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OPINIONS

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PLJ

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Opinions

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East Liberty Development, Inc. v. Everlasting Covenant Church, the City of Pittsburgh, Pittsburgh Public Schools and Allegheny County

Action under Blighted Property Conservation Act—Claim of Lien for Funds advanced by Conservator before Conservatorship proceeding.

Court determined that funds advanced by Conservator prior to conservatorship proceedings were not recoverable as a lien by Conservator.

No. GD-15-009548. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.
O'Reilly, S.J.—May 3, 2017.

OPINION

This matter arises under Section 1105 (g) of the Blighted Property Act, 68 P.S. 1101 et seq. I have read the excellent briefs filed in regard to the above matter and the issue presented by the Petitioner (East Liberty Development Inc.) as to whether its paying certain sums to the owner of the development site *prior* to the granting of the conservatorship by Order of Court under the Abandoned and Blighted Property Conservatorship Act, 68 P.S. § 1101 et seq. can be included in the lien sought here.

The testimony showed that once the Development Corporation had identified the property as a likely site for renovation and improvement and indeed rescue from its dangerous and deteriorating condition, it approached the putative owner and entered a Sales Agreement to purchase the site on February 7, 2014. That agreement called for a sale price of $90,000.00 and periodic payments to be made against that sale price, although the schedule is unclear from the agreement offered with 15 payments, 4 payments were made in the amounts of $5,500, $6,000, $5,000 and $2,000 for a total of $18,500.

The Development Corporation made than payments out of funds it had on hand or got from other sources. During the pending of the agreement, title examination of the site revealed that the putative owner could *not* deliver good title. As a result the Sales Agreement was deemed nugatory and the Development Corporation filed for, and received, on July 22, 2015 designation as the conservator of this site.

Work has progressed on the site and on March 9, 2017, Development Corporation filed for its conservator lien based on the funds expended to bring the property to its present state. The gross amount expended was $284,811.24. Included in the evidence presented in support of that lien were the aforesaid payments to the putative owner reflected in Exhibits 15, 16, 17 and 18 offered at the hearing. Appearing at that hearing were Attorneys for the City of Pittsburgh and the County of Allegheny as well as for the Pittsburgh Water and Sanitary Authority. All three objected to granting the lien to the Development Corporation for the payments reflected in Exhibits 15 through 18.

Counsel have correctly argued that these payment were made *before* the Conservatorship was created and should not be allowed as a "conservators" lien. Indeed the applicable section of the statue, at Section 1105 (g), contemplates a lien for expense *after* the conservatorship was granted. I agree and Exhibits 15 through 18 will be rejected and such lien to be disallowed as a "conservators" lien.

However, the fact remains that funds were paid out by the Development Corporation to an individual who could not deliver and it has not gotten the benefit of its bargain. Therefore while I do not believe those payments should be part of the "conservators" lien under Section 1105 (g), Development Corporation is free to resort to any and all other legal means to recoup the $18,500.00 as well as whatever action it may need to resolve the title to the property which may include Sheriff's Sale or a Quiet Title Action.

I have attached an order signed by me consistent with this Opinion in which the $18,000.00 is DENIED as a "Conservator's Lien" but the remainder of $266,311.24 is APPROVED.

BY THE COURT:
/s/O'Reilly, S.J.

Dated: May 3, 2017

ORDER OF COURT

AND NOW, this 3rd day of May 2017, the application by Petitioner (EAST LIBERTY DEVELOPMENT, INC.) for the entry of a Conservator's Lien in the amount of $266,311.24 against property locate at 130 Larimer Avenue, Pittsburgh, PA 15206 is GRANTED. However, the sum of $18,500 paid to Everlasting Covenant Church is not included in said lien. Said $18,500 paid to Everlasting Covenant Church continues to be a claim by Petitioner but is not included in this lien.

BY THE COURT:
/s/O'Reilly, S.J.

Mary R. Mechelli v. Borough of East McKeesport

Statutory Appeal of Municipal Proceeding—Order of Nuisance—Demolition of Real Property—Seeking Stay/Delay of Hearing—Failure to Properly Appeal Order Following Hearing.

Court determined nuisance, dismissing the statutory appeal; Appeal dismissed by Commonwealth Court; Appellant request for stay before Trial Court. Stay denied and statutory appeal dismissal reaffirmed.

No. SA 14-882. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.
O'Reilly, S.J.—June 12, 2017.

MEMORANDUM ORDER

This case involves a long-standing dispute between the Borough of East McKeesport (Borough) and the owners of certain

property in the Borough, Mary R. Mechelli and Eugene Grove, collectively referred to as Mechelli.

The property is a 2 story frame dwelling located at 900 Josephine Street, East McKeesport, PA 15035 in the Borough. It had fallen into disrepair and the Borough on August 8, 2014 had declared it to be a nuisance and placed it on its demolition list.

On September 5, 2014, Mary Mechelli filed a Statutory Appeal to the action of the Borough and its determination of nuisance. Throughout this matter Mechelli has appeared pro se. The Borough filed its certified record of the demolition proceedings and Writ of Certiorari on September 24, 2014.

Her basic position is that the house can be salvaged and ought not be demolished. On October 10, 2014, I scheduled a conference with the parties for December 16, 2014. That conference was rescheduled to January 9, 2015 at which the parties appeared. Since it was a conference no record was made but Mechelli asked for more time to try to raise funds for needed repairs or to find a bonafide buyer for the property.

Following that conference, I scheduled a hearing for February 10, 2015 primarily to keep the case moving and to give Mechelli an opportunity for repair. By the time of that hearing, little had been accomplished by her and I held two more hearings on March 25, 2015 and April 29, 2015. Nevertheless Mechelli was unable to effectuate any meaningful repairs or sell the property. Accordingly, and after review of the hearing before the Borough and this taking of additional testimony, I entered an Order on April 30, 2015 dismissing the appeal of Mechelli.

That order was based on my Analysis of the record before the Borough which showed there was indeed substantial evidence in the record that the property was indeed a nuisance and should be razed to protect the health and welfare of the citizens.

On June 3, 2015, Mechelli appealed the aforesaid order to the Superior Court which it transferred to the Commonwealth Court. Thereafter, the Commonwealth Court dismissed the appeal on May 2, 2016. Citing Mechelli's failure to order transcripts and failure to file a Brief, her efforts at reconsideration by the Commonwealth Court were rejected and the record was returned to our Department of Court Records on August 4, 2016. Mechelli thereafter filed a Motion to Stay Demolition on August 11, 2016 and asked for a hearing thereon.

The Borough filed its Motion to Dismiss Mechelli's Motion to Stay on March 1, 2017 and asserted, *inter alia*, that Mechelli was "clouding the record" by her motion and other dilatory behavior.

At the Borough's request I held a hearing on March 15, 2017 (The Transcript of that hearing was just purchased on June 6, 2017). At that hearing, Mechelli said they had a buyer and wanted to stay the demolition so as to close on the sale on April 17, 2017. The Borough proffered an order that denied the stay. I signed that order but added additional language that if the property did indeed sell on or before April 20, 2017, I would hear a new motion from that buyer to stay the eviction but the Mechelli appeal was dismissed. As I had previously ordered on April 30, 2015, no subsequent Motion was ever filed. Mechelli appealed on April 13, 2017.

My order dismissing the Statutory Appeal on April 30, 2015 still stands and I here reaffirm it.

BY THE COURT:
/s/O'Reilly, S.J.

Dated: June 12, 2017

Beneficial Consumer Discount Company d/b/a Beneficial Mortgage Company of Pennsylvania v. Pamela A. Vukman a/k/a Pamela McDeavitt, Leo L. McDeavitt, Jr., Christopher McDeavitt, and all Occupants of 104 Dorf Drive, Pittsburgh, PA 15209

Mortgage Foreclosure—Ejectment—Ejectment Following Foreclosure—Property Parties—Preliminary Objections

Court determined foreclosure had been confirmed and that adult residing in property, having been served satisfied rules as to proper parties. Overruled Preliminary Objections on basis that Preliminary Objections should be sustained only when clear that a demurrer applies.

No. GD-16-007774. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.
O'Reilly, S.J.—July 3, 2017.

MEMORANDUM ORDER

This case involves a mortgage foreclosure action filed by Plaintiff Beneficial Consumer Discount Company d/b/a Beneficial Mortgage Company of Pennsylvania against Defendant Pamela A. Vukman (aka Pamela McDeavitt), Leo L. McDeavitt, Jr., Christopher McDeavitt, and all occupants of 104 Dorf Drive, Pittsburgh, PA 15209. Beneficial extended a loan to Ms. Vukman on September 14, 2001 in the amount of $149,332.58 in connection with a refinance of Property located at 104 Dorf Drive. The loan was secured by a Mortgage on the Property which along with a Loan Repayment and Security Agreement, was executed by Ms. Vukman. She was to make monthly mortgage payments in the amount of $1,416.49 commencing on October 14, 2001 for thirty years. Ms. Vukman defaulted in December of 2005.

On October 17, 2006, Beneficial filed a foreclosure complaint against Ms. Vukman and they eventually reached an agreement. Specifically, they agreed to a settlement whereby Ms. Vukman was to make monthly payments under a restructured loan arrangement. The terms were formalized in a Consent Judgment. Ms. Vukman defaulted on her obligations under this Consent Judgment and Beneficial began the process of executing it. Ms. Vukman moved to vacate the Consent Judgment and Judge Joseph M. James denied it. Beneficial purchased the Property at Sherriff's sale on August 2, 2010. On August 31, 2010 Ms. Vukman filed a Motion to Set Aside Judgment and Sherriff's Sale which was granted by Judge Lee Mazur but later reversed by the Supreme Court of Pennsylvania. Beneficial filed a Motion to Confirm the Sheriff's Sale and Judge Michael McCarthy granted it on February 19, 2014. Ms. Vukman appealed that Order and the Superior Court affirmed and denied her request for reargument. The Supreme Court of Pennsylvania denied her petition for allowance of appeal. While her application for reargument was pending, Ms. Vukman filed pleadings with Judge McCarthy which he declined to rule upon. Following the Supreme Court's denial of her petition, she field

another motion asking the Court to rule on the petition she filed during the pendency of her appeal. Judge McCarthy again denied her request. She then filed a motion accusing Judge McCarthy of judicial bias which Judge Ronald Folino denied. She attempted to appeal Judge McCarthy's Order again.

On May 9, 2016, Beneficial filed a Complaint in Ejectment against Ms. Vukman and all occupants of the Property. On May 10, 2016, Beneficial served the Complaint to an adult in charge of the Property. The Sheriff issued a return of service as to "all occupants" of the Property.

Ms. Vukman has filed Preliminary Objections. First, she contends that her husband, Leo L. McDeavitt, Jr., was an indispensable party to the prior foreclosure action and Beneficial's failure to join him as a party caused the foreclosure judgment and Sherriff's Sale to be void. She also claims that her husband is an indispensable party to the ejectment proceedings and that Beneficial failed to join or serve him with the ejectment Complaint. Second, Ms. Vukman argues that Beneficial is not in lawful possession of the deed to the Property. Third, Ms. Vukman contends that the foreclosure action is still pending and therefore the ejectment action is premature. Finally, she argues that due to Pa. Rule of Civil Procedure 1028(a)(6), her settlement demands impact Beneficial's right to pursue ejectment.

Preliminary objections in the nature of a demurrer test the legal sufficiency of the complaint. When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom. Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief. If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections. *Haun v. Community Health Systems. Inc.*, 14 A.3d 120, 123 (Pa. Super. 2011).

Ms. Vukman's contention that her husband was an indispensable party to the prior foreclosure action is incorrect. Under Pa. Rule of Civil Procedure 1144, the only necessary defendants to a foreclosure are (a) the mortgagor and (b) the "real owner of the property," which is the person named on the deed. In the instant case, Ms. Vukman was the sole mortgagor and Mr. McDeavitt was not named on the deed. As for the ejectment action, Mr. McDeavitt has been properly joined and served. In an ejectment action, original process must be served upon the named defendant as well as "any person not named as a party who is found in possession of the property." Upon service, such persons "shall thereupon become a defendant in the action," and "upon praecipe of the plaintiff the prothonotary shall index the name of the person found in possession as a party to the action." Pa. Rule of Civil Procedure 410(b)(2). In this case, on May 9, 2016, Beneficial filed a Complaint in Ejectment against Ms. Vukman and all occupants of the Property. The next day, the Sherriff served an adult at the Property who refused to identify him or herself. Rule 402(a)(2)(i) provides that original process may be served by handing a copy "at the residence of the defendant to an adult member of the family with whom he resides [or] to an adult person in charge of such residence." Ms. Vukman identified Mr. McDeavitt and her son Christopher as the only other occupants of the Property. Thus, upon learning that Mr. McDeavitt was in possession of the Property, Beneficial added him as a named defendant.

Ms. Vukman's second preliminary objection incorrectly claims that Beneficial is not in lawful possession of the deed to the Property because a court-ordered stay imposed after the sale negated their right to title. However, the Pennsylvania Supreme Court rejected Ms. Vukman's challenge to the sale, the Superior Court affirmed Judge McCarthy's Order confirming the sale was valid, and the Pennsylvania Supreme Court rejected Ms. Vukman's petition for allowance of appeal. Additionally, Ms. Vukman waived any challenge by failing to timely raise it during the foreclosure proceedings.

Third, Ms. Vukman contends that the foreclosure action is still pending and therefore the ejectment action is premature. The foreclosure was complete in May 2009 when Ms. Vukman consented to judgment in favor of Beneficial. As stated above, both of her challenges to the validity of the sheriff's sale were rejected. The Common Pleas Court has twice confirmed that the foreclosure action is terminated.

Finally, Ms. Vukman argues that due to Pa. Rule of Civil Procedure 1028(a)(6), her settlement demands impact Beneficial's right to pursue ejectment. Rule 1028(a)(6) addresses situations where the parties have an arbitration agreement or other dispute-resolution agreement that covers the subject dispute. There is none of that governing Ms. Vukman's ejectment proceeding.

Therefore, Ms. Vukman's Preliminary Objections are overruled; **Answer in 30 days**.

BY THE COURT:
/s/O'Reilly, S.J.

Dated: July 3, 2017

Carole L. Scheib v. James Rozberil

Abuse of process by Plaintiff

Court entered order confirming prior order barring further actions by the Plaintiff regarding prior owned real property.

No. GD-16-003162. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.
Friedman, J.—July 21, 2017.

OPINION

Plaintiff filed an appeal from an order we entered on March 20, 2017, dismissing the captioned action, on our own motion. I was unaware until recently that an opinion was overdue.

Plaintiff has persisted in bringing actions against various persons who acquire real estate she and her husband once owned. This is simply the latest. By an order in a prior action, *Scheib v. Keystone Residential Properties, LLC et al.*, GD 11-18030, affirmed by the Pennsylvania Superior Court at 634 WDA 2012, we barred her from filing any further actions by directing the Department of Court Records, Civil Division (DCR) not to accept anything from her without prior permission from the Court, which was to be denied if the action involved the premises at 54 Lawson Street. Unfortunately, the DCR permitted the instant action to be filed and it eventually came to my attention, resulting in the order now under appeal.

We have attached as **APPENDIX 1** a copy of page 6 of the Superior Court's opinion at 634 WDA 2012. Footnote 1 supports my prior order and would also support the order I entered in the instant case.

Ms. Scheib may or may not have been treated unfairly twenty years ago in the original mortgage foreclosure action which resulted in her family losing their home. However, she cannot be permitted to harass the unfortunate subsequent buyers of her former home in these meritless attempts to change the past. On a human level, I have great sympathy for Ms. Scheib who has clearly been devastated by the loss to the point where she may no longer be rational. A review of some of the docket items indicates how bad things are: she filed a Petition to Consolidate and then filed an Answer to her own Petition, although she describes it as being Defendant's petition. See Doc. Nos. 20 and 16. Both (along with other papers) were apparently filed on the same date, December 14, 2016. She recently filed a Statement of Matters although there had been no order entered directing her to do so. Her Statement does not clarify the issues at all and merely demonstrates that she is still unable to understand the concept of finality.

Our order in the instant case was proper and should be affirmed.

BY THE COURT:
/s/Friedman, J.

Dated: July 21, 2017

No. GD-16-003162

APPENDIX 1 TO OPINION

J-S58037-12 Excerpt from 634 WDA 2012

the case, a clear summary of the argument, or citation to any relevant legal authority. ***See*** Pa.R.A.P. 2114, 2116, 2117, 2118, 2119. Appellant's brief provides no specific indication of error we are asked to address on appeal. Appellant presents her argument on eight pages, which contain quotations from unidentified or irrelevant court cases, and photocopies of various documents. Appellant's argument also consists of general statements of Appellant's version of the facts presented as legal conclusions. Further, Appellant totally fails to identify or plainly discuss her contentions on appeal or to utilize relevant legal citations to applicable law to support her contentions. ***See*** Pa.R.A.P. 2119. Appellant's gross deviations from the Pennsylvania procedural rules governing appellate briefs constitute sufficient grounds to suppress her brief and quash or dismiss the appeal.[1] ***See*** Pa.R.A.P. 2101; ***Smathers v. Smathers***, 670 A.2d 1159, 1160 (Pa.Super. 1996) (holding substantial defects in appellant's brief precluded meaningful

[1] As the trial court aptly observed, Appellant instituted this action in an effort to re-litigate matters that have already been decided against her. Further, her filings contain inaccurate statements and representations, including service of process and a right to recovery. Moreover, "*res judicata* clearly bars the filing of the captioned action." (***See*** Trial Court Opinion at 3.) The court's order "limiting Appellant's right to file anything further without prior court approval was proper to prevent her continued abuse and misuse of the judicial system while still allowing her access to the courts when appropriate and warranted" was also proper. (***Id.*** at 2-3.) ***See Menna v. St. Agnes Medical Center***, 690: A.2d 299, 305-06 (Pa.Super. 1997) (stating that when party re-litigates issue and engages in vexatious, frivolous, and obstreperous litigation conduct, courts have power to enjoin or limit litigant from filing further lawsuits on same issue).