

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

BRENDA PRILL f/k/a MASHBURN,

Plaintiff,

v.

DENNIS OSTRANDER and
BARCLAYS BANK of DELAWARE,

Defendants.

File No. 16-000301-CH

Hon. Richard N. LaFlamme

OPINION AND JUDGMENT QUIETING TITLE

Background

The parties are before the Court on Plaintiff's Motion for a Default Judgment to Quiet Title against both Defendants and for a Monetary Judgment against Defendant Dennis Ostrander ("Mr. Ostrander"), pursuant to MCR 2.603(B)(3).

Both Defendants are in default. On February 22, 2016, Defendant Barclays Bank of Delaware ("Barclays Bank") was served with a Summons, Complaint, and Case Scheduling Order. Defendant Barclays Bank did not appear or file any appearance, and was found in default on April 14, 2016. On July 7, 2016, Mr. Ostrander was served pursuant to an Order for Alternate Service. Mr. Ostrander did appear and object, but has not moved to set aside the default that was entered against him on August 1, 2016.

Plaintiff is seeking a Default Judgment to include personal liability for outstanding property tax payments against Mr. Ostrander based upon a ruling made by the Honorable Daniel A. Goostrey in the 12th Judicial District Court case of *Ostrander v. Mashburn*, Case No. 13-2686-SP.

Following a motion hearing on September 30, 2016, this Court took the matter under advisement in order to review Judge Goostrey's findings in *Ostrander v. Mashburn*.

Facts

This case involves real property located in the City of Jackson, Jackson County, Michigan, commonly known as 1514 Chapin Street, Jackson, MI 49203 ("Property"), and more particularly described as:

The West 3 RODS of Lot 7 and all of Lot 8, Block 2, Eaton's Eastern Addition to the City of Jackson, Jackson County, Michigan, according to the recorded plat thereof, as recorded in Liber 2 of Plats, Page 31, Jackson County Records.

On December 12, 2004, Defendant Ostrander sold the Property to Plaintiff Brenda Prill ("Mrs. Prill"), f/k/a Brenda Mashburn, and her then-husband Brian Mashburn ("Mr. Mashburn") pursuant to a land contract, for the purchase price of \$35,000.00. A Memorandum of Land Contract describing this sale was recorded on February 10, 2010, in Liber 1936, Page 565, Jackson County Records.

On June 15, 2012, the Honorable Susan E. Beebe entered a Judgment of Divorce between Mrs. Prill and Mr. Mashburn, in Case No. 12-000350-DO, which did not address any real estate interests. On September 11, 2015, Mr. Mashburn filed a Quit Claim Deed, recorded in Liber 2062, Page 0945, granting any and all of his interest in the Property to Mrs. Prill.

On December 16, 2013, in *Ostrander v. Mashburn*, Case No. 13-2686-SP, the Honorable Daniel A. Goostrey entered a Judgment in favor of Mrs. Prill and Mr. Mashburn, finding that Mrs. Prill and her ex-husband, Mr. Brian Mashburn, had paid the subject land contract in full.

On April 13, 2015, Defendant Barclays Bank of Delaware recorded a Judgment Lien, recorded in Liber 2052, Page 0299, Jackson County Records, against all Jackson County property owned by Mr. Ostrander.

Standard of Law

MCR 2.603(B)(3) permits a party to file a motion requesting a default judgment and permits the court to conduct a hearing “or order references it deems necessary and proper.”

Analysis

Mrs. Prill’s ownership interest pre-dates Barclays Bank’s ownership interest, as Barclay Bank’s, April 13, 2015, Judgment Lien against Defendant Ostrander, was recorded after the Memorandum of Land Contract, which was recorded on February 10, 2010. Therefore, Barclay Bank’s Judgment Lien does not attach to Mrs. Prill’s ownership interest in the Property. *See* MCL 565.29 (The priority of one real estate interest over another is determined by the order of recording).

This Court reviewed the transcripts of the proceedings before the Honorable Daniel A. Goostrey to determine what findings were made by the Court in the District Court Case of *Ostrander v. Mashburn*, Case No. 13-2686-SP. Judge Goostrey found that Mr. Mashburn and Mrs. Prill made payments totaling approximately \$40,000.00 on the land contract to Mr. Ostrander. While Judge Goostrey made no ruling regarding an applicable interest rate, it is clear from his ruling that the principal and interest were paid in full on the land contract.

However, Judge Goostrey did not make any ruling regarding property tax liability.¹ Although the Letter, dated November 11, 2008, signed by Mr. Ostrander indicates that property taxes were to be included in the Mashburns’ payment on the land contract, since Judge Goostrey applied all of those

¹ Therefore, the doctrines of res judicata and/or collateral estoppel do not apply here, as the claim and/or issue has not been previously decided on the merits. *See McCoy v Cooke*, 165 Mich App 662, 666; 419 NW2d 44 (1988) (“[R]es judicata, or merger and bar, precludes re-litigation of the same claim while collateral estoppel precludes re-litigation of the same issue.”).

payments to the land contract, and there has been no other evidence presented which provides a basis for Mr. Ostrander's personal liability for outstanding property taxes, the Court concludes that Mr. Ostrander is not liable for any portion of the outstanding taxes on the Property.

Therefore, the Court quiets title in favor of Plaintiff Mrs. Prill, but denies Plaintiff's request for a personal monetary judgment against Mr. Ostrander for the outstanding taxes on the Property.

Based on the above analysis, **IT IS HEREBY ORDERED AND ADJUDGED** that Plaintiff Brenda Prill's Motion to Enter Default Judgment Quieting Title and for Monetary Judgment, pursuant to MCR 2.603(B)(3), is **GRANTED IN PART** and **DENIED IN PART**.

Plaintiff's Motion for a Default Judgment Quieting Title is **GRANTED**. Judgment is hereby entered quieting title to the Property described herein, in favor of Plaintiff Brenda Prill, as the owner free and clear of any interest of Defendants Dennis Ostrander and Barclays Bank of Delaware, but not as to any other interest.

Plaintiff's Motion for a Default Monetary Judgment against Defendant Dennis Ostrander for outstanding property tax liability is **DENIED**.

IT IS SO ORDERED.

This is a final order which disposes of all claims and closes the file.

Dated: October 25, 2016

/s/Richard N. LaFlamme
Richard N. LaFlamme, Circuit Court Judge

The undersigned certifies that a copy of the above document was served upon attorneys of record by first class mail.

Dated: October 25, 2016

/s/Jenna Furman
Jenna Furman, Judicial Attorney