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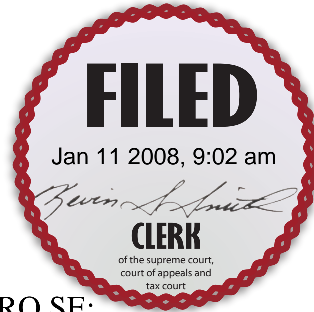

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IN THE COURT OF APPEALS OF INDIANA

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, successor by merger with Bank One, National Association, f/k/a The First National Bank of Chicago, as Trustee Under the Pooling and Servicing Agreement Dated as of January 1, 1999,

Appellant-Plaintiff,

vs.

WILLIAM L. COGLIANESE, JR.,

Appellee-Defendant.

No. 45A04-0701-CV-46

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Hawk P.C. Kautz, Temporary Judge
Cause No. 45D10-0506-MF-262

January 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Plaintiff JPMorgan Chase Bank, N.A., successor to Bank One, N.A. ("Chase Bank") challenges the denial of its Indiana Trial Rule 60(B)(7) motion to set aside a summary judgment order in favor of Appellee-Defendant William L. Coglianese, Jr. ("Coglianese") upon Chase Bank's complaint seeking to foreclose upon real estate purchased by Darlene Watson ("Watson") and subsequently conveyed to her son Coglianese. Chase Bank also challenges the trial court's jurisdiction to award attorney's fees in favor of Coglianese. We dismiss the purported appeal of the Trial Rule 60 decision and affirm the award of attorney's fees.

Issues

Chase Bank raises two issues for review:

I. Whether it is entitled to relief from a judgment pursuant to Trial Rule 60(B)(7); and

II. Whether the trial court lacked jurisdiction to award attorney's fees.

Coglianese cross-appeals, raising the sole issue of whether this Court has jurisdiction over the purported appeal.

Facts and Procedural History

Watson purchased real estate commonly known as 7026 West 135th Street in Cedar Lake, Indiana. On June 10, 1998, Watson executed a promissory note providing National Consumer Services Corp., LLC (NCS) with a security interest in the real estate in the amount of $61,920.00. The mortgage was recorded on June 23, 1998 in the Office of the Recorder of Lake County. In 2000, Watson quit-claimed her interest in the real estate to her son

Coglianese.

On August 8, 2001, Watson filed a pro-se complaint in the United States District Court for the Northern District of Indiana seeking a declaration that the mortgage at issue was void. On October 15, 2001, Watson was awarded a default judgment against NCS and Fairbanks Capital Corporation ("Fairbanks") in the amount of $21,000.00 and the mortgage was declared "null and void." (App. 90.)

On June 13, 2005, Chase Bank, having been assigned the interests of NCS in the mortgage and promissory note, filed a mortgage foreclosure action naming as defendants Coglianese and Home American Credit, Inc. (the holder of a subsequently recorded mortgage lien). On September 6, 2005, Coglianese filed a pro-se motion to dismiss. On November 7, 2005, Chase Bank filed a motion for summary judgment. On November 14, 2005, Coglianese filed a motion requesting that the trial court take judicial notice of the declaration of the federal district court that the subject mortgage was null and void.

On January 6, 2006, the trial court conducted a hearing upon the pending motions, treating the motion to dismiss and motion for judicial notice filed by Coglianese as a motion for summary judgment. On January 20, 2006, Chase Bank filed its "Motion to Stay Proceedings and to Refrain from Entering Judgment in Favor of William Coglianese." (App. 92.) The memoranda submitted contemporaneously with the motion advised the trial court that the federal district court had set aside the default judgment against Fairbanks and would likely set aside the default judgment against NCS. Kimberly Gilbert, the Bankruptcy Trustee responsible for distributing assets of Watson's bankruptcy estate, had apparently agreed that the default judgment against NCS was voidable, and had agreed to cooperate in setting aside

the judgment.

On January 23, 2006, the Lake Superior Court entered summary judgment in favor of Coglianese. Chase Bank filed a motion to correct error, which the trial court denied in part on March 3, 2006. Chase Bank filed a supplemental affidavit in support of its motion to correct error. On May 12, 2006, the trial court entered an order denying the motion to correct error. Chase Bank did not appeal the order.

On May 31, 2006, Chase Bank filed its Motion to Vacate pursuant to Indiana Trial Rule 60(B)(7). A hearing was conducted on September 13, 2006. On September 19, 2006, Coglianese filed a pro-se Motion to Vacate and Expunge Void Order (with reference to the 2006 federal district court order). On October 16, 2006, the trial court entered an order denying the respective motions. The trial court found that Chase Bank had failed to appeal the denial of the motion to correct error but instead attempted to collaterally attack that order via a Trial Rule 60 motion for equitable relief. Accordingly, the trial court characterized Chase Bank's Trial Rule 60 motion as "frivolous, unreasonable, and groundless." (App. 18.)

The trial court ordered Coglianese to file an affidavit setting forth his attorney's fees and costs, and ordered Chase Bank to file a written response no later than December 1, 2006. The trial court set a hearing "on the foregoing I.C. 34-52-1-1(b) matters" for December 8, 2006 at 1:30 p.m.

On November 30, 2006, Chase Bank filed its Notice of Appeal in this Court, advising that the order appealed was a final judgment as to all claims and all parties. On December 8, 2006, Chase Bank appeared at the attorney's fees hearing and objected that the trial court lacked subject matter jurisdiction to conduct the hearing. On December 22, 2006, the trial

court awarded Coglianese $6,805.32 as attorney's fees. On January 22, 2007, Chase Bank filed a second Notice of Appeal, contending that it was entitled, pursuant to Appellate Rule 14(A)(1), to an interlocutory appeal of right from the December 22, 2006 order. The matters were consolidated by this Court.

Discussion and Decision

It is the duty of the Court of Appeals to determine whether it has jurisdiction before proceeding to determine the merits of any case. Montgomery, Zukerman, Davis, Inc. v. Chubb Group of Ins. Co., 698 N.E.2d 1251, 1252-53 (Ind. Ct. App. 1998), trans. denied. When the Court determines that it does not have jurisdiction, it shall dismiss the appeal. Id. at 1253. The authority of this Court to exercise appellate jurisdiction generally is limited to appeals from final judgments. Allstate Ins. Co. v. Fields, 842 N.E.2d 804, 806 (Ind. 2006), reh'g denied. A final appealable order or judgment is one that disposes of all of the issues as to all of the parties and puts an end to the particular case. Montgomery, 698 N.E.2d at 1253. "An appeal from an interlocutory order is not allowed unless specifically authorized by the Indiana Constitution, statutes, or the rules of court." Allstate Ins. Co. v. Scroghan, 801 N.E.2d 191, 193 (Ind. Ct. App. 2004), trans. denied.

Indiana Appellate Rule 2(H) provides:

> A judgment is a final judgment if:
> (1) it disposes of all claims as to all parties;
> (2) the trial court in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment (i) under Trial Rule 54(B) as to fewer than all the claims or parties, or (ii) under Trial Rule 56(C) as to fewer than all the issues, claims or parties;
> (3) it is deemed final under Trial Rule 60(C);

(4) it is a ruling on either a mandatory or permissive Motion to Correct Error which was timely filed under Trial Rule 59 or Criminal Rule 16; or
(5) it is otherwise deemed final by law.

Jurisdiction – October 16, 2006 Order

The trial court concluded that Chase Bank's motion for equitable relief lacked merit, but scheduled a hearing upon Coglianese's claim for statutory attorney's fees. As such, the trial court disposed of fewer than all the claims between the parties. Chase Bank nevertheless filed a Notice of Appeal on November 30, 2006 and advised this Court that a final judgment had been entered (although it had been ordered to appear for hearing in the trial court on the remaining matters on December 8, 2006).

It appears that Chase Bank pursued the appeal under Trial Rule 60(C), which provides in relevant part:

> A ruling or order of the court denying or granting relief, in whole or in part, by motion under subdivision (B) of this rule shall be deemed a final judgment, and an appeal may be taken therefrom as in the case of a judgment.

Trial Rule 60(C) establishes that a 60(B) ruling constitutes a final judgment, permits an appeal, and also "triggers the timing deadline for taking such an appeal." Allstate, 842 N.E.2d at 809. In the Allstate decision, our supreme court addressed when an appeal can be taken from a motion for relief under Trial Rule 60(B) when the motion challenges an interlocutory order. Id. at 806. Relying on the rules governing Indiana trial and appellate proceedings which generally restrict appellate recourse until after the entry of a final judgment or other final action by the trial court, the Court held that Trial Rule 60(B) authorizes a motion for relief only from final, not interlocutory orders. Id. Additionally, no

appeal may be taken under Trial Rule 60(C) from the denial of a motion for relief from an interlocutory order granting default judgment on less than all issues. Id.

Here, the Trial Rule 60(B) motion sought to set aside a grant of summary judgment, an order upon all issues before the trial court at that time. Thus, it is not a challenge to an interlocutory order as was the case in Allstate. The October 16, 2006 order is facially a final denial of Trial Rule 60(B) relief and such would typically end all trial court litigation between the parties. However, the substance of the October 16, 2006 order clearly indicates that the order is interlocutory in nature, as its provisions contemplate further submissions from the parties and a hearing before final relief is ordered. For purposes of appellate jurisdiction, it was not a final judgment because it did not put an end to the particular case or finally adjudicate the rights of the parties. See Montgomery, 698 N.E.2d at 1253 (clarifying that a final judgment is one which disposes of all claims of all of the parties).

Chase Bank did not obtain discretionary certification of the interlocutory order so that it became a final appealable order, pursuant to Appellate Rule 14(B). The trial court did not, pursuant to T.R. 54(B), expressly determine that there was "no just reason for delay" and direct entry of judgment so that an appeal might be taken upon the issue resolved by its judgment. Chase Bank did not properly and timely invoke the jurisdiction of this Court but rather attempted to appeal an interlocutory order as a final judgment, without certification. We do not entertain a discretionary interlocutory appeal where the trial court did not certify its order for interlocutory appeal. Daimler Chrysler Corp. v. Yaeger, 838 N.E.2d 449, 450 (Ind. 2005). We therefore dismiss the purported appeal of the October 16, 2006 order.

Jurisdiction – December 22, 2006 Order

On January 22, 2007, Chase Bank filed a second Notice of Appeal, contending that it was entitled, pursuant to Appellate Rule 14(A)(1), to an interlocutory appeal of right from the December 22, 2006 order. By the time of the second Notice of Appeal, appealing the December 22, 2006 order, all matters between the parties had been disposed of and thus the appeal could not properly be characterized as interlocutory. However, despite this mischaracterization, the appeal of the December 22, 2006 order was timely, and we do not lack jurisdiction because an improper interlocutory appeal was attempted.

Nevertheless, the sole contention advanced by Chase Bank with respect to the December 22, 2006 order is that the trial court lacked subject matter jurisdiction to conduct the hearing and enter the order because jurisdiction had transferred to this Court with the filing of the Notice of Completion of the Clerk's Record on December 6, 2006.[1] However, we have determined that this Court did not acquire jurisdiction over an appeal of the October 16, 2006 order. The trial court exercised its continuing jurisdiction to dispose of the remaining controversy between the parties.

The purported appeal of the October 16, 2006 order is dismissed. The order of December 22, 2006 is affirmed.

Dismissed in part; affirmed in part.

NAJAM, J., and CRONE, J., concur.

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[1] Indiana Appellate Rule 8 provides: "The Court on Appeal acquires jurisdiction on the date the trial court clerk issues its Notice of Completion of the Clerk's Record. Before that date, the Court on Appeal may, whenever necessary, exercise limited jurisdiction in aid of its appellate jurisdiction, such as motions under Rules 18 and 39."