

IN THE SUPREME COURT OF OHIO

WELLS FARGO BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR SOUNDVIEW HOME LOAN TRUST 2007-) Supreme Court Case Nos. 2024-1669 and 2025-0071)
OPT4,) On Appeal from the Cuyahoga County Court of Appeals, 8th Appellate District
Plaintiff-Appellee,)) Court of Appeals Case No. CA 24 113637
v.))
GRACE M. DOBERDRUK, et al.,))
Defendant-Appellant.))

**PLAINTIFF-APPELLEE WELLS FARGO BANK, NATIONAL ASSOCIATION AS
TRUSTEE FOR SOUNDVIEW HOME LOAN TRUST 2007-OPT4's MOTION TO
SUPPLEMENT THE RECORD**

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MEMORANDUM IN SUPPORT

On April 15, 2025, the Court of Appeals sent its record to the Ohio Supreme Court and thereafter, on April 28, 2025, the Cuyahoga County Clerk noticed the filing of its record to the Ohio Supreme Court (collectively the “Record”). The Record was ordered to be certified in accordance with Rules 15.03 and Rules 15.06. The Record omits Appellee Wells Fargo Bank, National Association as Trustee for Soundview Home Loan Trust 2007-OPT4’s (“Wells Fargo”) Brief in Opposition to Appellant’s Emergency Motion to Stay Distribution dated September 25, 2024 filed in Court of Appeals Case Number CA-24-114218 (the “Brief”)(Exhibit A) as well as the Distribution of Sale Proceeds Report dated September 27, 2024 (“Distribution Report”)(Exhibit B) filed in Cuyahoga County Court of Common Pleas Case No. CV-22-972603.

Importantly, Rule 15.01(A) states “where applicable, the records on appeal should consist of all the above items [those in Rule 15.01(A)] from both the court of appeals and the trial court.” Rule 15.08 provides the remedy available to either Appellant Grace Doberdruk (“Ms. Doberdruk”) as well as Wells Fargo if any part of the Record is not complete and states:

If any part of the record is not transmitted to the Supreme Court but is necessary to the Supreme Court’s consideration of the questions presented on appeal, the Supreme Court, sua sponte or on motion of a party, may direct that a supplemental record be certified and transmitted to the Clerk of the Supreme Court in accordance with Rule 15.03(B)

Here, the Brief is necessary to questions presented on Appeal because it contains information and a recorded document reflecting the date of transfer of the real property, subject to the appeal, to the third party purchaser. As such, it confirms Wells Fargo’s position that there was no further relief for the Appellate Court to grant Ms. Doberdruk because all aspects of the foreclosure judgment and sale were carried out. Similarly, the Distribution Report states that the funds from the sale of the real property were distributed and the trial court no longer retains control of the sale proceeds. Consequently, it contains vital information to aid this Court in establishing

the timeline relating to the sale and distribution of proceeds. In addition, the fact that the sale proceeds were distributed was relied on by the Appellate Court in dismissing the Appeal and is a critical issue before this Court. See *Wells Fargo Bank, Natl. Assn. v. Doberdruk*, 2024-Ohio-5007, ¶ 15 (8th Dist.)

For these reasons, Wells Fargo respectfully requests this Court supplement the record as permitted by Rule 15.08.

Respectfully submitted,

/s/ Stefanie L. Deka

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*Counsel for Plaintiff-Appellee Wells Fargo
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Soundview Home Loan Trust 2007-Opt4*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Plaintiff-Appellee Wells Fargo Bank, National Association as Trustee for Soundview Home Loan Trust 2007-Opt4's Motion to Supplement the Record* was served upon the following via electronic mail this 14th day of August, 2025.

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Counsel for Appellant

/s/ Stefanie L. Deka
Stefanie L. Deka (0089248)



**NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113**

Court of Appeals

**BRIEF IN OPPOSITION TO
September 25, 2024 11:22**

By: STEFANIE DEKA 0089248

Confirmation Nbr. 3282685

WELLS FARGO AS TRUSTEE

CA 24 114218

vs.

GRACE M. DOBERDRUK

Judge:

Pages Filed: 10

IN THE EIGHTH DISTRICT COURT OF APPEALS
CUYAHOGA COUNTY, OHIO

WELLS FARGO BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR SOUNDVIEW HOME LOAN TRUST 2007-OPT4,)	CASE NO. CA-24-114218
Plaintiff-Appellee,)	<u>APPELLEE'S BRIEF IN OPPOSITION TO APPELLANT'S EMERGENCY MOTION TO STAY DISTRIBUTION</u>
v.)	
GRACE M. DOBERDRUK, et al.,)	
Defendants-Appellant.)	

Appellee Wells Fargo Bank, National Association as Trustee for Soundview Home Loan Trust 2007-OPT4 (“Appellee”) opposes Appellant Grace M. Doberdruk’s (“Appellant”) Emergency Motion to Stay Distribution (the “Motion”) as the Motion fails to meet the requirements of App. R. 7 and the trial court did not abuse its discretion in ordering a bond and permitting distribution when Appellant failed to post the bond. For these reasons, and as stated herein, Appellee respectfully requests that the Motion be denied.

Respectfully submitted,

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BRIEF IN OPPOSITION

I. INTRODUCTION

Appellant previously sought to stay distribution of the sale proceeds in the trial court. (Motion, T.d. 94). The trial court gave her an opportunity to stay distribution of the sale proceeds by posting a bond and then stayed the case to give Appellant time to post the bond, but she failed to do so. (Order, T.d. 96) (Notice, T.d. 98). Now, Appellant asks this Court for the same relief; however, the Motion fails to show that the bond was somehow improper or constituted an abuse of discretion. Further, Appellant also alleges that the sale of the real property at 5650 Ashley Circle, Cleveland OH 44143 (the “Property”) must be set aside or voided because the purchaser of the Property allegedly did not pay the amount due within thirty days of the date of confirmation. (Motion, p. 1). The Motion contains no proof of this conclusory statement through affidavit or otherwise. Appellant relies on what an unidentified third party allegedly told her at some unknown time. Not only is Appellant’s Motion lacking proof, it also omits legal support for all of her theories. For these reasons, the Motion should be denied.

II. LAW AND ARGUMENT

The Motion contains no facts or support for Appellant’s arguments that a stay of distribution of proceeds is required due to the alleged failure of the purchaser of the Property to timely pay the purchase price. Further Appellant’s arguments that the trial court should not have required a bond to stay the sale due to Appellant’s age, income, and Appellee’s alleged lack of standing do not allow for this Court to conclude that the trial court abused its discretion in ordering a bond or any other basis that would allow this Court to stay distribution.

A. The trial court did not abuse its discretion in requiring a bond to stay distribution.

Appellant never posted the required bond with the trial court and the Motion provides no factual basis to determine that the trial court abused its discretion in both ordering a bond and permitting distribution when Appellant failed to post the bond.

Under Ohio App. Rule 7(A), the Motion must show “show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof.” “R.C. § 2505.09, in conjunction with App.R. 7, provides that for a party to obtain a stay of execution of a judgment, the party must first request the stay in the trial court and post a supersedeas bond in an amount not less than the amount of the final judgment and interest.” *OneWest Bank, FSB v. Boyer*, 6th Dist. Wood No. WD-13-092, 2015-Ohio-2229, ¶ 6. “Determining the need for the bond and its amount are discretionary matters which will not be overturned by the appellate court absent a showing of an abuse of discretion.” *Id.* citing *Bibb v. Home Savings and Loan Co.*, 63 Ohio App.3d 751, 752, 580 N.E.2d 52 (6th Dist.1989). The purpose of the bond is to protect non-appealing parties from damages that result from the appeal being taken. *Richard L. Bowen & Associates, Inc. v. 1200 West Ninth Street Limited Partnership* (1995), 107 Ohio App. 3d 750, 753.

Here, the trial court ordered that it would stay confirmation of sale and distribution of the proceeds if Appellant posted a bond in the amount of \$472,905 and provided Appellant 21 days to do so. (Order, T.d. 96). The trial court’s calculation of this amount was not an abuse of discretion. Indeed, the trial court utilized the amount of Appellee’s judgment as the bond amount finding the same necessary. (Order. T.d. 96). Appellant did not post the bond. (Notice, T.d. 96). The Motion alleges that a bond is not

required when there is no money judgment. (Motion, p. 5). Appellant cites to *Natl. City Bank Northeast v. Beyer*, 6th Dist. Huron Court of Appeals No. H-99-017, 1999 Ohio App. LEXIS 6022, at *3 (Dec. 17, 1999) for this conclusion. But *Beyer* does not say that. In *Beyer*, the Court grappled with R.C. § 2505.39, a completely different statute than applicable here, and decided that based on R.C. § 2505.39, the probate court had the authority to suspend execution of judgment while the case was pending with the Ohio Supreme Court. *Id.*, at * 4. Therefore, the holding in *Beyer* is irrelevant and Appellant fails to provide this Court with any case law that a bond is not required to stay distribution if a money judgment is not being sought.

Appellant further argues that the trial court abused its discretion in requiring a bond because of Appellant's age. She cites no case law that age or physical health of a borrower is something that must be considered by the trial court when setting a bond in a foreclosure action. A bond was required, the amount of the bond did not constitute an abuse of discretion, Appellant failed to post the bond, and therefore, there is no basis by which to stay distribution.

B. The alleged failure to comply with R.C. § 2329.30 does not require the sale to be declared void or necessitate staying distribution.

Even if this Court determined that the trial court abused its discretion in requiring a bond, and it did not, the Motion fails to meet the requirements of Ohio App. Rule 7(A) as it fails to provide any facts supporting the allegations or basis for relief.

R.C. § 2329.30 states, in relevant part, "The court from which an execution or order of sale issues, upon notice and motion of the officer who makes the sale or of an interested party, **may** punish any purchaser of lands and tenements who fails to pay within thirty days of the confirmation of the sale the balance due on the purchase price of the lands and

tenements by forfeiting the sale of the lands and tenements and returning any deposit paid in connection with the sale of the lands and tenements, by forfeiting any deposit paid in connection with the sale of the lands and tenements, as for contempt, or in any other manner the court considers appropriate.” (Emphasis added). Punishment, by forfeiture of the lands, is purely permissive. Not only that, but it is permissive by the trial court, preventing Appellant from asking this Court to take any action under R.C. § 2329.30 as well as prohibiting her from relying on it as a basis to stay distribution.

Moreover, nothing in R.C. § 2329.30 allows for voiding or setting aside of a sale due to alleged non-compliance nor does Appellant provide any case law supporting the same. Indeed, a trial court has discretion whether to confirm a foreclosure sale and its decision must be evaluated in light of the factual circumstances of the particular case, and a trial court's determination in that regard will be reversed only upon an abuse of discretion. *Fifth Third Mtge. Co. v. Rankin*, 4th Dist. Pickaway No. 11CA8, 2012-Ohio-2806, ¶ 25. Finally, the trial court chose not to punish the purchaser, as was in its discretion, because the Property has already transferred to the purchaser. See Recorded Deed, Exhibit A. For all of these reasons, the Motion should be denied.

C. Appellee’s foreclosure judgment cannot be challenged during this Appeal and is not a basis to stay distribution.

Appellant’s second argument advocating for a stay has nothing to do with the issues in the pending appeal. It is a direct attack on the foreclosure judgment that cannot be considered in this appeal and is not a basis to stay distribution.

“Ohio law allows for appeals of two judgments in foreclosure proceedings—the order of foreclosure and the confirmation of sale. *CitiMortgage, Inc. v. Nyamusevya*, 10th Dist. Franklin Nos. 22AP-464, 22AP-514, 2023-Ohio-1583, ¶ 8 citing *CitiMortgage*,

Inc. v. Roznowski, 139 Ohio St.3d 299, 2014-Ohio-1984, 11 N.E.3d 1140, ¶ 39. Regarding the former, “[t]he order of foreclosure determines the extent of each lienholder's interest, sets forth the priority of the liens, and determines the other rights and responsibilities of each party in the action.” *Nyamusevya*, at ¶ 8 citing *Roznowski*, at ¶ 39. “In an appeal from an order of foreclosure, the parties may challenge the court's decision to grant the decree of foreclosure, but [o]nce the order of foreclosure is final and the appeals process has been completed, all rights and responsibilities of the parties have been determined and can no longer be challenged.” *Id.* “In contrast, and as this Court has held, an appeal of the confirmation of sale is limited to challenging the confirmation order itself and to issues related to confirmation proceedings * * *.” *Ditech Fin., L.L.C. v. VAT Mgt., L.L.C.*, 8th Dist. Cuyahoga No. 109209, 2020-Ohio-5000, ¶ 6 citing *Farmers State Bank v. Sponaugle*, 157 Ohio St.3d 151, 2019-Ohio-2518, 133 N.E.3d 470, ¶ 19 (Internal citations omitted.) The issues appealed from confirmation are wholly distinct from the issues appealed from the order of foreclosure. In other words, if the parties appeal the confirmation proceedings, “they do not get a second bite of the apple, but a first bite of a different fruit.” *Roznowski*, ¶ 40.

Here, Appellant filed the First Appeal pending in Case No. CA-24-113637 solely as to the Foreclosure Judgment (the “First Appeal”). The First Appeal raised assignment of errors as to Appellee's alleged lack of standing and the First Appeal remains pending. Appellant's arguments concerning Appellee's alleged lack of standing in the foreclosure cannot be considered in the Motion because they do not relate to the sale of the Property and whether the sale of the Property was conducted in compliance with the statutory requirements--- the only issues in this Appeal. Consequently, these arguments cannot be

a basis by which to stay distribution of the funds nor does Appellant provide any case law supporting her novel theory.

III. CONCLUSION

Wherefore, for the foregoing reasons, Appellee respectfully requests that the Motion be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a true and accurate copy of the foregoing ***Appellee's Brief in Opposition to Appellant's Emergency Motion to Stay Distribution*** was served upon the following via the Court's electronic filing system this 25th day of September, 2024.

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Department of Taxation

/s/ Stefanie L. Deka
Stefanie L. Deka (0089248)

PPN: 822-03-051
FOREST CITY PROPERTY
AMT \$412,600.00
CONV \$1650.40
24-31089

202409170065 DESH
09/17/2024 09:07 AM
RCPT# 20240917000080
PAID BY SHERIFF

Mark Chardos
CUYAHOGA COUNTY FISCAL OFFICE

SHERIFF'S DEED
Ohio Revised Code §2329.36

I, Harold A. Pretel, Sheriff of Cuyahoga County, Ohio pursuant to the Judgment and Decree in
foreclosure entered on January 11, 2024 in favor of

Wells Fargo Bank, National Association as Trustee for Soundview Home Loan Trust 2007-OPT4,
Asset-Backed Certificates, Series 2007-OPT4

in the amount of \$449,905.31 , the Order of Sale entered on March 20, 2024 , the
Confirmation of Sale entered on July 2, 2024 And in consideration of the sum
of \$412,600.00 dollars the receipt whereof is hereby acknowledged, does
hereby GRANT, SELL AND CONVEY unto
FOREST CITY PROPERTY INVESTMENTS, 13730 S. PARTRIDGE DR, VALLEY VIEW, OH
44125

and his heirs and assigns forever, all the rights, title and interest of the parties in the Court of
Common Pleas, Cuyahoga County, Ohio, Case Number

CV-22-972603, Wells Fargo Bank, National Association as Trustee for Soundview Home Loan
Trust 2007-OPT4, Asset-Backed Certificates, Series 2007-OPT4 vs. Grace M. Daberdruk, et al.

and all pleadings therein incorporated herein by reference in and to the following Lands and
Tenements situated in the County of Cuyahoga and State of Ohio, known and described as
follows, to wit:

<Attach Legal Description> SEE ATTACHED EXHIBIT A

EXHIBIT A

This deed does not reflect any restrictions, conditions or easements of record. Purchaser(s) / Grantee(s) take(s) subject to any such existing restrictions, conditions, easements and any and all real property taxes, assessments, interest and/or penalties from confirmation of sale, as provided By Ohio Revised Code 323.47.

Prior Owner:
Grace M. Doberdruk

Parcel Number(s):
822-03-051

Prior Instrument Reference:
dated July 8, 2009, filed July 9, 2009, recorded as Instrument Number 200907090613, Cuyahoga County, Ohio records

Executed Officially this 8th day of August, 2024

By:

Shaundra Howard, Administrative Supervisor
Civil Division, Cuyahoga County Sheriff's Office

The State of Ohio }
CUYAHOGA COUNTY }

The foregoing was acknowledged before me this 8th day of
August 2024 By Shaundra Howard, Administrative Supervisor
Cuyahoga County, Ohio

This instrument was prepared by:

Manley Deas Kochalski LLC
PO Box 165028
Columbus, OH 43216-5028


Notary Public State of Ohio

REZARTA DANO
Notary Public
State of Ohio
My Comm. Expires April 27, 2026

EXHIBIT A

Situated in the City of Highland Heights, County of Cuyahoga and State of Ohio; and known as Sublot No. 17 in Williamsburg Estates Subdivision No. 68 of part of Original Mayfield Township Lots No. 32 & 42, Tract 1 per the recorded plat in volume 242, Page 18 of Cuyahoga County Records of plats, and being a parcel of land 106.17 feet on the southerly cul-de-sac side of Ashley Circle (60 feet wide), 181.00 feet on the easterly line, 160.38 feet on the westerly line and has a rear line of 122.00 feet, be the same more or less, but subject to all legal highways.



Cuyahoga County Sheriff

CV-22-972603 ALI

DISTRIBUTION of SALE PROCEEDS REPORT

The State of Ohio } ss.
Cuyahoga County

**WELLS FARGO BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR SOUNDVIEW HOME LOAN TRUST
2007-OPT4, ASSET-BACKED CERTIFICATES, SERIES 2007-OPT4**

C/O PHH MORTGAGE CORPORATION, Plaintiff

vs

GRACE M DOBERDRUK ATTORNEY FOR GRACE M. DOBERDRUK, ET AL, Defendant

Sale Date: Monday the 6th day of May A.D. 2024

Purchaser: FOREST CITY PROPERTY INVESTMENTS

Purchase Price: \$412,600.00

PAID	
Paid Costs to Clerk	\$3,522.74
Retained Sheriff Fees	\$6,242.00
Paid Taxes	\$7,970.43
PAID WELLS FARGO BANK, NATIONAL ASSOCIATION AS TRU	408,431.73
Balance to Clerk	\$0.00
Sheriff to Hold	0.00
Total Amount Made on this Writ	\$426,166.90

Harold A. Pretel
Harold A. Pretel, Cuyahoga County Sheriff

EXHIBIT B