

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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

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

Plaintiff-Appellee

-vs-

Case No. 13 CA 50

RONALD D. GREEN, et al.

Defendants-Appellants

O P I N I O N

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Case No. 09 CV 1300

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

February 5, 2014

APPEARANCES:

For Plaintiff-Appellee

For Defendants-Appellants Greens

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Wise, J.

{¶1} Defendants-Appellants Ronald Green and Sharon Green appeal the May 23 2013, Judgment Entry entered by the Licking County Court of Common Pleas, denying their Motion to Vacate its August 28, 2009 Decree of Foreclosure by Default.

{¶2} Plaintiff-Appellee is Deutsche Bank National Trust Company as Trustee for HSI Asset Securitization Trust 2007-HE2.

STATEMENT OF THE CASE

{¶3} On July 23, 2009, Deutsche Bank filed an action against Ronald and Sharon Green (“the Greens”) seeking judgment 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.

{¶4} The Greens did not answer the complaint.

{¶5} On August 27, 2009, 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.

{¶6} On February 9, 2012, the Greens 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.

{¶7} The Greens did not appeal this judgment.

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

{¶9} By Opinion and Entry filed March 14, 2013, this Court affirmed the trial court's denial of the motion for relief from judgment, finding:

{¶10} “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*.”

{¶11} Appellants did not appeal this Court's decision.

{¶12} On April 25, 2013, Appellants Ronald Green and Sharon Green filed a third motion to vacate the August 28, 2009, Judgment Entry granting a Decree of Foreclosure by default.

{¶13} On May 1, 2013, Appellee filed its memorandum in opposition to the motion to vacate.

{¶14} On May 23, 2013, the trial court, after holding an oral hearing on the matter, denied the motion to vacate.

{¶15} On June 13, 2013, Appellants filed their notice of appeal.

{¶16} On June 13, 2013, Appellants also filed a motion to stay execution of judgment. The trial court granted said motion pending the posting of a \$50,000 supersedeas bond by Appellants. Appellants failed to post the bond.

{¶17} On July 11, 2013, the property was sold to Deutsche Bank.

{¶18} On July 19, 2013, Appellants filed a Motion to Stay Confirmation of the Sheriff's Sale.

{¶19} On August 6, 2013, the trial court denied the Motion to Stay Confirmation of Sale.

{¶20} On August 28, 2013, the trial court confirmed the foreclosure sale.

{¶21} Appellants now raise the following Assignment of Error:

ASSIGNMENT OF ERROR

{¶22} “THE TRIAL COURT ERRED IN DENYING THE MOTION FOR RELIEF FROM JUDGMENT.”

I.

{¶23} In their sole Assignment of Error, Appellants argue that the trial court erred in denying their motion to vacate. We disagree.

{¶24} More specifically, Appellants herein argue that Appellee lacked standing to file the complaint and, therefore, the trial court lacked jurisdiction rendering the judgment in this matter void.

{¶25} Deutsche Bank argues Green’s third motion for relief from judgment is barred by *res judicata*. We agree.

{¶26} As we stated in our previous Opinion, “[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.

{¶27} 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.

{¶28} On an appeal from a denial of their second motion for relief, this Court held:

{¶29} “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*."

{¶30} Appellants did not appeal our decision.

{¶31} Upon review, we again find that the grounds alleged in Appellants most recent motion for relief from default judgment are barred by the doctrine of *res judicata* for the same reasons as set forth previously.

{¶32} Appellants' sole Assignment of Error is overruled.

{¶33} For the foregoing reasons, the judgment of the Court of Common Pleas, Licking County, Ohio, is affirmed.

By: Wise, J.

Hoffman, P. J., and

Farmer, J., concur.

