

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

WELLS FARGO BANK, N.A., AS TRUSTEE  
FOR THE CERTIFICATEHOLDERS OF  
BEAR STERNS ASSET BACKED  
SECURITIES I TRUST 2007-AC5

Appellee

v.

ALLEN C. HOWELLS AND SVETLANA Z.  
HOWELLS

Appellants

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 2155 EDA 2013

Appeal from the Order Entered June 26, 2013  
In the Court of Common Pleas of Lehigh County  
Civil Division at No(s): 2010-C-5572

BEFORE: ALLEN, J., MUNDY, J., and FITZGERALD, J.\*

MEMORANDUM BY MUNDY, J.:

**FILED APRIL 21, 2014**

Appellants, Allen C. Howells and Svetlana Z. Howells, appeal from the June 26, 2013 order granting the motion for summary judgment filed by Appellee, Wells Fargo Bank, N.A. (Wells Fargo)<sup>1</sup>, and entering an *in rem* judgment in favor of Wells Fargo.<sup>2</sup> After careful review, we affirm.

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\* Former Justice specially assigned to the Superior Court.

<sup>1</sup> Wells Fargo is the trustee for the certificateholders of Bear Stearns Asset Bank Securities I Trust 2007-AC5.

<sup>2</sup> Appellants purport to appeal from the order dated June 24, 2013. We note that on appeal, "[t]he date of entry of an order in a matter subject to the Pennsylvania Rules of Civil Procedure shall be the day on which the clerk (*Footnote Continued Next Page*)

The trial court has summarized the relevant factual and procedural history as follows.

[Appellant] Allen C. Howells executed and delivered a promissory note to Bank of America in consideration for a loan of January 17, 2007. Pursuant to the promissory note, Appellant agreed to pay Bank of America and its successors in interest \$146,250.00 plus interest. Appellants subsequently executed a mortgage on a property located at 3430 Broadway, Allentown, Lehigh County, Pennsylvania in consideration for the loan. The mortgage was assigned to Wells Fargo on May 31, 2012.

[Wells Fargo] asserted that Appellants defaulted on the mortgage on February 1, 2009 by failing to make the required monthly payments of principal and interest due that day and each month thereafter. On September 21, 2010, [Wells Fargo] sent notice to Appellants advising them of the default.

On November 9, 2010, the within action was initiated by the filing of a Complaint in Mortgage Foreclosure. Appellants filed a Suggestion of Bankruptcy on January 20, 2011. The matter was stayed pending the resolution of the bankruptcy proceedings. The stay was lifted on February 22, 2012.

(Footnote Continued) \_\_\_\_\_

makes the notation in the docket that a notice of entry of the order has been given as required by Pa.[R.C.P.] 236(b).” Pa.R.A.P. 108(b). Herein, the trial court’s order granting summary judgment and entering judgment in favor of Wells Fargo was entered on June 26, 2013, when the clerk docketed said order. As that order disposed of all of the claims in the underlying litigation, it was appealable as a final order. Pa.R.A.P. 341(a); **Weible v. Allied Signal, Inc.**, 963 A.2d 521, 525 (Pa. Super. 2008) (concluding that the trial court’s orders granting summary judgment were final orders for Pa.R.A.P. 341 purposes because all of the parties to the underlying litigation were either settled, bankrupted, or dismissed by the grant of summary judgment). We have adjusted the caption accordingly.

Appellants filed preliminary objections to the Complaint on or about April 12, 2012. The Honorable William E. Ford dismissed the preliminary objections on September 17, 2012.

On October 8, 2012, Appellants filed an Answer and New Matter to [Wells Fargo]'s Complaint. [Wells Fargo] filed a responsive pleading to the New Matter on or about October 29, 2012.

On October 23, 2012, [Wells Fargo] served a Request for Admissions on defense counsel. Appellants did not reply. [Wells Fargo] asserted this amounted to an admission that the loan is in default and that Appellants received the requisite notices. Accordingly, [Wells Fargo] filed a Motion for Summary Judgment on March 5, 2013.

On April 4, 2013, Appellants filed a response to the summary judgment motion. Argument was conducted on June 11, 2013[,] addressing the Motion for Summary Judgment. On June 26, 2013, th[e trial c]ourt granted [Wells Fargo]'s Motion for Summary Judgment and entered judgment in favor of [Wells Fargo] and against Appellant[s].

On July 24, 2013, Appellants filed a Notice of Appeal to [this Court]. On July 29, 2013, pursuant to Pennsylvania Rule of Appellate Procedure 1925(b), th[e trial c]ourt ordered Appellants to file a Concise Statement of Matters Complained of on Appeal within [21] days. Appellants failed to file a Concise Statement.

On October 29, 2013, the [trial c]ourt contacted Appellants' counsel to verify that no Concise Statement had been filed as a courtesy to ensure that said statement was not misplaced during service. On October 30, 2013, [trial] court staff spoke with counsel, who indicated that one had not

yet been filed but that he would be filing one immediately. The same day, counsel filed Appellants' Concise Statement.<sup>[3]</sup>

Trial Court Opinion, 10/30/13, at 1-3. Also on that date, the trial court filed its Rule 1925(a) opinion.

On appeal, Appellants present the following issues for our review.

- [1.] Whether it was an error of law to conclude that [Wells Fargo] had standing pursuant to a valid assignment of the mortgage?
- [2.] Whether it was an error of law for the [trial] court to grant summary judgment when there is a material issue of fact regarding the validity of the promissory note?
- [3.] Whether the [trial] court erred in granting summary judgment when there was a material issue of fact regarding the calculation of the amounts allegedly due by [Appellants]?

Appellants' Brief at 5.

Prior to addressing Appellants' claims, we must first determine if Appellants have complied with Pennsylvania Rule of Appellate Procedure 1925(b). In its Rule 1925(a) opinion, the trial court suggests that Appellants' failure to file a timely concise statement constitutes a waiver of all issues on appeal. Trial Court Opinion, 10/30/13, at 3. We agree.

Our Supreme Court has recently held that Rule 1925(b) is a bright-line rule.

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<sup>3</sup> We note that Appellants' concise statement is not contained within the certified record nor is it referenced within the trial court's docket.

Our jurisprudence is clear and well-settled, and firmly establishes that: Rule 1925(b) sets out a simple bright-line rule, which obligates an appellant to file and serve a Rule 1925(b) statement, when so ordered; any issues not raised in a Rule 1925(b) statement will be deemed waived; the courts lack the authority to countenance deviations from the Rule's terms; the Rule's provisions are not subject to *ad hoc* exceptions or selective enforcement; appellants and their counsel are responsible for complying with the Rule's requirements; Rule 1925 violations may be raised by the appellate court *sua sponte*, and the Rule applies notwithstanding an appellee's request not to enforce it; and, if Rule 1925 is not clear as to what is required of an appellant, on-the-record actions taken by the appellant aimed at compliance may satisfy the Rule. We yet again repeat the principle first stated in [***Commonwealth v. Lord***, [719 A.2d 306 (Pa. 1998)]] that must be applied here: "[I]n order to preserve their claims for appellate review, [a]ppellants must comply whenever the trial court orders them to file a Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. 1925. Any issues not raised in a Pa.R.A.P. 1925(b) statement will be deemed waived." [***Id.***] at 309.

***Commonwealth v. Hill***, 16 A.3d 484, 494 (Pa. 2011) (footnote omitted).

Herein, the trial court ordered Appellants to file their concise statement within 21 days of July 29, 2013, making the statement due by August 19, 2013. Appellants failed to file a statement by said date. Rather, as the trial court submits, Appellants did not file their concise statement until October 30, 2013, rendering it untimely by 72 days.<sup>4</sup> Accordingly, following

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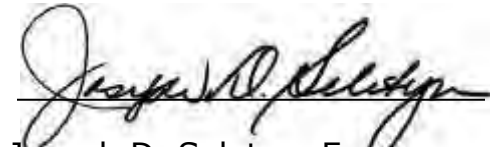
<sup>4</sup> We note that Appellants' concise statement does not appear within the certified record or on the trial court's docket as it appears that Appellants  
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our Supreme Court's instructions in **Hill**, we conclude Appellants have waived their issues on appeal by failing to file a timely Rule 1925(b) statement.<sup>5</sup>

Based upon the foregoing, we conclude Appellants' issues are waived. Therefore, we affirm the trial court's June 26, 2013 order.

Order affirmed. Case stricken from argument list.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", is written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 4/21/2014

(Footnote Continued) \_\_\_\_\_

filed the statement after the transmission of the record to this Court, which also occurred on October 30, 2013.

<sup>5</sup> Despite these procedural errors, the trial court addressed the merits of the issues allegedly raised within Appellants' concise statement in a thorough, well-reasoned, and well-supported 1925(a) opinion. Even though the trial court addressed these issues, **Hill** mandates that we find them waived based upon the untimely filing of said statement. **See Hill, supra**. Yet, if we were to reach the merits of Appellants' claims, we would affirm based on the October 30, 2013 opinion of the Honorable Douglas G. Reichley.