

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

ESTATE OF TAMMY J. MAYER,	:	
Deceased, KEITH E. MAYER,	:	No. 21-00,531
Administrator,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	CIVIL ACTION – LAW
	:	MORTGAGE FORECLOSURE
JAMES HALKIAS,	:	
	:	
Defendant.	:	

OPINION AND ORDER

AND NOW, this 14th day of March, 2024, upon consideration of the Motion for Reconsideration filed by the Defendant and the Motion to Dismiss the Defendant’s Motion filed by the Plaintiff, it is hereby ORDERED and DIRECTED that the Defendant’s Motion for Reconsideration is DENIED and that the Plaintiff’s Motion to Dismiss is GRANTED, as explained below.

I. BACKGROUND.

Plaintiff, Estate of Tammy J. Mayer, Deceased, Keith E. Mayer, Administrator, commenced this *in rem* action against Defendant, James Halkias, by Complaint in Mortgage Foreclosure filed on June 8, 2021.¹ Defendant is the owner of a certain piece and parcel of real property situate in Muncy Township, Lycoming County, by virtue of a Tax Claim Bureau Deed dated January 8, 2021 (the “Property”). Previously, the Property was owned by Jerry L. Winters (the “Mortgagor”). On or about July 9, 2010, Mortgagor executed a promissory note and mortgage upon the Property to Tammy J. Mayer (the “Decedent”) in the amount of \$45,000.² The Decedent passed away on March 29, 2018, and an estate was raised thereafter.

¹ Plaintiff’s Complaint in Mortgage Foreclosure, filed June 8, 2021 (the “Complaint”).

² *Id.*, ¶¶ 3-6.

On January 13, 2019, the Decedent's estate, Plaintiff here, alleging that Mortgagor had failed to repay the promissory note as required, filed a complaint in mortgage foreclosure against Mortgagor and the Property.³ On August 8, 2019, Mortgagor filed an answer to the Estate's complaint, wherein he admitted that he had made, executed and delivered to the Decedent a promissory note and mortgage and that the Property is subject to the mortgage. He also alleged that he had made an arrangement with the Decedent whereby he would provide services to Decedent in lieu of making payments on the Mortgage.⁴ At trial, the administrator of the Decedent's estate testified that he had found the note and mortgage but no evidence of payment thereon. The Mortgagor testified but failed to introduce any evidence of his having provided services to the Decedent.⁵ Therefore, by Order entered September 27, 2019, the Court entered judgment *in rem* in favor of the Plaintiff and against Mortgagor, in the amount of \$60,868.39.⁶

The Property was scheduled for sheriff's sale on February 7, 2020. Due to complications relating to the COVID-19 pandemic, however, the sale was continued to November 6, 2020. In the interim, the Property was exposed to upset tax sale on September 16, 2020 for unpaid taxes. Defendant here purchased the Property at the upset tax sale, and Plaintiff cancelled the November foreclosure sale as a result. The Tax Claim Bureau subsequently issued a deed to Defendant on January 8, 2021, by virtue of which deed Defendant now owns the Property.⁷

³ Complaint, filed June 12, 2019, docketed to Lycoming County Court of Common Pleas Civil Action No. 19-00,937.

⁴ Answer, filed August 9, 2019, at Civil Action No. 19-00,937.

⁵ Transcript of Proceedings, filed May 12, 2023, at Civil Action No. 19-00,937.

⁶ Order, dated September 23, 2019 and entered September 27, 2019, to Civil Action No. 19-00,937. A review of the docket at No. 19-00,937 indicates the judgment was not appealed and has never been stricken, opened, vacated, set aside or otherwise disturbed.

⁷ Complaint, ¶ 6.

Plaintiff thereafter commenced this action in mortgage foreclosure against Defendant on June 8, 2021. In answer to the Complaint, Defendant asserted the same defenses that the Mortgagor raised or could have raised in the original mortgage foreclosure action.⁸ He also asserted that the judgment in mortgage foreclosure did not survive the tax sale.⁹ Plaintiff contended that its prior *in rem* judgment is valid and enforceable, that the affirmative defenses raised by the Defendant are barred by *res judicata* and collateral estoppel, and that the upset tax sale did not disturb or erase Plaintiff's *in rem* judgment against the Property.¹⁰ After the pleadings closed, Plaintiff filed a motion for summary judgment, which the Court granted by Order entered on September 21, 2023.¹¹

On October 2, 2023, Defendant filed the instant Post Trial Motion for Reconsideration (the "Motion for Reconsideration").¹² Plaintiff moved to dismiss the Motion on November 1, 2023 (the "Motion to Dismiss"),¹³ and the Court heard argument on both Motions on December 15, 2023.¹⁴ Accordingly, the Motion for Reconsideration and the Motion to Dismiss are now ripe for decision.

⁸ Defendant's Answer to Complaint, filed April 18, 2022 (the "Answer").

⁹ Defendant's Answer to Plaintiff's Motion for Summary Judgment and Counter Motion for Summary Judgment, filed May 22, 2023, ¶ 30.

¹⁰ Plaintiff's Motion for Summary Judgment, filed May 12, 2023.

¹¹ See Opinion and Order granting Defendant's Motion for Summary Judgment, entered September 21, 2023.

¹² Defendant's Post Trial Motion for Reconsideration, filed October 2, 2023.

¹³ Plaintiff's Motion to Dismiss Defendant's Motion for Reconsideration, filed November 1, 2023. See also Defendant's Response to Plaintiff's Motion to Dismiss Defendant's Motion for Reconsideration, filed December 15, 2023 (the "Response to the Motion to Dismiss").

¹⁴ See Scheduling Order directing argument on Defendant's Motion for Reconsideration, entered October 6, 2023; Scheduling Order directing argument on Plaintiff's Motion to Dismiss, entered November 1, 2023. Notably, the November 1 Scheduling Order directed Defendant to file a response to Plaintiff's Motion to Dismiss within 20 days, or by November 21, 2023. Defendant filed a response to the Motion to Dismiss, but his response was not filed until December 15, 2023 and, therefore, is not timely.

II. LAW AND ANALYSIS.

A. The Motion for Reconsideration.

Defendant's Motion for Reconsideration challenges the propriety of the Court's Order entering summary judgment in favor of the Plaintiff and against him. The Court issued an Opinion with its Order on September 21, 2023 that explains in detail why the Court ruled as it did.¹⁵ In brief, however, the Court found (i) that the Defendant purchased the Property at an upset tax sale, which means that it was transferred subject to recorded liens not included in the upset price, including the Plaintiff's mortgage;¹⁶ (ii) that the substantive defenses asserted by the Defendant to the Plaintiff's action in mortgage foreclosure are barred by the doctrine of *res judicata*, because the Defendant is in privity with the Mortgagor, against whom the Plaintiff procured a final, valid judgment in mortgage foreclosure, and the defenses Defendant now asserts are matters that the Mortgagor raised or could have raised in the proceeding that resulted in a final judgment being rendered against him;¹⁷ and (iii) that summary judgment was appropriate because the Defendant failed to identify "one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion," as required by Rule 1035.3, Pennsylvania Rules of Civil Procedure, to avoid imposition of summary judgment.¹⁸

The Motion for Reconsideration alleges that the Court improperly entered Summary Judgment in favor of the Plaintiff and against Defendant because the Court "ignor[ed] the disputed questions and fact that the mortgage ... was fraudulent and non[-]enforceable[] and fail[ed] to address ... matters brought up by

¹⁵ See Opinion and Order granting Defendant's Motion for Summary Judgment, entered September 21, 2023.

¹⁶ *Id.*, Part II.A.

¹⁷ *Id.*, Part II.B.

¹⁸ *Id.*, Part II.C.

defendant.”¹⁹ Specifically, Defendant argues that the Court did not consider (i) that the mortgage here is invalid (1) because, at the time it was made, the Property was encumbered by an existing mortgage to Sovereign Bank which provided, *inter alia*, that the Property could not be further mortgaged²⁰ and (2) because it was given without consideration;²¹ (ii) that Mortgagor’s failure to make any payments to the Decedent is evidence that the mortgage was fraudulent;²² (iii) that the Mortgagor filed for Bankruptcy in 2020 “which wiped out all judgments that were not preserved by the bankruptcy court,” including Plaintiff’s mortgage lien against the Property;²³ (iv) that the Court never addressed who owns the Sovereign Bank Mortgage;²⁴ and (v) that, if the first foreclosure judgment was valid and was not discharged by the Mortgagor’s bankruptcy, a second foreclosure action is unnecessary and invalid.²⁵

B. The Motion to Dismiss.

In response to the Motion for Reconsideration, Plaintiff filed her Motion to Dismiss, contending that the Court is without authority to grant the relief sought by Defendant.²⁶ Specifically, Plaintiff contends (i) that the Court’s Order of September 21, 2023 became a final Order when it was not appealed within the applicable statutory time frame;²⁷ (ii) that a final Order typically may not be modified, rescinded, vacated or opened absent specific authority to the contrary;²⁸ (iii) that the Motion for

¹⁹ Motion for Reconsideration, introductory paragraph.

²⁰ *Id.*, ¶¶ 1-2.

²¹ *Id.*, ¶ 3.

²² *Id.*, ¶ 4.

²³ *Id.*, ¶ 5. The Court has never been presented with any evidence either that Mortgagor actually filed for bankruptcy or that the Plaintiff’s mortgage was “wiped out” by a bankruptcy. Such evidence is particularly important because *in rem* judgments by secured creditors typically survive bankruptcy.

²⁴ Motion for Reconsideration, ¶ 6. Plaintiff contends that the Sovereign Bank Mortgage was paid, but Defendant contends that it was transferred to him “without merger.” *Id.*

²⁵ *Id.*, ¶ 7.

²⁶ Motion to Dismiss, ¶¶ 7-29.

²⁷ *Id.*, ¶¶ 7, 9, 11-16.

²⁸ *Id.*, ¶¶ 8-11.

Reconsideration did not toll the appeal period;²⁹ (iv) that the Defendant did not timely appeal the September 21 Order;³⁰ (v) that, once the appeal period passed, the Court was without authority to modify its Order;³¹ (vi) that the matters raised in the Motion for Reconsideration are barred by *res judicata*;³² and (vii) that Motion for Reconsideration does not allege any extrinsic fraud or extraordinary circumstances that would merit the September 21 Order being reconsidered, opened, vacated or rescinded.³³

Defendant responds (i) that the mortgage at issue here is fraudulent, (1) because the Mortgagor did not have authority to execute it given there was a senior mortgage that was required to be paid before the instant mortgage could be made, and (2) because the instant mortgage was not given for value and was made for the purpose of defrauding the Mortgagor's other creditors;³⁴ (ii) that the September 21 Order is not a final order because it did not address his claims concerning the mortgage;³⁵ (iii) that the September 21 Order can be modified because he filed a post-trial motion within 10 days after entry of the Order;³⁶ (iv) that the Court can consider the Motion for Reconsideration because the Court granted reconsideration by scheduling the Motion for argument;³⁷ (v) that the appeal period has not started because the Court has not yet disposed of all claims;³⁸ and (vi) that *res judicata* does not apply here because Defendant and Mortgagor are different parties.³⁹

²⁹ *Id.*, ¶¶ 12-17.

³⁰ *Id.*, ¶¶ 18-20.

³¹ *Id.*, ¶¶ 21-23.

³² *Id.*, ¶¶ 24-26.

³³ *Id.*, ¶¶ 27-28.

³⁴ Defendant's Response to Plaintiff's Motion to Dismiss Defendant's Motion for Reconsideration, filed December 15, 2023, ¶¶ 1, 22, 24, 27, 28.

³⁵ *Id.*, ¶¶ 7, 10, 17, 18, 20, 21, 23, 29.

³⁶ *Id.*, ¶ 9.

³⁷ *Id.*, ¶¶ 10, 14, 26.

³⁸ *Id.*, ¶¶ 15, 19.

³⁹ *Id.*, ¶¶ 25.

C. Applicable law and analysis.

1. Final order.

A final order is an order that “disposes of all claims of all parties.”⁴⁰ It “effectively ends the litigation or disposes of the entire case.”⁴¹ Thus, an order granting summary judgment is a final order when it disposes of all claims of all parties⁴² and is not a final order when it does not do so.⁴³ Plaintiff and Defendant are the only parties to this litigation, and the only cause of action asserted here is Plaintiff’s cause of action in mortgage foreclosure.⁴⁴ The Court’s September 21, 2023 Order entered summary judgment in favor of the Plaintiff and against the Defendant on the sole cause of action asserted by either party. It disposed of the only claim before the Court and, effectively, put the Defendant “out of court.”⁴⁵ As such, the September 21 Order is a final order.

The Defendant’s argument that the Court did not resolve all claims here because it did not address his contentions concerning the mortgage is without merit. In its September 21 Order, the Court found that the Defendant is in privity with the

⁴⁰ Pa. R.A.P. 341(b)(1).

⁴¹ *Hahalyak v. Integra Financial Corp.*, 678 A.2d 819 (Pa. Super. 1996) (citing *DiDio v. Philadelphia Asbestos Corp.*, 642 A.2d 1088 (Pa. Super. 1994)).

⁴² See, e.g., *Tuscarora Wayne Ins. Co. v. Hebron, Inc.*, 197 A.3d 267 (Pa. Super. 2018) (order in declaratory judgment action that insurer was not obligated to defend or indemnify insured was a final order as to all parties, including landlord who was named as an additional insured under the policy), alloc. denied, 205 A.3d 273 (Pa. 2019).

⁴³ See, e.g., *Moore Motors, Inc. v. Beaudry*, 775 A.2d 869 (Pa. Super. 2001) (order granting summary judgment on all counts of a breach of contract complaint and on one of three counts of a counterclaim was not a final order because two counterclaims remained pending).

⁴⁴ Plaintiff’s Complaint contains a single count and seeks judgment against Defendant in mortgage foreclosure. Complaint, filed June 8, 2021. Defendant’s Answer includes new matter but does not assert a counterclaim. Answer, filed April 18, 2022. Plaintiff’s Reply to New Matter does not assert any additional claims. Reply to New Matter, filed May 4, 2022.

⁴⁵ “A pivotal consideration in determining whether an order is final and appealable is whether the plaintiff aggrieved by it has, for purposes of a particular action, been put “out of court” ...” *Independent Oil and Gas Ass’n of Pennsylvania v. Pennsylvania Public Utility Comm’n*, 804 A.2d 693, 698-99 (Pa. Commw. 2002) (quoting *Sweener v. First Baptist Church of Emporium, Pennsylvania*, 533 A.2d 998, 1000 (Pa. 1987)).

Mortgagor concerning his rights of title, property or estate concerning the Property⁴⁶ and, therefore, that the Defendant effectively stands in the Mortgagor's shoes with respect to the Property.⁴⁷ The issues concerning the mortgage that Defendant seeks to raise here are issues that were raised or that could have been raised by the Mortgagor in his defense at Civil Action No. 19-00,937. Accordingly, the doctrine of *res judicata*, which "bars the relitigation of issues that either were raised or [that] could have been raised in the prior proceeding,"⁴⁸ precludes this Court from disturbing the judgment in mortgage foreclosure entered there and precludes the Defendant from successfully asserting those defenses here.⁴⁹

A judgment entered by a court in an adversarial proceeding generally cannot be modified once it becomes final—*i.e.*, after the period for appeal has expired.⁵⁰ The purpose for this is to establish finality. "For all the reasons that finality of judgments is important, such a judgment [entered in an adverse proceeding] should be invulnerable **except upon a showing of extraordinary miscarriage.**"⁵¹ Absent such a showing, the Court's authority to modify a final order is limited, and typically occurs in one of three situations: (1) In most situations, a court "may modify or rescind any order within 30 days after its entry ... if no appeal from such order has been taken or allowed;"⁵² (2) a court may grant reconsideration upon motion of a

⁴⁶ A person is in "privity" with another when he has a "mutual or successive relationship[] to the same right of property[] or such an identification of interest ... as to represent the same legal right." *Ammon v. McCloskey*, 655 A.2d 549, 554 (Pa. Super. 1995), *alloc. denied*, 670 A.2d 139 (Pa. 1995).

⁴⁷ See, e.g., *Strayer v. Johnson*, 1 A. 222, 224-25 (Pa. 1885) (holding that a purchaser at a tax sale is in privity to the title, if any, that is divested by the sale and passes to him and that he is bound by concurrent verdicts and judgments in prior actions of ejectment to which his predecessors in title were parties, as to the location and title of the land in question).

⁴⁸ *McArdle v. Tronetti*, 627 A.2d 1219, 1222 (Pa. Super. 1993) (citations omitted).

⁴⁹ *Res judicata* applies when the persons, parties and things being sued for in a subsequent action are the same as those in the first action. *Northwestern Lehigh School Dist. v. Commw., Agr. Lands & Condemnation Approval Bd.*, 578 A.2d 614, 617 (Pa. Commw. 1990). Such is the case here.

⁵⁰ *Manufacturers and Traders Trust Co. v. Greenville Gastroenterology, SC*, 108 A.3d 913, 918 (Pa. Super. 2015) (citing *Simpson v. Allstate Ins. Co.*, 504 A.2d 335, 337 (Pa. Super. 1986) (en banc)).

⁵¹ *Simpson, supra*, 504 A.2d at 337 (emphasis in original).

⁵² 42 Pa. C.S. § 5505.

party, provided that the application for reconsideration is filed timely and provided that the court enters an order "expressly granting reconsideration ... within the time prescribed ... for the filing of a notice of appeal ... with respect to such order;"⁵³ or (3) after trial and upon written motion of a party, a court may order a new trial on any or all of the issues, enter judgment in favor of any party, remove a nonsuit, affirm, modify or change the decision, or enter any other appropriate order.⁵⁴

2. Procedural issues.

Because it is a final Order entered in an adversarial proceeding, the Court's ability to modify September 21, 2023 Order, even if it intended to do so, is limited. The Order was entered on September 21, 2023. Either party could have appealed from it within thirty days after its entry,⁵⁵ but no appeal was filed.⁵⁶ When no appeal was filed, the Order became final, and this Court lost jurisdiction to change it.⁵⁷ Absent a specific rule or statute authorizing a substantive change to the Order, the Court may only correct obvious technical mistakes (e.g., incorrect dates) on it.⁵⁸ In short, the Court lacks subject matter jurisdiction to grant the relief Defendant requests.⁵⁹

⁵³ Pa. R.A.P. 1701(b)(3).

⁵⁴ Pa. R.C.P. 227.1(a).

⁵⁵ Pa. R.A.P. 903(a) (providing that a notice of appeal must be filed within thirty days after entry of an order in most situations).

⁵⁶ The appeal period expired on October 23, 2023. Saturday, October 21, 2023 was the thirtieth day after entry of the Order; however, pursuant to 1 Pa. C.S. § 1908, "[w]hen any period of time is referred to in any statute, such period ... shall be so computed as to exclude the first and include the last day of such period. Whenever the last day of any such period shall fall on Saturday or Sunday, ... such day shall be omitted from the computation." Thus, the appeal period expired on the following Monday, October 23, 2023.

⁵⁷ *City of Philadelphia Police Dep't v. Civil Service Comm'n of City of Philadelphia*, 702 A.2d 878, 800 (Pa. Commw. 1997) (citing 42 Pa. C.S. § 5505; *Orie v. Stone*, 601 A.2d 1268 (Pa. Super. 1992), alloc. granted, 609 A.2d 168 (Pa. 1992), appeal dismissed as improvidently granted, 622 A.2d 286 (Pa. 1993)).

⁵⁸ *Id.* (citing 42 Pa. C.S. § 5505; Pa. R.A.P. 903; *DeMarco v. Borough of East McKeesport*, 556 A.2d 977 (Pa. Commw. 1989), alloc. denied, 577 A.2d 545 (Pa. 1990)).

⁵⁹ See, e.g., *Ettelman v. Com., Dep't of Transp., Bureau of Driver Licensing*, 92 A.3d 1259, 1262 (Pa. Commw. 2014).

Defendant takes the position that subject matter jurisdiction exists because he has filed a motion for reconsideration. This is incorrect. As indicated above, a court may only grant reconsideration upon motion of a party if the application for reconsideration was filed timely and if the court enters an order expressly granting reconsideration within thirty days.⁶⁰ After Defendant filed his Motion for Reconsideration on October 2, 2023, the Court entered an Order on October 6, 2023 scheduling argument on December 15, 2023 and directing Plaintiff to file a response.⁶¹ The Court did not expressly grant reconsideration, and, therefore, the thirty day appeal period was not tolled.⁶² As the Superior Court explained:

The effect which an application for reconsideration will have on the appeal process is addressed in Pa. R.A.P., Rule 1701. This rule tolls the time for taking an appeal only when the court files “an order expressly granting reconsideration ... within the time prescribed by these rules for the filing of a notice of appeal.” Phrased differently the trial court is permitted to grant reconsideration only if such action is taken during the applicable appeal period. An order granting reconsideration will only be effective if it is made and entered on the docket before expiration of the applicable appeal period, 30 days from the entry of the order which is the subject of the reconsideration motion, and if it states that it is expressly granting reconsideration. It should be emphasized that the Rule requires reconsideration to be expressly granted. It is insufficient for the trial court to merely set a hearing date on the reconsideration motion or issue a Rule to Show Cause. Failure to “expressly” grant reconsideration within the time set by the rules for filing an appeal will cause the trial court to lose its power to act on the application for reconsideration.⁶³

In other words, because the Court did not “expressly grant reconsideration” in its October 6, 2023 Scheduling Order, it lost jurisdiction after October 23, 2023⁶⁴ to grant the relief Defendant seeks in the Motion for Reconsideration.

⁶⁰ Pa. R.A.P. 1701(b)(3).

⁶¹ Scheduling Order, entered October 6, 2023.

⁶² *Schoff v. Richter*, 562 A.2d 912, 913 (Pa. Super. 1989).

⁶³ *Id.*

⁶⁴ October 23, 2023 is the thirtieth day after September 21, 2023, for purposes of 42 Pa. C.S. § 5505 and Pa. R.A.P. 1701. See, *supra*, n. 56.

Defendant may be confusing a motion for reconsideration with a motion for post-trial relief. A motion for post-trial relief may be filed within ten days after a bench or jury trial⁶⁵ when, upon written motion of a party, a court may make an appropriate order affirming, modifying or changing the decision.⁶⁶ Post-trial motions typically are mandatory in order to preserve issues on appeal,⁶⁷ and their purpose is to allow a trial court to review and reconsider its rulings and to correct errors.⁶⁸ The trial court is not under a deadline requiring it to decide post-trial motions prior to lapse of the appeal period, because “the appeal period does not begin to run until the trial court has issued a decision on the post-trial motions.”⁶⁹

Defendant has styled the instant Motion for Reconsideration as a “Post Trial Motion for Reconsideration,” but it is not a post-trial motion since it was not filed following trial. Indeed, a post-trial motion may not be filed to an order, such as this Court’s September 21, 2023 Order, disposing of a motion for summary judgment, which is a proceeding other than a trial.⁷⁰ Accordingly, Defendant’s motion is a motion for reconsideration, which does not toll the appeal period and which the Court loses jurisdiction to decide upon expiration of thirty days after its filing.⁷¹

3. Substantive issues.

As the Court lacks subject matter jurisdiction to grant the relief sought by the Defendant, it need not consider the substantive issues raised by the Defendant.

⁶⁵ Pa. R.C.P. 227.1(c).

⁶⁶ Pa. R.C.P. 227.1(a)(4).

⁶⁷ See, e.g., *Wells Fargo Bank N.A. v. Spivak*, 104 A.3d 7 (Pa. Super. 2014), reargument denied.

⁶⁸ See, e.g., *Soderberg v. Weisel*, 687 A.2d 839 (Pa. Super. 1997).

⁶⁹ *Oak Tree Condominium Ass’n v. Greene*, 133 A.3d 113, 116-17 (Pa. Commw. 2016) (citing *Chalkey v. Roush*, 805 A.2d 491, 496 (Pa. 2002); *Lane Enterprises, Inc. v. L.B. Foster Co.*, 710 A.2d 54 (Pa. 1998)).

⁷⁰ Pa. R.C.P. 227.1, cmt. (“A motion for post-trial relief may not be filed to orders disposing of preliminary objections, motions for judgment on the pleadings, motions for summary judgment, or motions relating to discovery or other proceedings, which do not constitute a trial.”) (citing *U.S. National Bank in Johnstown v. Johnson*, 487 A.2d 809 (Pa. 1985)).

⁷¹ See, *supra*, this Part.

Notwithstanding that, however, the Court would not be inclined to grant the Motion for Reconsideration even if it retained jurisdiction to do so. The Court is convinced that it properly granted Plaintiff's Motion for Summary Judgment. As indicated above, the Court found that the Defendant is in privity with the Mortgagor concerning his rights of title, property or estate concerning the Property and, therefore, that the Defendant effectively stands in the Mortgagor's shoes with respect to the Property. Because the issues concerning the mortgage that Defendant seeks to raise here are issues that were raised or that could have been raised by the Mortgagor in defense of the action at Civil Action No. 19-00,937, the doctrine of *res judicata* bars Defendant from re-litigating them here and precludes this Court from disturbing the judgment in mortgage foreclosure entered there.⁷² Furthermore, as the Defendant purchased the Property at an upset tax sale, he purchased it subject to recorded obligations, to include the Plaintiff's mortgage and its judgment in mortgage foreclosure.⁷³

In short, were the Court permitted to decide the Motion for Reconsideration on substantive grounds, it would deny the Motion.

4. Summary.

The Court's September 21, 2023 Order entered summary judgment in favor of the Plaintiff and against the Defendant on the sole cause of action asserted by either party. It "dispose[d] of all claims of all parties" and put the Defendant "out of court." Thus, it is a "final order" under Pennsylvania law.⁷⁴

The Commonwealth Court has explained that:

The judicial system cannot countenance attempts to extend or renew litigation after a matter has been adjudicated and finally determined by

⁷² See, *supra*, Part II.C.1; see also Opinion and Order, entered September 21, 2023, Part II.C.

⁷³ Opinion and Order, entered September 21, 2023, Part II.B.

⁷⁴ See, *supra*, Part II.C.1.

an order no longer subject to reconsideration, reargument or appeal. The finality of an unappealed order rests on the principle that, after parties have been afforded an adequate opportunity to present their claims, litigation must come to an end. Where no appeal has been taken, even the issuing court loses the power to change its determination after the passage of thirty days from entry of the order. ... And that finality applies not only to claims that have been raised, but also to those which ... could have been raised.⁷⁵

The Court lacks jurisdiction to modify or rescind its September 21, 2023 Order entering summary judgment in favor of the Plaintiff and against the Defendant, and it would not do so even if able. As such, the Motion for Reconsideration must be denied.

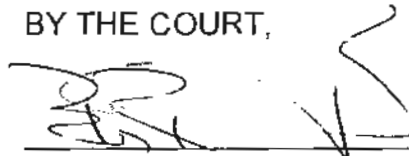
In contrast, the Motion to Dismiss asks the Court to dismiss the Motion for Reconsideration based upon the Court's lack of jurisdiction to decide it. As such, the Motion to Dismiss must be granted.

III. CONCLUSION.

Accordingly, the Defendant's Post Trial Motion for Reconsideration, filed October 2, 2023, is DENIED, and the Plaintiff's Motion to Dismiss Defendant's Motion for Reconsideration, filed November 1, 2023, is GRANTED, as explained in detail above.

IT IS SO ORDERED.

BY THE COURT,


Eric R. Linhardt, Judge

ERL/bel

cc: Thomas A. Burkhart, Esq.
James Halkias
5540 Westbury Drive, Enola, PA 17025
Gary Weber, Esq. (Lycoming Reporter)
Court Administration/Court Scheduling

⁷⁵ *Dep't of Transp., Bureau of Motor Vehicles v. Kosak*, 639 A.2d 1252, 1257 (Pa. Commw. 1994).