

Cite as 2010 Ark. App. 815

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA 10-367

CHASE HOME FINANCE, LLC
APPELLANT

V.

WILMINGTON O. CHARLES, JR.,
LLOYD A. & MARSHA G. FREEDMAN
LIVING TRUST, ARKANSAS
DEPARTMENT OF FINANCE &
ADMINISTRATION, GARY MORAN,
and ARKANSAS FEDERAL CREDIT
UNION
APPELLEES**Opinion Delivered** DECEMBER 8, 2010APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SIXTH DIVISION
[NOS. CV2007-16477, 2009-1451]

HONORABLE TIM FOX, JUDGE

AFFIRMED IN PART;
REVERSED IN PART**JOHN B. ROBBINS, Judge**

This appeal concerns competing interests in a piece of realty in Little Rock located at 607 Parkway Place, and the validity of a foreclosure decree entered against the property. The original purchaser, Wilmington Charles, Jr., bought the house and land in 2002, and the loan was secured by a mortgage held by appellant Chase Home Finance, LLC (“Chase”). In 2004, Charles was loaned \$16,000 for home improvement by Arkansas Federal Credit Union (“AFCU”), which was secured by a mortgage on the property. In January 2008, AFCU sought to foreclose because Charles was in default; the loan balance was \$7,725.36. In its amended complaint, AFCU requested that it be granted a judgment lien on the property

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“subject to the interests of Chase” but superior to any other interest.¹ Chase was served by certified mail as a named defendant, but it did not answer or respond to AFCU’s motion for default judgment. A foreclosure decree was entered in June 2008. The decree entered judgment against Chase by default, it “foreclosed and held for naught” Chase’s interests, and it granted AFCU a first lien.²

In August 2008, a foreclosure sale was properly advertised and held at the Pulaski County Courthouse, where appellees Lloyd A. and Marsha G. Freedman Living Trust and Gary Moran (collectively “Moran”) made the highest bid of \$10,010. The sale was confirmed in late August 2008. In September 2008, Chase moved to set aside the foreclosure decree. Moran moved to intervene in October 2008. Moran opposed Chase’s motion. AFCU also opposed Chase’s motion. The trial court granted Chase’s motion in January 2009. Upon Moran’s request, another hearing was conducted in October 2009 to consider reinstating the foreclosure decree.³ The trial court granted Moran’s request to intervene and concluded that reinstatement of the foreclosure decree was proper, as set forth in an order filed in December 2009. It is from this order that Chase appeals.

¹There were other interests in the property held by named defendants Wells Fargo Bank and the Arkansas Department of Finance and Administration. Neither of those parties appealed the trial court’s order, so we do not address their interests in this opinion.

²The decree was approved by the attorney for AFCU but not by the attorney for Chase. A copy of the decree was mailed to Chase at its Delaware office.

³A separate cause of action for declaratory judgment filed by Moran regarding this property was consolidated into the foreclosure proceeding.

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Chase asserts that the foreclosure decree that granted relief in excess of what was requested in the foreclosure complaint was void, and therefore, reinstatement of that decree was error. Only Moran responds, agreeing that it was error to enter a foreclosure decree that nullified Chase's first lien, but contending that the error rendered the decree voidable, not void. As an innocent purchaser, Moran contends that the foreclosure decree could not be set aside as to him. We agree with Chase that the foreclosure decree was void, and therefore we reverse that part of the decree.

It is important to note that the parties agree that the foreclosure decree violated Ark. R. Civ. P. 54(c)(2010). That is evident. This rule states in relevant part that “[a] judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment.” *See also* Ark. R. Civ. P. 55(d)(2010). In other words, a default judgment must strictly conform to the allegations of the complaint. *See Renault Central, Inc. v. International Imports of Fayetteville, Inc.*, 266 Ark. 155, 583 S.W.2d 10 (1979); *Kohlenberger, Inc. v. Tyson Foods, Inc.*, 256 Ark. 584, 510 S.W.2d 555 (1974); *Starks v. North Little Rock Policemen's Pension and Relief Fund*, 256 Ark. 515, 510 S.W.2d 305 (1974); *Kerr v. Kerr*, 234 Ark. 607, 353 S.W.2d 350 (1962); *Robinson v. Robinson*, 103 Ark. App. 169, 287 S.W.3d 652 (2008). Moran asserts that it occupies high ground in equity, as an innocent purchaser, citing to *Home Mutual Bldg. & Loan Ass'n v. Brown*, 188 Ark. 98, 64 S.W.2d 89 (1933). That is true and would support their position if the foreclosure decree was voidable, as opposed to void. So, the salient question is whether the foreclosure decree was void or voidable.

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We hold that the foreclosure decree was void, and thus we reverse the reinstatement of the foreclosure decree. We affirm that part of the order on appeal that granted Moran the request to intervene.

We explain our reasoning here. In cases where an appellant claims that a judgment is void, the question is one of law and the standard of review is de novo. *West v. West*, 103 Ark. App. 269, 288 S.W.3d 680 (2008). The general rule is that a judgment entered in excess of the court's power is void. *Born v. Hodges*, 101 Ark. App. 139, 271 S.W.3d 526 (2008). See also 46 Am. Jur. 2d *Judgments* § 297. Although the trial court had personal jurisdiction over Chase, as a party to this litigation, it did not have authority or power to grant greater or different relief to AFCU than that requested in the amended complaint. Thus, the foreclosure decree was void as to the nullification of Chase's lien because the trial court acted in excess of its authority. See *Stein v. York*, 181 Cal. App. 4th 320, 105 Cal. Rptr. 3d 1 (2010); *Ellis v. Ellis*, 118 Idaho 468, 797 P.2d 868 (Ct. App. 1990); *Leen v. Demopolis*, 62 Wash. App. 473, 815 P.2d 269 (Div. 1 1991); *Producers v. Thomason*, 15 Kan. App. 2d 393, 808 P.2d 881 (1991); *Allison v. Boondock's, Sundecker's & Greenthumb's, Inc.*, 36 Wash. App. 280, 673 P.2d 634 (Div. 1 1983).

We reverse that part of the order on appeal that reinstated the foreclosure decree. We affirm as to the trial court granting Moran the right to intervene.

KINARD and ABRAMSON, JJ., agree.