

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

DUNMORE HOSPITALITY GROUP, INC.,

Appellant

v.

SYNERGY BANK, A DIVISION AND/OR
SUBSIDIARY OF GARDEN STATE
COMMUNITY BANK, A DIVISION AND/OR
SUBSIDIARY OF NEW YORK COMMUNITY
BANK, A SUBSIDIARY OF NEW YORK
COMMUNITY BANCORP., INC.,

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1490 MDA 2012

Appeal from the Order of August 13, 2012,
in the Court of Common Pleas of Lackawanna County,
Civil Division at No. 11-CV-7661

BEFORE: FORD ELLIOTT, P.J.E., WECHT and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

FILED JULY 18, 2013

Appellant Dunmore Hospitality Group, Inc. appeals the order entering judgment in favor of Appellee Synergy Bank. We affirm.

The trial court summarized the relevant facts as follows.

In October 2005, [Appellee] made a \$2,050,000.00 loan ["Loan"] to [Appellant]. The Loan was secured by a first position mortgage on [Appellant's] hotel property located at 1226 O'Neill Highway, Dunmore, PA. . . .

In October 2008, [Appellant] refinanced the Loan with a new loan from North Penn Bank. On October 15, 2008, [Appellant] requested a payoff figure for the loan secured by [Appellee].

*Retired Senior Judge assigned to the Superior Court.

Subsequently, [Appellee] sent correspondence dated October 15, 2008 which represented . . . the amount necessary to satisfy the mortgage and record the satisfaction. On October 23, 2008, the title insurance company . . . forwarded a check as payoff in full of the mortgage with [Appellee]. This sum also included the \$45.00 fee to have the mortgage satisfied of record with the Recorder of Deeds.^[1] Thereafter, [Appellee] failed to satisfy the mortgage of record.

[Appellant] filed a two count Complaint on December 16, 2011 seeking (I) to quiet title to the Dunmore Property and (II) seeking civil penalties for failure to present a satisfaction piece pursuant to 21 P.S. § 682. [Appellee] was served with the Complaint on December 28, 2011. On January 26, 2012, the Lackawanna County Recorder of Deeds accepted [Appellee's] mortgage satisfaction piece, thus rendering Count 1 moot. However, [Appellee's] employees failed to realize that there was still an outstanding claim for money damages pursuant to the Count II of [Appellant's] Complaint. During this time, on January 19, 2012, [Appellant] issued its ten (10) day Default Judgment Notice. On January 31, 2012, [Appellant] filed a Praecipe for Entry of Default Judgment – a mere 47 days after filing of the Complaint. On March 22, 2012, [Appellee] filed the instant Petition to Open and/or Strike Default Judgment.

Trial Court Opinion, 08/08/12, at 1-2.

Following consideration of Appellee's petition to open and/or strike judgment, Appellant's response thereto, memoranda submitted by the parties, and oral argument, the trial court granted Appellee's petition to strike and directed that the default judgment against Appellee be stricken. By separate order, the court entered judgment in favor of Appellee in

¹ On October 17, 2011, due to an upcoming refinancing, Appellant sent another request to Appellee to satisfy the mortgage.

accordance with its order granting Appellee's motion to strike. Appellant's timely appeal followed.

As this Court has stated:

A petition to strike a judgment is a common law proceeding which operates as a demurrer to the record. A petition to strike a judgment may be granted only for a fatal defect or irregularity appearing on the face of the record An order of the court striking a judgment annuls the original judgment and the parties are left as if no judgment had been entered.

In determining whether fatal defects exist on the face of the record for the purpose of striking a judgment, a court may look only at what was in the record when the judgment was entered.

Knickerbocker Russell Co. v. Crawford, 936 A.2d 1145, 1146-47 (Pa. Super. 2007) (citations omitted). In addition, "where a fatal defect or irregularity is apparent from the face of the record, the prothonotary will be held to have lacked the authority to enter default judgment and the default judgment will be considered void." ***US Bank N.A. v. Mallory***, 982 A.2d 986, 991 (Pa. Super. 2009).

Further, "[t]he law remains settled in Pennsylvania that the decision [w]hether to strike . . . a default judgment . . . is left to the sound discretion of the trial court; its decision will not be reversed absent a manifest abuse of discretion or error of law." ***Bittenbender v. Southeastern Pennsylvania Transp. Authority***, 523 A.2d 1173, 1176 (Pa. Super. 1987) (internal quotations omitted).

In its petition to strike, Appellee avers, *inter alia*, that the default judgment should be stricken due to a fatal defect on the face of the record

because Appellant's statutory claim for judgment relied on 21 P.S. §§ 681 and 682, which was repealed and replaced by the Mortgage Satisfaction Act of 2002 ("the New Act"), 21 P.S. § 721-1 *et seq.*, which took effect on February 8, 2003.

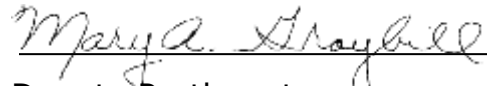
In Count II of Appellant's complaint, Appellant asserts "a statutory action for civil penalty" pursuant to 21 P.S. § 681 and 682 due to Appellee's alleged failure to satisfy the mortgage. Appellant relied exclusively on the repealed law to establish this cause of action in its complaint. However, the New Act provides that an action under its Section 6 is the "exclusive remedy for damages for failure of a mortgagee to issue and present for recording a satisfaction piece." 21 P.S. § 721-6(d)(4). Although Appellant challenges the trial court's grant of Appellee's petition to strike, arguing that he substantially complied with the notice requirements of the New Act, he does not address the defect in the record, *i.e.*, that his complaint relied entirely on a repealed law to support his cause of action.

Because Appellant's complaint sought judgment against Appellee based on a repealed statute, the record could not sustain the default judgment entered against Appellee. ***See Calesnick v. Redevelopment Authority of Philadelphia***, 529 A.2d 528, 530 (Pa. Super. 1987) (stating "[o]ur Courts have held that if the complaint fails to state a cause of action, the default judgment entered thereon should be stricken.") The face of the record contained a fatal defect. Consequently, the trial court properly

granted Appellee's petition to strike, albeit on different grounds.² **See *Lerner v. Lerner***, 954 A.2d 1229, 1240 (Pa. Super. 2008) (stating the appellate court may affirm the trial court on any basis if the result is correct).

Order affirmed.

Judgment Entered.


Deputy Prothonotary

Date: 7/18/2013

² The trial court granted Appellee's petition to strike the default judgment based on its finding that Appellant's notices failed to strictly comply with the notice provisions of the New Act.