

[Cite as *Arch Bay Holdings, L.L.C-Series 2008B v. Goler*, 2015-Ohio-3036.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102455

ARCH BAY HOLDINGS, LLC-SERIES 2008B

PLAINTIFF-APPELLEE

vs.

EMILY D. GOLER, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
DISMISSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-09-714145

BEFORE: Keough, J., Jones, P.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: July 30, 2015

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KATHLEEN ANN KEOUGH, J.:

{¶1} In January 2007, defendant-appellant Emily D. Goler (“Goler”) executed a promissory note that she secured with a mortgage on her real property located at 1470 Glen Lyon Drive in Westlake, Ohio. Goler subsequently stopped making the required monthly payments on the note, and in December 2009, Arch Bay Holdings, LLC-Series 2008B (“Arch Bay Holdings”) filed a foreclosure complaint against Goler, which Goler answered.

{¶2} Arch Bay Holdings filed a motion for summary judgment on September 23, 2010, which Goler failed to oppose, and the magistrate granted that motion on February 2, 2011. The court subsequently vacated its decision and allowed Goler to file a brief opposing the motion; the court ultimately denied Arch Bay Holdings’ motion for summary judgment. The court also granted a motion to substitute Arch Bay Asset-Backed Securities Trust 2010-2 (“Arch Bay”) as plaintiff.

{¶3} Goler subsequently moved to dismiss the case pursuant to Civ.R. 12(B)(1). The court denied this motion and granted all parties leave to file cross-motions for summary judgment and substitute-plaintiff Arch Bay leave to file a second motion for summary judgment.

{¶4} On November 21, 2012, Arch Bay filed a second motion for summary judgment, which the court granted on April 11, 2013. In the meantime, another defendant, The Glens Homeowners Association, obtained judgment against Goler for

unpaid association fees and scheduled the property for sheriff's sale. On July 19, 2013, prior to the sale, Goler filed for bankruptcy protection in the United States Bankruptcy Court in the District of Nevada, and the case was stayed.

{¶5} The bankruptcy stay was terminated on December 12, 2013, and substitute-plaintiff Arch Bay sought another sale of the property. The sale was held on February 18, 2014 and confirmed on March 4, 2014. Arch Bay was the successful bidder at the sale. On February 18, 2014, Arch Bay filed a notice that it had assigned its interest in its successful bid to U.S. Bank National Association, as Trustee for the RMAC Trust, Series 2013-1T. The court subsequently granted Arch Bay's motion to substitute U.S. Bank as plaintiff.

{¶6} On April 7, 2014, U.S. Bank moved to vacate the sale and confirmation of the sale because, although the trial court's judgment of April 11, 2013, granted summary judgment to Arch Bay, the court had never issued a decision granting Arch Bay the right to foreclose. Thus, U.S. Bank argued that because the court had never rendered final judgment in favor of Arch Bay, the order of sale to the sheriff issued at Arch Bay's behest was improper and the resulting sale should be vacated.

{¶7} On May 3, 2014, the court vacated the sale and confirmation of sale. Subsequently, on October 17, 2014, the magistrate issued a supplemental decision in favor of U.S. Bank and ordered foreclosure and sale. On October 31, 2014, Goler timely filed objections to the magistrate's supplemental decision.

{¶8} On November 5, 2014, Goler filed a motion to "set aside" the magistrate's

supplemental decision. U.S. Bank moved to strike this motion, and the trial court granted U.S. Bank's motion on November 26, 2014. On December 9, 2014, the trial court adopted the magistrate's supplemental decision. Goler now appeals from this decision. We must dismiss, however, for lack of a final, appealable order.

{¶9} This court has jurisdiction to review final orders or judgments of lower courts within our district. Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2501.02. If the order is not a final, appealable order, we lack jurisdiction and must dismiss the appeal. *Madfan, Inc. v. Makris*, 8th Dist. Cuyahoga No. 102179, 2015-Ohio-1316, ¶ 11. Accordingly, this court has the duty to sua sponte examine any deficiencies in jurisdiction. *Saikus v. Ford Motor Credit Co.*, 8th Dist. Cuyahoga No. 77802, 2001 Ohio App. LEXIS 1696, *6 (Apr. 12, 2001).

{¶10} Pursuant to Civ.R. 53(D)(3)(b)(i), a party may file written objections to a magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during the 14-day period. Under Civ.R. 53(D)(4)(d), a trial court "shall rule" on any timely filed objections to a magistrate's decision. Where a trial court fails to rule on timely objections, there is no final, appealable order. *In re B.W.*, 8th Dist. Cuyahoga Nos. 96550 and 96551, 2011-Ohio-4513, ¶ 8, citing *Peric v. Buccilli*, 8th Dist. Cuyahoga No. 80805, 2002-Ohio-6234, ¶ 8. As stated by one court, "[w]hen a trial court enters judgment on a magistrate's decision, but fails to explicitly rule on a party's objections, that judgment does not constitute a final, appealable order because it does not fully determine the action." *In re Strickler*, 9th Dist. Lorain No.

09CA009692, 2010-Ohio-2277, ¶ 5.

{¶11} Here, the magistrate's supplemental decision was filed on October 17, 2014. Goler filed written objections on October 31, 2014, within the 14-day period for filing objections. The trial court never ruled on these objections, however, and thus we do not have a final, appealable order.

{¶12} Dismissed.

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

It is ordered that a special mandate be sent to said 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.

KATHLEEN ANN KEOUGH, JUDGE

LARRY A. JONES, SR., P.J., and
ANITA LASTER MAYS, J., CONCUR