

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

WELLS FARGO BANK NATIONAL : IN THE SUPERIOR COURT OF
ASSOCIATION AS TRUSTEE FOR : PENNSYLVANIA
ABFC 2006-OPT1 TRUST, ASSET :
BACKED FUNDING CORPORATION :
ASSET - BACKED CERTIFICATES, :
SERIES 2006-OPT1 C/O OCWEN :
LOAN SERVICING, LLC :

Appellee : No. 1457 MDA 2022

v. :

DENNIS K. DIXON AND HEATHER E. :
MERRITT :

Appellants

Appeal from the Judgment Entered September 16, 2022
In the Court of Common Pleas of Berks County
Civil Division at No(s): 15-14763

BEFORE: PANELLA, P.J., MURRAY, J., and STEVENS, P.J.E.*

MEMORANDUM BY PANELLA, P.J.:

FILED: JANUARY 22, 2024

Dennis K. Dixon and Heather E. Merritt, husband and wife, appeal *pro se* from the trial court's order granting Wells Fargo Bank National Association's motion for leave to reassess damages and decreeing that Dixon and Merritt's damages and judgment amount were amended.

This case originated as a mortgage foreclosure action in 2015 and its procedural history has been extensive since that time. The trial court granted

* Former Justice specially assigned to the Superior Court.

summary judgment in favor of Wells Fargo in 2017, entering an *in rem* judgment in favor of Wells Fargo for \$318,274.16, as of June 3, 2016, plus an additional \$51.04 in daily interest. Dixon and Merritt appealed to this Court, raising many issues. ***See Wells Fargo Bank National Association as Trustee for ABFC 2006-OPT1 Trust v. Dixon***, 1143 MDA 2017 (Pa. Super. file September 18, 2018) (unpublished memorandum). During that appeal, a panel of this Court determined that summary judgment was proper and specifically affirmed the trial court's decision disposing of Dixon and Merritt's various issues. ***See id.*** Dixon and Merritt filed a petition for allowance of appeal to the Supreme Court of Pennsylvania, which was denied. ***See Wells Fargo Bank National Association as Trustee for ABFC 2006-OPT1 Trust v. Dixon***, 216 A.3d 1019 (Pa. 2019).

Dixon and Merritt then filed motions in the trial court to open and strike the judgment. Those motions were denied, and Dixon and Merritt filed another appeal to this Court. ***See Wells Fargo Bank National Association as Trustee for ABFC 2006-OPT1 Trust v. Dixon***, 83 MDA 2021 (Pa. Super. filed March 21, 2022) (unpublished memorandum). A panel of this Court quashed the appeal as untimely. ***See id.*** Dixon and Merritt filed a petition for allowance of appeal to the Supreme Court of Pennsylvania, which was denied on October 31, 2022. ***See Wells Fargo Bank National Association as Trustee for ABFC 2006-OPT1 Trust v. Dixon***, 286 A.3d 1238 (Pa. 2022).

While the petition for allowance of appeal was pending, Wells Fargo filed a motion for leave to reassess damages. ***See*** Motion, 6/21/22. The trial court

issued a rule to show cause upon Dixon and Merritt to show why the motion should not be granted. **See** Order, 7/11/22. Dixon and Merritt responded to the rule to show cause. **See** Response, 7/20/22. The trial court held argument on the motion. **See** N.T. 9/15/22. The trial court granted Wells Fargo's motion the same day and Dixon and Merritt appealed to this Court on October 14, 2022.

Wells Fargo has raised the doctrine of *res judicata*, the law of the case doctrine, and the coordinate jurisdiction rule as reasons for this court to deny and dismiss the appeal. While both *res judicata* and the coordinate jurisdiction are commonly classified as a part of the law of the case doctrine, they are not the same.

The doctrine of *res judicata* is an independent and distinct legal issue from the law of the case doctrine. The doctrine of *res judicata* serves the twin purposes of protecting litigants from assuming the burden of re-litigating the same issue with the same party and promoting judicial economy through preventing needless litigation.

"Res judicata" means "a thing adjudged" or a matter settled by judgment. Traditionally, American courts have used the term *res judicata* to indicate claim preclusion, i.e., the rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and constitutes for them an absolute bar to a subsequent action involving the same claim, demand or cause of action. This is distinguished from the traditional doctrine of collateral estoppel, or issue preclusion, which holds that when a particular issue has already been litigated, further action on the same issue is barred. We have interpreted the "modern doctrine of *res judicata*" as incorporating

both claim preclusion, or traditional *res judicata*, and issue preclusion, or traditional collateral estoppel.

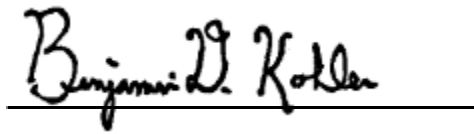
McNeil v. Owens–Corning Fiberglas Corp., 680 A.2d 1145, 1147–48 (Pa. 1996) (citation omitted). ***See also, Stoeckinger v. Presidential Fin. Corp. of Delaware Valley***, 948 A.2d 828, 832 (Pa. Super. 2008).

Here, as the trial court correctly notes, Dixon and Merritt are attempting to re-litigate issues already determined by the trial court and made final on appeal. Dixon and Merritt again raise the issues of (1) assignment of the mortgage, (2) possession of the original note and mortgage, (3) lack of standing, (4) subject matter jurisdiction, and (5) insufficient evidence. After a comprehensive review of the record, we easily conclude that all of these issues have been fully litigated, decided by the trial court, and affirmed on appeal.

Pursuant to the doctrine of *res judicata*, we decline to reach Appellants' issues, thereby affirming the trial court's order. The earlier decision by the trial court is now *res judicata* as to the underlying judgment in this mortgage foreclosure action and bars the present, subsequent appeal of the motion to re-assess the damages based upon the identical issues previously litigated. Lastly, in accordance with our review herein, we deny as moot Wells Fargo's motion to quash.

Order affirmed. The Motion to Quash filed by Wells Fargo Bank National Association as Trustee for ABFC 2006-OPT1 Trust, Asset Backed Funding Corporation Asset Backed Certificates, Series 2006-OPT1 c/o Ocwen Loan Servicing, LLC, denied as moot.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 1/22/2024