

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL 2017 COV-5 PH12:00

REVERSE MORTGAGE SOLUTIONS, INC.	:	1767 EDA 2018
<i>Plaintiff/Appellant,</i>	:	
v.	:	FEBRUARY TERM, 2018
JOHN DOE, BOBBY JOHNSON AND/OR	:	Case No. 01861
TENANT/OCCUPANT	:	
<i>Defendant/Appellee.</i>	:	

OPINION

On appeal is the Court’s May 8, 2018 order denying the Motion for Writ of Possession (“Motion”) of plaintiff/appellant Reverse Mortgage Solutions, Inc. (“Reverse Mortgage”), which sought possession of a property located at 2124 Federal Street, Philadelphia, PA 19146 (the “Property”) and ejectment of occupants “John Doe, Bobby Johnson and/or Tenant/Occupant.” The Court denied the Motion because it lacked jurisdiction to eject occupants that Reverse Mortgage failed to identify or serve and, more importantly, ejecting such occupants would violate their Constitutional due process rights. For these reasons, as set forth in more detail below, the Court respectfully requests that the Superior Court affirm the Court’s decision.

FACTS

On March 1, 2017, plaintiff/appellant Reverse Mortgage commenced a mortgage foreclosure action against Bobby Johnson, the record owner of a property located at 2124 Federal Street, Philadelphia, PA 19146 (the “Property”). (Foreclosure Complaint, Tr. Crt. Dkt. 170207613 (“Forcl. Dkt.”) at 03/01/17). After Mr. Johnson failed to answer the complaint or appear at a scheduled conciliation conference, Judge Rosalyn K. Robinson entered an order directing Mr. Johnson to answer the mortgage foreclosure complaint within ten days. (Order, Forcl. Dkt. at 07/14/17). Mr. Johnson did not answer the complaint and, on the praecipe of

Reverse Mortgage, the Office of Judicial Records entered a default judgment against him. (Default Judgment, Forcl. Dkt. at 08/07/17). The sheriff sold the Property on November 7, 2017. (Sheriff's Sale, Forcl. Dkt. at 11/09/17). Reverse Mortgage took title to the Property on December 27, 2017. (Recorded Deed, Tr. Crt. Dkt. 180201861 ("Ejmt. Dkt.") at 02/19/18).

On February 19, 2018, Reverse Mortgage commenced an ejectment action for possession of the Property. (Ejectment Complaint, Ejmt. Dkt. at 02/19/18). In the complaint, Reverse Mortgage named "John Doe and/or Tenant/Occupant" as defendants. (*Id.*) On February 26, 2018, D'wayne Henriksson, a process server for Reverse Mortgage, personally served a copy of the complaint on Mr. Johnson at the Property. (Affidavit of Service, Ejmt. Dkt. at 03/06/18). Reverse Mortgage filed a return of service with the Court, which stated that Mr. Henriksson served "John Doe and/or Tenant/Occupant" by "handing a copy at the residence of the Defendant(s) to an adult member of the family with whom he/she resides or to the adult person in charge of the residence because no adult family member was found." (*Id.*) Significantly, the affidavit failed to identify any relationship between Mr. Johnson and the purported other occupants. (*Id.*) Nor did the affidavit state any title or position held by Mr. Johnson to substantiate that he was "in charge" of the residence. (*Id.*)

On March 20, 2018, Reverse Mortgage filed a praecipe to index Mr. Johnson as a defendant. (Praecipe to Index Occupant, Ejmt. Dkt. at 03/20/18). No other occupants were indexed as defendants. (*See Ejmt. Dkt.*)

Neither Mr. Johnson nor any other occupant of the Property answered the ejectment complaint. (*See id.*) The Office of Judicial Records entered a default judgment on April 2, 2018. (Default Judgment, Ejmt. Dkt. at 04/02/18). On April 12, 2018, Reverse Mortgage filed the Motion against Bobby Johnson and the unidentified occupants. (Motion for Writ of Possession,

Ejmt. Dkt. at 04/12/18). The Court denied the motion (Order, Ejmt. Dkt. at 05/08/18) and Reverse Mortgage timely appealed to the Superior Court. (Notice of Appeal, Dkt. at 06/07/18).

STANDARD OF REVIEW

The Superior Court's scope of review of a Common Pleas Court order denying a writ of possession in a foreclosure action is plenary and the standard of review is *de novo*. *Johnson v. Bullock-Freeman*, 61 A.3d 272, 274 (Pa. Super. 2013).

DISCUSSION

The Court did not err by denying Reverse Mortgage's Motion because it lacked jurisdiction to eject the unidentified occupants and ejecting these occupants on this record would violate their Constitutional due process rights.

Proper service of process is a prerequisite to a court's jurisdictional authority over a party. *Nat'l Forests II, Inc. v. Keta Realty Co.*, 130 A.3d 19, 30 (Pa. Super. 2015)(quoting *Sharp v. Valley Forge Med. Ctr. and Heart Hosp.*, 221 A.2d 185, 187 (Pa. 1966)). A party must strictly follow the procedural rules for affecting service of process for a court to have jurisdiction. *Id.* A judgment entered by a court that lacks jurisdiction over a party purported to be bound by the judgment is null. *Barnes v. McKellar*, 644 A.2d 770, 773 (Pa. Super. 1994).

“Original process may be served ...by handing a copy... at the residence of the defendant to an adult member of the family with whom he resides; but if no adult member of the family is found, then to an adult person in charge of such residence; or ... at any office or usual place of business of the defendant to his agent or to the person for the time being in charge thereof.” Pa.R.C.P. 402(a). “When service of original process has been made the sheriff or other person making service shall make a return of service forthwith.” Pa.R.C.P. 405(a). “A return of service

by a person other than the sheriff shall be by affidavit" and "filed with the prothonotary."

Pa.R.C.P. 405(d)–(e).

"A return of service shall set forth the date, time, place and manner of service, the *identity of the person served* and any other facts necessary for the court to determine whether proper service has been made." Pa.R.C.P. 405(b)(emphasis added). A return of service must contain *sufficient* information for a court to determine that service was proper. *Cintas Corp. v. Lee's Cleaning Servs., Inc.*, 700 A.2d 915, 918 (Pa. 1997). A court lacks jurisdiction over a party if it cannot make this determination. *See id.*; *see also Serrino v. Cty. of Luzerne Tax Claim Bureau*, No. 2014 C.D. 2012, 2013 WL 3952312, at *4 (Pa. Commw. Aug. 1, 2013)(quoting *Cintas Corp.*, 700 A.2d at 920).

A plaintiff in an action seeking possession of real property may obtain original process over an unknown party in possession even if that party is not yet identified as a defendant in the action at the time of service. *See Pa.R.C.P. 410*. To obtain service, the plaintiff must identify the possessor at the time of service and must then, on praecipe, index the name of the possessor as a defendant in the action. Pa.R.C.P. 410(b)(1). Rule 410 does not relieve a plaintiff from identifying the person served in a return of service. *See Pa.R.C.P. 410*; *see also Pa.R.C.P. 405*.

Mr. Henriksson, process server for Reverse Mortgage, attempted to serve occupant "John Doe and/or Tenant/Occupant" by handing a copy of the complaint to Bobby Johnson, who Mr. Henriksson identified as a family member or an adult in charge of the Property. (Affidavit of Service, Ejmt. Dkt. at 03/06/18). Mr. Henriksson did not, however, identify "Tenant/Occupant" or "John Doe" in his return of service, or provide *any* information for the Court to determine whether they were properly served. (*Id.*) Nor did he substantiate a family relationship, let alone any relationship between Mr. Johnson and any other occupant of the Property. Similarly,

nothing in the affidavit provided any facts to support the notion that Mr. Johnson was “in charge” of the Property. Any order granting Reverse Mortgage’s Motion would have been void for any one of these reasons.

More significantly, ejecting a resident without notice violates that resident’s due process rights. *See generally, Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). “An *elementary and fundamental* requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Id.* (emphasis added). This requirement is a *constitutional minimum* that applies regardless of whether an action is *in personam* or *in rem*. *Id.* at 312. As the Supreme Court noted in *Mullanne*:

It is not readily apparent how the courts of New York did or would classify the present proceeding, which has some characteristics and is wanting in some features of proceedings both *in rem* and *in personam*. But in any event we think that the requirements of the Fourteenth Amendment to the Federal Constitution *do not depend upon a classification* for which the standards are so elusive and confused generally and which, being primarily for state courts to define, may and do vary from state to state.”)(emphasis added).

Mullane, 339 U.S. at 312.

It hardly need be stated that handing a copy of the complaint to Bobby Johnson without making any inquiry into the identities of the other occupants at the Property or their relationship with Mr. Johnson is not reasonably calculate to apprise them of the ejectment action.

The Court is aware that in the real world unauthorized occupants of a property do not necessarily disclose their identity or relationships. The rules, however, anticipate this situation and provide alternative service methods consistent with due process requirements. If service cannot be made under Rule 402 of the Pennsylvania Rules of Civil Procedure, a party may move

for a special order directing the method of service. *See* Pa.R.C.P. 430. When supported by a proper affidavit, this Court has routinely granted motions for special service and allowed original service of process by posting the subject property. What the Court will not allow is for the plaintiff to serve a person found at the Property and, with no factual basis whatsoever, to eject others without proper notice and an opportunity to be heard.

CONCLUSION

For the foregoing reasons, the Court respectfully requests that the Superior Court affirm the Court's decision to deny the Motion for Writ of Possession of Reverse Mortgage Solutions, Inc.

Abbe F. Fletman
Abbe F. Fletman, J.

Dated: November 5, 2018

REVERSE MORTGAGE SOLUTIONS v. JOHNSON

1767 EDA 2018
Case No. 180201861

PROOF OF SERVICE

I hereby certify that I, on this day, caused to be served the foregoing person(s) in the manner indicated below

PLAINTIFF:

REVERSE MORTGAGE SOLUTIONS INC
14405 WALTERS RD
SUITE 200
HOUSTON TX 77014

Type of Service: Chambers Mailbox (City Hall 229)

ATTORNEY FOR PLAINTIFF:

NICOLE LABLETTA, ESQ.
425 RXR PLAZA
UNIONDALE NY 11556

MORRIS A. SCOTT, ESQ.
RAS LAVRAR LLC
425 COMMERCE DR
SUITE 150
FORT WASHINGTON PA 19034

ELIZABETH L. WASSALL, ESQ.
111 WOODCREST ROAD
SUITE 200
CHERRY HILL NJ 08003

DAVID FEIN, ESQ.
701 MARKET STREET
SUITE 5000
PHILADELPHIA PA 19106

MATTHEW K. FISSEL, ESQ.
701 MARKET STREET
SUITE 5000
PHILADELPHIA PA 19106

Type of Service: Chambers Mailbox (City Hall 229)

DEFENDANT:

BOBBY JOHNSON
2124 FEDERAL ST
PHILADELPHIA PA 19146

OCCUPANT, TENANT
2124 FEDERAL ST
PHILADELPHIA PA 19146

Type of Service: Chambers Mailbox (City Hall 229)

Dated: November 5, 2018



Joan Bernard