IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 50-2019-AP-000207-CAXX-MB
L.T. NO.: 50-2019-CC-012003-XXXX-SB

DOV SAMUEL MARKOVICH,
Appellant,

v.

ELIAV JECOBY,
Appellee.
_____/

Opinion filed: November 30, 2020

Appeal from the County Court in and for Palm Beach County;
Judge Marni A. Bryson

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PER CURIAM.

Appellant, Dov Markovich, appeals a final judgment and writ of possession evicting him from a residence purportedly owned by Appellee, Eliav Jecoby. Markovich asserts that the final judgment is void because the county court did not have subject matter jurisdiction over the instant case. Jecoby argues that he and Markovich entered into a binding stipulation agreement which renders any issues on appeal moot. After careful review of the record below, we conclude that the county court lacked subject matter jurisdiction over the parties and that the only proper action is

to dismiss the case below. Consequently, we reverse the final judgment of the county court and order it to dismiss the case for lack of subject matter jurisdiction.

Factual Background

On September 12, 2019, Jecoby filed a Complaint in county court seeking to evict Markovich from a residence in Delray Beach, FL. Jecoby alleged that Markovich failed to pay rent for two months and that he had been served notice to pay rent or deliver possession on September 5, 2019. Markovich filed a counterclaim against Jecoby seeking quiet title. In his counterclaim, Markovich alleged that he purchased the property from a third party on September 13, 2018 and that the property was transferred to him via quitclaim deed. Contemporaneous with this transfer, Markovich entered into a balloon mortgage with Jecoby whereby Jecoby would provide a loan in the amount of $65,000.00; Markovich would then pay Jecoby $650.00 a month for a period of sixty (60) months with a balloon payment at the end of the term. Markovich alleged that, on June 20, 2019, Jecoby fraudulently recorded a quitclaim deed which purportedly conveyed the property from Markovich to Jecoby. Markovich claimed that he had a valid ownership interest in the property from the original quitclaim deed and that no landlord-tenant relationship between him and Jecoby existed.

On October 11, 2019, the lower court *sua sponte* entered an order setting mediation and a final hearing on possession for October 23, 2019. In doing so, the lower court explicitly found that the Residential Landlord and Tenant Act governed the proceedings. On October 17, 2019, Markovich filed a motion seeking to set aside the court's October 11, 2019 Order. The motion alleged that the county court did not have subject matter jurisdiction over the matter because it was not a landlord-tenant matter. Markovich instead argued that the dispute was governed by section 26.012(2)(g), Florida Statutes (2019), because the instant case was a matter of ejectment or

foreclosure and not the violation of a lease between a landlord and tenant (which Markovich claims did not exist). The lower court denied this motion the same day.

On November 20, 2019, the lower court entered a "Stipulation for Payment with Judgment Upon Default and Disbursal of Any Registry Deposits" which was signed by both parties and the county court judge. Based on the terms of the stipulation, Markovich agreed to vacate the premises and not engage in any further litigation; Jecoby agreed to dismiss the case, not to seek any monetary damages, and to provide Markovich with certain documents related to the property. Shortly thereafter, both parties filed documents claiming that the other party refused to comply with the stipulation. On December 9, 2019, the county court entered a final judgment against Markovich and issued a writ of possession. This appeal followed.

Legal Analysis

Appellant Markovich's sole argument on appeal is generally a restatement of his October 17, 2019 motion arguing that the county court lacked subject matter jurisdiction because the action below was not an eviction proceeding. Whether or not a court has subject matter jurisdiction is "vital to a court's power to adjudicate the rights of individuals," and so it is imperative that this Court address the issue first. *See 84 Lumber Co. v. Cooper*, 656 So. 2d 1297, 1298 (Fla. 2d DCA 1994). "Whether a court has subject matter jurisdiction is a question of law reviewed de novo." *Sanchez v. Fernandez*, 915 So. 2d 192, 192 (Fla. 4th DCA 2005). If the trial court lacks subject matter jurisdiction, any judgment it renders is void. *Miller v. Preefer*, 1 So. 3d 1278, 1282 (Fla. 4th DCA 2009). Lack of subject matter jurisdiction is a fundamental error and can be raised at any time, including for the first time on appeal. *See 84 Lumber*, 656 So. 2d at 1298.

Both county courts and circuit courts have jurisdiction over matters of real property. In some cases, they may even have concurrent jurisdiction with one another. The county court has

exclusive jurisdiction to handle eviction proceedings between a landlord and tenant, but both the county and circuit court can consider other landlord-tenant disputes (provided the amount in controversy is within the jurisdictional limits of each court). *Compare* § 83.59(2), Fla. Stat. (2019), *with* § 34.011(1), Fla. Stat. (2019). *See also* § 34.011(2), Fla. Stat. (2019) (county courts have exclusive jurisdiction of eviction actions); *accord Bell v. Kornblatt*, 705 So. 2d 113, 114 (Fla. 4th DCA 1998). Similarly, both courts have some overlapping jurisdiction in regards to other property disputes. Circuit courts have exclusive jurisdiction over "actions of ejectment" and "actions involving the title and boundaries of real property." § 26.012(2)(f), (g), Fla. Stat. However, county courts may hear "all matters in equity involved in any case" so long as the amount in controversy meets the jurisdictional limits of county court. § 34.01(4), Fla. Stat. Our supreme court has taken this to mean that circuit courts and county courts have concurrent jurisdiction of foreclosures where the amount in controversy is below the county court's jurisdictional limit. *See Alexdex Corp. v. Nachon Enters., Inc.*, 641 So. 2d 858, 861 (Fla. 1994).

Although Markovich previously contested the validity of the quitclaim deed that Jecoby executed in July of 2019, he concedes on appeal that whether or not deed is fraudulent is not properly before this Court. Instead, Markovich argues that section 697.01, Florida Statutes controls since the quitclaim deed acted as security for the mortgage he entered into with Jecoby. Markovich posits that, because this action was a foreclosure and not an eviction, the county court lacked jurisdiction.[1] Section 697.01 defines instruments that should be construed as a mortgage as follows:

[1] In further support of his argument that the action below could not be an eviction proceeding, Markovich points out that no written or oral rental agreement existed between him and Jecoby. While the record does contain a written lease, that lease was not signed by either party; thus, we concur with Markovich that there is no evidence that the terms of a lease were executed or agreed

> All conveyances . . . or other instruments of writing conveying or selling property, either real or personal, for the purpose or with the intention of securing the payment of money . . . shall be deemed and held mortgages, and shall be subject to the same rules of foreclosure and to the same regulations, restraints and forms as are prescribed in relation to mortgages.

§ 697.01(1), Fla. Stat. In order to determine whether such a conveyance is a mortgage, the "essential point" is the intent of the parties since no conveyance can be a mortgage unless it was used to secure the payment of a debt. *Williams v. Roundtree*, 478 So. 2d 1171, 1172 (Fla. 1st DCA 1985). If a conveyance is considered a *de facto* mortgage, any foreclosure thereof is governed by the same rules applicable to any other mortgage foreclosure. *Lunn Woods v. Lowery*, 577 So. 2d 705, 707 (Fla. 2d DCA 1991).

Here, the record is clear that the parties intended the quitclaim deed to act as part of a secured mortgage. The mortgage Markovich and Jecoby entered into was secured by both a note and the second deed. The former owner of the property, Celina Gelerman, provided a notarized statement stating that Jecoby had actually purchased the property for Markovich and that the mortgage was created so that Markovich could have the benefits of establishing Florida residency (including homestead benefits) while also providing a mechanism for Markovich to fulfill his debt to Jecoby. Gelerman also stated that the second quitclaim deed was explicitly created as security for Jecoby in case Markovich could not make payments under the mortgage. Gelerman's statement is supported by the language of the mortgage itself which states that, in addition to a note, the property is further secured by a quitclaim deed "that the Mortgagee may file in the event the Mortgagor is in default for over sixty (60) days." These facts clearly show that the intent of the parties was for quitclaim deed to act as security for the mortgage.

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upon. *See Toledo v. Escamilla*, 962 So. 2d 1028, 1030 (Fla. 3d DCA 2007) (holding that, without proof of a written or oral rental agreement, the Landlord Tenant Act does not apply).

In seeming anticipation of this potential issue, the Note backing the mortgage contains an additional provision whereby "the Note Holder shall retain the right to repossess the property upon written notice to [the borrower] without filing a judicial foreclosure proceeding." The language of the Note confirms that the quitclaim deed was meant to be a mechanism to transfer the property while avoiding a foreclosure proceeding. This provision is completely unenforceable since it contradicts Florida's foreclosure law. A mortgage is, by definition, a specific lien on the property described and not "a conveyance of legal title or of the right of possession." § 697.02, Fla. Stat. By law, a mortgagee can only take possession of the property through judicial foreclosure. *Orlando Hyatt Assocs., Ltd. v. F.D.I.C.*, 629 So. 2d 975, 977 (Fla. 5th DCA 1993) (quoting *In re Aloma Square*, 85 B.R. 623, 625 (Bankr. M.D. Fla. 1988)). Despite the language of the Note and Mortgage, it cannot abrogate Florida law and waive the foreclosure requirement.

Since the quitclaim deed at issue was meant to secure a mortgage, and given that mortgages require a judicial foreclosure in order to gain possession, it is clear this action should have been brought as a foreclosure, rather than an eviction. While a county court can have jurisdiction over a foreclosure, the foreclosure cannot exceed the amount in controversy of the county court which, at the time the action was filed, was $15,000.00. § 34.01(1)(c)1., Fla. Stat.; *see also Coral Springs Tower Club II Condo. Ass'n, Inc. v. Dizefalo*, 667 So. 2d 966, 967 (Fla. 4th DCA 1996). The mortgage in this case was for a sum of $65,000.00. Since the value of the mortgage plainly exceeds the county court's jurisdictional limits, only the circuit court had subject matter jurisdiction over this action.[2] Consequently, the final judgment entered by the county court is void for lack of jurisdiction and this Court must reverse the final judgment.

[2] The county court also lacked jurisdiction because Markovich raised a counterclaim for quiet title which is an action that can only be raised in circuit court. *See Blackton, Inc. v. Young*, 629 So. 2d 938, 940 (Fla. 5th DCA 1993), *abrogated on other grounds Alexdex Corp.*, 641 So. 2d at 861.

Despite this clear jurisdictional defect, Jecoby insists that Markovich's appeal has no merit due to the stipulation agreement they entered into. A stipulation that is properly entered into is binding upon the court and all of the parties, *Gunn Plumbing, Inc. v. Dania Bank*, 252 So. 2d 1, 4 (Fla. 1971), and a court is bound to enforce the stipulation unless one of the parties can demonstrate a ground for rescission such as mistake, fraud, or misrepresentation. *See EGYB, Inc. v. First Union Nat. Bank of Fla.*, 630 So. 2d 1216, 1217 (Fla. 5th DCA 1994). Markovich does not allege any grounds for rescission, and so Jecoby argues that this Court is bound to respect the stipulation regardless of any jurisdictional issues. Subject matter jurisdiction is conferred by the constitution or a statute and parties can never agree or consent to subject matter jurisdiction if it does not otherwise exist. *See Citizens Prop. Ins. Corp. v. Scylla Properties, LLC*, 946 So. 2d 1179, 1181 (Fla. 2d DCA 2006); *Snider v. Snider*, 686 So. 2d 802, 84 (Fla. 4th DCA 1997). Therefore, the lower court still lacked jurisdiction to enter the final judgment.

Conclusion

Because the action brought by Jecoby against Markovich was actually a foreclosure with an amount in controversy over $15,000.00, the county court lacked subject matter jurisdiction to adjudicate the action from its onset. Although the parties did enter into a stipulation agreement, the agreement cannot and did not confer jurisdiction on the county court. As a result, we **REVERSE** the county court's entry of final judgment against Markovich. We **REMAND** the case back to the county court to **DISMISS** the action for lack of subject matter jurisdiction. Finally, we also **DENY** Jecoby's "Renewed Motion for Costs and Attorney's Fees."

KERNER, MARTZ, and J. KEYSER, JJ., concur.