

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

UAP — Columbus JV326132,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-926
Michael J. Young,	:	(C.P.C. No. 07CVE-12-17339)
Defendant-Appellant,	:	(REGULAR CALENDAR)
Wells Fargo Bank, N.A. et al.,	:	
Defendants-Appellees.	:	

D E C I S I O N

Rendered on June 5, 2012

Carlisle, McNellie, Rini, Kramer & Ulrich, Co., LPA, Eric T. Deighton and Bradley P. Toman, for appellee Wells Fargo Bank, N.A.

Michael J. Young, pro se.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Defendant-appellant, Michael J. Young, appeals a judgment of the Franklin County Court of Common Pleas in favor of defendant-appellee, Wells Fargo Bank, N.A. ("Wells Fargo"). For the following reasons, we reverse.

{¶ 2} The case now before this court has a lengthy history. Litigation commenced on December 20, 2007, when UAP-Columbus JV326132 ("UAP") filed suit against Young to recover on a judgment lien. In the complaint, UAP alleged that the Franklin County Court of Common Pleas had entered a monetary judgment in favor of UAP and against Young, and that the Franklin County Clerk of Courts had certified the judgment pursuant

to R.C. 2329.02. UAP further alleged that Young was the owner of property located at 5550 Woodridge Drive, and that, by virtue of its certificate of judgment, it had a lien against that property. UAP requested that the trial court foreclose its lien, marshal all other liens on the Woodridge property, order the sale of the Woodridge property, and satisfy UAP's judgment from the proceeds of the sale.

{¶ 3} In addition to Young, UAP named Huntington National Bank ("Huntington") as a defendant. UAP alleged that Huntington had an interest in the action because it was the holder of a mortgage on the Woodridge property.¹

{¶ 4} In his answer, Young asserted that UAP's judgment lien could not attach to the Woodridge property because the property was held in trust, with Young only serving as trustee. Young also asserted that the trust was not a party to the action because UAP sued him only in his individual capacity, and not in his capacity as trustee.

{¶ 5} Young followed his answer with a motion for summary judgment. In that motion, Young conceded that UAP had secured a judgment against him for the breach of a lease that he had personally guaranteed. Young, however, argued that his personal debt could not be satisfied out of proceeds from the sale of the Woodridge property because that property was held in trust. To establish the ownership of the Woodridge property, Young produced a quit claim deed, recorded May 11, 2006, evincing the transfer of the property from "**MICHAEL J. YOUNG, A SINGLE PERSON**" to "**MICHAEL J. YOUNG, TRUSTEE of the Michael J. Young Trust dated January 24, 2006.**" Young also produced a copy of the January 24, 2006 Trust Agreement, in which Young set up a revocable trust whereby his son, Justin M. Young, would receive title to the Woodridge property upon Young's death. The Trust Agreement also provided that, during Young's lifetime, Young retained full control of the Woodridge property and possessed the right to mortgage the property. Based on this evidence, Young contended that UAP could not pursue its foreclosure action against the Woodridge property. Because Young did not personally own the Woodridge property, UAP's judgment lien could not attach to that property.

¹ Due to their potential interest in the property, UAP also named as defendants the Ohio Department of Taxation, the Ohio Department of Job and Family Services, and the Treasurer of Franklin County.

{¶ 6} UAP responded to Young's motion by attacking the validity of the trust. According to UAP, the trust failed because Young was both the sole trustee and the sole beneficiary of the trust. Where the same person is sole trustee and sole beneficiary, the result is a merger of the legal and equitable title to the trust property, which defeats the trust. UAP maintained that, although the Trust Agreement designated Justin as a beneficiary, actually Young alone possessed both the beneficial interest in and legal title to the Woodridge property. UAP thus concluded that the trust failed, leaving Young as the owner of the Woodridge property. Alternatively, UAP argued that genuine issues of material fact remained regarding whether Young's conveyance of the Woodridge property to the trust constituted a fraudulent transfer under Ohio law.

{¶ 7} The trial court agreed with both of UAP's arguments, and thus, it denied Young summary judgment. With leave of court, UAP then filed its own motion for summary judgment, arguing that it was entitled to judgment because no valid trust existed. The trial court granted UAP's motion. On June 4, 2009, the trial court issued an "Order, Judgment Entry and Foreclosure Decree."

{¶ 8} Young appealed the June 4, 2009 judgment to this court, assigning three errors. First, Young contended that he created a valid trust. After analyzing the relevant precedent, we disagreed with the trial court's conclusion that Justin was not a legitimate trust beneficiary. *UAP-Columbus JV326132 v. Young*, 10th Dist. No. 09AP-646, 2010-Ohio-485, ¶ 16-20. Because the Trust Agreement granted to Justin a vested interest in the Woodridge property, we held that the trust was not invalid for lack of a beneficiary separate from Young. *Id.* at ¶ 19. Therefore, we concluded that the trial court erred in granting UAP summary judgment. *Id.* at ¶ 20.

{¶ 9} Young also sought a determination from this court that the trial court erred in denying him summary judgment. We, however, determined that the trial court correctly found that questions of fact remained regarding whether Young fraudulently transferred the Woodridge property to the trust. *Id.* at ¶ 28-33. Therefore, we concluded that the trial court did not err in finding that those factual questions precluded summary judgment in Young's favor. *Id.* at ¶ 28, 33.

{¶ 10} Finally, Young argued that UAP's failure to join him, in his capacity as trustee, or Justin, as trust beneficiary, would prevent the transfer of clear title to the

Woodridge property. *Id.* at ¶ 34. We declined to rule on this argument as the trial court had not yet addressed it. *Id.* at ¶ 35.

{¶ 11} After disposing of each of Young's assignments of error, we reversed the trial court's grant of summary judgment to UAP. *Id.* at ¶ 36. We then remanded the case to the trial court for further proceedings. *Id.*

{¶ 12} After remand, neither UAP nor Young took any further action. The case remained dormant until September 16, 2010, when Wells Fargo filed two motions. In its first motion, Wells Fargo requested that the trial court substitute it for Huntington. Wells Fargo sought substitution because Huntington had assigned the mortgage on the Woodridge property to it. In its second motion, Wells Fargo requested leave to file an amended answer, cross-claim, and counterclaim. In its amended pleading, Wells Fargo alleged that Young had defaulted on the promissory note that the mortgage on the Woodridge property secured. Wells Fargo sought a monetary judgment and foreclosure on its mortgage. The trial court granted both of Wells Fargo's motions.

{¶ 13} No party answered Wells Fargo's amended pleading. Thus, Wells Fargo moved for default judgment. On September 30, 2011, the trial court entered judgment in Wells Fargo's favor and ordered the sale of the Woodridge property.

{¶ 14} Young now appeals the September 30, 2011 judgment, and he assigns the following errors:

[1.] THE APPELLEE'S FAILURE TO JOIN THE TRUST OR THE TRUSTEE AS A PARTY HOLDING TITLE TO THE SUBJECT REAL ESTATE PREVENTS THE TRIAL COURT FROM GRANTING A VALID JUDGMENT TO FORECLOSE AND SELL THE SUBJECT REAL ESTATE AT PUBLIC SALE, ESPECIALLY SINCE THE TITLE HOLDER HAS BEEN KNOWN TO APPELLEE SINCE THE INCEPTION OF THE CASE AND THE VALIDITY OF THE TITLE HAS BEEN UPHELD BY THE COURT OF APPEALS.

[2.] THE APPELLEE'S FAILURE TO JOIN THE TRUST OR THE TRUSTEE OF THE TRUST AS A PARTY WILL PREVENT THE TRANSFER OF CLEAR TITLE [sic] TO THE SUBJECT PROPERTY AND WILL BE A FRAUD ON ANY PURCHASER AT PUBLIC SALE.

{¶ 15} Because they are interrelated, we will address both of Young's assignments of error together. Essentially, by these assignments of error, Young argues that the trial

court erred in ordering foreclosure where the owner of the property, i.e., Young as trustee, was not a party to the foreclosure action. In response, Wells Fargo contends that Young became a party to this action when UAP served process on him. According to Wells Fargo, this service brought Young before the court in both his capacity as an individual and as a trustee.

{¶ 16} A trust is " 'a fiduciary relationship in which one person,' " i.e., the trustee, " 'holds a property interest, subject to an equitable obligation to keep or use that interest for the benefit of another,' " i.e., the beneficiary. *Hill v. Irons*, 160 Ohio St. 21 (1953), quoting 1 Bogert, *Trusts and Trustees*, Section 1. Because a trustee is both a representative and an individual, " 'the capacity [in which the trustee is sued] must be clear and the distinction between the two different capacities must be maintained.' " *MacAlpin v. Van Voorhis*, 11th Dist. No. 8-176 (Sept. 28, 1981), quoting 23 Ohio Jurisprudence 2d, Fiduciaries, Section 159.

{¶ 17} To determine in what capacity a plaintiff sued a defendant, courts examine the complaint and the course of proceedings. *Liberty Mut. Ins. Co. v. Paris*, 8th Dist. No. 74064 (May 20, 1999); *Columbia Properties, Inc. v. Franklin Cty. Leased Housing Corp.*, 10th Dist. No. 76AP-707 (Jan. 13, 1977); *Indianapolis Life Ins. Co. v. Herman*, 516 F.3d 5, 10 (1st Cir.2008). See also *Moore v. City of Harriman*, 272 F.3d 769, 772-73 (6th Cir.2001) (adopting the "course of proceedings" test to determine whether a defendant is sued in his individual or official capacity); *Colvin v. McDougall*, 62 F.3d 1316, 1317 (11th Cir.1995) ("In trying to determine in what capacity [the defendant] was sued, we look at the complaint and the course of proceedings."); *Melo v. Hafer*, 912 F.2d 628, 635 (3d Cir.1990), *aff'd*, 502 U.S. 21 (1991) ("In determining whether plaintiffs sued [the defendant] in her personal capacity, official capacity, or both, we first look to the complaints and the 'course of proceedings.' "). Courts will find that a defendant is sued in his capacity as trustee if a complaint identifies the defendant as a trustee either in the caption or in a factual allegation. *Phillips v. May*, 11th Dist. No. 2003-G-2520, 2004-Ohio-5942, ¶ 42; *Liberty Mut. Ins. Co.; Columbia Properties, Inc.*

{¶ 18} Here, the caption of Wells Fargo's amended pleading names Young as a defendant without specifying the capacity in which Wells Fargo sued him. The body of the amended pleading does not describe Young as a trustee or, for that matter, refer at all to

the trust. Moreover, nothing in the course of proceedings of this case indicates that Young understood that he was a party to the litigation in his trustee capacity. Like Wells Fargo's amended pleading, UAP's complaint also makes no mention of the trust or Young's role as trustee. Thus, beginning with his answer to that complaint, Young has maintained that he has not been sued as the trustee for the trust that holds the Woodridge property. Based on the lack of any description of Young as a trustee in Wells Fargo's or UAP's pleadings and Young's consistent protestations that he has not been sued as trustee, we conclude that Young is a defendant to this action in his individual, and not his trustee, capacity.

{¶ 19} Because neither Wells Fargo nor UAP sued Young in his capacity as trustee, the owner of the Woodridge property is not a party in this litigation. When the owner of mortgaged property acquired prior to the initiation of a foreclosure action is not a party to that foreclosure action, the order of the court ordering foreclosure and sale of the property will not bind the owner. *Terrell v. Allison*, 88 U.S. 289, 291-92 (1874). "[I]n order to foreclose or cut off [a property] right, and in order to convey it to the bona fide purchaser for value, the party holding the right must be joined in the action." *Hembree v. Mid-America Fed. Savings & Loan Assn.*, 64 Ohio App.3d 144, 152 (2d Dist.1989), *abrogated on other grounds*, *Hausman v. Dayton*, 73 Ohio St.3d 671, 675 (1995). Thus, "[i]t is the duty of a mortgagee to make all persons who appear of record to have a lien upon or interest in the mortgaged premises parties to his action of foreclosure, [because], if he does not, their lien or interest remains unaffected thereby." *Stewart v. Wheeling & Lake Erie Ry. Co.*, 53 Ohio St. 151, 167 (1895). In other words, if an owner of record is not a party to the foreclosure action, his rights in the property survive the foreclosure. *Id.*; *Terrell* at 292-93; *Douthitt v. Kalliantas*, 10th Dist. No. 94AP-100 (June 9, 1994) (following *Stewart*); *Hembree* at 152, 154. Logically, then, a mortgaged property cannot be sold in a foreclosure sale if the owner of record is not a party to the foreclosure action. A purchaser of property at a foreclosure sale cannot obtain rights to the property if another person still retains those rights. *See Rinehart v. Wilkes*, 10th Dist. No. 84AP-952 (May 23, 1985) ("Since there [was] no [property owner] before the court upon whom the decree of foreclosure could operate, the decree was void; the sheriff's sale and deed were void, since, necessarily, they are based upon a void decree of foreclosure. That being so, the purchaser obtained no title to the property by virtue of the sheriff's sale.").

{¶ 20} Because Wells Fargo did not join the title owner of the Woodridge property as a defendant, we conclude that the trial court erred in ordering foreclosure and sale of the Woodridge property. Accordingly, we sustain Young's two assignments of error.

{¶ 21} For the foregoing reasons, we sustain Young's first and second assignments of error, and we reverse the judgment of the Franklin County Court of Common Pleas.

Judgment reversed.

BROWN, P.J., and BRYANT, J., concur.
