

**[J-24-2013]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

**CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, ORIE MELVIN, JJ.**

BENEFICIAL CONSUMER DISCOUNT COMPANY D/B/A BENEFICIAL MORTGAGE COMPANY OF PENNSYLVANIA,	:	No. 29 WAP 2012
	:	
Appellant	:	Appeal from the Order of the Superior Court entered January 30, 2012 at No. 259 WDA 2011, affirming the Order of the Court of Common Pleas of Allegheny County entered January 10, 2011 at No. GD-06-024554.
v.	:	
	:	ARGUED: April 9, 2013
	:	
PAMELA A. VUKMAN,	:	
	:	
Appellee	:	

**OPINION**

**MR. JUSTICE EAKIN**

**DECIDED: SEPTEMBER 25, 2013**

This is an appeal from the order of the Superior Court affirming the order of the Court of Common Pleas of Allegheny County, which granted appellee’s motion to set aside judgment and sheriff’s sale, and dismissed appellant Beneficial Consumer Discount Company’s praecipe without prejudice. Upon review, we reverse and remand.

In October, 2006, mortgagee Beneficial filed a complaint in mortgage foreclosure against mortgagor appellee, alleging appellee was in default. Prior to the filing, Beneficial provided appellee an “Act 91” notice, discussed below. The parties eventually agreed to a settlement whereby Beneficial received judgment for the accelerated amount due on the mortgage; in turn, Beneficial agreed not to execute on the judgment so long as appellee made regular payments. The trial court approved this settlement in May, 2009.

On April 5, 2010, Beneficial filed an affidavit alleging appellee had defaulted on her obligations under the settlement agreement. The following day, Beneficial filed a praecipe for writ of execution. On August 2, 2010, the property was sold at sheriff's sale; Beneficial was the successful bidder.

On August 31, 2010, appellee filed a document titled "Motion to Set Aside Judgment and Sheriff's Sale," in which she contended Beneficial failed to comply with the requirements of the Homeowner's Emergency Mortgage Act (Act 91), 35 P.S. §§ 1680.401c et seq. Specifically, appellee alleged the Act 91 notice in 2006 failed to inform her of the option of a face-to-face meeting with Beneficial. Following a hearing, the trial court found the Act 91 notice was deficient based on this omission. See Combined Act 91/Act 6 Notice, 5/17/06. The court concluded this stripped it of subject matter jurisdiction, which cannot be waived; therefore, the court set aside the sheriff's sale and judgment, and dismissed Beneficial's original complaint. Trial Court Order, 12/7/11, at 3 (quoting HSBC Bank v. Carter, GD-08-006055, 6/2/10 (Allegheny County), affirmed, No. 1073 WDA 2010, unpublished memorandum (Pa. Super. filed January 30, 2012)) ("proper notice was an essential prerequisite, a jurisdictional prerequisite to filing a mortgage foreclosure action").

Beneficial filed a timely appeal asserting that the notice sent to appellee was not deficient, that appellee was barred from challenging the notice's adequacy at this stage, and that even if the notice was deficient, this fact did not extinguish the trial court's subject matter jurisdiction over this case. Beneficial Consumer Discount Company v. Vukman, 37 A.3d 596, 598-99 (Pa. Super. 2012).<sup>1</sup>

The Superior Court held the Act 91 notice was deficient as contended. Id., at 602. Concerning subject matter jurisdiction, the Superior Court noted, although "[a]ppellee's

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<sup>1</sup> The case reporter misspells appellee's name as "Vukmam."

complaints regarding the deficiencies in the Act 91 notice sound more in the nature of a jurisdictional challenge based upon procedural matters[,]” which “can be waived,” it was bound by its previous decision in Philadelphia Housing Authority v. Barbour, 592 A.2d 47, 48 (Pa. Super. 1991), affirmed per curiam, 615 A.2d 339 (Pa. 1992). Beneficial Consumer Discount Company, at 599-600 (citation omitted). There, the court agreed with the trial court’s holding that foreclosure notice requirements are jurisdictional. Id.; see Philadelphia Housing, at 48 (citing Main Line Federal Savings and Loan Association v. Joyce, 632 F.Supp. 9, 10 (E.D. Pa. 1986)) (“[T]he notice requirements pertaining to foreclosure proceedings are jurisdictional, and, where applicable, a failure to comply therewith will deprive a court of jurisdiction to act.”);<sup>2</sup> Commonwealth v. Hull, 705 A.2d 911, 912 (Pa. Super. 1998) (citation omitted) (“It is beyond the power of a panel of the Superior Court to overrule a prior decision of the Superior Court.”).<sup>3</sup> “For [that] reason, [the court] conclude[d] that the trial court properly considered whether the pertinent Act 91 notice was deficient.” Beneficial Consumer Discount Company, at 600.

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<sup>2</sup> The Superior Court also cited Marra v. Stocker, 615 A.2d 326 (Pa. 1992); however, that case did not address the effect of defective notice on subject matter jurisdiction. There we held certain notice requirements did not apply to the foreclosure in question. Marra, at 329. The only mention of jurisdiction was in then-Justice Zappala’s dissent, in which he noted Main Line Federal, “held that the notice required by Act 6 is a jurisdictional prerequisite to suit such that failure to give notice deprives the court of subject matter jurisdiction[; however, that case] ... has never been adopted by an appellate court of this jurisdiction.” Id., at 331 n.4 (Zappala, J., dissenting) (citing Main Line Federal, at 10).

<sup>3</sup> This Court is not bound by the quoted language from Philadelphia Housing, see Heim v. Medical Care Availability and Reduction of Error Fund, 23 A.3d 506, 510 (Pa. 2011) (citation omitted) (“a per curiam order does not serve as binding precedent”), nor have we adopted or are we bound by Main Line Federal. See In re Stevenson, 40 A.3d 1212, 1216 (Pa. 2012) (“[C]ourts of our Commonwealth are not bound by decisions of federal courts inferior to the U.S. Supreme Court.”).

Beneficial petitioned for allocatur; this Court granted review of the following issue:<sup>4</sup>

Does a lender's use of the Uniform Act 91 Notice divest a trial court of subject matter jurisdiction and require setting aside a completed Sheriff's Sale, vacating a consent judgment, and dismissing a foreclosure action where any claimed defect in the notice implicates only jurisdiction based on a procedural matter, the lender had no discretion in the form of notice it used, the notice was prescribed by the PHFA consistent with express statutory authorization, and the record shows that the borrower-in-default suffered no prejudice from the lender's use of the Uniform Act 91 Notice, received all the protections contemplated by Act 91, and waived any claim of a procedural defect concerning Act 91?

Beneficial Consumer Discount Company v. Vukman, 55 A.3d 100, 100-01 (Pa. 2012) (per curiam). We also requested additional briefing regarding "Whether the recently-enacted Homeowner Assistance Settlement Act, 35 P.S. § 1681.1 et seq., affects our disposition. See Greenough v. Greenough, 11 Pa. 489[, 1849 W.L. 5732] (1849). See also Commonwealth v. Shaffer, [] 734 A.2d 840, 843-844 ([Pa.] 1999)." Id., at 101.

First, Beneficial contends improper notice simply goes to the court's power to act, not its subject matter jurisdiction. Because we determine defective Act 91 notice does not implicate the jurisdiction of the court, the other issues raised need not be addressed, and we remand to the trial court without considering them.

The test for whether a court has subject matter jurisdiction inquires into the competency of the court to determine controversies of the general class to which the case presented for consideration belongs. Thus, as a pure question of law, the standard of review in determining whether a court has subject matter jurisdiction is de novo and the scope of review is plenary.

Mazur v. Trinity Area School District, 961 A.2d 96, 101 (Pa. 2008) (citation omitted).

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<sup>4</sup> Beneficial sets forth its "question" in a single run-on sentence of 115 words, comingling multiple distinct issues. This unnecessary effusiveness erodes comprehension as it goes on. By phrasing clauses in the conjunctive, appellant repeats a too-common error, making the answer sought dependent on establishing every clause set forth. Advocates do not advance their cause by tossing every arguably favorable fact into a single all-encompassing mélange of a sentence. Nevertheless, we will address whether defective notice affects jurisdiction, which despite the verbosity is the relevant question.

In 2006, Act 91 required a mortgagee who desired to foreclose to send notice to the mortgagor “advis[ing] the mortgagor of his delinquency ... and that such mortgagor has thirty (30) days to have a face-to-face meeting with the mortgagee who sent the notice or a consumer credit counseling agency to attempt to resolve the delinquency ... by restructuring the loan payment schedule or otherwise.” 35 P.S. § 1680.403c(a)-(b)(1) (emphasis added), amended by P.L. 841, No. 60, § 2 (July 8, 2008). As the notice sent lacked this clause, the notice was deficient under the statute.

Appellant’s contention is that Act 91 notice is “a procedural requirement or condition precedent that does not impact the general subject matter jurisdiction of the Courts of Common Pleas to hear foreclosure actions.” Appellant’s Brief, at 20 (citing Bell Tel. Co. v. Philadelphia Warwick Co., 50 A.2d 684, 688 (Pa. 1947) (court not without subject matter jurisdiction merely because condition precedent to recovery has not been satisfied); Skelton v. Lower Merion Tp., 148 A. 846, 847 (Pa. 1930) (“Whether or not there are statutory or contractual conditions, compliance with which is essential to [the plaintiff’s] recovery, and whether or not he is obliged to aver that he has complied with them, if there are any, are matters of substance, not of jurisdiction[.]”)). The Superior Court, appellant contends, confused the distinction between jurisdiction and power, improperly concluding it was bound by the comment in Philadelphia Housing, which was dicta based on dicta in a non-binding federal case. Appellant further avers the Superior Court misapprehended this Court’s holding in Marra, see supra n.2, and that no case from the Superior Court or this Court has held a court is deprived of subject matter jurisdiction in a foreclosure action where the Act 91 notice was defective.

Appellee does not question the competency of the courts to entertain foreclosure actions. Instead, she argues, “Act 91 mandates that no foreclosure cause of action exists prior to proper Notice[.]” which is “a prerequisite for the foreclosure action to even be cognizable at law[;]” therefore, “jurisdiction has been specifically removed by a statute or rule of law over pre or defective notice actions[.]” and “subject matter jurisdiction over

such actions is lacking.” Appellee’s Brief, at 13, 19 (citations and internal quotation marks omitted). In support, appellee contrasts, without legal citation, “jurisdictional prerequisite[s],” which “establish[] the conditions under which access to the court is granted or denied,” and “elements of a cause of action that must be demonstrated for the court to actually grant relief.” Id., at 11. Appellee argues that by requiring notice prior to the commencement of a foreclosure action, “the Legislature has ousted subject matter jurisdiction from the courts over foreclosure actions commenced prior to statutorily-defined proper [n]otice.” Id., at 12. Appellee then quotes Act 91 and asserts “not only is the Notice prescribed by Act 91 jurisdictional, jurisdiction is withheld from the court until the Act 91 process is exhausted.” Id., at 16.

Appellee claims the Legislature framed Act 91 “explicitly in terms of ... the right for the cause of action to be commenced” by stating, “Before any mortgagee may[ ]... commence any legal action including mortgage foreclosure to recover under such obligation[, it must comply with Act 91].” Id. (quoting 35 P.S. § 1680.402c(a)). Thereby, appellee contends, the Legislature “altogether eliminated any remedy a pre-Notice foreclosure plaintiff had at the outset under prior statutes or the common law[,]” and as such, “its dictates must be strictly complied with.” Id., at 16-17 (citing Shenango Valley Osteopathic Hospital v. Department of Health, 451 A.2d 434, 437 (Pa. 1982) (citation omitted) (“In all cases where a remedy is provided ... by any act or acts of assembly of this [C]ommonwealth, the directions of the said acts shall be strictly pursued[.]”)).

Lastly, appellee argues that where the Legislature chooses “to forbid a cause of action as opposed to simply changing the rules under which the [court] has the power to grant relief in particular cases[,]” it “depriv[es] the court of the power to even hear the action” absent fulfillment of the new condition. Id., at 21. Appellee contends choosing this more drastic result in the area of mortgage foreclosure is reasonable, given that “[f]oreclosure defendants are almost by definition lacking in financial resources, and this

clearly translates into a deficit in legal resources[.]” and “[m]ost foreclosure cases are not even litigated but go to default judgment, and when they are litigated it is often on a pro-se basis.” Id., at 22.

The question thus is whether Act 91 imposes jurisdictional prerequisites, which “relate[] solely to the competency of the particular court ... to determine controversies of the general class to which the case ... belongs[.]” or whether they are procedural requirements, which impact “the ability of a [court] to order or effect a certain result[.]” in mortgage foreclosure cases. In re Melograne, 812 A.2d 1164, 1167 (Pa. 2002) (citation omitted). “Claims relating to a tribunal’s power are, unlike claims of subject matter jurisdiction, waivable.” Id. (citation omitted); see Jones v. State Automobile Insurance Association, 455 A.2d 710, 712 (Pa. Super. 1983) (quoting Papencordt v. Masterwork Paint Co., 194 A.2d 878, 880-81 (Pa. 1963)) (in determining improper commencement of action by petition and rule was waivable procedural defect, court noted, “Where a court has general jurisdiction over the subject matter of the litigation, any irregularity in the method by which the court obtains jurisdiction of a particular case is usually waived by failure to raise the objection timely. Defects in process or procedure may always be waived provided there is general jurisdiction of the subject matter.”).

Although this Court has never addressed whether Act 91 notice implicates subject matter jurisdiction, the New Jersey Supreme Court recently rejected a mortgagor’s argument that a defect in a pre-foreclosure notice violates a “jurisdictional precondition” and renders any resulting judgment void. See US Bank National Association v. Guillaume, 38 A.3d 570, 587 & n.4 (N.J. 2012). The Court reasoned, “Had the Legislature intended that a foreclosure action be dismissed whenever a timely-served notice omitted even a single item listed in N.J.S.A. 2A:50-56(c), it would have so stated.” Id., at 587. While the New Jersey Court’s decision is not binding, it is persuasive

because the pre-foreclosure notice statute at issue in Guillaume is substantially similar to Act 91.<sup>5</sup> In fact, N.J.S.A. 2A:50-56 is more suggestive of a legislative intent to eradicate a defective notice foreclosure action than Act 91 in that it requires mortgagors to plead compliance with its requirements in their complaints. See N.J.S.A. 2A:50-56(f) (“Compliance with this section shall be set forth in the pleadings of any legal action referred to in this section.”).

Save for exceptions irrelevant to this matter, our Courts of Common Pleas have unlimited original jurisdiction over all proceedings in this Commonwealth, unless otherwise provided by law. Pa. Const. art. 5, § 5; 42 Pa.C.S. § 931(a). In the absence of a clear legislative mandate, laws are not to be construed to decrease the jurisdiction of the courts. See, e.g., Armstrong School District v. Armstrong Education Association, 595 A.2d 1139, 1144 (Pa. 1991) (“The language of [the statute] makes no reference to a decrease in the equity court’s jurisdiction and such a diminution may not be implied.”); In re Jones & Laughlin Steel Corporation, 398 A.2d 186, 191 (Pa. Super. 1979) (“[I]f the legislature’s intention to limit jurisdiction is not clear, we should construe the act in question as imposing no limitation.”), affirmed, 412 A.2d 1099 (Pa. 1980).

Appellee’s entire argument relies on her incorrect assumption that the Legislature has required the cause of action in foreclosure to include a mortgagee’s compliance with

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<sup>5</sup> The New Jersey statute provides:

Upon failure to perform any obligation of a residential mortgage by the residential mortgage debtor and before any residential mortgage lender may accelerate the maturity of any residential mortgage obligation and commence any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage, the residential mortgage lender shall give the residential mortgage debtor notice of such intention at least 30 days in advance of such action as provided in this section.

N.J.S.A. 2A:50-56(a).



Act 91's requirements. A cause of action is "a factual situation that entitles one person to obtain a remedy in court from another person." Black's Law Dictionary 235 (8th ed. 2004). In foreclosure, this factual situation includes a mortgagor's default on a duly executed mortgage. See Pa.R.C.P. 1147(a) (itemizing factual averments required in mortgage foreclosure complaint). The cause of action does not include the procedural requirements of acting on that cause. Appellee's overarching assertion that Act 91 imposes jurisdictional prerequisites on mortgage foreclosure actions is unsupportable.

Turning to the definitions of "procedural law" and "procedure," the Act 91 notice requirements appear to fit comfortably in the procedural realm as they set forth the steps a mortgagee with a cause of action must take prior to filing for foreclosure. See Black's Law Dictionary 1241 (8th ed. 2004) (Procedural law: "The rules that prescribe the steps for having a right or duty judicially enforced, as opposed to the law that defines the specific rights or duties themselves." Procedure: "1. A specific method or course of action. 2. The judicial rule or manner for carrying on a civil lawsuit or criminal prosecution."). Contrary to appellee's argument, the Act 91 notice requirements certainly do not sound in jurisdiction as they do not affect the classification of the case as a mortgage foreclosure action. See In re Melograne, at 1167 (citation omitted) ("Jurisdiction relates solely to the competency of the particular court or administrative body to determine controversies of the general class to which the case then presented for its consideration belongs."). Moreover, the lack of explicit language in Act 91 prescribing that such requirements are jurisdictional cautions against this Court treating them as such. See Armstrong School District, at 1144; In re Jones & Laughlin Steel Corporation, at 191.

The failure to pay the mortgage according to its terms gave Beneficial its cause of action. To act on that cause of action, it was required to give notice under Act 91. As the notice it gave did not meet the requirements of the Act, it was defective and the

procedural requirements for enforcement were not met; that defect, however, did not affect the jurisdiction of the court to hear the matter.

Accordingly, we find the provision of a defective Act 91 notice does not deprive the courts of subject matter jurisdiction, and we remand this case to the trial court.<sup>6</sup>

Order reversed; case remanded. Jurisdiction relinquished.

Former Justice Orié Melvin did not participate in the consideration or decision of this case.

Mr. Chief Justice Castille and Messrs. Justice Baer and McCaffery join the opinion.

Mr. Justice Saylor files a concurring opinion in which Madame Justice Todd joins.

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<sup>6</sup> While we considered the Legislature's recent enactment of the Homeowner Assistance Settlement Act (Act 70), 35 P.S. § 1681.1 et seq., given that our decision is reached without reference to this statute, further analysis of the same is unnecessary.