgagee send notice to both the mortgaged property and the last known address of the mortgagor. 35 Pa.C.S. § 1680.403c(b)(1)(West 2008).

The Loan Interest and Protection Law provides:

- (a) Before any residential mortgage lender may accelerate the maturity of any residential mortgage obligation, **commence any legal action including mortgage foreclosure** to recover under such obligation, or take possession of any security of the residential mortgage debtor for such residential mortgage obligation, such person shall give the residential mortgage debtor notice of such intention at **least thirty days in advance** as provided in this section.
- (b) Notice of intention to take action as specified in subsection (a) of this section shall be in writing, sent to the residential mortgage debtor by registered or certified mail at **his last known address and, if different, at the residence which is the subject of the residential mortgage.**

41 Pa.C.S.A. § 403(West 1974)(emphasis added).

A trial court is not deprived of jurisdiction by a mortgagee who does not comply with the notice requirements of the Act. *Beneficial Consumer Disc. Co. v. Vukman*, 77 A.3d 547, 553 (Pa. 2013). Not complying with the notice requirements of the Act does, however, result in the mortgagee's failure to meet the procedural requirements necessary to enforce the mortgage. *Id.* (holding that mortgagee's failure to comply with Act's notice requirements did not affect the jurisdiction of the court to hear the foreclosure action and reversing the trial court's order setting aside sheriff's sale for lack of subject matter jurisdiction).

Mr. Vuriminidi was incarcerated when this action was commenced, but, immediately before his incarceration, he resided at 1782 Frankford Avenue. (See Complaint, Dkt. at

⁹ Act of January 30, 1974, P.L. 13, No. 6.

10/15/15; Preliminary Objections, Dkt. at 3/3/16, at ¶ 6). On August 25, 2015, more than 30 days before commencement of the action, Wells Fargo sent notice of its intention to foreclosure to Mr. Vuriminidi at 1782 Frankford Avenue. (Foreclosure Notice, *attached as Exhibit A* to Answer to Preliminary Objections, Dkt. at 3/24/16, at PDF p. 15). Mr. Vuriminidi's last known address was different from that of the Property, therefore, Wells Fargo, pursuant to 35 Pa.C.S. § 1680.403c(b)(1)(b), also sent notice to the Property. (*Id.*) Nothing in the record suggests that Wells Fargo knew of Mr. Vuriminidi's incarceration before commencing this action. (See Preliminary Objections, Dkt. at 3/3/16; *see* Dkt.) Moreover, nothing in the Act required Wells Fargo investigate Mr. Vuriminidi's whereabouts. To the contrary, both the Act and the provisions of the Loan Interest and Protection Law that the Act incorporates specifically require notice to be sent to a mortgagor's last known address. Wells Fargo met this requirement by sending notice to Mr. Vuriminidi at 1782 Frankford Avenue. Wells Fargo, therefore, was not deprived of the power to enforce the mortgage in a mortgage foreclosure action.

2. Hoopskirt Lofts Condominium Association is not an indispensable party.

The Hoopskirt Lofts Condominium Association is not an indispensable party because it was not the mortgagor, the personal representative or the real owner of the Property when this action was commenced.

An indispensable party is a party so pervasively connected to the claims in an action that a court cannot grant relief in the absence of the party without infringing on the party's rights or interests. *Hubert v. Greenwald*, 743 A.2d 977, 980 (Pa. Super. 1999). A court cannot gain subject matter jurisdiction over an action unless all indispensable parties are joined in the action. *Id.* Consequently, the absence of an indispensable party renders any order in an action void for lack of subject matter jurisdiction. *Id.* In a mortgage foreclosure, in particular, a plaintiff must name as defendants: (1) the mortgagor; (2) the personal representative, heir or devisee of a

deceased mortgagor, if known; and (3) the real owner of the property, or if the real owner is unknown, the grantee in the last recorded deed. Pa.R.C.P. 1144. Though Rule 1144 requires a plaintiff in a mortgage foreclosure action to name the real owner of a property as defendants, this requirement applies only *at the time of the filing of the complaint*. *Fin. Freedom, SFC v. Cooper*, 21 A.3d 1229, 1232 (Pa. Super. 2011). A party who takes an interest in the property *after* the action is commenced need not be joined. *First Union Mortg. Corp. v. Frempong*, 744 A.2d 327, 336 (Pa. Super. 1999); *see also Resolution Trust Corp. v. Warwick Nurseries, Ltd.*, 675 A.2d 730, 731–32 (Pa. Super. 1996). The Superior Court has held:

It is perfectly well-settled, that encumbrance[s] who become [] pendente lite, are not necessary parties to a bill to foreclose, although they are bound by the decree, for they can claim nothing except what belonged to the person under whom they assert title, since they have constructive notice; and there would be no end to such suits, if a mortgagor might by new encumbrances, created pendente lite, require all such encumbrances to be made parties.)

Resolution Trust Corp. v. Warwick Nurseries, Ltd., 675 A.2d at 731–32.

On March 13, 2015, the Condominium Association won a judgment to enforce a lien on the Property for delinquent condominium assessments. (Final Disposition, Tr. Ct. Dkt. 131201973 at 3/13/15). A month *after* this mortgage foreclosure action was commenced, the Philadelphia Sheriff sold the Property to Zimilong to satisfy the judgment. (Sheriff's Sale, Tr. Ct. Dkt. 131201973 at 11/11/15).

Mr. Vuriminidi claimed in the Petition that Zimolong, under some understanding with Wells Fargo and the Condominium Association, made a “straw purchase” of the Property and, consequently, the Condominium Association was the “real owner” of the Property when the action was commenced. (Petition, Dkt. at 2/21/17, at PDF pp. 40–42).

Even if the Condominium Association, in some way, constructively became the real owner through Zimilong's purchase of the Property at the sheriff's sale – for which no evidence was provided – Zimilong did not purchase the Property until *after* the mortgage foreclosure action was commenced. The Condominium Association was not, therefore, an indispensable party and did not need to be joined.

3. *Wells Fargo gave Mr. Vuriminidi notice of its intent to enter default judgment.*

Wells Fargo provided Mr. Vuriminidi notice of its intention to enter default judgment as required by Pa.R.C.P. 237.1.

A plaintiff may file a praecipe requesting the Office of Judicial Records to enter default judgment upon a defendant's failure to file a responsive pleading. Pa.R.C.P 1037(b). For default judgement to be entered, the plaintiff must provide the defendant with notice of its intention to seek default judgment at least ten days before the date of the filing of the praecipe. Pa.R.C.P. 237.1(2)(ii). The Office of Judicial Records is not authorized to enter default judgment unless the praecipe contains a certification that the plaintiff sent the defendant such notice. *Id.*

On April 25, 2016, the Court overruled Mr. Vuriminidi's preliminary objections and ordered him to file an answer to the complaint within 20 days. (Order, Dkt. at 4/25/16). Mr. Vuriminidi did not answer the complaint. (*See* Dkt.; Petition, Dkt. at 2/21/17, at PDF p. 48). On July 18, 2016, Wells Fargo filed a praecipe to enter default judgment. (Praecipe for Judgment, Dkt. at 7/18/16). Peter Wapner, lawyer for Wells Fargo, certified in the praecipe that notice of intent to enter default judgment had been mailed to Mr. Vuriminidi at 1782 Frankford Avenue and SCI Pine Grove. (*Id.*) Wells Fargo, therefore, met the notice requirements of Rule 237.1 and the Office of Judicial Records was authorized to enter default judgment.

4. Wells Fargo served its answer to Mr. Vuriminidi's preliminary objections.

Wells Fargo mailed its answer to Mr. Vuriminidi's preliminary objections as required by the Pennsylvania Rules of Civil Procedure and is under no obligation to prove that Mr. Vuriminidi's actually received the answer.

"Copies of all legal papers other than original process filed in an action or served upon any party to an action shall be served upon every other party to the action." Pa.R.C.P. 440(a)(1). "If there is no attorney of record, service shall be made by handing a copy to the party or by mailing a copy to or leaving a copy for the party at the address endorsed on an appearance or prior pleading or the residence or place of business of the party." Pa.R.C.P. 440(a)(2)(i). A properly mailed pleading is presumed, subject to rebuttal, to have been received by an opposing party. *Franklin Interiors, Inc. v. Browns Lane, Inc.*, 323 A.2d 226, 228 (Pa. Super. 1974). The party mailing the pleading does not have to prove actual receipt. *Id.*

Christina Zern, lawyer for Wells Fargo, certified that, on March 23, 2016, Wells Fargo's answer to Mr. Vuriminidi's preliminary objections was mailed to Mr. Vuriminidi at SCI Pine Grove. (Certificate of Service, *attached to Answer to Preliminary Objections*, Dkt. at 3/24/16). Wells Fargo met the procedural requirements of Rule 440 and need not prove that Mr. Vuriminidi actually received its answer to his preliminary objections.

5. The Office of Judicial Records did not improperly reject a responsive pleading.

The Office of Judicial Records received and docketed Mr. Vuriminidi's preliminary objections to the complaint. The record does not show that Mr. Vuriminidi attempted to file additional preliminary objections and, even if he did, the Office of Judicial Records was under no obligation to docket them.

All preliminary objections to a complaint must be raised at one time. Pa.R.C.P. 1028(b). The Office of Judicial Records docketed Mr. Vuriminidi's preliminary objections on March 3,

2016. (Preliminary Objections, Dkt. at 3/3/16). Mr. Vuriminidi stated in the Petition that he attempted to file additional preliminary objections on July 14, 2016, but the Office of Judicial Records rejected his filing. (Petition, Dkt. at 2/21/17, at PDF p. 48).

The record does not support Mr. Vuriminidi's statement that he attempted to file additional preliminary objections. (*See supra*, n. 2). Even if he did, the Office of Judicial Records was not required to docket them. Wells Fargo did not file an amended complaint, to which Mr. Vuriminidi could again object. (*See Dkt.*) Rather, Wells Fargo answered Mr. Vuriminidi's preliminary objections. (Answer to Preliminary Objections, Dkt. at 3/24/16). Mr. Vuriminidi was, therefore, barred from filing any additional preliminary objections pursuant to Pa.R.C.P. 1028(b) and the Office of Judicial Records had the authority to reject an attempt to do so.

B. The Court Did Not Err By Denying Mr. Vuriminidi's Petition to Open The Default Judgment.

Mr. Vuriminidi did not answer the complaint. The Court determined that his excuse for not answering the complaint was incredible. Having made this determination, the Court denied Mr. Vuriminidi's petition to open. The Court did not abuse its discretion in doing so.

A petition to open default judgment "is an appeal to the equitable power of the court." *Graziani v. Randolph*, 856 A.2d 1212, 1223 (Pa. Super. 2004). Evidence relating to the cause of action must be introduced to support the petition. *PennWest Farm Credit, ACA v. Hare*, 600 A.2d 213, 217 (Pa. Super. 1991). Pennsylvania courts apply a three-prong test when considering a petition to open default judgment: "(1) the petition to open must be promptly filed; (2) the party seeking to open the judgment can show a meritorious defense; and (3) the failure to appear can be excused." *Schultz v. Erie Insurance Exchange*, 477 A.2d 471 (Pa. 1984). The burden to show circumstances warranting the opening of a judgment is on the petitioner. *See U.S. Bank*

Nat'l Ass'n for Pa. Hous. Fin. Agency v. Watters, 163 A.3d 1019, 1028 (Pa. Super. 2017) (“a default judgment may be opened when the moving party establishes [these] three requirements ... If a petition to open a default judgment fails to fulfill any one prong of this test, then the petition must be denied.”), *allocator denied*, 170 A.3d 973 (Pa. 2017); *see also McCoy v. Pub. Acceptance Corp.*, 305 A.2d 698, 700 (Pa. 1973) (“Having determined that the appellant did not adequately explain the failure to answer the complaint, the lower court was justified in refusing to open the judgment.”)

Mr. Vuriminidi did not answer the complaint. (*See* Dkt.; Petition, Dkt. at 2/21/17, at PDF p. 48). He explained that he was never served with the Court’s order directing him to do so because his address of record was 1782 Frankford Avenue and he was incarcerated at SCI Pine Grove at the time the order was entered. (*Id.* at PDF pp. 49–50; N.T. 10:12–18).

On February 2, 2016, Wells Fargo served Mr. Vuriminidi the foreclosure complaint at his SCI Pine Grove address. (Sheriff’s Service, Dkt. at 2/12/16). Mr. Vuriminidi listed his SCI Pine Grove address in his preliminary objections filed March 3, 2016. (Preliminary Objections, Dkt. at 3/3/16). On March 23, 2016, Wells Fargo served its answer to Mr. Vuriminidi at his SCI Pine Grove address. (Certificate of Service, *attached to* Answer to Preliminary Objections, Dkt. at 3/24/16). On April 25, 2016, the Office of Judicial Records noted on the docket that it sent notice to Mr. Vuriminidi of the Court’s order overruling his preliminary objections and directing him to answer the complaint. (Rule 236 Notice, Dkt. at 4/25/16). Mr. Vuriminidi’s address of record is currently his SCI Pine Grove address. (*See* Dkt.)

Absent some indication otherwise, the Court had no reason to believe that the Office of Judicial Records sent notice of the order directing Mr. Vuriminidi to answer the complaint to the wrong address. The Court determined, therefore, that Mr. Vuriminidi’s explanation for not filing

his answer was incredible and denied his petition to open. The Court did not abuse its discretion in doing so.

CONCLUSION

For the foregoing reasons, the Court respectfully requests that the Superior Court affirm the Court's April 26, 2017 order denying the Motion to Open/Strike Default Judgment of *pro se* the defendant/appellant Vamsidhar R. Vuriminidi.

Abbe F. F.

Abbe F. Fletman, J.

Dated: November 27, 2018

APPENDIX-C

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

WELLS FARGO BANK, N.A.

: No. 101 EAL 2020

v.

: Petition for Allowance of Appeal
from the Order of the Superior Court

ANN S. BORIS AND VAMSIDHAR R.
VURIMINDI

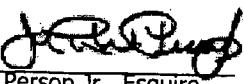
PETITION OF: VAMSIDHAR R. VURIMINDI

ORDER

PER CURIAM

AND NOW, this 4th day of August, 2020, the Petition for Allowance of Appeal is
DENIED.

A True Copy
As Of 08/04/2020

Attest: 
John W. Person Jr., Esquire
Deputy Prothonotary
Supreme Court of Pennsylvania