

CAUSE NO. 2023-03096

MIDFIRST BANK,)
)
) *Plaintiff,*)
) **vs.**)
)
) **KARIN LESLIE BLAIR AND**)
) **KACEY MIKELLE BLAIR,**)
)
) *Defendants.*)
) **129TH JUDICIAL DISTRICT**
)
)
) **ALL ABOUT PROPERTY, LLC,**)
)
) *Intervenor Plaintiff,*)
) **vs.**)
)
) **MIDFIRST BANK,**)
)
) *Intervenor Defendant.*)
) **OF HARRIS COUNTY, TEXAS**

**INTERVENOR PLAINTIFF ALL ABOUT PROPERTY, LLC'S RESPONSE TO
MIDFIRST BANK'S MOTION TO STRIKE**

COMES NOW Intervenor All About Property, LLC (“AAP” or “Intervenor”), and files this Response to Plaintiff MidFirst Bank’s (“MidFirst”) Motion to Strike AAP’s Petition in Intervention and First Supplement to its Original Petition in Intervention (the “Motion to Strike”), and in support thereof would respectfully show the Court as follows:

I. INTRODUCTION

MidFirst seeks to prevent AAP—the current record owner of the property at issue—from participating in this lawsuit that directly affects AAP’s property rights. MidFirst argues that AAP lacks a justiciable interest, that AAP’s claims are barred by res judicata, and that AAP’s intervention would complicate the case. MidFirst further asserts that the outcome of this case will have no effect on AAP’s property interests.

MidFirst's arguments are without merit. AAP has a direct and substantial interest in this lawsuit, which will determine the validity of MidFirst's claimed lien and its right to foreclose on the property owned by AAP. AAP's intervention is necessary to protect its property rights, and the intervention is proper under Texas law.

Additionally, res judicata does not bar AAP's claims because there has been no final judgment on the merits, as the prior federal court judgment is currently on appeal. Moreover, the issues in this case are not identical to those in the prior federal case. For these reasons, as more fully explained below, AAP respectfully requests that the Court deny MidFirst's Motion to Strike.

II. BACKGROUND AND FACTS

AAP is the current undisputed record owner of the real property located at 14618 Tab Lane, Houston, Texas 77070 (the "Property"). As detailed in the petition and supporting exhibits, AAP acquired the Property at a constable's execution sale on November 2, 2021, following an HOA foreclosure. AAP holds a Constable's Execution Deed, recorded in the Harris County Property Records.

MidFirst claims a lien interest in the Property under a Deed of Trust executed by the prior owners, Christopher M. Blair and Karin L. Blair (the "Blairs"), to secure a mortgage loan.

On April 28, 2022, Plaintiff filed an action against Midfirst which was quickly removed to federal court. Plaintiff's claims against MidFirst were that they did not have the legal standing to foreclose due to invalid assignments of the subject residential mortgage loan. AAP also asserted claims of quiet title and alternatively, the equitable right of redemption.

Later, on January 17, 2023, MidFirst filed this lawsuit against the heirs of Christopher Blair, seeking to enforce its alleged lien and to foreclose on the Property. This is the same lien that AAP

was alleging in federal court that MidFirst has no standing under. AAP was not named as a party in MidFirst's petition against the Blairs, despite being the record owner of the Property.

On March 27, 2023, AAP filed its Petition in Intervention in this state court case, asserting its interest in the Property and raising claims and defenses regarding MidFirst's purported lien.

Meanwhile, in the Federal case, AAP moved for abstention due to the state court case being filed, and Midfirst moved for summary judgment. A summary judgment was granted for Midfirst and AAP's motion for abstention was denied on February 8, 2024. AAP appealed to the 5th Circuit, and the appeal has not been decided. The latest event was AAP's reply brief was filed earlier this month on September 6, 2024.

Now, MidFirst has moved to strike AAP's intervention in the state court case, arguing that AAP lacks a justiciable interest, that its claims are barred by res judicata, and that its intervention would complicate the case. However, AAP has a direct and substantial interest in this lawsuit, which will determine the validity of MidFirst's claimed lien and its right to foreclose on the Property owned by AAP.

III. ARGUMENTS AND AUTHORITIES

A. AAP Has a Justiciable Interest in This Lawsuit

Under Texas law, a person or entity may intervene in a lawsuit if it could have brought the same action, or any part thereof, in its own name, or if it would be able to defeat recovery, in whole or in part, if the action had been brought against it. *In re Union Carbide Corp.*, 273 S.W.3d 152, 154–55 (Tex. 2008); Tex. R. Civ. P. 60. A justiciable interest is a direct and substantial interest in the subject matter of the litigation such that the intervenor will either gain or lose by the judgment. *Law Offices of Windle Turley, P.C. v. Ghiasinejad*, 109 S.W.3d 68, 70 (Tex. App.—Fort Worth 2003, no pet.). The purpose of intervention is to avoid a multiplicity of suits by resolving related

claims in one proceeding. *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990).

Here, AAP has a direct and substantial interest in the subject matter of this lawsuit. As the current record owner of the Property, AAP's ownership rights will be directly affected by the outcome of this case. If MidFirst is permitted to foreclose on the Property, AAP stands to lose its ownership interest. AAP is entitled to protect its property rights and to challenge the validity of MidFirst's claimed lien and its right to foreclose. "[W]hen the third party has a property interest, whether legal or equitable, that will be affected by [a foreclosure] sale, the third party has standing to challenge such a sale to the extent that its rights will be affected by the sale." *Morlock, L.L.C. v. Nationstar Mortg., L.L.C.*, 447 S.W.3d 42, 45 (Tex. App.—Houston [14th Dist.] 2014, pet. denied).

Moreover, AAP could have brought the same action in its own name, and in fact has previously brought an action against MidFirst regarding the same property and issues. Therefore, AAP has a justiciable interest in this lawsuit and is entitled to intervene. *See id.*

B. AAP's Intervention Is Proper and Necessary

While the trial court has some discretion to strike a petition in intervention, such discretion is abused when the intervenor meets the test for intervention and striking the intervention would prejudice the intervenor's rights. See *In re Union Carbide Corp.*, 273 S.W.3d at 155; *Guar. Fed. Sav. Bank*, 793 S.W.2d at 657. The test for intervention requires that: (1) the intervenor could have brought the same action, or any part thereof, in its own name, or, if the action had been brought against it, it would be able to defeat recovery, in whole or in part; (2) the intervention will not complicate the case by an excessive multiplication of the issues; and (3) the intervention is

essential to effectively protect the intervenor's interest. See *Guar. Fed. Sav. Bank*, 793 S.W.2d at 657. AAP meets all these criteria:

1. As discussed above, AAP could have brought (and has brought) the same action in its own name.

2. AAP's intervention will not complicate the case unduly or cause an excessive multiplication of the issues. The issues raised by AAP are directly related to the existing claims and defenses in this case, and AAP's participation will promote judicial economy by resolving all related claims in a single proceeding.

3. AAP's intervention is essential to effectively protect its interests. As the current owner of the Property, AAP's property rights are directly at stake in this lawsuit. If AAP is not allowed to participate, it will be unable to protect its ownership interest and challenge the validity of MidFirst's claimed lien and right to foreclose.

“In general, an action to foreclose on a lien is an ‘in rem’ proceeding, and only those individuals or entities having a current interest in the property subject to foreclosure are necessary parties to a foreclosure suit. *Hibernia Energy III, LLC v. Ferae Naturae, LLC*, ---S.W.3d ---, 2022 WL 17819744, at *7 (Tex. – App. El Paso 2022, no pet.) (citing *Pereira v. Gulf Elec. Co.*, 343 S.W.2d 334, 336 (Tex. App. – Waco 1960, writ ref'd n.r.e.) (while a former owner of property may be a proper party in a suit to foreclose a lien, the former owner is not a necessary party in an “in rem” proceeding); *Hartfield v. Greber*, 207 S.W. 85, 86 (Tex. [Comm’n Op.] 1918) (“It is a well-settled rule of the common law that, in a suit to foreclose a mortgage, it is not necessary to make the debtor a party to the suit, where he has parted with his interest in the property, unless a personal judgment is sought against him.”))

Furthermore, under the Texas Declaratory Judgments Act, when declaratory relief is sought, all persons who have or claim any interest that would be affected by the declaration must be made parties. Tex. Civ. Prac. & Rem. Code § 37.006(a). MidFirst is seeking declaratory relief in this case regarding the validity and enforceability of its lien. As the record owner of the Property, AAP is a necessary party to this action.

C. Res Judicata Does Not Bar AAP's Claims

MidFirst argues that AAP's claims are barred by res judicata due to a prior federal court judgment involving the same parties and issues. This argument fails because there is no final judgment on the merits, as the federal court judgment is currently on appeal, and the issues in this case are not identical to those in the prior case.

Under Texas law, the doctrine of res judicata, or claim preclusion, prevents the relitigation of claims that have been finally adjudicated or that arise out of the same subject matter and could have been litigated in a prior action. To establish res judicata, the following elements must be proven:

1. A prior final judgment on the merits by a court of competent jurisdiction;
2. Identity of parties or those in privity with them; and
3. A second action based on the same claims as were raised or could have been raised in the first action.

See *Citizens Ins. Co. of Am. v. Daccach*, 217 S.W.3d 430, 449 (Tex. 2007).

In this case, the federal court judgment is not final because it is currently on appeal to the United States Court of Appeals for the Fifth Circuit. Under Texas law, a judgment is not considered final for purposes of res judicata until it is final on appeal. See *Scurlock Oil Co. v. Smithwick*, 724 S.W.2d 1, 6 (Tex. 1986) (“[A] judgment is not final so long as appellate proceedings are pending.”);

see also *Mower v. Boyer*, 811 S.W.2d 560, 562 (Tex. 1991). Therefore, res judicata does not apply because there is no final judgment on the merits.

Moreover, the issues in this case are not identical to those in the prior federal case. In the federal case, AAP asserted claims against MidFirst challenging its standing to foreclose. In this state court case, MidFirst is seeking to foreclose on the Property by enforcing its alleged lien against the heirs of Christopher Blair, without including AAP—the current owner of the Property—as a party. AAP’s intervention raises defenses and claims necessary to protect its property rights in response to MidFirst’s claims.

Additionally, under Texas law, res judicata does not bar defenses that could not have been raised in the prior action, or that are necessary to protect a party’s property rights in a subsequent action. See *Texas Beef Cattle Co. v. Green*, 921 S.W.2d 203, 211 (Tex. 1996).

D. The Outcome of This Case Will Directly Affect AAP’s Property Interests

MidFirst asserts that the results of this case will have no effect on AAP’s property interests. This assertion is incorrect. MidFirst is seeking to enforce its claimed lien and to foreclose on the Property. Such foreclosure would divest AAP of its ownership interest in the Property. AAP has a constitutional right to protect its property from wrongful foreclosure. See Tex. Const. art. I, § 19 (due course of law). Denying AAP the opportunity to participate in this case would deprive AAP of due process and the ability to protect its property rights.

Therefore, the outcome of this case will directly and substantially affect AAP's property interests, and AAP must be allowed to participate in this lawsuit to protect those interests.

IV. CONCLUSION AND PRAYER

For the foregoing reasons, AAP respectfully requests that the Court deny MidFirst Bank’s Motion to Strike AAP’s Petition in Intervention and First Supplement to its Original Petition in Intervention, and allow AAP to participate in this case as an intervenor.

WHEREFORE, PREMISES CONSIDERED, Intervenor All About Property, LLC prays that the Court deny MidFirst Bank’s Motion to Strike, allow AAP’s intervention in this case, and grant such other and further relief to which AAP may be justly entitled.

Respectfully submitted,

JEFFREY JACKSON & ASSOCIATES, PLLC

By: /s/ Jeffrey C. Jackson
Jeffrey C. Jackson
State Bar No. 24065485
2500 E. TC Jester Blvd., Suite 285
Houston, Texas 77008
Tel: (713) 861-8833
Fax: (713) 682-8866
Email: jeff@jjacksonllp.com

ATTORNEY FOR INTERVENOR
ALL ABOUT PROPERTY, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon all counsel of record via Certified Mail, Return Receipt Requested, Facsimile and/or the Court’s Texas E-File system or email on September 19, 2024.

Shelley L. Hopkins
HOPKINS LAW, PLLC
3 Lakeway Center Court, Suite 110
Austin, Texas 78734
512-600-4320 (T)
shelley@hopkinslawtexas.com
Robert D. Forster, II

BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP
4004 Belt Line Road, Suite 100
Addison, Texas 75001
972-386-5040 (T)
972-341-0734 (F)
robertfo@bdfgroup.com

*Attorneys for Defendants Midland Mortgage, a Division of Midfirst Bank and
Mortgage Electronic Registration Systems, Inc.*

/s/ Jeffrey C. Jackson
JEFFREY C. JACKSON

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Myra Nguyen on behalf of Jeffrey Jackson

Bar No. 24065485

myra@jjacksonpllc.com

Envelope ID: 92226784

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Shelley Hopkins	24036497	shelley@hopkinslawtexas.com	9/19/2024 1:55:50 PM	SENT
Robert Forster	24048470	robertfo@bdfgroup.com	9/19/2024 1:55:50 PM	SENT
Leanna Kimball		leannak@bdfgroup.com	9/19/2024 1:55:50 PM	SENT
Piper Armstrong		piper@hopkinslawtexas.com	9/19/2024 1:55:50 PM	SENT

Unofficial Copy Office of Malvern Business District Clerk