

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

WELLS FARGO BANK, N.A., AS	:	
TRUSTEE FOR ABFC 2006-OPTI	:	
TRUST, ABFC ASSET-BACKED	:	
CERTIFICATES, SERIES 2006-OPTI,	:	
	:	
Plaintiff/Appellee	:	
	:	
vs.	:	No. 12-0080
	:	
ALLISON STRAKER OR OCCUPANTS,	:	
	:	
Defendants/Appellant	:	

Martha E. Von Rosenstiel, Esquire	Counsel for Plaintiff
Jean A. Engler, Esquire	Counsel for Plaintiff
Allison Straker	Pro Se
Occupants	Pro Se

MEMORANDUM OPINION

Matika, J. - April 1, 2013

This action in ejectment was filed as a result of Appellee obtaining default judgment against the Appellant, Allison Straker in a mortgage foreclosure action.¹ This instant appeal is the most recent dilatory tactic being undertaken by the Appellant in the long life of this litigation. A recitation of the history of this litigation and the related litigation² is necessary to explain this Court's opinion and order.

On June 19, 2007, Appellee filed an action in mortgage foreclosure against the Appellant, Allison Straker. After proper

¹ *Wells Fargo Bank N.A. vs. Allison Straker*, 07-1895 (Pa. Com. Pl. Aug. 9, 2007).

² Attached to this opinion is a copy of the docket entries of the underlying mortgage foreclosure action, case index 07-1895. This opinion however only seeks to highlight the relevant dates and actions.

service and no answer having been filed, judgment was entered in favor of Appellee and against Appellant on August 8, 2007, in the amount of \$251,025.65. Shortly thereafter, on August 23, 2007, Appellee filed the first of many writs of execution. Since that date, Appellant has:

- 1) On January 31, 2008, filed for bankruptcy (dismissed on September 17, 2008);
- 2) On October 29, 2008, filed a petition to set aside sheriff's sale (denied on November 3, 2008);
- 3) On February 26, 2009, filed for bankruptcy (dismissed on July 17, 2009);
- 4) On September 11, 2009, filed for bankruptcy (relief from stay granted January 15, 2010);
- 5) On August 11, 2010, filed an emergency petition to stay sheriff's sale and a motion to compel (sale voluntarily stayed by Appellee due to motion to compel, however motion to compel denied on September 13, 2010);
- 6) On October 15, 2010, filed request for reconsideration of denial of emergency petition to stay sheriff's sale filed (denied on October 27, 2010);
- 7) On November 5, 2010, filed for bankruptcy;
- 8) On September 8, 2011, filed a petition to set aside sheriff's sale scheduled for September 9, 2011 (petition denied on September 9, 2011);

On September 9, 2011, a sheriff's sale was finally held at which

time Appellee was the successful bidder for the subject property. Appellee's successful bid was the judgment amount of \$365,891.92.

Appellant's attempts to further delay the inevitable did not end there. After the sale, on September 27, 2011, Appellant caused to be filed, by an individual named Anthony Delay claiming to be Appellant's husband, a petition to intervene and set aside sheriff's sale. Said petition was denied and dismissed on December 19, 2011.

On January 12, 2012, Appellee filed this instant ejectment action. Service was effectuated upon the Appellant on March 26, 2012, who, on April 13, 2012 filed an answer. On May 4, 2012, Appellee filed a motion for summary judgment. In response, Appellant filed, on June 29, 2012, a petition to amend her answer to the ejectment complaint that was promptly and properly denied by this Court due to procedural defects in her petition. On July 13, 2012, Appellant re-filed this petition, which in effect stayed this Court's ability to act on Appellee's motion for summary judgment. Additionally, Appellant filed her own motion for summary judgment on July 18, 2012. In the meantime, on September 4, 2012, Appellant filed a petition to strike the judgment and set aside the sheriff's sale in the underlying foreclosure action.

On November 1, 2012, this Court denied Appellant's petition to amend her answer. By Court Order dated November 29, 2012, and filed on November 30, 2012, the Honorable Judge Serfass denied her motion to strike the judgment and set aside the sheriff's sale in the underlying foreclosure action. *See, Wells Fargo Bank N.A. vs. Allison*

Straker, 07-1895 (Pa. Com. Pl. Nov. 30, 2012).

At that point in time, there remained for disposition, the cross motions for summary judgment in the ejectment action. However, on December 20, 2012, Appellant filed a petition for reconsideration in the underlying foreclosure action, which by order of the Honorable Judge Serfass, was not expressly granted but instead scheduled for argument. Additionally, on December 21, 2012, Appellant filed, in the case at bar, a petition to stay this Court's rendering of a decision regarding the cross filed motions for summary judgment until after the Honorable Judge Serfass addressed her petition for reconsideration. Accordingly, on January 10, 2013, this Court denied Appellant's motion for summary judgment and petition to stay, and conversely granted Appellee's motion for summary judgment.³

On February 1, 2013, Appellant filed this appeal and a petition to stay the eviction proceedings.⁴

³ Appellant's sole argument with regard to this ejectment action deals with her right to proceed when the underlying judgment was, in her opinion, still at issue. In deference to this argument, the Court delayed its decision on the motions for summary judgment until after Appellant's appeal period expired in the other case, that being December 30, 2012, and even longer in light of the petition for reconsideration that was filed on December 12, 2012. There being no appeal or express grant of Appellant's petition for reconsideration in that other case, we believed there was no longer a genuine issue of material fact as to the legality of the underlying judgment and sheriff sale, and thus addressed the cross motions for summary judgment accordingly. Where there are no genuine issues of material fact to present to the jury, a court, as this Court has done so here, is permitted to grant a motion for summary judgment. Pa.R.C.P. 1035.2.; *Phaff v. Gerner*, 303 A.2d 826, 829 (Pa. 1973); *Basile v. H & R Block, Inc.*, 777 A.2d 95, 100 (Pa. Super. Ct. 2001).

⁴ While not having any bearing on the issues raised in this appeal, this Court notes for the Appellate Court that we held an argument on March 18, 2013, on Appellant's petition to stay the eviction proceedings. On that date, the Court granted the petition, however, we required the Appellant to post a bond

As to the issues raised in Appellant's concise statement, those issues were raised and disposed of in the underlying foreclosure action and are not proper nor timely appealed in this current action.⁵ As a result, Appellee is entitled to recover possession of the subject property by virtue of our granting Appellee's motion for summary judgment.

Based on the foregoing factual and procedural history of both this ejectment action and the underlying foreclosure action, this Court believes that this appeal is frivolous and without merit. It is quite clear that it is Appellant's desire and intention to litigate as long as possible so she can remain in her house as long as possible. This Court finds no substantial basis for the Appellate Court to grant this appeal. We further believe that Appellee, as assessed owner of the property at issue, will be prejudiced further by delaying its ability to occupy these premises.

BY THE COURT:

Joseph J. Matika, Judge

in the amount of \$365,891.92. Additionally, it should be noted that on March 6, 2013, the Honorable Judge Serfass expressly denied reconsideration in the related underlying foreclosure action.

⁵ This Court recently learned that Appellee has since appealed the Honorable Judge Serfass's order of March 5, 2013, regarding her request for reconsideration. This appeal is docketed *Wells Fargo Bank v. Allison Straker*, 826 EDA 2013.