

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR HSI
ASSET SECURITIZATION
CORPORATION TRUST 2007-HE2

Plaintiff-Appellee

-VS-

RONALD D. GREEN, ET AL.

Defendants-Appellants

JUDGES:

Hon. William B. Hoffman, P.J.
Hon. Sheila G. Farmer, J.
Hon. John W. Wise, J.

Case No. 12-CA-47

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Licking County Court of
Common Pleas, Case No. 2009 CV 01300

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

March 14, 2013

APPEARANCES:

For Plaintiff-Appellee

For Defendants-Appellants

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Hoffman, P.J.

{¶1} Defendants-appellants Ronald Green and Sharon Green (hereinafter “Green”) appeal the May 9, 2012 Judgment Entry entered by the Licking County Court of Common Pleas, denying their Motion for Relief from the August 25, 2009 Decree of Foreclosure by Default, and Motion for Stay of Execution and Canceling Sheriff’s Sale Scheduled for May 11, 2012. Plaintiff-appellee is Deutsche Bank National Trust Company as Trustee for HSI Asset Securitization Trust 2007-HE2 (hereinafter “Deutsche Bank”).

STATEMENT OF THE CASE¹

{¶2} Deutsche Bank sued Green for the balance due on a note and to foreclose a mortgage against property owned by Green located at 13595 Cable Road S.W., Pataskala, Ohio. Green did not answer the complaint.

{¶3} Deutsche Bank moved for and was granted default on August 28, 2009. The subject property was sold at Sheriff’s sale on May 27, 2011.

{¶4} On February 9, 2012, Green filed a Motion for Relief from Judgment, which the trial court denied on February 13, 2012. In that same entry, the trial court granted a previously filed motion by Deutsche Bank to withdraw its previous entry confirming the sale of the property and directed the property to be resold.

{¶5} On May 9, 2012, Green filed a second Motion for Relief from Judgment. The trial court denied this second motion for relief on May 9, 2012.²

¹ A rendition of the facts is unnecessary for our disposition of this appeal.

² On May 11, 2012, Green filed a petition for bankruptcy. On May 16, 2012, Green filed a Notice of Appeal and Motion to Stay Sheriff’s Sale. The trial court stayed proceedings

{¶6} It is from the trial court's May 9, 2012 Judgment Entry Green prosecutes this appeal, assigning as error:

{¶7} "I. THE TRIAL COURT ERRED IN DENYING THE MOTION FOR RELIEF FROM JUDGMENT."

{¶8} Deutsche Bank argues Green's second motion for relief from judgment is barred by res judicata. We agree.

{¶9} "[R]es judicata prevents the successive filings of Civ.R. 60(B) motions [for] relief from a valid, final judgment when based upon the same facts and same grounds or based upon facts that could have been raised in the prior motion." *Harris v. Anderson*, 109 Ohio St.3d 101, 2006-Ohio-1934, ¶8, quoting *Beck-Durell Creative Dept., Inc. v. Imaging Power, Inc.*, 10th Dist. Franklin No. 02 AP-281, 2002-Ohio-5908, ¶16.

{¶10} The trial court denied Green's first motion for relief of its August 28, 2009 Default Judgment on February 13, 2012. Green did not appeal that decision.

{¶11} We find all the grounds alleged in Green's second motion for relief from the default judgment were or could have been raised in their first motion for relief from judgment. Accordingly, we find Green's arguments herein are barred by res judicata pursuant to the holding in *Harris*.

{¶12} Green's assignment of error is overruled.

and this Court stayed appellate proceedings based upon the bankruptcy petition. On August 7, 2012, this Court lifted the bankruptcy stay.

{¶13} The judgment of the Licking County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Wise, J. concur

s/ William B. Hoffman

HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer

HON. SHEILA G. FARMER

s/ John W. Wise

HON. JOHN W. WISE

s/ John W. Wise
HON. JOHN W. WISE