

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CLAUDIA WILTBANK-JOHNSON, §	§	No. 296, 2011
Appellant, §	§	
v. §	§	Court Below—Superior Court
§	§	of the State of Delaware in and
§	§	for Sussex County
§	§	
HOMEOWNERS LOAN CORP., §	§	
a Delaware corporation; and §	§	
MORTGAGE ELECTRONIC §	§	
REGISTRATION SYSTEMS, INC., §	§	
a Delaware corporation, §	§	
§	§	
Plaintiffs Below, §	§	C.A. No. S10J-05-058
Appellees. §	§	

Submitted: October 31, 2011

Decided: January 20, 2012

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 20th day of January 2012, after careful consideration of the appellant's opening brief and the motion to affirm filed by the appellees, it appears to the Court that:

(1) This appeal is from the Superior Court's denial of the *pro se* appellant's motion to vacate a sheriff sale. For clarity, this Order refers to the appellant, Claudia Wiltbank-Johnson, by her first name, Claudia, and to her siblings by their first names, Benjamin and Kathleen. The Order also refers to (and

the Court has taken judicial notice of) a Court of Chancery matter that is related to the Superior Court matter on appeal.

(2) It appears that Claudia, Benjamin and Kathleen as tenants in common each owned an undivided one-third interest in property located at 406 St. Paul Street in Lewes, Delaware (“the Property”). In 2004, Benjamin and his wife obtained a \$200,000.00 loan (“the Loan”) from the appellees, Homeowners Loan Corporation and Mortgage Electronic Registration Systems (“HLC/MERS”). The Loan was secured by a mortgage on the Property.

(3) In May 2006, Kathleen brought a declaratory judgment action in the Court of Chancery seeking to quiet title and a partition sale of the Property.¹ HLC/MERS filed a cross-claim in the Court of Chancery action against Benjamin and his wife, alleging that they were in default on the Loan.² Eventually an order of judgment by default (“the Default Judgment”) was entered against Benjamin and his wife on HLC/MERS’ cross-claim.³

(4) On May 20, 2010, HLC/MERS began proceedings in the Superior Court to execute on the Default Judgment. HLC/MERS’ execution efforts included levying on Benjamin’s one-third interest in the Property.

¹ See docket at 1, *Brown v. Wiltbank*, Del. Chan., C.A. No. 2170 (May 19, 2006) (filing of complaint for declaratory judgment, quiet to real estate and partition by sale).

² *Id.* See docket at 35 (Feb. 17, 2007) (filing of cross-claim).

³ *Id.* See docket at 72 (Aug. 20, 2007) (issuing order of judgment by default).

(5) On January 18, 2011, Benjamin's interest in the Property was sold to HLC/MERS at a sheriff sale. On February 18, 2011, Claudia filed a motion to vacate the sale on the basis that the parties' rights in the Property had not yet been decided in the Court of Chancery action.⁴ In response to Claudia's motion, HLC/MERS contended that the sale of Benjamin's one-third interest in the Property did not "impede or diminish" Claudia's one-third interest in the Property or her rights in the Court of Chancery action.⁵

(6) The Superior Court held a hearing on Claudia's motion to vacate on March 18, 2011. From the bench, the trial judge denied the motion, and on April 20, 2011, the trial judge issued a written denial. In the days following, the trial judge issued several more orders disposing of various non-conforming post-decisional documents filed by Claudia. Finally, by letter order dated June 1, 2011, the trial judge advised Claudia as follows:

As I stated in my previous letter dated May 10, 2011 (a copy of which is enclosed), I denied your Motion to Vacate Sheriff's Sale on March 18, 2011 (a copy of which is enclosed). Everything that you have filed since then has been untimely and will not be considered.

IT IS SO ORDERED.

⁴ It appears that by memorandum opinion dated October 13, 2011, the Court of Chancery granted Kathleen's petition for partition sale of the Property after concluding that Claudia had not established that she was entitled to a life estate in the Property. *Brown v. Wiltbank*, 2011 WL 5027057 (Del. Ch.).

⁵ HLC/MERS further maintained that it executed on the Default Judgment with the knowledge and permission of the other parties in the Court of Chancery action, including Claudia, who was represented by counsel at the time.

(7) Claudia filed this appeal from the Superior Court’s letter order of June 1, 2011. On appeal, Claudia’s opening brief is difficult to decipher, but it is clear that she strenuously objects to the Superior Court’s denial of her motion to vacate the sheriff sale.⁶ Nonetheless, having considered the parties’ positions on appeal, the Court concludes that that the denial of Claudia’s motion to vacate the sheriff sale should be affirmed.⁷

NOW, THEREFORE IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁶ It is equally clear that Claudia objects to the rulings issued in the Court of Chancery action, but none of those rulings is properly before the Court in this appeal. The Court notes that by Order dated December 2, 2011, we dismissed Claudia’s appeal from the Court of Chancery’s October 13, 2011 memorandum opinion on the basis that the matter was not appealable until the Court of Chancery enters an implementing order. *Wiltbank-Johnson v. Brown*, 2011 WL 6016237 (Del. Supr.).

⁷ See *Burge v. Fidelity*, 648 A.2d 414, 420 (Del. 1994) (affirming “the broad discretion of the Superior Court to confirm or set aside sheriff’s sales”).