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BAYVIEW LOAN SERVICING, LLC *v.* YOKO ISHIKAWA ET AL.
(AC 45926)

Bright, C. J., and Moll and Suarez, Js.

Syllabus

The substitute plaintiff, L Co., sought to foreclose a residential mortgage on certain real property owned by the defendant Y. The defendant H, Y's former spouse, and Y executed a promissory note secured by the mortgage, and, several years later, but prior to the commencement of the foreclosure action, H quitclaimed his interest in the property to Y and left the residence. After H had been defaulted for failure to appear and Y had been defaulted for failure to plead, the trial court granted the original plaintiff's motion for a judgment of strict foreclosure. After another party was substituted as the plaintiff and its motion to open the judgment was pending, Y filed an answer and special defenses, asserting, inter alia, that the complaint failed to allege that notice of the default and acceleration had been provided to both Y and H, as required by federal regulation (24 C.F.R. § 201.50). Subsequently, L Co. filed a motion for strict foreclosure as to liability only, claiming that notice had been provided to Y and H, and that 24 C.F.R § 201.50 was inapplicable. Y objected, claiming that H had not received notice, that the receipt of notice by H was a condition precedent to bringing the foreclosure action, and that there was a genuine issue of material fact concerning H's receipt of notice such that L Co. was not entitled to summary judgment. The trial court granted L Co.'s motion for summary judgment as to liability only, determining that there were no genuine issues of material fact and that L Co. was entitled to summary judgment as to liability. The court further concluded that it was unaware of any authority that would permit Y to raise her special defense on behalf of H and that, even if she could, the defense still failed, as 24 C.F.R. § 201.50 was inapplicable, and, further, even if it had applied, notice had been provided to H in compliance with the regulation and the notice provision of the mortgage. On Y's appeal to this court, held that the trial court properly granted L Co.'s motion for summary judgment as to liability only because there were no genuine issues of material fact as to whether H had received proper notice: the trial court properly rejected Y's special defense of lack of notice as to H, as research revealed no authority demonstrating that Y was the proper party to assert a special defense, even if viable, that was personal to H; moreover, Y's claim that she had standing to pursue her special defense based on L Co.'s alleged failure to provide notice to both her and H, and, thus, a condition precedent to the commencement of the foreclosure action had not been complied with, was without merit, because once H executed the quitclaim deed, H had no legal interest in the property securing the note and had no equitable or statutory right of redemption in the property, and it would have been illogical to permit Y to rely on H's alleged failure to receive notice to defend against L Co.'s foreclosure action against her.

Argued May 15—officially released July 25, 2023

Procedural History

Action to foreclose a mortgage on certain real property owned by the named defendant, and for other relief, brought to the Superior Court in the judicial district of Ansonia-Milford, where Limosa, LLC, was substituted as the plaintiff; thereafter, the court, *Hon. Arthur A. Hiller*, judge trial referee, granted the substitute plaintiff's motion for summary judgment as to liability only and rendered a judgment of strict foreclosure, from which the named defendant appealed to this court. *Affirmed.*

Earle Giovanniello, for the appellant (named defendant).

Jeffrey M. Knickerbocker, for the appellee (substitute plaintiff).

Opinion

MOLL, J. In this residential mortgage foreclosure action, the defendant Yoko Ishikawa[1] appeals from the judgment of strict foreclosure rendered by the trial court in favor of the plaintiff, Limosa, LLC.[2] On appeal, the defendant claims that the court improperly granted the plaintiff's motion for summary judgment as to liability only because it erred in determining that there were no genuine issues of material fact as to the defendant's special defense alleging that Robert D. Hackett, the defendant's former spouse and a co-obligor on the underlying note and mortgage, had not been given notice of default and acceleration pursuant to 24 C.F.R. § 201.50. We affirm the judgment of the trial court.

The following procedural history is relevant to our resolution of this appeal. On March 25, 2017, Bayview Loan Servicing, LLC (Bayview), commenced the present foreclosure action against the defendant and Hackett. In its complaint, Bayview alleged as follows. On December 22, 2011, the defendant and Hackett were indebted in the amount of $335,443 to Bank of America, N.A., in connection with a promissory note executed in favor thereof. The note was secured by a mortgage executed by the defendant and Hackett on residential property located at 318 Sarah Circle in Orange. By way of a quitclaim deed dated December 15, 2013, and recorded on the Orange land records on February 4, 2014, Hackett conveyed his interest in the property to the defendant. Following certain assignments, Bayview became the holder of the note and the mortgage in 2016. The last installment of principal and interest received on the note was for the payment due on or before July 1, 2016. Finally, Bayview alleged that the principal balance due on the note was $362,488.87.

On July 12, 2018, after Hackett had been defaulted for failure to appear and the defendant had been defaulted for failure to plead, the trial court, *Moran, J.*, granted Bayview's motion for a judgment of strict foreclosure, with the law days commencing on September 17, 2018. Thereafter, the court opened the judgment on September 17, 2018, and again on October 22, 2018, to extend the law days. Pursuant to the October 22, 2018 order, the court extended the law days to commence on January 7, 2019.

On January 2, 2019, pursuant to Practice Book § 14-1, the defendant filed a claim for a statutory stay on the basis of a Chapter 7 bankruptcy petition that she had filed on the same day. On September 3, 2019, Bayview filed a notice reflecting that the United States Bankruptcy Court for the District of Connecticut had closed the defendant's bankruptcy case on April 12, 2019, thereby terminating the automatic bankruptcy stay. The same day, Anthium, LLC (Anthium), filed a motion to open the judgment of strict foreclosure in

order for the court (1) to substitute it as the plaintiff following certain assignments of the mortgage, (2) to permit it to amend the complaint filed by Bayview to reflect the substitution, and (3) to reenter a judgment of strict foreclosure with new law days. On December 23, 2019, the court simply ordered that Anthium was substituted as the plaintiff in lieu of Bayview.

On September 13, 2019, while Anthium's September 3, 2019 motion to open was pending, the defendant filed an answer and special defenses directed to the "amended complaint," which we construe to mean the original complaint filed by Bayview.[3] Other than admitting to the allegation that Hackett had quitclaimed his interest in the property to her, the defendant denied having knowledge or information sufficient to respond to the remaining allegations in the complaint. In addition, relevant to this appeal, the defendant's second special defense[4] asserted that the complaint failed to allege that notice of default and acceleration (notice) had been given to her and to Hackett as required by 24 C.F.R. § 201.50.[5]

On October 21, 2021, the plaintiff filed a motion for summary judgment as to liability only against both Hackett and the defendant. In its accompanying supporting memorandum of law, the plaintiff asserted that (1) it had established a prima facie case of foreclosure and (2) the defendant's special defenses were untenable. With respect to the defendant's second special defense, the plaintiff argued that (1) insofar as the note and the mortgage required it to provide notice,[6] which it did not concede, such notice had been given, as the plaintiff had sent notice of default to the defendant and Hackett by first class mail, postage prepaid, as well as by certified mail, to the property address on October 20, 2016, as reflected in a supporting affidavit, and (2) 24 C.F.R. § 201.50 was inapplicable. On December 30, 2021, the defendant filed an objection, arguing only that Hackett did not receive notice of default, as he had left the residence in 2008, and that the note required compliance with 24 C.F.R. § 201.50, which, according to the defendant, was a condition precedent to bringing the present foreclosure action.[7] On April 29, 2022, after hearing argument on April 28, 2022, the court, *Hon. Arthur A. Hiller*, judge trial referee, ordered additional briefing on the notice issue. In its posthearing brief, the plaintiff argued that the defendant could not, as a matter of law, assert on behalf of Hackett that he had failed to receive notice. Alternatively, the plaintiff (1) maintained that 24 C.F.R. § 201.50 did not apply and (2) argued that, if the regulation were applicable, then it had complied with the regulation. In her posthearing brief, the defendant contended that (1) receipt of notice by Hackett was a condition precedent to bringing the present foreclosure action and (2) there was a genuine issue of material fact concerning Hackett's receipt of notice, such that the plaintiff was not entitled to summary

judgment as to liability only.

On May 9, 2022, the court issued an order granting the plaintiff's motion for summary judgment as to liability only against the defendant and Hackett. The court determined that the plaintiff had established its prima facie case to foreclose the mortgage. With respect to the defendant's second special defense, the court concluded that (1) it was "not aware of any authority that would allow the defendant to raise this defense on behalf of Hackett," and (2) "[e]ven if [she] could raise this defense, it still fails."[8] With regard to the latter, the court determined that 24 C.F.R. § 201.50 was inapplicable and, even if the regulation applied, notice was provided to Hackett in compliance with the regulation, as well as the notice provision of the mortgage. In light of its determinations, the court concluded that there were no genuine issues of material fact and that the plaintiff was entitled to summary judgment as to liability only. On September 30, 2022, the court rendered a judgment of strict foreclosure, setting the law days to commence on November 29, 2022. This appeal followed.[9]

The defendant claims that the court improperly granted the plaintiff's motion for summary judgment as to liability only because there is a genuine issue of material fact as to whether Hackett had received the notice. In response, in addition to addressing the merits of the defendant's claim, the plaintiff argues that the defendant lacks standing to assert, as a defense to the foreclosure action against her, that Hackett had failed to receive the notice. The defendant counters that she has standing to raise her second special defense because the actual receipt of the notice by Hackett was a condition precedent to bringing the present foreclosure action. We agree with the plaintiff that the defendant lacks standing to raise her second special defense, and, therefore, we need not address the merits of the defendant's claim.

We begin by setting forth the applicable standard of review. "A determination regarding standing concerns a question of law over which we exercise plenary review." (Internal quotation marks omitted.) *Caliber Home Loans, Inc.* v. *Zeller*, 205 Conn. App. 642, 650, 259 A.3d 1, cert. denied, 338 Conn. 914, 259 A.3d 1179 (2021). "When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue . . . ." (Internal quotation marks omitted.) *Handsome, Inc.* v. *Planning & Zoning Commission*, 317 Conn. 515, 525, 119 A.3d 541 (2015).

Put simply, as the court determined, the defendant cannot maintain a defense to the plaintiff's foreclosure action against her predicated on the plaintiff's alleged failure to deliver the notice to Hackett. The defendant has not cited, and our research has not revealed, any authority demonstrating that she is the proper party to

assert a special defense, even if viable, that is personal to Hackett. See *Stamford Hospital* v. *Vega*, 236 Conn. 646, 657, 674 A.2d 821 (1996) ("[i]n general, a party does not have standing to raise rights belonging to another"); *Megin* v. *New Milford*, 125 Conn. App. 35, 37–38, 6 A.3d 1176 (2010) ("[t]he general rule is that one party has no standing to raise another's rights" (internal quotation marks omitted)).[10]

The defendant maintains that she has standing to pursue her second special defense because "[i]f notice was not given to both borrowers, the condition precedent was not complied with." At the same time, however, she concedes that "by virtue of [the] quitclaim deed from . . . Hackett to [the defendant] . . . they were no longer joint tenants. As estranged former spouses, they were not engaged in a common enterprise." This argument cuts against her position that she has standing to raise her second special defense. A duly executed quitclaim deed "has the force and effect of a conveyance to the releasee of all the releasor's right, title and interest in and to the property described . . . . [It] may be used as a release of a mortgage, attachment, judgment lien or any other interest in real property." General Statutes § 47-36f. By virtue of the quitclaim deed, Hackett had no legal interest in the property securing the note and no equitable or statutory right of redemption in the property. See *Twichell* v. *Guite*, 53 Conn. App. 42, 53, 728 A.2d 1121 (1999) (defendant had "no present interest in the property in question" in light of quitclaim deed). Under these circumstances, it would strain logic to permit the defendant to rely on Hackett's alleged failure to receive the notice to defend against the plaintiff's foreclosure action against her.

The judgment is affirmed and the case is remanded for the purpose of setting new law days.

In this opinion the other judges concurred.

[1] Robert D. Hackett, Yoko Ishikawa's former spouse, was named as a defendant in the complaint filed by the original plaintiff, Bayview Loan Servicing, LLC. Hackett, who was defaulted for failure to appear and against whom judgment was rendered, is not participating in this appeal. Accordingly, we refer to Yoko Ishikawa as the defendant and to Robert D. Hackett by his surname.

[2] This action was originally brought by Bayview Loan Servicing, LLC. On October 4, 2021, the court, *Hon. Arthur A. Hiller*, judge trial referee, granted a motion to substitute Limosa, LLC, as the plaintiff following certain assignments of the mortgage. Accordingly, we refer to Limosa, LLC, as the plaintiff.

[3] The only complaint in the record is the complaint filed by Bayview. As this court has stated, "when, in an action to foreclose a mortgage, there is a substitution of a new plaintiff arising out of the assignment of the underlying debt and security, it is not necessary for the substitute plaintiff to file an amended complaint." *F.P., Inc.* v. *Collegium & Wethersfield Ltd. Partnership*, 33 Conn. App. 826, 831, 639 A.2d 527, cert. denied, 229 Conn. 917, 642 A.2d 1211 (1994).

[4] The defendant's first special defense asserted that the complaint failed to allege encumbrances as required by Practice Book § 10-69.

[5] Title 24 of the Code of Federal Regulations, § 201.50 (b), provides: "Notice of default and acceleration. Unless the borrower cures the default or agrees to a modification agreement or repayment plan, the lender shall provide the borrower with written notice that the loan is in default and that the loan maturity is to be accelerated. In addition to complying with applicable

State or local notice requirements, the notice shall be sent by certified mail and shall contain:

"(1) A description of the obligation or security interest held by the lender;

"(2) A statement of the nature of the default and of the amount due to the lender as unpaid principal and earned interest on the note as of the date 30 days from the date of the notice;

"(3) A demand upon the borrower either to cure the default (by bringing the loan current or by refinancing the loan) or to agree to a modification agreement or a repayment plan, by not later than the date 30 days from the date of the notice;

"(4) A statement that if the borrower fails either to cure the default or to agree to a modification agreement or a repayment plan by the date 30 days from the date of the notice, then, as of the date 30 days from the date of the notice, the maturity of the loan is accelerated and full payment of all amounts due under the loan is required;

"(5) A statement that if the default persists the lender will report the default to an appropriate credit reporting agency; and

"(6) Any other requirements prescribed by the Secretary [of Housing and Urban Development]."

[6] Paragraph 8 of the note provides in relevant part: "Giving of Notices. Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address. . . ."

Paragraph 13 of the mortgage provides in relevant part: "Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. . . . Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph."

[7] In objecting to the plaintiff's motion for summary judgment as to liability only, the defendant did not contend that *she* had failed to receive any required notice of default.

[8] We construe the court's decision to reflect that the court rejected the defendant's first special defense. See footnote 4 of this opinion. The defendant does not raise a claim of error on appeal regarding her first special defense.

[9] On October 20, 2022, the plaintiff filed a motion to dismiss this appeal on the basis that the appeal was late and/or frivolous, which this court denied.

[10] As the United Supreme Court has noted, although questions of standing usually arise as to a plaintiff's standing to assert a claim, "[a] similar standing issue arises when the litigant asserts the rights of third parties defensively, as a bar to judgment against him. . . . In such circumstances, there is no [Article] III standing problem; but the prudential question is governed by considerations closely related to the question [of] whether a person in the litigant's position would have a right of action on the claim." (Citations omitted.) *Warth* v. *Seldin*, 422 U.S. 490, 500 n.12, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975). "There are good and sufficient reasons for this prudential limitation on standing when rights of third parties are implicated—the avoidance of the adjudication of rights which those not before the [c]ourt may not wish to assert, and the assurance that the most effective advocate of the rights at issue is present to champion them." *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 80, 98 S. Ct. 2620, 57 L. Ed. 2d 595 (1978). Similarly, although the standing issue in the present case does not implicate the court's subject matter jurisdiction to resolve the underlying dispute between the plaintiff and the defendant, our conclusion that the defendant cannot raise a defense personal to Hackett is governed by the same prudential limitation.