

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Deutsche Bank National Trust :
Company, as Trustee for Ameriquest :
Mortgage Securities Inc., Asset-Backed :
Pass-Through Certificates, Series :
2005-R3 :

v. :

Daniel G. Durning and Donna M. :
Vanni-Durning or Occupants and :

Guy Leroy :

v. :

Deutsche Bank National Trust :
Company, as Trustee for Ameriquest :
Mortgage Securities Inc., Asset-Backed :
Pass-Through Certificates, Series :
2005-R3 :

Appeal of: Guy Leroy :

No. 375 C.D. 2013
Submitted: October 4, 2013

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE COVEY

FILED: November 12, 2013

Guy Leroy (Leroy), pro se, appeals from the Delaware County Common Pleas Court's (trial court) February 14, 2013 order granting Deutsche Bank National Trust Company's (Deutsche Bank) motion for judgment on the pleadings and dismissing Guy Leroy's new matter and counterclaims. The sole issue before the Court is whether the trial court erred or abused its discretion in granting Deutsche

Bank's motion for judgment on the pleadings when there were disputed issues of fact as to Leroy's counterclaims and defenses. We affirm.

On February 28, 2005, Daniel G. Durning and Donna M. Vanni-Durning (Durnings) obtained a mortgage (Mortgage) from Ameriquest Mortgage Securities Inc. (Ameriquest) for 215 Park Drive, Glenolden, Pennsylvania (Property). The Mortgage was recorded in the Delaware County's Recorder of Deed's office. On February 11, 2009, CITI Residential Lending Inc., as Ameriquest's attorney-in-fact, assigned the Mortgage to Deutsche Bank. On February 1, 2010, the Durnings defaulted on the Mortgage. On March 8, 2011, Deutsche Bank commenced a mortgage foreclosure action against the Durnings.¹ On September 19, 2011, judgment was entered for \$171,037.08 against the Durnings. Notice of Sheriff's Sale was posted on the Property and sent by certified mail to the Property. On April 20, 2012, Deutsche Bank took ownership of the Property via Sheriff's sale. The Sheriff's deed was recorded on May 23, 2012.

On June 14, 2012, Deutsche Bank filed a complaint in ejectment against the Durnings or Occupants of the Property. On October 19, 2012, Leroy, pro se, filed an answer with new matter and counterclaims. The new matter asserted that Leroy acquired title to the Property at a county tax sale (upset sale) and that Deutsche Bank was negligent in not having paid delinquent real estate taxes from escrowed funds.² Leroy's first counterclaim averred that Deutsche Bank was unjustly enriched because it did not pay real estate taxes from escrowed funds. His second counterclaim was a request to quiet the Property's title based upon an assertion that Deutsche Bank's mortgage was divested by Leroy's payment of the taxes at the upset sale.

¹ At the time the foreclosure complaint was filed, the Durnings owed \$158,000.00 on the Mortgage.

² Leroy did in fact bid \$9,302.00 for the Property at an upset sale on September 14, 2011; however, no deed was recorded after the sale.

On December 19, 2012, Deutsche Bank filed a motion for judgment on the pleadings. On January 9, 2013, Leroy filed a memorandum in response to Deutsche Bank's motion. On February 13, 2013, Deutsche Bank filed a reply to Leroy's memorandum. On February 14, 2013, the trial court granted Deutsche Bank's motion for judgment on the pleadings and dismissed Leroy's new matter and counterclaims. Leroy appealed to this Court.³

Leroy argues that the trial court erred or abused its discretion in granting Deutsche Bank's motion for judgment on the pleadings because there were disputed issues of fact as set forth in Leroy's counterclaims and defenses. We disagree.

As our Supreme Court has explained, appellate review of a trial court's decision to grant or deny judgment on the pleadings is limited to determining whether the trial court committed an error of law or whether there were facts presented which warrant a jury trial. In conducting this review, we look only to the pleadings and any documents properly attached thereto. Judgment on the pleadings is proper only where the pleadings evidence that there are no material facts in dispute such that a trial by jury would be unnecessary.

In passing on a challenge to the sustaining of a motion for judgment on the pleadings, our standard of review is limited. We must accept as true all well pleaded statements of fact of the party against whom the motion is granted and consider against him only those facts that he specifically admits. We will affirm the grant of such a motion only when the moving party's right to succeed is certain and the case is so free from doubt that the trial would clearly be a fruitless exercise.

Erie Ins. Exch. v. Conley, 29 A.3d 389, 391-92 (Pa. Super. 2011) (quoting *John T. Gallaher Timber Transfer v. Hamilton*, 932 A.2d 963, 967 (Pa. Super. 2007))

³ This case was not transferred to Superior Court because it involves interpretation of the Real Estate Tax Sale Law, Act of July 7, 1947, P.L. 1368, *as amended*, 72 P.S. §§ 5860.101–5860.803, over which this Court has jurisdiction and there is no objection to this Court's jurisdiction. Pa. R.A.P. 741(a).

(citations omitted)). Here, the facts are not in dispute, but rather Leroy's interpretation thereof. Leroy specifically contends that because of the upset sale, he is the Property's owner and, at the very least, Deutsche Bank owes him a refund of the tax money he paid for the Property.

However, regarding upset sales Section 609 of the Real Estate Tax Sale Law (RETSL) specifically provides:

Every such sale shall convey title to the property under and subject to the lien of every recorded obligation, claim, lien, estate, **mortgage**, ground rent and Commonwealth tax lien not included in the upset price with which said property may have or shall become charged or for which it may become liable.

72 P.S. § 5860.609 (emphasis added). It is well settled that

in the [RETSL] the legislature has provided a comprehensive statutory scheme for the sale of property in order to satisfy real estate tax liens, and the [RETSL] specifically addresses the effect each type of sale will have on liens. Thus, **an upset tax sale will convey title subject to all recorded liens and mortgages**. A judicial sale conveys title free and clear of all liens and mortgages.

Pitti v. Pocono Bus. Furniture, Inc., 859 A.2d 523, 527 n.5 (Pa. Cmwlth. 2004) (citations omitted; emphasis added).

It is undisputed that Leroy purchased the Property at an upset sale for \$9,302.00. It is further uncontested that Ameriquest had a **recorded mortgage** against the Property since April 2005, and that it assigned the Mortgage to Deutsche Bank on February 11, 2009. Moreover, it is unchallenged that the upset sale price did not include the \$158,000.00 due on the Mortgage. Thus, when Leroy purchased the Property on September 14, 2011, he did so subject to Deutsche Bank's mortgage. Thereafter, Deutsche Bank purchased the Property at a Sheriff's Sale after foreclosure and recorded the deed. Accordingly, Deutsche Bank is the valid owner of the Property and entitled to judgment for possession of the Property. Because "there are

no material facts in dispute such that a trial by jury would be unnecessary[,]” the trial court properly granted Deutsche Bank’s motion for judgment on the pleadings. *Erie Ins. Exch.*, 29 A.3d at 391.

Concerning Leroy’s counterclaims, Pennsylvania Rule of Civil Procedure No. 1056(a) provides: “The defendant may plead a counterclaim which arises from the same transaction or occurrence or series of transactions or occurrences from which the cause of action arose.” Here, the ejectment claim arose out of the Property’s Mortgage assignment to Deutsche Bank, the foreclosure thereon and the subsequent purchase of the Property at the Sheriff’s sale. Leroy’s claims for unjust enrichment and quiet title did not arise out of any of these transactions or occurrences, but rather the delinquency in the Property’s taxes, and his payment thereof. Thus, the trial court properly dismissed Leroy’s counterclaims.

Regarding Leroy’s new matter,

The purpose of new matter pleading is ‘to compel a plaintiff to answer the defendant’s affirmative defenses during the pleading stage to avoid an unnecessary trial.’ Thus, although a plaintiff is required to respond to averments which set forth the factual basis in support of an affirmative defense, a plaintiff is not compelled to answer conclusions of law. In fact, a trial judge errs if he considers asserted conclusions of law or accepts them as admitted when passing on a motion for judgment on the pleadings.

Enoch v. Food Fair Stores, Inc., 331 A.2d 912, 914 (Pa. Super. 1974) (citations omitted). Here, the new matter consists of factual allegations and legal conclusions. The factual allegations, even if accepted as true, do not affect the disposition of the motion as they all refer to the upset sale. Given the trial court’s disposition of the motion for judgment on the pleadings, it is clear that it did not consider the legal conclusions when ruling on the motion. Accordingly, the trial court properly

dismissed Leroy's new matter when it granted Deutsche Bank's motion for judgment on the pleadings.

For all of the above reasons, the trial court's order is affirmed.

ANNE E. COVEY, Judge

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ORDER

AND NOW, this 12th day of November, 2013, the Delaware County
Common Pleas Court's February 14, 2013 order is affirmed.

ANNE E. COVEY, Judge