

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

BAYVIEW LOAN SERVICING, LLC,	:	APPEAL NO. C-080532
	:	TRIAL NO. A-0801709
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
SOLOMON COOK	:	
	:	
and	:	
DOROTHEA COOK,	:	
	:	
Defendants-Appellants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

In this appeal, we are asked to decide whether the trial court abused its discretion by appointing a receiver upon the request of a mortgagee in a foreclosure action. We hold that it did not.

Defendant-appellant Solomon Cook executed two promissory notes in favor of Silver Hill Financial, LLC, for the sums of \$1.26 million and \$157,500. The notes were secured by mortgages on certain property that were executed by Cook and his wife, defendant-appellant Dorothea Cook.

Silver Hill then assigned its interest in the notes to plaintiff-appellee Bayview Loan Servicing, LLC.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Bayview later instituted a foreclosure action against the Cooks and asked the trial court to appoint a receiver for the mortgaged property. The court granted the motion, and the Cooks now appeal.

In a single assignment of error, the Cooks argue that the trial court erred by appointing a receiver in violation of R.C. 2735.01(B). The Cooks also contend that the terms of the court's appointment order were flawed.

Typically, the appointment of a receiver in a foreclosure action is governed by R.C. 2735.01(B). That section authorizes the appointment of a receiver if one of two circumstances is demonstrated: (1) that the mortgaged property "is in danger of being lost, removed, or materially injured," or (2) that a condition of the mortgage has not been performed, and "the property is probably insufficient to discharge the mortgage debt."² But parties may, by the terms of their mortgage agreement, waive the necessity for the statutory determinations.³

Moreover, where the mortgagee seeks enforcement of a provision in the mortgage agreement conferring the right to collect rents and apply them to the debt, and the agreement allows the mortgagee, upon the commencement of a foreclosure action, to seek the appointment of a receiver without notice to the mortgagor, the authority to appoint a receiver is conferred by R.C. 2735.01(F). That section authorizes the appointment of a receiver "[i]n all other cases in which receivers have been appointed by the usages of equity."⁴

² R.C. 2735.01(B).

³ See *Harajli Mgmt. & Inv., Inc. v. A&M Inv. Strategies, Inc.*, 167 Ohio App.3d 546, 2006-Ohio-3052, 855 N.E.2d 1262, ¶158; *Metro. Sav. Bank v. Papadelis* (Sept. 13, 1995), 9th Dist. No. 2380-M.

⁴ See *Fed. Land Bank of Louisville v. DeRan* (1944), 74 Ohio App. 365, 59 N.E.2d 54 (applying G.C. 11894, now codified as R.C. 2735.01).

A trial court has broad discretion to appoint a receiver, and a reviewing court will not disturb the trial court's judgment unless the trial court abused its discretion.⁵

In this case, the mortgage agreements, as well as separate loan documents, included assignments to Bayview of the Cooks' rights to any leases and rents for the mortgaged property. In addition, the mortgages contained provisions entitling Bayview, in the event of any default, to apply for the appointment of a receiver for the property "without notice and without regard for the adequacy of the security for the [d]ebt and without regard for the solvency of Borrower, any Guarantor, Indemnitor or of any person, firm or other entity liable for the payment of the [d]ebt."

Because the Cooks had executed assignments of rents and leases to Bayview, and had expressly waived any requirement for a preappointment determination of the value of the mortgaged property, the trial court's appointment of a receiver was authorized by R.C. 2735.01(F) and did not constitute an abuse of discretion.

The Cooks contend that even if the court's appointment of a receiver was proper, its entry appointing the receiver was flawed in several respects. Specifically, they argue that the entry provided for an insufficient bond to protect them from potential malfeasance by the receiver, and that it improperly granted powers to the receiver with respect to the sale of the property and the payment of expenses associated with property.

Calculation of the receiver's bond and the expansion or limitation of the receiver's powers are matters committed to the sound discretion of the trial court.⁶ We

⁵ See *State ex rel. Celebrezze v. Gibbs* (1991), 60 Ohio St.3d 69, 72, 573 N.E.2d 62.

⁶ See R.C. 2735.03 and 2735.04; see, also, *Gibbs*, supra, at 74.

OHIO FIRST DISTRICT COURT OF APPEALS

see nothing in the record to suggest that the court's attitude in making its order was unreasonable, arbitrary, or unconscionable.⁷

Consequently, we overrule the assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on February 18, 2009
per order of the Court _____.
Presiding Judge

⁷ *Quonset Hut v. Ford Motor Co.* (1997), 80 Ohio St.3d 46, 47, 684 N.E.2d 319; *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 482 N.E.2d 1248.