

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

HSBC BANK USA, N.A., AS TRUSTEE, : APPEAL NO. C-190187  
IN TRUST FOR THE REGISTERED : TRIAL NO. A-1200734  
HOLDERS OF ACE SECURITIES :  
CORP. HOME EQUITY LOAN TRUST, : *JUDGMENT ENTRY.*  
SERIES 2006-FM2, ASSET BACKED :  
PASS-THROUGH CERTIFICATES, :

Plaintiff-Appellee, :

vs. :

CARLEEN DATES, :

Defendant-Appellant. :

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellee HSBC Bank USA, N.A., as Trustee, in trust for the registered holders of ACE Securities Corp. Home Equity Loan Trust, Series 2006-FM2, Asset Backed Pass-Through Certificates (“HSBC Bank”) filed a foreclosure action against defendant-appellant Carleen Dates. Dates had purchased the house in 2006, executing a note in favor of Fremont Investment & Loan. The note was endorsed in blank by Fremont and later assigned to HSBC Bank in 2011. After the foreclosure action was filed, HSBC Bank filed a motion for summary judgment, which the trial court granted in 2014. The property was sold in December of 2018, and the sale was confirmed by the trial court on February 8, 2019, with an amended entry filed on March 7, 2019.

Dates appeals, raising four assignments of error. She first claims that the trial court abused its discretion when it confirmed the sale of the property. “[W]hen foreclosure proceedings have reached the confirmation stage, ‘the rights and responsibilities of the parties can no longer be challenged’ and ‘a party is limited to challenging whether the sale proceedings conformed to law.’ ” (Citation omitted.)

*Bank of Am., N.A. v. Singh*, 12th Dist. Butler No. CA2015-07-131, 2016-Ohio-639, ¶ 7. As the Ohio Supreme Court explained, “[b]ecause of this limited nature of the confirmation proceedings, the parties have a limited right to appeal the confirmation.” *CitiMortgage, Inc. v. Roznowski*, 139 Ohio St.3d 299, 2014-Ohio-1984, 11 N.E.3d 1140, ¶ 40. Nothing in Dates’s argument in this assignment of error actually addressed the limited issue of the confirmation proceedings, but rather attacks the underlying foreclosure decision. Because Dates failed to present an argument supporting a finding that the trial court abused its discretion when it confirmed the sale of the property, we overrule Dates’s first assignment of error.

In her second assignment of error, Dates claims that the trial court erred by hearing the case “in the first place” because it was the “wrong venue.” She claims that, since the amount in controversy exceeded \$75,000, the case should have been heard in federal court. Reading this as an attack on the trial court’s jurisdiction rather than venue, we find the argument to be feckless. The foreclosure of real property is governed by R.C. 2323.07. A foreclosure of real property allows the court of common pleas to order the sale of the property and to prioritize any and all liens asserted against the property. *Huntington Mtge. Co. v. Shanker*, 92 Ohio App.3d 144, 153, 634 N.E.2d 641 (8th Dist.1993). This is an action properly brought in state court. We overrule Dates’s second assignment of error.

In her third assignment of error, Dates claims that the trial court erred when it proceeded to sell the property, because her debts—including the mortgage debt—had been discharged in bankruptcy. But the Ohio Supreme Court has held that, where a debtor has been discharged in bankruptcy, the mortgage interest survives because the discharge only extinguished the personal liability of the debtor. *See Deutsche Bank Natl. Trust Co. v. Holden*, 147 Ohio St.3d 85, 2016-Ohio-4603, 60 N.E.3d 1243, ¶ 26. While HSBC Bank could not proceed against Dates for a deficiency because the debt was discharged, its “surviving right to foreclose on the mortgage can be viewed as a ‘right to an equitable remedy’ for the debtor’s default on

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the underlying obligation.” *Johnson v. Home State Bank*, 501 U.S. 78, 84, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991). Therefore, the trial court was permitted to proceed on the action against the mortgage interest. We overrule Dates’s third assignment of error.

Dates’s fourth assignment of error is nearly unintelligible. Part of the argument seems to be an affidavit inserted in the middle of the brief where she makes several statements “under proof of claim.” Given its most generous reading, the assignment of error again attacks the underlying foreclosure decision rather than the confirmation of sale. We overrule Dates’s fourth assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**MOCK, P.J., CROUSE and WINKLER, JJ.**

To the clerk:

Enter upon the journal of the court on June 10, 2020

per order of the court \_\_\_\_\_.

Presiding Judge