

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

The Huntington National Bank

Court of Appeals No. L-12-1080

Appellee

Trial Court No. CI0201201697

v.

PRS Investments LLC, et al.

DECISION AND JUDGMENT

Appellants

Decided: May 31, 2013

* * * * *

Jonathan M. Hanna, for appellee.

George R. Royer, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} Appellant, Paul Syroka, appeals the judgment of the Lucas County Court of Common Pleas, which appointed a receiver over the property of PRS Investments, LLC. We affirm.

A. Facts and Procedural History

{¶ 2} On February 13, 2012, a cognovit judgment was entered in favor of appellee, Huntington National Bank, against PRS Investments and Paul Syroka for their default on two notes totaling approximately \$1.8 million. The notes were secured by mortgages on certain real property owned by PRS Investments. Shortly after entry of the cognovit judgments, Huntington moved for the appointment of a receiver over the property. The trial court held a hearing on the motion on February 17, 2012, and on February 24, 2012, entered its order appointing Dennis Noneman as receiver.

B. Assignment of Error

{¶ 3} On March 26, 2012, appellant appealed from the order appointing the receiver, initially raising two assignments of error. The first assignment of error, pertaining to the validity of the underlying cognovit judgment, was stricken from appellant's brief, and that part of the appeal dismissed, by this court on October 12, 2012. Appellant asserts as his remaining assignment of error:

THE COURT ERRED IN APPOINTING MR. NOONEMAN (sic)
AS RECEIVER IN THIS CASE.

II. Analysis

{¶ 4} "The question of whether or not a receiver will be appointed in a given case is addressed to the sound discretion of the court under all the circumstances." *State ex rel. Celebrezze v. Gibbs*, 60 Ohio St.3d 69, 73, 573 N.E.2d 62 (1991).

A court in exercising its discretion to appoint or refuse to appoint a receiver must take into account all the circumstances and facts of the case, the presence of conditions and grounds justifying the relief, the ends of justice, the rights of all the parties interested in the controversy and subject matter, and the adequacy and effectiveness of other remedies. *Id.* at 73, fn. 3, quoting 65 American Jurisprudence 2d, Receivers, Sections 19-20, at 873-874 (1972)

{¶ 5} R.C. 2735.01 governs the appointment of receivers, and provides, in pertinent part,

A receiver may be appointed by * * * the court of common pleas or a judge thereof in his county * * * in the following cases:

* * *

(B) In an action by a mortgagee, for the foreclosure of his mortgage and sale of the mortgaged property, when it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and the property is probably insufficient to discharge the mortgage debt.

{¶ 6} Citing R.C. 2735.01(B), appellant argues that the trial court abused its discretion in appointing a receiver because Huntington failed to present evidence that the

property is in danger of being lost, removed, or materially injured.¹ However, under the facts of this case, Huntington was not required to make such a showing. R.C. 2735.01(B) provides alternative criteria for appointing a receiver: either (1) “the mortgaged property is in danger of being lost, removed, or materially injured,” or (2) “the condition of the mortgage has not been performed, and the property is probably insufficient to discharge the mortgage debt.” Huntington sought the appointment of a receiver under the latter, and thus is only required to show that a condition of the mortgage has not been performed and the property is probably insufficient to discharge the debt.

{¶ 7} Here, it is undisputed that a condition of the mortgage was not performed when PRS Investments defaulted on the note. As to the value of the property being insufficient to discharge the debt, PRS Investments waived that requirement when it signed the mortgage, which provides “Lender’s right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount.” *See Harajli Mgt. & Invest., Inc. v. A&M Invest. Strategies, Inc.*, 167 Ohio App.3d 546, 2006-Ohio-3052, 855 N.E.2d 1262, ¶ 57-58 (6th Dist.) (applying the rule that “[t]he specific requirements set forth in R.C. 2735.01 may be effectively waived by the parties if such waiver is expressed in a mortgage provision” to hold that the mortgagor “waived the right to a determination of the value of the property”).

¹ We note that the trial court found the appointment of a receiver to be “proper and necessary to protect, preserve and maximize the value of the Property.”

Therefore, we hold that the trial court did not abuse its discretion when it appointed a receiver over the property.

{¶ 8} Appellant also argues that the trial court abused its discretion when it appointed Dennis Noneman to be the receiver because he has an interest in the property. R.C. 2735.02 provides, “No party, attorney, or person interested in the action shall be appointed receiver therein except by consent of the parties.” Appellant argues that Noneman’s status as the listing real estate agent is sufficient to classify him as a “person interested in the action.” We disagree. Noneman is not a party, is not employed by a party, and is indifferent to the litigation. Furthermore, he has no relationship to the property outside of his undertaking to manage and sell it as he is authorized and directed to do by the trial court’s order of appointment. Therefore, we hold that the trial court did not abuse its discretion when it found Noneman to be an uninterested party and appointed him as the receiver.

{¶ 9} Accordingly, appellant’s assignment of error is not well-taken.

III. Conclusion

{¶ 10} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

The Huntington National Bank v.
PRS Investments LLC, et al.
L-12-1080

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
