

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

National City Bank

Court of Appeals No. E-11-009

Appellee

Trial Court No. 2009-CV-0699

v.

TAB Holdings, Ltd., an Ohio
limited liability company, et al.

DECISION AND JUDGMENT

Appellant

Decided: May 25, 2012

* * * * *

Charles J. Palmeri and Christopher D. Yugulis, for appellee.

D. Jeffery Rengel and Thomas R. Lucas, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This matter is before the court on appeal from a foreclosure action in the Erie County Court of Common Pleas. Previously in this foreclosure action, we reviewed and affirmed the trial court's award of summary judgment in favor of appellee, National

City Bank, n.k.a. PNC Bank (“PNC”), against appellant, TAB Holdings, Ltd. (“TAB”),¹ in the amount of \$1,008,353.73 plus interest at eight percent from August 4, 2009.

National City Bank v. TAB Holdings, Ltd., 6th Dist. No. E-10-060, 2011-Ohio-3715.

{¶ 2} In this appeal, TAB claims error concerning the trial court’s entry of a foreclosure decree and order of sale, file-stamped on November 10, 2010, and journalized on January 10, 2011. TAB raises the following assignments of error:

1. The trial court was without jurisdiction when it entered a foreclosure decree against appellant while a previous order of summary judgment was under appeal.

2. The trial court erred in finding that the terms of the mortgage were breached where appellee dismissed its cognovits note action without a judgment against appellants.

{¶ 3} In TAB’s first assignment of error, it argues that the trial court was without jurisdiction to enter a foreclosure decree because TAB had already filed a notice of appeal regarding the trial court’s grant of summary judgment. We, however, find that “[u]ntil and unless a supersedeas bond is posted the trial court retains jurisdiction over its judgments as well as proceedings in aid of the same.” *State ex rel. Klein v. Chorpening*, 6 Ohio St.3d 3, 4, 450 N.E.2d 1161 (1983). *Accord* Civ.R. 62(B) and R.C. 2505.09. Also, the trial court “retains all jurisdiction not inconsistent with the court of appeals’

¹ We note that TAB is a single appellant, although TAB’s appellate counsel states that they are representing “appellants.”

jurisdiction to reverse, modify, or affirm the judgment.” *Yee v. Erie Cty. Sheriff’s Dept.*, 51 Ohio St.3d 43, 44, 533 N.E.2d 1354 (1990). No stay was sought in this case and the foreclosure decree and order of sale was in furtherance of the trial court’s award of summary judgment. We therefore find that the trial court had jurisdiction to enter the foreclosure decree, setting forth the parties’ interests and priorities, and the order for sale by the sheriff. TAB’s first assignment of error is found not well-taken.

{¶ 4} TAB argues in its second assignment of error that the trial court erred in finding that the terms of the mortgage were breached because PNC had dismissed its cognovit note action without obtaining a judgment against TAB. We note that TAB is referring to another trial court action that is not part of this record. Nevertheless, we find that we have already reviewed the judgment against TAB and affirmed the trial court’s decision. *See National City Bank v. TAB Holdings, Ltd.*, 6th Dist. No. E-10-060, 2011-Ohio-3715. Accordingly, we find TAB’s second assignment of error not well-taken.

{¶ 5} On consideration whereof, the court finds substantial justice has been done the party complaining and the judgment of the Erie County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

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

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

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>.