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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-661

Filed 21 March 2023

Mecklenburg County, No. 18-CVS-6946

DEUTSCHE BANK NATIONAL TRUST COMPANY, as TRUSTEE for SOUNDVIEW HOME LOAN TRUST 2006-EQ1 ASSET-BACKED CERTIFICATES, SERIES 2006-EQ1; 2006 MASTER ASSET-BACKED SECURITIES TRUST 2006-HE5 MORTGAGE PASS THROUGH CERTIFICATES, SERIES HE5, by and through U.S. BANK, NATIONAL ASSOCIATION, in its capacity as TRUSTEE under POOLING and SERVICING AGREEMENT dated as of DECEMBER 1, 2006, Plaintiffs,

v.

CYRIL N. GAYDOS; KARINA C. GAYDOS; MEHA BHUPENDRA SHAH; FENIL HIREN KUMAR SHAH; GAYDOS & FAMILY 14716 VIA SORRENTO CONDOMINIUM, INC.; U.S. BANK, NATIONAL ASSOCIATION s/i/i PINNACLE BANK s/b/m BANK OF NORTH CAROLINA; PINNACLE BANK s/b/m BANK OF NORTH CAROLINA; MILTON XAVIER EARQUHART a/k/a MILTON XAVIER; JOHN DOES #1-10; MORTGAGE ELECTRONIC REGISTRATIONS SYSTEMS, INC., solely as nominee for BANK OF NORTH CAROLINA and its successors and assigns, Defendants.

Appeal by Defendants Meha Bhupendra Shah, Fenil Hiren Kumar Shah, and U.S. Bank, National Association s/i/i Pinnacle Bank s/b/m Bank of North Carolina from an order entered 26 October 2021 by Judge Robert C. Ervin in Mecklenburg County Superior Court. Heard in the Court of Appeals 7 February 2023.

McGuireWoods LLP, by Scott I. Perle, Bradley R. Kutrow, and Dylan M. Bensinger, for Plaintiff-Appellee Deutsche Bank National Trust Company.

Alexander Ricks PLLC, by Ryan P. Hoffman, Benjamin F. Leighton, and David Q. McAdams, for Defendants-Appellants Meha Bhupendra Shah, Fenil Hiren Kumar Shah, and U.S. Bank, National Association s/i/i Pinnacle Bank s/b/m Bank of North Carolina.

No briefs filed by remaining parties.

RIGGS, Judge.

Defendants Meha Bhupendra and Fenil Hiren Kumar Shah, along with U.S. Bank, National Association s/i/i Pinnacle Bank s/b/m Bank of North Carolina (collectively the “Shahs”), appeal from an order granting summary judgment to Plaintiff Deutsche Bank National Trust Company (“Deutsche Bank”) on its claims restoring a fraudulently extinguished deed of trust and giving Deutsche Bank priority to subsequent interests. On appeal, the Shahs argue that the trial court erred in granting summary judgment because the deed of trust contained a fatal patent ambiguity and failed to encumber the property at issue. After careful review, and because it appears the purported final judgment and other orders included in the record fail to resolve Deutsche Bank’s claims for monetary relief brought against the Shah’s co-defendants, we dismiss the appeal as interlocutory.

I. FACTUAL AND PROCEDURAL HISTORY

Deutsche Bank¹ filed the instant action on 5 April 2018. In its complaint, Deutsche Bank alleged that Defendants Cyril N. and Karina C. Gaydos, Gaydos & Family 14716 Via Sorrento Condominium, Inc., Xavier Milton Earquhart a/k/a Milton Xavier, and John Does #1-10 (collectively the “Gaydos/Earquhart Defendants”) successfully conspired to file a fraudulent satisfaction of a deed of trust held by Deutsche Bank. Deutsche Bank sought monetary damages against the Gaydos/Earquhart Defendants and a declaratory judgment against all named defendants, including the Shahs, who were innocent subsequent purchasers of the property at issue. This latter claim sought to restore the deed of trust fraudulently extinguished by the Gaydos/Earquhart Defendants and have Deutsche Bank’s interest named superior to that held by the Shah’s mortgagee. An amended complaint was filed on 4 May 2018, adding Defendant Mortgage Electronic Registrations Systems, Inc. (“MERS”) as a party.

On 10 February 2020, the Shahs filed their answer and Deutsche Bank voluntarily dismissed its claims against Cyril and Karina Gaydos, MERS, and John Does #1-10. The following day, Deutsche Bank obtained an entry of default as to the

¹ Deutsche Bank was joined by its co-plaintiff, 2006 Master Asset-Backed Securities Trust 2006-HE5 Mortgage Pass Through Certificates, Series HE5, by and through U.S. Bank National Association in its capacity as Trustee under Pooling and Servicing Agreement dated as of December 1, 2006. Deutsche Bank’s co-plaintiff later voluntarily dismissed all its claims and is therefore omitted from discussion in this opinion.

remaining Gaydos/Earquhart Defendants. The Shahs then moved for summary judgment on 25 June 2020, and Deutsche Bank did the same on 5 August 2020.

The trial court heard the parties' pending dispositive motions on 19 July 2021 and later granted summary judgment for Deutsche Bank on its claim for a declaratory judgment against the Shahs. Deutsche Bank then moved for and received a default judgment against the defaulted Gaydos/Earquhart Defendants on 5 April 2022. However, while the default judgment appears final as to the claim for declaratory judgment, it fails to address or award monetary relief for Deutsche Bank's several claims for damages. The Shahs filed a notice of appeal from the trial court's summary judgment order on 27 April 2022.

II. ANALYSIS

Appellate jurisdiction is a necessary prerequisite to the resolution of any appeal on the merits, "and this Court has an obligation to address the issue *sua sponte*." *Duval v. OM Hospitality, LLC*, 186 N.C. App. 390, 392, 651 S.E.2d 261, 263 (2007) (cleaned up) (citation and quotation marks omitted). This includes reviewing the record to discern whether the appeal is interlocutory, which "presents a jurisdictional issue." *Id.* (citation and quotation marks omitted).

Final judgments dispense with all claims and issues and are immediately appealable. *Coles v. Sugarleaf Labs, Inc.*, ___ N.C. App. ___, ___, 880 S.E.2d 394, 398 (2022). However, "[i]nterlocutory orders differ substantially from final judgments both in their character and their appealability." *Id.* An interlocutory order is entered

“during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy.” *Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950). Thus, an order that assigns liability but leaves open the issue of damages, even if denoted a “final” judgment by the trial court, is nonetheless an interlocutory order. *Tridyn Indus., Inc. v. Am. Mut. Ins. Co.*, 296 N.C. 486, 490-91, 251 S.E.2d 443, 447 (1979); *see also* N.C. R. Civ. P. 56(c) (2023) (“A summary judgment, *interlocutory in character*, may be rendered on the issue of liability alone although there is genuine issue as to the amount of damages.” (emphasis added)). So, too, is an order that is final as to some but not all claims or parties. *Tridyn Indus.*, 296 N.C. at 490-91, 251 S.E.2d at 446-47; *see also* N.C. R. Civ. P. 54(a) (2023) (“A judgment is either interlocutory or the final determination of the rights of the parties.”).

Interlocutory orders are generally appealable:

if the order is final as to some but not all of the claims or parties, and the trial court certifies the case for appeal pursuant to N.C. Gen. Stat. § 1A-1, Rule 54(b), or if it affects a substantial right of the appellant that would be lost without immediate review.

Coles, ___ N.C. App. at ___, 880 S.E.2d at 398 (citations and quotation marks omitted). The appellant bears the burden of establishing either circumstance, and “[i]t is not the duty of this Court to construct arguments for or find support for appellant’s right to appeal from an interlocutory order.” *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994) (citations omitted).

Where such a showing is not made in the appellant's principal brief, this Court will dismiss the appeal. *Id.*

The summary judgment order appealed from does not contain a Rule 54(b) certification, and the purported "final" default judgment against the defaulted Gaydos/Earquhart Defendants does not resolve or address the monetary relief sought by Deutsche Bank from those parties. The Shahs do not argue that the summary judgment order affects a substantial right, and instead simply assert that the summary judgment order and default judgment together constitute a final judgment. Because this assertion is not borne out by the pleadings and orders contained in the record, and lacking any showing concerning their effect on a substantial right, we dismiss the Shah's appeal for lack of jurisdiction. *Id.*

APPEAL DISMISSED.

Chief Judge STROUD and Judge CARPENTER concur.

Report per Rule 30(e).