



In the Missouri Court of Appeals
Eastern District
DIVISION ONE

DLJ MORTGAGE CAPITAL, INC.,	)	No. ED109090
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of St. Charles County
vs.	)	
	)	
CREATIVE CLIENT RECOVERY, INC.,	)	Honorable Jon A. Cunningham
ET AL.,	)	
	)	
Appellants.	)	FILED: November 16, 2021

Introduction

Creative Client Recovery, Inc. (“CCR”) and Ronald Bell, Sr., et al. (the “Bells”) (collectively, “Appellants”) appeal from the judgment of the trial court in favor of DLJ Mortgage Capital, Inc. (“DLJ”) on its claim for judicial foreclosure and on CCR’s counterclaims for quiet title and judicial foreclosure (the “2020 Judgment”). CCR raises ten points on appeal, and the Bells raise seven points on appeal. The primary issue on appeal is the priority of competing liens on the subject property. CCR challenges the trial court’s grant of judgment on the pleadings to DLJ on CCR’s counterclaims, alleging CCR owned judgment liens having priority over DLJ’s liens. Relatedly, CCR contends the trial court’s judgment was vague and indefinite as to other liens on the subject property and failed to acknowledge CCR’s interest in its judgment liens.

While CCR raises the issue of lien priority within its first point on appeal, CCR has not met its burden to demonstrate that its liens had priority over DLJ’s lien. CCR abandoned this

issue by failing to provide relevant legal authority within its argument and instead relying solely upon conclusory statements to support its claim of lien priority. For that reason, we deny CCR's first point on appeal. However, the trial court failed to set forth CCR's interest on its judgment liens, and DLJ concedes CCR is a junior lienholder. We therefore grant CCR's claim of error in Point Ten to the extent that the trial court's judgment failed to declare that the surplus following the foreclosure sale, if any, should be distributed to satisfy CCR's judgments liens. Accordingly, we remand on CCR's Point Ten to the trial court with instructions to specify in the judgment the amount of CCR's judgments liens which are entitled to payment from the foreclosure-sale surplus, if any exists. The trial court's judgment is affirmed in all other respects. Because the remaining points on appeal lack merit, and a formal, published discussion addressing those points would serve no jurisprudential purpose, a memorandum discussing the points not covered in this opinion has been furnished to the parties pursuant to Rule 84.16(b).¹

Factual and Procedural History

This appeal arises out of decades-long litigation involving numerous parties and interests on the subject of real property located at 3435 Tiverton Drive in St. Charles, Missouri (the "Property"). In the current action on appeal, DLJ petitioned for judicial foreclosure on an equitable judgment lien it obtained on the Property following the entry of a judgment in 2010 (the "2010 Judgment"). CCR counterclaimed for quiet title and judicial foreclosure on a judgment lien it obtained on the Property following a judgment entered in 2000. The trial court recognized that the main dispute involved lien priority between DLJ and CCR. The following facts are limited to only those issues, actions, and parties necessary to resolve the points on appeal discussed herein.

¹ All Rule references are to Mo. R. Civ. P. (2019), unless otherwise indicated.

I. DLJ's Judgment Lien

DLJ's equitable judgment lien derives from a judgment entered in 2010 in a separate action in which suit was brought to recover on a defaulted deed of trust for the Property. DLJ was substituted as the plaintiff after being assigned the mortgagee's rights, title, and interest in the Property. Although the case did not proceed to trial, the parties—including the purported mortgagor, Cheryl Polk ("Polk"), as well as Ronald Bell ("Bell Sr."), "Mrs. Ronald Bell," Ronald Bell Jr. ("Bell Jr."), and John and Jane Doe—came to various agreements, and the circuit court issued the 2010 Judgment granting DLJ's claims for quiet title, declaratory judgment, and an equitable judgment lien. The 2010 Judgment granted DLJ a first priority lien on the Property effective retroactively from October 2005. The 2010 Judgment ordered DLJ to pay \$30,000 to "Bell"—not specifying Jr. or Sr.—and ordered "Bell" to vacate the Property as well as to execute a quitclaim deed if requested by DLJ. The 2010 Judgment stated that all other claims of all other parties were dismissed with prejudice and ordered all parties to cooperate in effecting its terms.²

CCR was not a party to the litigation leading to the 2010 Judgment. No party from the case appealed from or moved to set aside the 2010 Judgment.³

II. CCR's Judgment Liens

The circuit court in August 2000 entered civil judgments in favor of Washburn Machinery, Inc. for \$103,520.07 and Wesco Machinery, Inc. for \$9,400 against "Ron Bell"—later judicially determined to be against Bell Sr. and not Bell Jr. Both companies assigned their

² Contemporaneous with the 2010 Judgment, the trial court issued a voluntary dismissal order (the "Dismissal Order") stating in part that Polk voluntarily dismissed with prejudice her counterclaims against DLJ, and DLJ voluntarily dismissed with prejudice its claims for a deficiency against Polk. The Dismissal Order also provided that the parties consented that title to the Property may be vested in Polk for the purposes of DLJ's quiet title, declaratory judgment, and equitable lien claims. Separately, Bell also dismissed his claims with prejudice.

³ In 2020, DLJ moved to revive the 2010 Judgment, which the circuit granted in September 2020. Bell Jr. appealed from the revived judgment, and his appeal was dismissed under Rule 84.08.

rights and interests to CCR in 2006. CCR revived these civil judgments in 2010 and again in July 2013.

III. DLJ's Current Action for Judicial Foreclosure

In the case giving rise to this appeal, DLJ petitioned to judicially foreclose on the Property under Section 443.190⁴ based on the 2010 Judgment granting DLJ a first priority lien. CCR counterclaimed for quiet title and judicial foreclosure on the Property.

DLJ moved for judgment on pleadings asserting its lien priority over CCR's judgment lien. The trial court entered judgment on the pleadings in favor of DLJ in December 2018. In the judgment, the trial court found that CCR failed to revive the judgment liens within three years of its 2013 revival, and concluded that CCR lost any liens it had on the Property. The trial court further specified that any liens CCR may have had on the Property lost priority over DLJ's lien when CCR allowed its liens to lapse.

Following two trials, the trial court entered final judgment in April 2020 granting DLJ judicial foreclosure on the Property and denying all other claims.⁵ The trial court restated its prior judgment on the pleadings finding in favor of DLJ on CCR's counterclaims. In reaching its judgment in favor of DLJ, the trial court noted that DLJ through assignment had become the holder of loan documents originally executed by a mortgagee who had been defrauded into loaning the sum of \$382,516.85 for the purchase of the Property, which provided the basis for DLJ's equitable lien in the 2010 Judgment. The trial court found that the parties agreed that Bell Sr. was the owner of the Property, and that the 2010 Judgment showed Bell Sr. would receive \$30,000 from DLJ and that DLJ would receive a first priority lien on the Property. The trial

⁴ All Section references are to RSMo (2016), unless otherwise indicated.

⁵ We granted leave for DLJ to request the trial court correct a clerical error in the caption of the judgment and other parts of the record to accurately reflect the parties' names under Rule 74.06(a).

court concluded that DLJ had the right to judicially foreclose on the Property. The trial court ordered the Property to be sold at a sheriff's sale and stated that the successful bidder at the foreclosure sale would be the only party retaining any right, title, interest, equity, or lien on the Property. Following the 2020 Judgment, CCR and the Bells moved for a new trial, which the trial court denied. Both parties appealed, and we consolidated their appeals for review.

Points on Appeal

In this consolidated appeal, CCR raises ten points on appeal, and the Bells raise seven points on appeal. CCR's Point One argues the trial court erred as a matter of law in granting DLJ's motion for judgment on the pleadings because CCR's liens neither lapsed nor lost priority under Sections 511.350 and 511.360, which specify judgment liens last for a period of ten years. Point Nine maintains the trial court's 2020 Judgment was void and unenforceable because it was vague and indefinite as to the existence and priority of other liens on the Property. Point Ten avers that the trial court erred as a matter of law by failing to enumerate CCR's interest in the Property because quiet-title actions require such a finding. The remaining fourteen points on appeal are set forth in a memorandum furnished to the parties pursuant to Rule 84.16(b).

Standard of Review

We review the judgment in a court-tried case for whether the judgment is unsupported by substantial evidence, is against the weight of evidence, or erroneously declares or misapplies the law. Peoples Nat'l Bank, N.A. v. Fish, 600 S.W.3d 273, 278 (Mo. App. E.D. 2020) (citing Ivie v. Smith, 439 SW 3d 189, 198–99 (Mo. banc 2014); Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. banc 1976)). “We view the evidence and its reasonable inferences in the light most favorable to the trial court's judgment and we disregard contrary evidence and inferences.” Fed. Nat'l Mortg. Ass'n v. Bostwick, 414 S.W.3d 521, 524 (Mo. App. W.D. 2013) (internal citation omitted).

“[I]n reviewing a court-tried case, an appellate court is primarily concerned with the correctness of the trial court’s decision rather than the route taken to reach it.” McQueen v. Gadberry, 507 S.W.3d 127, 138 (Mo. App. E.D. 2016) (citing O’Gorman & Sandroni, P.C. v. Dodson, 478 S.W.3d 539, 543 (Mo. App. E.D. 2015)); see also Fish, 600 S.W.3d at 278 (internal citation omitted) (noting “a judgment in a court-tried case will be affirmed on any basis supported by the record”). “Therefore, we are obliged to affirm if we determine that the trial court reached the correct result, regardless of whether the trial court’s proffered reasons are wrong or insufficient.” McQueen, 507 S.W.3d at 138 (quoting O’Gorman, 478 S.W.3d at 543); In Estate of McKenna, 500 S.W.3d 850, 855 (Mo. App. E.D. 2016) (internal citation omitted).

We review questions of law de novo without deference to the trial court. Bostwick, 414 S.W.3d at 524–25 (internal citation omitted). In particular, we review statutory interpretation de novo. Ivie, 439 S.W.3d at 202 (internal citation omitted).

Similarly, a “[j]udgment on the pleadings addresses a question of law, which we review de novo.” Emsweller v. Bi-State Dev. Agency of Mo.-Ill. Metro. Dist., 591 S.W.3d 495, 498 (Mo. App. E.D. 2019) (internal quotation omitted). “The party seeking judgment on the pleadings is similar to that of a movant seeking a motion to dismiss: assuming the facts pleaded by the opposite party to be true, these facts nevertheless are insufficient to warrant relief as a matter of law.” Id. (internal quotation omitted). We will affirm a judgment on the pleadings “where under the conceded facts, a judgment different from the pronounced could not be rendered notwithstanding any evidence which might be produced.” Id. (internal quotation omitted). “Even in de novo review, we will affirm on any basis supported by the record where an “outcome-sustaining route is left unchallenged or undefeated[.]” TracFone Wireless, Inc. v. City of Springfield, 557 S.W.3d 439, 444 (Mo. App. S.D. 2018) (internal citations omitted)

(noting we review de novo “those matters of law properly lodged by the parties, pursuant to Rule 84.04, and consistent with attendant principles of appellate review . . . and grant relief if an *appellant demonstrates*—within these confines—that a different outcome is *required*”).

Discussion

I. Lien Priority Between DLJ and CCR

A. Priority of CCR’s Judgment Liens (CCR’s Point One)

CCR challenges the trial court’s entry of judgment on the pleadings as a matter of law when it found CCR’s liens on the Property lapsed after three years because Missouri law specifies judgment liens last ten years. The trial court held that although judgments and liens could be revived within ten years of the original judgment under Sections 511.350 and 511.360, Section 511.430 limits the duration of a lien securing a revived judgment to three years. CCR states in the argument section of its brief that Sections 511.360 and 511.350 mandate judgment liens rendered or revived after 1998 survive for ten years instead of three. CCR then posits that by reviving the judgments in 2010 and 2013, its judgment liens were timely revived within the statutory ten-year period provided by Sections 511.360 and 511.350, and that because the lien revivals relate back to the date of the original judgments in 2000, CCR’s liens have priority over DLJ’s 2010 lien.

We review the trial court’s grant of DLJ’s motion for judgment on the pleadings de novo. Emsweller, 591 S.W.3d at 498 (internal citation omitted). With de novo review we give no deference to the trial court’s conclusions of law. While de novo review of an appellate court is broad, such review is not a license for the reviewing court to become an advocate for the appellant by conducting its own research and crafting its own argument on behalf of the appellant. See Burgan v. Newman, 618 S.W.3d 712, 716 (Mo. App. E.D. 2021) (quoting

Hamilton v. Archer, 545 S.W.3d 377, 381 (Mo. App. E.D. 2018) (“[T]he function of an appellate court is not to serve as an advocate for the parties on appeal, and this Court must carefully safeguard its role as a neutral adjudicator.”) (alteration in original). “If a party does not support contentions with relevant authority or argument beyond conclusory statements, the point is deemed abandoned.” Gardner v. Bank of Am., N.A., 466 S.W.3d 642, 649 (Mo. App. E.D. 2015) (internal citation omitted).

Here, CCR’s argument as to lien priority over DLJ’s judgment lien focuses exclusively on the dates the judgment liens were acquired on the Property and the language of Sections 511.360 and 511.350. CCR simply states that there was never a ten-year gap between revivals, thus its liens are still valid and superior to that of DLJ. Absent from CCR’s argument as to lien priority is any discussion or mention of Section 511.430, the statute upon which the trial court relied when it entered judgment on the pleadings in favor of DLJ. Section 511.430 provides:

If . . . the defendant, or any of his creditors, do not appear and show cause against reviving the judgment or decree, the same shall be revived, and the lien continued for another period of three years; and so on, from time to time, as often as may be necessary.

Under this provision, the life of a lien on a revived judgment is three years. See id. DLJ maintains that the three-year revival period of Section 511.430 period applies and that CCR’s liens lost priority when they lapsed in 2016. Although CCR maintains a ten-year revival period applies due to the language of Sections 511.360 and 511.350, CCR ignores the legal basis of the trial court’s judgment argument and skirts any scrutiny of an apparent or real conflict between the language of Sections 511.360 and 511.350 and the terminology of Section 511.430. In its brief, CCR does not consider or discuss the applicable rules of statutory interpretation should separate statutory provisions covering the same subject matter appear unambiguous standing alone, but present a possible conflict when examined together. CCR’s brief advances no issue of

statutory conflict nor offers any judicial authority or legal citations on statutory interpretation in support of its assertion that Section 511.360 (and in its reply brief, Rules 74.08 and 74.09) provides that the revival of all judgment liens continue in ten-year increments. Should this Court undertake the required research and analysis to address the substantive legal issues at the core of the trial court's judgment, we would become an advocate for CCR in this appeal, which we cannot and will not allow. See Burgan, 618 S.W.3d at 716 (internal citation omitted).

By failing to provide relevant legal authority and relying upon conclusory statements to support its first point on appeal with regard to lien priority, CCR fails to meet its "burden to demonstrate that the judgment appealed from was wrong." TracFone Wireless, Inc., 557 S.W.3d at 444 n.6 (internal quotation omitted). CCR has therefore abandoned this issue. See Gardner, 466 S.W.3d at 649.

We note, however, that the record shows CCR filed a revival of its judicial liens in 2019, *after* the entry of the trial court's December 2018 judgment. In its brief, DLJ acknowledges that CCR's action in 2019 revived its judgment liens on the Property. Even if the trial court properly concluded that CCR lost lien priority when it failed to revive its judgment liens within the three-year period following its last revival in 2013 (which we do not address given the abandonment of this issue by CCR), that lapse by CCR would not cause CCR to lose its judgment liens against the Property altogether. Rather, the impact of any lapse in lien revival merely affects the priority date of the original 2000 judgments. See Section 511.380; Rule 74.10. Setting aside other issues with DLJ's ability to recover on its judgment lien through judicial foreclosure, the trial court erred as a matter of law in its judgment on the pleadings concluding CCR *permanently* lost its liens on the Property by failing to revive the liens within three years of 2013. See Sections 511.360–.380, .430. DLJ concedes this aspect of the lien dispute.

Because CCR abandoned the issue of priority in relation to DLJ's judgment lien, CCR cannot now overcome the trial court's finding that any liens CCR may have had on the Property are subordinate to DLJ's lien. See Emsweller, 591 S.W.3d at 498 (internal citation omitted) (noting we will affirm a judgment on the pleadings where no evidence could produce a different result). Thus, any error in the trial court's finding that CCR had no lien against the Property was harmless because CCR abandoned its claim of priority over DLJ's 2010 judgment lien. Accordingly, any judgment liens CCR has against the Property are subordinate to DLJ's judgment lien. Point One is denied.

B. The 2020 Judgment was a Valid, Final Judgment but Erred in not Specifying CCR's Judgment Liens (CCR's Points Nine and Ten)

Relatedly, Points Nine and Ten raise issues with respect to the 2020 Judgment's final determination of the status and interest of CCR's judgment liens. In Point Nine, CCR maintains the 2020 Judgment was void for being vague and indefinite as to other liens on the Property. Correspondingly, CCR argues in Point Ten that the trial court erred as a matter of law by finding against its claim to quiet title on the Property because the judgment did not state CCR's rights and interests in the Property based on its judgment liens.

"A judgment which is indefinite is void and unenforceable" as a matter of law. Lambrou v. Jackson, 497 S.W.3d 304, 306–07 (Mo. App. S.D. 2016) (internal quotation omitted) (finding a judgment in a complex, multiparty case was not final where it generally found for the plaintiff but failed to specify which defendants must pay which amounts). A trial court's judgment is final when it disposes of "all issues in a case, leaving nothing for future determination." First Nat'l Bank of Dieterich v. Pointe Royale Prop. Owners' Ass'n, Inc., 515 S.W.3d 219, 221 (Mo. banc 2017) (internal quotation omitted).

Here, the trial court denied CCR's counterclaims for quiet title and judicial foreclosure and granted DLJ's sole count for judicial foreclosure. The 2020 Judgment stated that the proceeds of the judicial foreclosure sale shall be applied to payment of the foreclosure sale fees, real estate taxes, DLJ's equitable judgment lien, and any other liens established by the evidence at trial. The trial court found no other defendant produced evidence of any superior priority liens against the Property. The trial court ordered the Property to be sold at a sheriff's sale and stated that the successful bidder at the foreclosure sale would be the only party retaining any right, title, interest, equity, or lien on the Property. Having disposed of all the issues remaining before it and the rights of all the parties following foreclosure, the 2020 Judgment was a valid, final judgment. See First Nat'l Bank of Dieterich, 515 S.W.3d at 221 (internal citation omitted); Lambrou, 497 S.W.3d at 306 (internal citation omitted). Point Nine is denied.

However, even though the trial court found that any judgment liens CCR might have, if any, were subordinate to DLJ's judgment liens, the trial court erred when it did not determine CCR's interest in the Property in the 2020 Judgment. See First Nat'l Bank of Dieterich, 515 S.W.3d at 221 (internal citation omitted); Lambrou, 497 S.W.3d at 306 (internal citation omitted); Fields v. Millsap & Singer, P.C., 295 S.W.3d 567, 570 (Mo. App. W.D. 2009) (internal citation omitted) (noting foreclosure by the senior lien holder extinguishes all junior liens and moots all appeals therefrom); but see Stulz v. Citizen's Bank & Tr. Co., 160 S.W.3d 423, 429 (Mo. App. W.D. 2005) (internal citation omitted) (noting that "[t]he fact that a purchaser at a foreclosure sale takes the real estate free of junior liens in no way impairs the junior lienor's right to the surplus [of the sale proceeds], if any exists"). Indeed, DLJ has conceded it has no objection to remanding the matter to the trial court to specify that CCR is entitled to the

remaining proceeds, if any, of the foreclosure sale after payment towards costs and DLJ's lien.⁶ Accordingly, because the trial court erred in not declaring CCR's interest in the Property by specifying the amount of CCR's judgment liens, we grant Point Ten. We remand to the trial court with instructions to recognize CCR's judgment liens on the Property and further to specify the amounts of the liens and accrued interest so that the surplus proceeds from the foreclosure sale, if any, will apply towards satisfaction of CCR's judgment liens.

Conclusion

The judgment of the trial court is reversed in part, and we remand for the trial court to denominate the amount of CCR's liens entitled to payment with any foreclosure-sale surplus. The trial court's judgment is affirmed in all other respects. The parties have been furnished with a memorandum discussing the remaining points on appeal whose discussion lack jurisprudential purpose pursuant to Rule 84.16(b).


KURT S. ODENWALD, Presiding Judge

Kelly C. Broniec, J., concurs.
John P. Torbitzky, J., concurs.

⁶ DLJ asserts its recovery from the initial invalid foreclosure sale was less than the total amount of the equitable judgment lien, thus DLJ reasons we may infer from the amounts of the original loan and the 2020 Judgment that there will be no surplus proceeds to pay towards CCR's judgment liens. This we cannot do. We may not rely on conjectures outside the record but may only consider the facts in evidence before us. See 8182 Maryland Assocs., Ltd. P'ship v. Sheehan, 14 S.W.3d 576, 587 (Mo. banc 2000) (internal citations omitted) ("Generally, appellate courts will not consider evidence outside of the record on appeal."); see also Quirk v. Sanders, 673 S.W.2d 850, 852 (Mo. App. E.D. 1984) (internal citations omitted) (noting mootness may be determined based on facts extrinsic to the record when those facts are properly proved and uncontested). Because the record on appeal is devoid of evidence of the present value of the Property, we cannot say with certainty that any remand on the issue of distributing the judicial-foreclosure surplus proceeds would have no impact on CCR's ability to recover.