[Cite as *Bank of New York Mellon v. Ackerman*, 2018-Ohio-4642.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

BANK OF NEW YORK MELLON	:	
	:	
Plaintiff-Appellee	:	Appellate Case No. 28002
	:	
v.	:	Trial Court Case No. 2009-CV-3194
	:	
GREGORY THOMAS ACKERMAN, et al.	:	(Civil Appeal from Common Pleas Court)
	:	
Defendants-Appellants	:	

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O P I N I O N

Rendered on the 16th day of November, 2018.

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TUCKER, J.

{¶ 1} Defendants-appellants, Gregory Thomas Ackerman and Joyce L. Ackerman, appeal pro se from the trial court's final order of April 20, 2018, in which the court adopted a magistrate's decision sustaining the motion of Plaintiff-appellee, Bank of New York Mellon, for sanctions and other relief. Appellants argue that the trial court's order should be reversed because the court violated 28 U.S.C. 1657(a) by issuing the underlying foreclosure decree before the entry of final adjudication in two other civil actions; because Appellee acted maliciously and in bad faith by attempting to proceed with a sheriff's sale despite Appellants' filing of a petition for a writ of certiorari to the United States Supreme Court; because the court violated their constitutional right to a trial by jury in issuing the foreclosure decree; and because Appellee breached a loan modification agreement by attempting to proceed with the sale. In addition, Appellants move for an order staying any further proceedings in the trial court until their other civil actions have been resolved.

{¶ 2} We find that Appellants have presented no meritorious arguments for the reversal of the trial court's order of April 20, 2018, and therefore, the order is affirmed. Similarly, Appellants have not offered a meritorious basis for the imposition of a stay on further proceedings in the trial court, and as a result, their motion for a stay is overruled.

I. Facts and Procedural History

{¶ 3} Appellee filed a complaint against Appellants, and four other parties, on April 21, 2009, seeking to foreclose on Appellants' residence (the "Property") in Dayton. Shortly afterward, Appellee moved for a stay because it had reached a workout agreement with Appellants, and on November 9, 2009, the trial court administratively dismissed the case. The workout agreement, however, proved to be unsuccessful.

{¶ 4} On May 20, 2010, the trial court returned the case to its active docket. The trial court granted summary judgment in Appellee's favor in its judgment entry of November 11, 2010, which included a foreclosure decree. Appellants appealed the judgment, and this court affirmed. *Bank of New York Mellon v. Ackerman*, 2d Dist. Montgomery No. 24390, 2012-Ohio-956, ¶ 1.

{¶ 5} Freshzone Products, Inc., a corporation owned by Appellants, submitted the winning bid for the Property at a sheriff's sale on May 3, 2013, and made a 10 percent down payment. The trial court entered a confirmation of sale on June 20, 2013, but the corporation failed to tender the balance due within 30 days thereafter as required by R.C. 2329.30. On February 3, 2014, the trial court vacated the confirmation of sale; set the sale aside; found the corporation to be in contempt of court; and ordered that the down payment be forfeited to Appellee. Effective February 26, 2014, the trial court further ordered, with respect to any future sale, that Appellants and the corporation be required to pay the full amount of a winning bid in certified funds immediately, or otherwise be prohibited from bidding.

{¶ 6} Appellants submitted the winning bid for the Property at a sale held on February 17, 2017. Although they made a down payment of $5,000 at that time, they violated the court's order of February 26, 2014, by failing to pay the full amount of their bid. In its order of April 20, 2018, adopting a magistrate's decision, the trial court set the sale aside; found Appellants to be in contempt of court; ordered that the down payment made by Appellants be forfeited to Appellee; and imposed restrictions on Appellants' ability to bid at any future sale. On May 21, 2018, Appellants timely filed their notice of appeal.

II. Analysis

{¶ 7} Appellants' brief is not compliant with App.R. 16(A), most notably for the omission of any assignments of error.[1] Nevertheless, Appellants present several arguments that could be construed as assignments of error, and we address those arguments in this opinion.

{¶ 8} First, Appellants move for a stay of further proceedings in the trial court "pending the completion of their other related and predicating profound deprivation of constitutional rights case matters." Appellants' Br. 2. The cases to which Appellants refer are Case No. 2000 CV 01472 and Case No. 2003 CV 09499. *Id.* Neither of these cases is related to the instant action as a matter of law, and Appellants' motion for a stay is accordingly overruled. *See Bank of New York Mellon v. Ackerman*, 2d Dist. Montgomery No. 24390, 2012-Ohio-956, ¶ 2, fn.1; Final and Appealable Decision and Entry Overruling Defendants' Objections to the Magistrate's Decision 4-5 and 8, Apr. 20, 2018.

{¶ 9} Second, Appellants argue that the trial court violated 28 U.S.C. 1657(a) by issuing a foreclosure decree before the entry of final adjudication in Case Nos. 2000 CV 01472 and 2003 CV 09499. Appellants' Br. 4-5. Yet, even assuming for sake of analysis that the statute applies to state courts, it mandates the prioritization only of actions brought under Title 28, Chapter 153 of the United States Code, pertaining to writs of habeas corpus; actions brought under 28 U.S.C. 1826, pertaining to recalcitrant witnesses; or actions for temporary or preliminary injunctive relief. 28 U.S.C. 1657(a).

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[1] In its response, Appellee argues only that the appeal should be dismissed as the result of Appellants' non-compliance with App.R. 16.

Thus, the trial court could not have violated 28 U.S.C. 1657(a), because neither Case No. 2000 CV 01472, nor Case No. 2003 CV 09499, was an action subject to mandatory prioritization under the statute.

{¶ 10} Third, Appellants argue that Appellee acted maliciously and in bad faith by attempting to proceed with a sheriff's sale on August 31, 2018, despite Appellants' filing of a petition for a writ of certiorari to the United States Supreme Court. Appellants' Br. 3. We take judicial notice, however, of the fact that the attempted sale in question was cancelled on August 30, 2018, and also of the fact that the Supreme Court denied Appellants' petition on October 1, 2018. Evid.R. 201(B)-(C); *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, 874 N.E.2d 516, ¶ 7-8 and 10; *State v. Banks*, 2d Dist. Montgomery No. 25541, 2013-Ohio-4394, ¶ 21, fn.1, quoting *State v. Raymond*, 10th Dist. Franklin No. 08AP-78, 2008-Ohio-6814, ¶ 16; *In re Helfrich*, 5th Dist. Licking No. 13 CA 20, 2014-Ohio-1933, ¶ 35. Appellants' argument concerning the attempted sale on August 31, 2018, is consequently moot.

{¶ 11} Fourth, Appellants argue that the trial court violated their constitutional right to a trial by jury, and fifth, Appellants argue that Appellee breached a loan modification agreement by filing its complaint against them. Appellants' Br. 5-7. Given that we have previously considered and rejected the same arguments, they are barred by the doctrine of res judicata. *See Bank of New York Mellon v. Ackerman*, 2d Dist. Montgomery No. 24390, 2012-Ohio-956, ¶ 16-22. The "doctrine of res judicata 'bars all claims that were litigated in a [previous] action[,] as well as claims [that] might have been litigated in that action.' " *Bank of New York Mellon v. Ackerman*, 2d Dist. Montgomery No. 26779, 2016-Ohio-960, ¶ 19, quoting *Deaton v. Burney*, 107 Ohio App.3d 407, 669 N.E.2d 1 (2d

Dist.1991).

III. Conclusion

{¶ 12} We find that Appellants' arguments lack merit. Therefore, the trial court's order of April 20, 2018, is affirmed, and Appellants' motion for a stay under App.R. 7 is overruled.

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WELBAUM, P.J. and DONOVAN, J., concur.

Copies sent to:

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