IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

ROBERT A. GOERING, TREASURER, HAMILTON COUNTY	:	APPEAL NO. C-150073 TRIAL NO. A-1201749
	:	*JUDGMENT ENTRY.*
Plaintiff-Appellee,	:	
vs.	:	
2624 DUCK CREEK, LLC, et al.,	:	
Defendants,	:	
and	:	
JAMES PARESO,	:	
and	:	
KAY PARESO	:	
Intervenors-Appellants,	:	
vs.	:	
GREATER CINCY PROPERTIES, LLC,	:	
Intervenor-Appellee	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

This matter arises from a tax foreclosure action involving property located at 2624 Duck Creek Road. Beginning in 2004, James and Kay Pareso were the owners of record of the Duck Creek Road property, which they held for investment purposes. The Paresos hired an attorney, Katherine Powell, to help them with their investment.

Powell was to establish a limited liability company called 2624 Duck Creek, LLC, and that entity was to purchase the property through a land contract. In March 2008, the Paresos executed a deed transferring the property to 2624 Duck Creek, LLC, with the alleged understanding that the deed would be held in escrow pending the completion of the sale through the land contract.

A limited liability company was apparently never formed and registered with the Ohio secretary of state. In addition, rather than holding the executed deed in escrow, it was recorded on March 17, 2008, thereby transferring the property to 2624 Duck Creek, LLC, an entity that did not exist. Taxes on the property were not paid, which led to the foreclosure action brought by the Hamilton County treasurer.

At the time that the foreclosure action was filed, the owner of record was 2624 Duck Creek, LLC. Neither the Paresos nor Powell were named in the action. The property was eventually foreclosed upon and sold at a sheriff's sale to intervenor-appellee Greater Cincy Properties, LLC. After the sale was confirmed and the proceeds were disbursed, there remained $31,898.31 in excess proceeds.

Following the sheriff's sale and confirmation, the Paresos filed a motion to stay the issuance of the sheriff's deed, and to vacate the judgment entry of foreclosure and the entry confirming the sheriff's sale. The Paresos later voluntarily withdrew this motion, and moved the court to award them the excess proceeds of the sheriff's sale. The Paresos claimed entitlement to the excess proceeds under R.C. 5721.20 and 2329.44. In the alternative, the Paresos argued that they were entitled to the excess proceeds under a constructive-trust theory of recovery, or under the theory of a creditor's bill. The trial court denied their motion. This appeal followed.

In their first assignment of error, the Paresos argue that the trial court should have awarded them the excess proceeds under R.C. 5721.20 and 2329.44. In pertinent part, R.C. 5721.20 allows the owner of a tax-foreclosed property to claim excess funds following the sale of the property and the satisfaction of outstanding liens. R.C. 2329.44 states that a judgment debtor whose property was the subject of a foreclosure sale is entitled to any excess proceeds that remain after a sale and writ of execution. The Paresos were not the owners of record of the property, and they were not "judgment debtors" in this case. They therefore are not entitled to the excess proceeds under either statute. The Paresos' first assignment of error is overruled.

In their second assignment of error, the Paresos argue that the trial court should have awarded them the excess proceeds under a constructive trust theory or as a creditor's bill. Our standard of review is abuse of discretion. *Sandusky Properties v. Aveni*, 15 Ohio St.3d 273, 274-75, 473 N.E.2d 798 (1984).

A constructive trust arises by operation of law against one whom by fraud or by any form of unconscionable conduct either has obtained or holds the legal right to property which he ought not, in equity and good conscience, hold and enjoy. *Ferguson v. Owens*, 9 Ohio St.3d 223, 225, 459 N.E.2d 1293 (1984). The remedy of a "creditor's bill" is codified in R.C. 2333.01. In essence, R.C. 2331.01 allows certain assets of a judgment debtor to be reached by a judgment creditor in order to satisfy the outstanding judgment.

The Paresos' basis for arguing that they are entitled to relief under both of these theories involves a separate lawsuit. In that lawsuit, the Paresos had obtained a default judgment against Powell for $173,765.72 on the ground that Powell had fraudulently recorded the deed transferring 2624 Duck Creek from the Paresos to 2624 Duck Creek, LLC. But the Paresos' argument turns on the unproven premise that Powell and 2624 Duck Creek, LLC, are one and the same. Based on the record before us, we cannot come to that conclusion. The Paresos' judgment is against Powell, only. Powell does not currently hold the proceeds that the Paresos seek, and has no legal claim to the excess proceeds. Since Powell has no right to the excess proceeds, the Paresos are not entitled under a constructive trust theory or under R.C.

2333.01 to them. We therefore find no abuse of discretion in the trial court's decision holding that the Paresos had failed to establish a right to equitable relief. *See Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). The Paresos' second assignment of error is overruled.

The trial court's judgment is affirmed.

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.

CUNNINGHAM, P.J., DEWINE and **STAUTBERG, JJ.**

To the clerk:

Enter upon the journal of the court on December 2, 2015

per order of the court _______________________________.

Presiding Judge