

[Cite as *Blisswood Village Home Owners Assn. v. Genesis Real Estate Holdings Group, L.L.C.*,  
2018-Ohio-1092.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 105861

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**BLISSWOOD VILLAGE HOME OWNERS  
ASSOCIATION**

PLAINTIFF-APPELLEE

vs.

**GENESIS REAL ESTATE HOLDINGS  
GROUP, L.L.C., ET AL.**

DEFENDANTS-APPELLANTS

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**JUDGMENT:  
DISMISSED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-15-852876

**BEFORE:** Kilbane, P.J., McCormack, J., and E.T. Gallagher, J.

**RELEASED AND JOURNALIZED:** March 22, 2018

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MARY EILEEN KILBANE, P.J.:

{¶1} Defendant-appellant, Genesis Real Estate Holdings Group, L.L.C., (“Genesis”), appeals from the trial court’s order confirming the sale of real property in this foreclosure action instituted by plaintiff-appellee, Blisswood Village Home Owners Association (“Blisswood”).

For the reasons set forth below, we dismiss this appeal as moot.

{¶2} In October 2015, Blisswood filed the present foreclosure action against Genesis and other defendants holding or claiming an interest in a condominium unit located at 441

Kenwood Drive, Unit O, in the city of Euclid, Ohio (“the property”). At the time Blisswood initiated the foreclosure action, Genesis was the record title owner of the property.

{¶3} In the foreclosure complaint, Blisswood sought a decree of foreclosure against the property and requested judgment in the amount of \$729.46, plus interest, for unpaid monthly assessments for common expenses as well as late fees and other charges, including reasonable attorney fees, under R.C. 5311.18.

{¶4} In October 2016, Blisswood moved for summary judgment, and in December 2016, the trial court granted summary judgment in its favor and issued a decree of foreclosure on the property. In January 2017, the property was sold at sheriff’s sale to a third party. In April 2017, the trial court confirmed the sale, and in May 2017, the sheriff distributed the proceeds of the sale as ordered by the trial court in the decree of foreclosure.

{¶5} On June 1, 2017, Genesis filed a notice of appeal with this court. Notably, the record reflects that Genesis never moved to stay confirmation of the sale or satisfaction of the judgment pending this appeal. On June 16, 2017, Blisswood moved to dismiss this appeal, arguing the appeal is moot because the property has been sold and the proceeds of the sale have been distributed.

{¶6} Genesis raises the following single assignment of error for our review.

Assignment of Error

The trial court erred as a matter of law when it confirmed the March 27, 2017 foreclosure of [the property] because the court lacked subject matter jurisdiction over [Blisswood’s] foreclosure action, therefore rendering all proceedings void, including the court’s judgment in foreclosure and the decree of the confirmation itself.

{¶7} In the sole assignment of error, Genesis argues the trial court lacked subject matter jurisdiction over the instant case because Blisswood’s “complaint in foreclosure was based upon

a single, invalid statutory lien.”<sup>1</sup> Before we examine the merits of the sole assignment of error, we must address Blisswood’s motion to dismiss this appeal.

{¶8} We note that there are two judgments appealable in foreclosure actions: the order of foreclosure and the confirmation of sale. *CitiMortgage, Inc. v. Roznowski*, 139 Ohio St.3d 299, 2014-Ohio-1984, 11 N.E.3d 1140, ¶ 39.

{¶9} Because Genesis failed to pursue an appeal from the order of foreclosure, any argument pertaining to that order is now barred. *Beneficial Ohio, Inc. v. LaQuatra*, 8th Dist. Cuyahoga No. 99860, 2014-Ohio-605, \_ 5; *U.S. Bank, Natl. Assn. v. Sanders*, 8th Dist. Cuyahoga No. 104607, 2017-Ohio-1160, ¶ 18. The only arguments that can be considered by this court in an appeal from the confirmation of the sale are those related to the procedures employed in the sale and whether the trial court abused its discretion in confirming the sale. *Id.*; *Sanders* at ¶ 18. Genesis does not put forth any argument related to the confirmation of the sale.

{¶10} As discussed above, Blisswood, relying on several cases from this district, argues the instant appeal is moot and must be dismissed because the property has been sold and the proceeds of that sale have been distributed. *See Provident Funding Assocs., L.P. v. Turner*, 8th Dist. Cuyahoga No. 100153, 2014-Ohio-2529; *Wells Fargo Bank v. Cuevas*, 8th Dist. Cuyahoga No. 99921, 2014-Ohio-498; *LaQuatra*. We agree with Blisswood.

{¶11} In *Turner*, this court noted that R.C. 2329.45, which governs the reversal of judgments in foreclosure cases, provides a remedy for appellants in foreclosure cases after the property has been sold. *Id.* at \_ 5.

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<sup>1</sup> The Ohio Supreme Court has held that courts of common pleas have subject matter jurisdiction over foreclosure actions. *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 19-20.

{¶12} We explained that even when the property itself is no longer recoverable, R.C. 2329.45 provides an alternative remedy in the form of restitution. *Id.* at \_ 6. We noted, however, that R.C. 2329.45 only applies when the appealing party sought and obtained a stay of the distribution of the proceeds. *Id.* at \_ 6, citing *Bankers Trust Co. of California, N.A. v. Tutin*, 9th Dist. Summit No. 24329, 2009-Ohio-1333, ¶ 11; *see also Cuevas; LaQuatra*, 8th Dist. Cuyahoga No. 99860, 2014-Ohio-605.

{¶13} Where a defendant in a foreclosure action fails to obtain a stay of the distribution of the proceeds, any appeal therefrom is moot because “the matter has been extinguished through satisfaction of the judgment, the individual subject matter of the case is no longer under the control of the court and the court cannot afford relief to the parties to the action.” *Tutin* at ¶ 16.

{¶14} Here, Genesis never moved for a stay of the proceedings. The property has been sold and the proceeds of the sale distributed — this matter has been extinguished through satisfaction of the judgment in foreclosure. Thus, there is no relief that can be afforded to Genesis.

{¶15} Accordingly, the instant appeal is moot. Blisswood’s motion to dismiss this appeal as moot is granted.

{¶16} Appeal dismissed.

It is ordered that appellee recover of appellant costs herein taxed.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MARY EILEEN KILBANE, PRESIDING JUDGE

TIM McCORMACK, J., and  
EILEEN T. GALLAGHER, J., CONCUR