

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

SPECIALIZED LOAN SERVICING, :
LLC, :
Plaintiff :
vs. : No. 22-2487
JOSEPH WOODWARD, and :
SARA LUKASEVICH, :
Defendants :
and :
MARK COPOULOS, :
Intervenor :

Troy M. Freedman, Esquire	Counsel for Plaintiff
Adam Weaver, Esquire	Counsel for Defendant, Joseph Woodward
Carole Walbert, Esquire	Counsel for Intervenor
Sara Lukasevich	Pro Se

MEMORANDUM OPINION

Matika, J. - November 20, 2024

Petitioner, Joseph W. Woodward (hereinafter "Woodward") has filed a "Petition to Strike or Open Default Judgment and to Set Aside Sheriff's Sale of Real Property" claiming numerous defects throughout the underlying litigation and subsequent sheriff's sale processes. For the reasons stated herein, this Court grants his request to set aside the sheriff's sale, but deny his requests to open/strike the judgment.

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CARBON COUNTY
PROthonotary

FACTUAL AND PROCEDURAL BACKGROUND¹

Woodward and his ex-girlfriend, Defendant, Sara Lukasevich² (hereinafter "Lukasevich") owned real estate located at 141 Center Avenue, Jim Thorpe, Pennsylvania. This property is encumbered by a mortgage held by Specialized Loan Servicing, LLC (hereinafter "SLS"). On December 13, 2022, SLS commenced a foreclosure action against both Woodward and Lukasevich. Service of the complaint was made on Lukasevich on December 19, 2022 by the Carbon County Sheriff's Office, and on Woodward on January 3, 2023, also by the Carbon County Sheriff's Office. Both service of process occurred at Lukasevich's residence at 17 W. 4th Street, Jim Thorpe, Pennsylvania.³

Thereafter, due to neither Defendant filing an answer to the complaint in foreclosure, SLS, pursuant to Pa.R.Civ.P. 237.1(a)(2), filed a praecipe to enter default judgment after sending both Woodward and Lukasevich ten-day default judgment notices to which neither responded. These notices were sent to

¹ The parties agreed to allow the Court to take judicial notice of the docket entries filed in this case.

² Lukasevich has never participated in these proceedings.

³ Woodward takes issue with being served at this address claiming: 1) he does not live there; and 2) he only goes to Lukasevich's address on Saturdays because of a custody visit. While he disputes that he was served at Lukasevich's address, he acknowledges that he is not claiming that where the Sheriff's return states that they served him there was fraudulent. "In the absence of fraud, a sheriff's return which is complete on its face is conclusive and immune from extrinsic attack of the facts of which the sheriff['s deputy] presumptively has personal knowledge." *American Express Company v. Burgis*, 476 A.2d 944, 949 (Pa. Super 1984) citing *Hollinger v. Hollinger*, 206 A.2d 1 (1965).

each Defendant at both the 17 E. 4th Street, Jim Thorpe address, and the 141 Center Avenue, Jim Thorpe address, the latter being the address of the subject property and where Woodward claimed he resided at all times. Default judgment was then entered against both Defendants on February 14, 2023.

SLS began the process of executing on that judgment on that same date and filed the necessary paperwork to do so. This paperwork also included an original sheriff's sale date of April 12, 2023. SLS attempted to serve notice on Woodward at Lukasevich's address but was unsuccessful in doing so as she indicated that he did not live there.

Being unsuccessful in serving Woodward, SLS noticed all parties that the April 12, 2023 sheriff's sale was being continued until June 14, 2023. This notice sent by the law firm representing SLS was sent to Woodward at only 17 E. 4th Street, Jim Thorpe and not to the 141 Center Avenue address. Again, on June 14, 2023, similar notice was filed and sent to continue the June 12, 2023 sheriff's sale to August 9, 2023, presumably for lack of service on Woodward.⁴ Thereafter, SLS filed its motion for alternate service seeking to serve Woodward with the notice of sheriff's sale by alternate means, i.e. certified and regular mail and

⁴ According to an Affidavit of Due and Diligent Attempt attached to SLS's Motion for Alternate Service, its process server attempted to serve Woodward at 141 Center Avenue, Jim Thorpe on five (5) occasions (3/16/2023, 3/19/2023, 3/21/2023, 3/24/2023, and 3/28/2023) all of which were unsuccessful.

posting of the subject property. By Order of Court dated June 26, 2023, this Court permitted such, requiring the mailings to be sent to both addresses. SLS then sent notice of the upcoming August 9, 2023 sale to Woodward at both addresses. On August 28, 2023, SLS filed a certificate of service confirming *inter alia*, that they mailed notice to Woodward of the August 9, 2023 sale back on June 28, 2023.

On August 7, 2023, two (2) days prior to the scheduled August 9, 2023 sheriff's sale, SLS filed a "Motion for Postponement of Sheriff's Sale" on the basis that notice of the sale was not completed.⁵ The granting of this motion rescheduled the sale to September 13, 2023.

Unfortunately, due to a general ransomware attack in the Court system, it was necessary for the Sheriff's Office to seek a continuance for the September 13, 2023 sheriff's sale as well as the rescheduled October 11, 2023, November 8, 2023, and December 13, 2023 sheriff's sale. On each occasion, SLS filed a notice that each sale was continued. Lastly, on January 10, 2024, SLS filed one last motion for postponement of sheriff's sale continuing the sheriff's sale from January 10, 2024 until February 14, 2024. Attached to all notices filed by SLS, including relating to this

⁵ We are unsure as to why SLS needed to seek a continuance since, based upon the dockets in this case, service was effectuated. Nonetheless, Judge Steven Serfass granted the continuance.

last motion were certificates of service indicating that a copy of the notice was sent to "Joseph W. Woodward, 17 E. 4th Street, Jim Thorpe, Pennsylvania 18229" and not to the property address of 141 Center Avenue, Jim Thorpe, where SLS knew Defendant to be residing.

On February 14, 2024, the property at 141 Center Avenue, Jim Thorpe was sold at Sheriff's Sale to Intervenor, Mark Copoulos for the price of \$179,423.00. A proposed schedule of distribution was filed on February 15, 2024.

It was not until March 4, 2024 did Woodward file his "Petition to Strike or Open Default Judgment and to Set Aside Sheriff's Sale of Real Property." A hearing was held on that Petition on April 18, 2024 where only Woodward testified.

At that hearing, Woodward testified that he never resided at 17 E. 4th Street, Jim Thorpe, was never served with the original complaint (despite the sheriff's return of service stating otherwise), nor did he ever receive any notice of the sheriff sale notices.⁶ Woodward did testify that he became aware of the entry of the default judgment entered against him in February, 2023, however did not engage counsel at that time to pursue any action as a result. Instead, he attempted multiple times to engage with representatives of SLS for purposes of curing the default and/or

⁶ In fact, Woodward testified that he received no notices or service of any kind including the original complaint, the ten (10) day default judgment notice, postings on the property or sheriff's sale notices.

obtaining payoff statements.⁷ Unfortunately, Woodward had no success in resolving the issue.

Woodward also testified that he only learned that his property was sold at a sheriff's sale three (3) days after the fact when the winning bidder sent him a text message.

LEGAL DISCUSSION

Woodward in filing his petition has advanced three (3) separate arguments, two of which in and of themselves seek to eliminate the default judgment against him and the third to set aside the sheriff's sale. If either of the former two arguments were granted, the setting aside of the sheriff's sale would be automatic. Addressing that latter issue alone could be done independent of the first two. Accordingly, this court will address that issue first.

I. SETTING ASIDE SHERIFF'S SALE

To support Woodward's argument that the sheriff sale should be set aside he proffers four (4) claims: 1) that he was not served with the foreclosure complaint; 2) that he never received notice of the Plaintiff's pleadings as they were made to his ex-girlfriend's house at 17 E. 4th Street, Jim Thorpe; 3) that he never received notice of the sheriff's sale; and 4) that the

⁷ See Petitioner's Exhibits 1-5.

Plaintiff failed to send him the requisite Act 6 and Act 91 notices before Plaintiff commenced this action against him.

1. FAILURE TO SEND ACT 6/ACT 91 NOTICES

Addressed to Plaintiff's Complaint as Exhibit B are copies of the Act 6/Act 91 Notices that Plaintiff claimed it sent to Defendants. Woodward contends that Plaintiff failed to comply with the requirements of 41 P.S. §403 by not sending these notices. The exhibit to the complaint clearly identifies those documents as the requisite Act 6/91 notice and supporting documentation evidencing that Plaintiff sent it to Woodward at both his last known address, which is also the residence which is the subject of the mortgage at 141 Center Avenue, Jim Thorpe, and as well as 17 E. 4th Street, Jim Thorpe. This Court sees no basis to set aside the sheriff's sale based upon this frivolous claim.

2. DID NOT RECEIVE PLAINTIFF'S PLEADINGS/ 3. SERVICE OF FORECLOSURE COMPLAINT

Next, Woodward contends that he did not receive any of the pleadings in this case. This Court can presume that Woodward is referring to the complaint in mortgage foreclosure as that is the only pleading⁸ that Plaintiff has filed in this case. He argues and testified that he was never served with this complaint and

⁸ Pa.R.Civ.P. 1017 identifies the pleadings allowed in a civil action. They are limited to: a complaint and an answer thereto, a reply if the answer contains new matter, a counterclaim or a cross-claim, a counter-reply if the reply to a counterclaim or cross-claim contains new matter and a preliminary objection and a response thereto.

that contrary to the sheriff's return of service filed on January 4, 2023 he was not at Lukasevich's home at 17 E. 4th Street on the date in question as he only goes there on Saturdays for custody exchanges. The Sheriff's return of service indicates that on January 3, 2023, Deputy Kyle Krempasky personally served the defendant, Woodward, with this pleading at 11:33 A.M. at 17 E. 4th Street, Jim Thorpe, Pennsylvania. As previously noted, there is no reason to question the validity of this sheriff's return of service or the contents therein.⁹ Woodward's argument on these issues are likewise frivolous.

4. SERVICE OF THE NOTICE OF THE SHERIFF'S SALE

Woodward's last argument as to why in and of itself, the sheriff's sale should be set aside, is because he never received any notices of the sheriff's sale.

Pennsylvania Rules of Civil Procedure Rule 3121 states that "[u]pon petition of any party in interest before delivery of the personal property or of the sheriff's deed to real property, the court may, upon proper cause shown, set aside the sale and order a resale or enter any other order which may be just and proper under the circumstances. See Pa.R.C.P. 3132. Lack of proper notice is a proper cause for setting aside a sheriff's sale of real property. See *First Eastern Bank, N.A. v. Campstead, Inc.*, 637

⁹ See footnote 3.

A.2d 1364, 1367 (Pa. Super. Ct. 1994). Strict compliance with the formal notice requirement is required because without it an individual is deprived of their property without due process of the law. See *First Eastern Bank, N.A. v. Campstead, Inc.*, 637 A.2d 1364, 1366 (Pa. Super. Ct. 1994). The requirements of due process are met if notice is " . . . reasonably calculated to inform interested parties of the pending action, and the information necessary to provide an opportunity to present objections." See *Pennsylvania Coal Min. Ass'n v. Insurance Dept.*, 370 A. 2d 685, 692-93 (Pa. Super. Ct. 1977).

In accordance with Pa.R.Civ.P. 3129.2(c), in addition to other notices not complained of here, SLS was required to prepare a written notice that", shall contain the same information as the handbills or may consist of the handbill and shall be served at least thirty days before the sale on all persons whose names and addresses are set forth in the affidavit required by Rule 3129.1."

Further, pursuant to (1) of that subsection, "service of the notice shall be made (i) upon a defendant in the judgment who has not entered an appearance and upon the owner of the property"

A. By a sheriff . . . ;

B. By the Plaintiff mailing a copy . . . ; and

C. By special order of court.

Lastly, "[i]f service on any person is not made at least thirty days prior to the date of the sale stated in the notice,

such notice shall be deemed timely if the sale is stayed, continued, postponed or adjourned in accordance with Rule 3129.3 to a date certain which is at least thirty days after the date of the last required service." Pa.R.Civ.P. 3219.2(c)(3). Pa.R.Civ.P. 3219.3 sets forth the notice requirements for postponed or continued sheriff's sales as follows:

(a) Except as provided by subdivision (b) or special order of court, new notice shall be given as provided by Rule 3129.2 if a sale of real property is stayed, continued, postponed or adjourned.

(b) (1) If the sale is stayed, continued, postponed or adjourned to a date certain within one hundred thirty days of the scheduled sale, notice of which sale was given as provided by Rule 3129.2, and public announcement thereof, including the new date, is made to the bidders assembled at the time and place fixed for the sale, now new notice as provided by Rule 3129.2 shall be required, but there may be only two such stays, continuances, postponements or adjournments within the one hundred thirty day period without new notice.

(2)(i) When the sale is stayed, continued, postponed or adjourned as provided by subdivision (b)(1), the plaintiff shall file

(A) a notice of the date of continued sheriff's sale with the prothonotary at least fifteen days before the continued sale date, and

(B) a certificate of filing with the sheriff confirming the filing of the notice of the date of continued sheriff's with Prothonotary.

The sheriff shall continue the sale to the next available sale date if the notice of the date of continued sheriff's sale has not been timely filed. The continuance imposes a new obligation on the plaintiff to meet the requirements describe in (b)(2)(i)(A) and (b).

(ii) Non-compliance with this subdivision is not a basis for setting aside the sheriff's sale unless raised prior to the delivery of the sheriff's deed. The sale shall be set aside only upon a showing of prejudice.

The original sheriff's sale date was April 12, 2023 but because SLS was unsuccessful in serving Woodward with notice, it requested that the sheriff's sale be continued until June 14, 2023. That notice, dated April 17, 2023 and filed on April 18, 2023 was sent to both defendants at the address of 17 E. 4th Street, Jim Thorpe, Lukasevich's home.

Later, on June 21, 2023, SLS once again filed notice, dated June 14, 2023 that the sheriff's sale scheduled for June 14, 2023 was being scheduled for August 9, 2023, presumably based upon its failure to notice Woodward of this sale. This notice, once filed, was again sent to both defendants at Lukasevich's address of 17 E. 4th Street, Jim Thorpe.

Having been unsuccessful, SLS, on June 22, 2023 filed a motion for alternate service which was subsequently granted allowing it to serve notice of the sheriff's sale on Woodward by posting the subject property at 141 Center Avenue and mailing the same notices to Woodward at that address by both regular and certified mail. On June 28, 2023, SLS caused the mailing of regular and certified notices to Woodward at 141 Center Avenue, Jim Thorpe according to its certificate of service filed on August 28, 2023. The property was also posted on August 30, 2023.

On August 7, 2023, SLS requested a further postponement of the sale, which was granted, rescheduling the sale for September

13, 2023.¹⁰ In that motion, it indicated that service was not completed and additional time was needed.¹¹

On the next four (4) successive sheriff's sale dates of September 13, 2023, October 11, 2023, November 8, 2023 and December 13, 2023 due to a ransomware attack that affected the sheriff's office software program, the sheriff's office sought and obtained orders continuing each sale. For each, SLS also sent notices to Woodward and Lukasevich of the fact that the sales were postponed, but attached to each of these notices was a certificate of service indicating that a copy of the notice was sent to Woodward at 17 E. 4th Street, Jim Thorpe and not to 141 Center Avenue, Jim Thorpe.

The issue for the Court to decide is whether these notice requirements under both 3129.2 and 3129.3 were in accordance with those rules and if not, whether those deficiencies, if any, are sufficient non-compliance to invalidate and set aside the sale.

Pa.R.Civ.P. 3129.3(b)(2)(ii) notes that "non-compliance with this subsection is not a basis for setting aside the sheriff's sale unless raised prior to the delivery of the sheriff's deed. The sale shall be set aside only upon a showing of prejudice." No party has claimed that the sheriff's deed was ever conveyed to

¹⁰ In that Order, signed by Judge Serfass it indicates that "no further advertising or additional notice to lienholder or defendant is required provided the postponement is announced at the (8/9/23) sheriff's sale." (emphasis ours) This Court has no evidence that such a pronouncement was made on the August 9, 2023 sheriff's sale date.

¹¹ Based on the August 28, 2023 filing, service had been made on Woodward in late June, 2023, but the property was not posted until August 3, 2023.

Copoulos, thus, the timing of raising the non-compliance is proper. Additionally, as evidenced by the record, SLS sent notice to each sale after September 13, 2023 to Woodward to an address at which he did not reside, a fact known to SLS as it noted as such in its multiple filings in its attempts to serve Woodward. Since notice of the sheriff's sales and specifically the February 10, 2024 one where the property was finally sold, were sent to an address where Woodward did not reside, he was clearly prejudiced by the sale of his property without notice.

Accordingly, the sale of the property located at 141 Center Avenue, Jim Thorpe must be set aside, however, this does not end the analysis of the issues raised by Woodward as this Court needs to now determine whether the judgment itself should be stricken or opened.

II. OPENING/STRIKING THE JUDGMENT

"A petition to open a default judgment and a petition to strike a default judgment are two distinct remedies, which generally are not interchangeable." *Flynn v. America West Airlines*, 742 A.2d 695, 697 (1999). Thus, our analysis, of each differs.

1. OPENING A JUDGMENT

In order to succeed in opening a default judgment, the moving party must satisfy all of the following requirements: 1) the petition is timely filed; 2) the default is reasonably

explained or excused; and 3) the moving party proposed a meritorious defense to the underlying claim. *Fink v. General Accident Ins. Co.*, 594 A.2d 345 (Pa. Super. Ct. 1991). Woodward's petition was filed on March 4, 2024, over a year after judgment was entered by the Carbon County Prothonotary's Office. Woodward attempts to justify this delay on the basis that he was never served with the complaint. As the Court previously noted, this is inaccurate as Woodward was served by the Carbon County Sheriff's Office on January 3, 2023 at the residence of Lukasevich. Further, due to a lack of response, the requisite ten (10) day notice was sent on January 24, 2023 to Woodward's address of 141 Center Avenue, Jim Thorpe. Thus, this significant delay in filing the instant petition is extremely late and not reasonably explained or excused as service was made on Woodward. Thus, Woodward has failed to satisfy at least two (2) of the requirements to open the judgment.

2. STRIKING A JUDGMENT

Next, Woodward contends that the judgment should be stricken. "A petition to strike a judgment operates as a demurrer to the record, and must be granted whenever some fatal defect appears on the face of the record. When deciding if there are fatal defects on the face of the record for the purposes of a petition to strike a judgment, a [trial] court may only look at what was in the record when the judgment was entered. Importantly, a petition

to strike is not a chance to review the merits of the allegations of a complaint. Rather, a petition to strike is aimed at defects that affect the validity of the judgment and that entitle the petitioner, as a matter of law, to relief. Importantly, a petition to strike does not involve the discretion of the trial court.” *Oswald v. WB Public Square Associates, LLC*, 80 A.2d 790 (Pa. Super. Ct. 2013).

Woodward again appears to raise the issue of service of the complaint, which this Court will summarily dismiss again here. Additionally, Woodward raises the issue of a failure of SLS to comply with the Act 6/91 notice requirements pursuant to 41 P.S. §403(a). Once more this Court previously addressed this issue as well.

Seeing no fatal defect appearing on the face of the record prior to the entry of the judgment on February 14, 2023, this Court sees no basis to strike the judgment either.

CONCLUSION

Based on the foregoing, this Court enters the following Order:

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CIVIL DIVISION

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Adam Weaver, Esquire	Counsel for Defendant, Joseph Woodward
Carole Walbert, Esquire	Counsel for Intervenor
Sara Lukasevich	Pro Se

ORDER OF COURT

AND NOW, this day of November, 2024, upon consideration of the "Defendant's (Woodward) Petition to Strike or Open Default Judgment and to Set Aside Sheriff's Sale of Real Property," along with any and all subsequent responses thereto including post hearing submissions and after hearing thereon, it is hereby **ORDERED and DECREED** as follows:

1. The Petition of the Defendant, Joseph Woodward to open/and or strike the judgment entered on February 14, 2023 is **DENIED**; and

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PROTHOTARY

2. The Petition of the Defendant, Joseph Woodward to set aside the sheriff's sale held on February 10, 2024 is **GRANTED**.

It is further **ORDERED and DECREED** that the Carbon County Sheriff's Office shall **RESCHEDULE** a sheriff's sale of 141 Center Avenue, Jim Thorpe, Pennsylvania with due notice to all parties and creditors in a manner consistent with Pa.R.Civ.P. 3129.1 and 3129.2.

BY THE COURT:



Joseph J. Matika, J.