

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

WELLS FARGO BANK, N.A.,

Appellant,

v.

ELAINE AVERS; JOHN AVERS; ROBYN BOWMAN;
LORI J. BURKE; BONNIE J. HAMMOND; PORTFOLIO
RECOVERY ASSOCIATES LLC; and Unknown Heirs of
JOHN WILLIAM AVERS, deceased,

Appellees.

No. 2D22-478

June 9, 2023

Appeal from the Circuit Court for Pinellas County; George M. Jirotko,
Judge.

Ileen J. Cantor of LOGS Legal Group, LLP, Boca Raton, for Appellant.

George A.D. Thurlow, Joseph F. Milligan, and George K. Rahdert of
Rahdert & Mortimer, PLLC, St. Petersburg, for Appellee, Lori J. Burke.

No appearance for remaining Appellees.

LABRIT, Judge.

Wells Fargo Bank, N.A., appeals an order denying as untimely its
motion claiming entitlement to surplus funds from a foreclosure sale.
The trial court found Wells Fargo's motion premature and deemed it a
nullity. Wells Fargo argues that this was error, and we agree.

Sections 45.031 and 45.032, Florida Statutes (2018),¹ set forth the procedures for judicial foreclosure sales. Pertinent to this appeal, they required a party claiming entitlement to surplus funds to file a claim no later than "60 days after the sale." § 45.031(1)(a), (2)(f), (7)(b). In *Bank of New York Mellon v. Glenville*, 252 So. 3d 1120, 1129 (Fla. 2018), our supreme court determined that "60 days after the sale" means sixty days after the clerk's issuance of the certificate of disbursements. Under section 45.031(7), the clerk must issue this certificate after the foreclosure sale is held and the clerk disburses the sale proceeds in accordance with the foreclosure judgment.

The foreclosure sale in this case occurred on November 19, 2019, and the property sold for nearly double the amount of the foreclosure judgment. Recognizing the surplus, Wells Fargo filed a motion for surplus funds on November 27, 2019. One week later, the clerk issued the certificate of disbursements on December 4, 2019. Solely based on the timing of these events, the trial court denied Wells Fargo's motion. It reasoned that the sixty-day period for surplus claims "begins to run from the date the [clerk] issues the certificate of disbursements." And because

¹ Although the version of the statutes effective July 1, 2019, applies to this dispute, *see* ch. 2018-71, Laws of Fla., the record establishes that neither the parties nor the trial court analyzed it and instead relied on the 2018 version. While the parties and the trial court should have considered the timeliness of Wells Fargo's motion under the statutes as amended in 2019, *see Smiley v. State*, 966 So. 2d 330, 334 (Fla. 2007) (explaining that procedural changes in the law should, "whenever possible, . . . be applied to pending cases in order to fully effectuate the legislation's intended purpose"); *N.W. v. Dep't of Child. & Fams.*, 184 So. 3d 1179, 1182 (Fla. 2d DCA 2015) (observing that procedural or remedial changes "may be immediately applied to pending cases"), the outcome is the same under either version.

Wells Fargo filed its motion before that sixty-day period began, the trial court found that the motion was premature and "a nullity."

This was error. Assuming without deciding that Wells Fargo's motion was a nullity, the record demonstrates that Wells Fargo supplemented its motion with an affidavit filed January 22, 2020—less than sixty days after the clerk issued the certificate of disbursements. Through this affidavit, Wells Fargo claimed entitlement to the surplus. Its filing of this affidavit no later than "60 days after the sale" renders its claim timely under the 2018 version of sections 45.031 and 45.032.²

Accordingly, we reverse the trial court's order denying Wells Fargo's motion as untimely and we remand for further proceedings consistent with this opinion.

Reversed and remanded.

MORRIS, C.J., and LaROSE, J., Concur.

Opinion subject to revision prior to official publication.

² The statutory amendments that became effective in 2019 substantially changed the timeframe for filing surplus claims. See ch. 2018–71, Laws of Fla. The statutes now require the filing of a claim no later than the date that the clerk reports the funds as unclaimed to the Florida Department of Financial Services, and the clerk doesn't issue this report until one year after the sale at the earliest. See §§ 45.031(1)(a), (2), (7)(b), 45.032(3)(c) (2019). Wells Fargo filed its motion and affidavit well within this timeframe, so its claim was also timely under the 2019 version of the statutes that should have been applied below.