

[Cite as *Wells Fargo Home Mtge. v. Chun*, 2015-Ohio-1827.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101722

WELLS FARGO HOME MORTGAGE

PLAINTIFF-APPELLEE

vs.

HEE SOOK CHUN, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-13-801764

BEFORE: E.T. Gallagher, P.J., Stewart, J., and Boyle, J.

RELEASED AND JOURNALIZED: May 14, 2015

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EILEEN T. GALLAGHER, P.J.:

{¶1} Defendant-appellant, Hee Sook Chun (“Chun”), appeals from an order confirming the sale of her home in foreclosure. She raises one assignment of error for our review:

1. The trial court erred in confirming the sheriff’s sale of the subject property.

{¶2} We find no merit to the appeal and affirm the trial court’s judgment.

Facts and Procedural History

{¶3} In February 2013, plaintiff-appellee, Wells Fargo Home Mortgage (“Wells Fargo”) filed a complaint in foreclosure against Chun alleging that she defaulted on an adjustable rate note that was secured by a mortgage on property located in Beachwood, Ohio (“the property”). Following a bench trial, a magistrate issued a decision granting foreclosure to Wells Fargo in December 2013. Chun did not file objections to the magistrate’s decision, and the trial court adopted the magistrate’s decision in January 2014.

{¶4} On May 5, 2014, the court ordered the sale of the property and issued notice of the sale on May 22, 2014. The notice of sale provided, in part, that “[t]he sale is scheduled for 06/23/2014 at 9:00 A.M. at the Cuyahoga County Justice Center Auditorium, 1215 West 3rd Street, Cleveland, Ohio 44113.” On June 3, 2014, Wells Fargo served Chun with notice of the sale. The notice Wells Fargo served on Chun indicated that the sale would take place at the Cuyahoga County Juvenile Justice Center,

9300 Quincy Avenue, Cleveland, Ohio. A week later, on June 10, 2014, the trial court issued a new order regarding the sale, indicating that the “[n]otice of sale previously entered herein is amended to read * * * the sale is scheduled for 06/23/2014 at 9:00 A.M. at the Cuyahoga County Juvenile Justice Center, 9300 Quincy Avenue, Cleveland, Ohio 44106.”

{¶5} Meanwhile, notice of the sheriff’s sale of the property was published in the Daily Legal News. In the proof of publication, Richard Karlovec (“Karlovec”), an agent of The Daily Legal News, stated under oath, that the newspaper published notice of the sale “for a period of three consecutive weeks beginning May 24, 2014.” The advertised notice stated that the sheriff’s sale of the property would take place “on the first floor in Room 100 at the Cuyahoga County Juvenile Justice Center located at 9300 Quincy Avenue in the City of Cleveland * * * on Monday, the 23rd of June, A.D. 2014, beginning at 9:00 o’clock A.M.”

{¶6} On June 12, 2014, Chun moved to stay the sheriff’s sale. The sale nevertheless proceeded as scheduled on June 23, 2014, at the Cuyahoga County Juvenile Justice Center, and the property was sold to a third party. The court subsequently denied Chun’s motion to stay the sale as moot. On July 9, 2014, the trial court issued a decree confirming the sheriff’s sale. Chun now appeals from that order.

Law and Analysis

{¶7} In her sole assignment of error, Chun argues the trial court erroneously confirmed the sheriff’s sale of her home because the sale failed to comply with the

applicable notice requirements set forth in R.C. 2329.26. She contends the court only provided 13-days notice prior to the sale instead of the 30 days required by statute.

{¶8} As a preliminary matter, we note that because Chun failed to raise any objection to the public notice requirements in the trial court, she waived her right to raise those objections on appeal, absent plain error. *Plain Local School Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 130 Ohio St.3d 230, 2011-Ohio-3362, 957 N.E.2d 268, ¶ 20. The plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error seriously affects the basic fairness, integrity, or public reputation of the judicial process. *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 122, 679 N.E.2d 1099 (1997), syllabus.

{¶9} R.C. Chapter 2329 governs the execution of judgments in foreclosure. Within 30 days of the sheriff's return of a writ of execution on lands sold, R.C. 2329.31 requires a trial court to confirm the sale, if, on careful examination of the sheriff's proceedings, it finds "that the sale was made, in all respects, in conformity with sections 2329.01 to 2329.61, inclusive, of the Revised Code."

{¶10} R.C. 2329.26 governs the notice requirements for the date, time, and place of a sheriff's sale. As relevant here, R.C. 2329.26(A) provides:

(A) Lands and tenements taken in execution shall not be sold until all of the following occur:

(1) (a) * * * the judgment creditor who seeks the sale of the lands and tenements or the judgment creditor's attorney does both of the following:

(i) Causes a written notice of the date, time, and place of the sale to be served in accordance with divisions (A) and (B) of Civil Rule 5 upon the

judgment debtor and upon each other party to the action in which the judgment giving rise to the execution was rendered;

(ii) At least seven calendar days prior to the date of the sale, files with the clerk of the court that rendered the judgment giving rise to the execution a copy of the written notice described in division (A)(1)(a)(i) of this section with proof of service endorsed on the copy in the form described in division (D) of Civil Rule 5.

* * * *

(2) The officer taking the lands and tenements gives public notice of the date, time, and place of the sale once a week for at least three consecutive weeks before the day of sale by advertisement in a newspaper of general circulation in the county. The newspaper shall meet the requirements of section 7.12 of the Revised Code. The court ordering the sale may designate in the order of sale the newspaper in which this public notice shall be published.

{¶11} Chun does not challenge the publication of the notice of the sheriff's sale, and Karlovec stated in the proof of publication that The Daily Legal News is "a daily newspaper of general circulation" in Cuyahoga County. As previously stated, Karlovec also averred that the notice of the sale of the property was published in The Daily Legal News "for a period of three consecutive weeks" beginning on May 24, 2014. The sale occurred on June 23, 2014, more than 30 days after the notice was first published in a newspaper of general circulation. Therefore, the published notice complied with R.C. 2329.26(A)(2), which only requires the notice be published for a period of three consecutive weeks, or 21 days.

{¶12} In accordance with R.C. 2329.26(A)(1)(a)(i), Wells Fargo served Chun with notice of the date, time, and location of the sale by regular mail in accordance with Civ.R. 5. Wells Fargo filed a copy of the written notice that was served on Chun with the

Cuyahoga County Clerk of Courts as required by R.C. 2329.26(A)(1)(a)(ii) on June 3, 2014. The 3rd of June is more than seven days before June 23, the date of the sale. Therefore, the sheriff's sale complied with the notice requirements of R.C. 2329.26, and the trial court properly confirmed the sheriff's sale of the property.

{¶13} The sole assignment of error is overruled.

{¶14} Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to 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.

EILEEN T. GALLAGHER, PRESIDING JUDGE

MELODY J. STEWART, J., and
MARY J. BOYLE, J., CONCUR