

**IN THE COURT OF COMMON PLEAS OF
NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL ACTION**

MN REIT, L.L.C.,)	
Plaintiff)	No. C-48-CV-2015-3919
)	
v.)	
)	
BERNIE E. McCAULEY and)	
Unknown Occupants,)	
Defendant)	

OPINION OF THE COURT

This matter is before the Court on "Plaintiff's Motion for Partial Judgment on the Pleadings," filed on June 24, 2015 ("Motion"). Briefs have been filed, oral argument was heard on July 28, 2015, and the matter is ready for disposition.

Plaintiff's Complaint in this ejectment action was filed on May 7, 2015, and contains two counts. In Count I, Plaintiff seeks ejectment and mesne profits. In Count II, Plaintiff seeks damages for unjust enrichment. On June 3, 2015, Defendant filed an Answer. The following facts, taken from Plaintiff's Complaint, have been admitted by Defendant:

Defendant . . . is an adult individual who is residing (illegally) at certain property having an address of 270 Halletts Rd., Mt. Bethel, PA 18343 (hereinafter, the "Property"). A legal description of the [P]roperty is attached [to the Complaint] as Exhibit "A". . . . Defendant and Pamela A. McCauley, his former spouse, acquired the Property from Richard J. Ball, Sr. and Betty J. Ball, his wife, by virtue of a [d]eed dated December 21, 1995. A copy of this [d]eed is attached [to the Complaint] as Exhibit "B". On or around November 25, 2003, Pamela McCauley executed a deed in which she granted and conveyed her interest in the Property to Defendant. A true and correct copy of this deed, the original of which was recorded in the [O]ffice of the Recorder of Deeds of Northampton County on March 12, 2004, is attached [to the Complaint] as Exhibit "C". In connection with the conveyance of his wife's interest in the Property, Defendant made[,] executed[,] and delivered a mortgage upon the Property in favor of Centex Home Equity Company, LLC to secure a note in the amount of \$117,000.00. A true and correct copy of this mortgage, the original of which was recorded with the Office of the Recorder of Deeds on March 12, 2004[,] at Book 2004-1, [Page] 94026, is attached [to the Complaint] as Exhibit "D". On March 26, 2013, [a] [c]omplaint in [m]ortgage [f]oreclosure was filed by Nationstar Mortgage, LLC, F/K/A Centex Home Equity Company, LLC ("Nationstar") at Docket No. C-48-CV-2013[-2800]. A true and correct copy of this complaint is attached [to the Complaint] as Exhibit "E". A case management [o]rder [d]ated March 26, 2013[,] was filed scheduling a conciliation conference for June 21, 2013. Defendant was personally served with the complaint in foreclosure on April 5, 2013. On July 3, 2013, a conciliation conference [o]rder dated June 21, 2013[,] was filed, wherein Defendant was ordered to submit financials in 20 days, and the conference was rescheduled for August 21, 2013. Following the [c]onciliation [c]onference on August 21, 2013, an [o]rder was issued identifying that an agreement between the parties had been reached, that the case remained open, and that Plaintiff could proceed with the foreclosure action in the event of a default by Defendant within six (6) months of the date of the order. A true and correct copy of this [o]rder is attached [to the Complaint] as Exhibit "F". . . . Defendant failed to file any responsive pleading to challenge or defend against the [c]omplaint in [m]ortgage [f]oreclosure. On or around April 3, 2014, a default judgment was entered against Defendant for failure to file an answer to the complaint. Nationstar also filed a [p]raecipe for [w]rit of [e]xecution together with a property

description and [a]ffidavit pursuant to Pa. R.C.P. [No.] 3129. A true and correct copy of the [a]ffidavit is attached [to the Complaint] as Exhibit "G". According to an [a]ffidavit of [s]ervice, Defendant was personally served with the [n]otice of the [s]heriff's [s]ale scheduled for July 11, 2014, on April 22, 2014. A true and correct copy of the [a]ffidavit of [s]ervice is attached [to the Complaint] as Exhibit "H". Defendant did not attempt to strike off or open the default judgment, and the Property was sold in execution as scheduled on July 11, 2014. Defendant also failed to take exception to, or otherwise raise any challenge to the sheriff's sale, nor did Defendant petition the [C]ourt to set aside the sale prior to the sheriff's execution of the sheriff's deed. By [s]heriff's [d]eed dated September 12, 2014, the Property was granted and conveyed to The Bank of New York Mellon F/K/A The Bank of New York, Successors to JPMorgan Chase Bank, N.A., [a]s Trustee for Centex Home Equity Loan Trust 2004-C. The [s]heriff's [d]eed was recorded in the Office of the Recorder of Deeds for Northampton County on October 22, 2014, at Deed Book 2014-1 at Page 185646. A true and correct copy of this [d]eed is attached [to the Complaint] as Exhibit "I". . . . Thereafter, the Property was granted and conveyed to Plaintiff by way of [a] deed dated January 28, 2015. The deed was subsequently recorded on March 5, 2015, in the Office of the Recorder of Deeds [of Northampton County] in Deed Book 2015-1 at Page 34643. A true and correct copy of this deed is attached [to the Complaint] as Exhibit "J".

(Compl. ¶¶ 2, 4-11, 13-19, 22; Answer ¶¶ 2, 4-11, 13-19, 22.) In his Answer, Defendant concedes that "record title to [the P]roperty is in the name of . . . Plaintiff" and that he "has continued to occupy the [P]roperty since the date of the [s]heriff's [s]ale." (Answer ¶¶ 23-24.) Finally, Defendant admits that "Plaintiff has requested that Defendant vacate the Property on several occasions prior to the filing of . . . the Complaint[,] but Defendant has refused these requests and remains intent on occupying the Property." (Compl. ¶ 25; Answer ¶ 25.)

In this case, Plaintiff moves for partial judgment on the pleadings, at this time seeking a judgment of possession on its ejectment claim, reserving its claims for mesne profits and unjust enrichment for trial.

Any party may move for a judgment on the pleadings after relevant pleadings are closed but within such time as not to unreasonably delay the trial. Rule 1034(a) of the Pennsylvania Rules of Civil Procedure, Pa.R.C.P. No. 1034(a). In ruling on a motion for judgment on the pleadings, the court may consider only the pleadings and any documents properly attached thereto and must accept as true all allegations of the non-moving party. *Pfister v. City of Phila.*, 963 A.2d 593, 597 (Pa. Cmwlth. 2009). A motion for judgment on the pleadings may be granted where there is no genuine issue of fact and the moving party is entitled to judgment as a matter of law. *Parish v. Horn*, 768 A.2d 1214, 1215 n.1 (Pa. Cmwlth. 2001), *aff'd*, 569 Pa. 45, 800 A.2d 294 (Pa. 2002).

Mun. Auth. of Borough of Midland v. Ohioville Borough Mun. Auth., 108 A.3d 132, 136 (Pa. Commw. 2015).

"Ejectment is a possessory action only, and can succeed only if the plaintiff is out of possession, and if he has a present right to immediate possession." *Brennan v. Shore Brothers, Inc.*, 380 Pa. 283, 285, 110 A.2d 401, 402 (1955). This translates into the protocol necessary to initiate an action in ejectment, which cannot be maintained by the plaintiff unless he is out of possession, and he has a right to the possession of the property at the time of the commencement of the action. *Id.*, at 285, 110 A.2d at 403; *see also Bruker v. Carlisle Borough*, 376 Pa. 330, 334-35, 102 A.2d 418, 420 (1954) ("It is true that ordinarily, where the defendant is in possession and the plaintiff out of possession of the land the latter must bring an action in ejectment.").

Wells Fargo Bank, N.A. v. Long, 934 A.2d 76, 79 (Pa. Super. 2007). A successful bidder at a sheriff's sale has an immediate right to possession of

the property once the sheriff acknowledges the sale and delivers a sheriff's deed to the successful bidder. *Id.* at 80.

In this case, Defendant admits that a sheriff's deed was delivered to Plaintiff and that he has remained in the Property since the delivery of the deed to Plaintiff. Thus, Plaintiff has clearly established that it is out of possession and has an immediate right to present possession absent some viable legal defense raised in the pleadings by Defendant. In this regard, the Court notes that Defendant has not filed new matter and has raised no affirmative defenses. Thus, any affirmative defenses have been waived. *Iorfida v. Mary Robert Realty Co.*, 539 A.2d 383, 386 (Pa. Super. 1988) ("affirmative defenses (with exception not applicable here) not raised in new matter in accordance with Pa.R.C.P. [No.] 1030 are waived pursuant to Pa.R.C.P. [No.] 1032.").

In any event, the only arguable issue raised by Defendant in his Answer and Brief is his claim that he has "legal and equitable title based upon the fact that the Plaintiff's predecessor in title, Nationstar[,], did not abide by the [a]greement entered into on August 21, 2013[,]" following the conciliation conference in the foreclosure action. (Answer ¶ 23.) Defendant contends that he tendered payments to Nationstar under the terms of that agreement and that Nationstar refused to accept them. (*Id.* ¶¶ 12-13.) Even accepting these allegations as true for purposes of ruling on Plaintiff's Motion, the allegations do not raise a valid defense.

Initially, we note that an attack on a sheriff's sale usually cannot be made in a collateral proceeding. *Caplan v. Kent*, 366 Pa. 87, 76 A.2d 764 (1950). An ejectment action is a proceeding collateral to that under which the land was sold. *Mencke v. Rosenberg*, 202 Pa. 131, 51 A. 767, 769 (1902). Thus, where it is claimed that the underlying default judgment is merely voidable, that claim will not be entertained because such a judgment [cannot] be reached collaterally. *Roberts v. Gibson*, 214 Pa. Super. 220, 251 A.2d 799 (1969). However, in an ejectment action it may be alleged that the judgment is void. A void decree can be attacked at any time. *Brokans v. Melnick*, 391 Pa. Super. 21, 569 A.2d 1373, 1376 (1989). Where a judgment is void, the sheriff's sale which follows is a nullity. A judgment is void when the court had no jurisdiction over the parties, or the subject matter, or the court had no power or authority to render the particular judgment. *Id.* A judgment which is void [cannot] support an ejectment action and may be asserted as a defense in the ejectment proceeding. *Id.* See also *Kaib v. Smith*, 454 Pa. Super. 67, 684 A.2d 630 (1996) (where in an ejectment proceeding the court considered whether the trial court erred in refusing to set aside a sheriff's sale, but ruled that the complaining party, a tenant, failed to establish proper cause to warrant setting aside the sale) and *Meritor Mortgage Corp. v. Henderson*, 421 Pa. Super. 339, 617 A.2d 1323 (1992) (ruling that the failure to make adequate service in a foreclosure action could be raised in the action of ejectment because a void judgment can be attacked at any time).

Dime Sav. Bank, FSB v. Greene, 813 A.2d 893, 895 (Pa. Super. 2002).

Here, the argument advanced by Defendant, even if accepted as true, would not render the judgment void but, at best, voidable. As noted above, a voidable default judgment cannot be collaterally attacked in an ejectment action. Moreover, Defendant has raised no argument or facts indicating that the judgment is void. In this regard, Defendant concedes that he was personally served with the mortgage foreclosure complaint, which concerned a property he owned in Northampton County and that was filed in a case in

which this Court certainly had subject matter jurisdiction. Defendant concedes that he did not respond to the mortgage foreclosure complaint. Thus, this Court certainly had the power to enter a default judgment. Finally, Defendant admits that he did not seek to open or strike the default judgment and did not petition to set aside the sheriff's sale prior to the delivery of the sheriff's deed to Plaintiff. For all of the above reasons, there are simply no grounds to deem the judgment to be void.

For all of the above reasons, there are no genuine issues of fact, and Plaintiff is entitled to judgment of possession, as a matter of law, on its ejectment claim.

WHEREFORE, the Court enters the following:

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Plaintiff)	No. C-48-CV-2015-3919
)	
v.)	
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BERNIE E. McCAULEY and)	
Unknown Occupants,)	
Defendant)	

ORDER OF COURT

AND NOW, this 13th day of August, 2015, "Plaintiff's Motion for Partial Judgment on the Pleadings," filed on June 24, 2015, is hereby **GRANTED**.

A judgment for possession is hereby entered in favor of Plaintiff and against Defendant. Plaintiff is hereby entitled to possession of the real property described as follows:

ALL that certain parcel or tract of land situate in the Township of Upper Mount Bethel, County of Northampton and Commonwealth of Pennsylvania Being Unit Lot #1 as shown on revised Plat of Hallett's Woods, Inc., and recorded in Map Book 46, at Page 61, entered 22nd day of December 1977, bounded and described as follows, to wit:

BEGINNING at an iron pipe lying the following two (2) courses and distances from a point in the public road, Township Route 709, namely: (1) along lands now or formerly Morris Cohon, North thirty-seven Degrees forty-five Minutes (N37° 45' E) East, 508.4 feet (more or less) to a point; thence (2) through prior Grantor's lands (Jane M. Davidge, Widow), South forty-three Degrees zero Minutes (S 43° 00' E) East, 50.7 feet to the

point and place of beginning, being the northerly corner of lands herein described; thence, through lands of the prior Grantor (Jane M. Davidge, Widow), of which this was a part, the following four (4) courses and distances, namely: (1) South forty-three Degrees zero Minutes (S 43° 00' E) East, 215.00 feet to an iron pipe; thence (3) North fifty-one Degrees thirty-four Minutes (N 51° 34' W) West, 212.20 feet to an iron pipe; thence (4) parallel to and 50 feet southeasterly of land of aforesaid Cohon, North thirty-seven Degrees forty-five Minutes (N37° 45' E) East, 250.00 feet to the point and place of BEGINNING.

CONTAINING 1.14 Acres of Land.

TOGETHER with all right, title and interest, being an undivided twenty percent interest, in and to the Common Elements as more fully set forth in the aforesaid Declaration and Declaration Plan.

SUBJECT to the ingress, egress and regress by Jane Davidge, Widow, her heirs and assigns, over Halletts Road and Pioneer Drive to access other lots within the subdivision and as access other land of the grantor to the North and East of the Development Phase I of Halletts Woods, Inc., recorded in Map Book 46, Page 61.

SUBJECT to utility and drainage easements and covenants, conditions and restrictions noted on Plat of Halletts Woods, Inc., Recorded in Map Book Volume 46, at Page 61.

TOGETHER with the right of ingress, egress and regress over Halletts Road from the premises hereinabove described to Township Road 709, known as Turkey Ridge Road.

BEING THE SAME PREMISES which THE BANK OF NEW YORK MELLON, F/K/A, THE BANK OF NEW YORK, Successors to JPMorgan Chase Bank, N.A., as Trustee for Centex Home Equity Loan Trust 2004-C, by Nationstar Mortgage LLC as its servicer and Attorney in Fact, by Power of Attorney dated April 8, 2014, did, by Deed dated January 28, 2015, and recorded in the Office for the Recorder of Deeds in and for the County of Northampton at Easton, Pennsylvania, in Record Book 2015-1, Page 34643, granted and conveyed unto MN REIT LLC.

TAX IDENTIFICATION NUMBER: B11-4-3E-0131.

PREMISES BEING KNOWN AS: 270 Halletts Road, Mount Bethel, Pennsylvania.

Plaintiff shall file a praecipe for arbitration, on its remaining claims, within sixty (60) days.

BY THE COURT:

/s/ Anthony S. Beltrami
J.