

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| LOUIS and BRENDA McDUFFY, | § |
| | § |
| Defendants Below- | § No. 60, 1999 |
| Appellants, | § |
| | § |
| v. | § Court Below—Court of Chancery |
| | § of the State of Delaware, |
| DeGEORGE ALLIANCE, INC., | § in and for New Castle County |
| | § C.A. No. 14472 |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: February 14, 2000
Decided: April 12, 2000

Before VEASEY, Chief Justice, WALSH and HOLLAND, Justices.

ORDER

This 12th day of April 2000, upon consideration of the appellants' opening brief, the appellee's motion to affirm, motion to dismiss, and motion to strike, as well as the appellants' motion for oral argument, and the responses and replies thereto¹ it appears to the Court that:

¹The McDuffys filed their opening brief in the present appeal on April 14, 1999. On April 23, 1999, DeGeorge filed both a motion to affirm and a motion to dismiss the appeal. Before this Court had the chance to rule upon the pending motions, DeGeorge filed for bankruptcy. Pursuant to the automatic stay provisions of the Bankruptcy Code, 11 U.S.C. § 362(a), this appeal was stayed automatically pending resolution of DeGeorge's bankruptcy proceedings. After the Bankruptcy Court lifted the automatic stay as to this appeal, the Clerk of this Court informed the parties that the previously-filed motions would now be considered by the Court. In response, on January 7, 2000, the McDuffys filed a response to DeGeorge's motions to affirm and dismiss. DeGeorge moved to strike that response. Thereafter, the McDuffys filed a motion requesting oral argument in this matter.

(1) The appellants, Brenda and Louis McDuffy, filed this appeal *pro se* from a decision of the Court of Chancery dated January 15, 1999, which denied reargument of an earlier order confirming a Sheriff's sale of certain real property. The property, identified as 14 Bizarre Drive, New Castle, Delaware, had been the subject of foreclosure proceedings in 1997. The Court of Chancery, on December 15, 1997, had granted the appellee, DeGeorge Home Alliance (formerly known as Miles Homes Services, Inc.), the right to foreclose upon several equitable mortgages that the McDuffys had executed in favor of DeGeorge. This Court affirmed the Court of Chancery's judgment on August 26, 1998 ("*McDuffy I*").²

(2) Several months after the mandate issued in *McDuffy I*, the McDuffys, through their former counsel, sent a letter to the Court of Chancery inquiring about the status of their counterclaim to DeGeorge's complaint seeking foreclosure. The Court of Chancery, in a letter dated December 8, 1998, responded that the McDuffys' counterclaim had been resolved by its December 15, 1997 order, which was affirmed in *McDuffy I*. The Court of Chancery noted that the McDuffys' counsel had asserted the position before this Court in *McDuffy I* that all matters, including the McDuffys' counterclaim, had been resolved by

²See *McDuffy v. Miles Home Services, Inc.*, Del. Supr., No. 27, 1998, Holland, J. (Aug. 26, 1998) (ORDER).

the Court of Chancery's December 15, 1997 order. The McDuffys, therefore, already had their opportunity in *McDuffy I* to raise any issues relating to their counterclaim.

(3) The McDuffys did not appeal from the Court of Chancery's December 8, 1998 decision regarding their counterclaim. Thereafter, on December 29, 1998, DeGeorge filed a motion seeking an order confirming the Sheriff's sale of 14 Bizarre Drive. DeGeorge's motion stated that the property had been sold at a Sheriff's sale on December 8, 1998, after due notice, and no objection had been made prior to the sale. The Court of Chancery confirmed the Sheriff's sale on January 4, 1999. The McDuffys, through their counsel, moved for reargument of that order. The Court of Chancery, treating the McDuffys' motion for reargument as a motion for relief from judgment under Rule 60, found the motion to be without merit. This appeal ensued.

(4) In their opening brief on appeal, the McDuffys have raised numerous claims relating to the substance of the foreclosure proceedings. This Court's ruling in *McDuffy I*, however, resolved DeGeorge's right to foreclose on its mortgages. That ruling is the law of the case. The McDuffys cannot attempt to relitigate DeGeorge's right to foreclose now.³ Furthermore, the McDuffys

³*Insurance Corp. of America v. Barker*, Del. Supr., 628 A.2d 38, 40-41 (1993).

also have waived any issue related to their counterclaim. The McDuffys' counsel previously asserted that their counterclaim was properly before this Court in *McDuffy I*. Having taken that position and having had the opportunity to raise any argument regarding their counterclaim in *McDuffy I*, the McDuffys are precluded from attempting now to relitigate that issue.

(5) Finally, the McDuffys challenge the Court of Chancery's order dated January 15, 1999, denying their motion for reargument, which the Court of Chancery properly treated as a motion for relief from judgment. The denial of such a motion is within the sound discretion of the trial court.⁴ In this case, the McDuffys did not file any objection prior to the Sheriff's sale, nor did they set forth any grounds to justify relief from judgment. Accordingly, we find no abuse of the Court of Chancery's discretion in this case.⁵

(6) Consequently, we find it manifest on the face of the McDuffys' opening brief that this appeal should be affirmed because the issues on appeal are controlled as a matter of law by this Court's disposition of *McDuffy I* and, to the extent the issues on appeal are ones of judicial discretion, we find no abuse of the Court of Chancery's discretion.

⁴See *Battaglia v. Wilmington Savings Fund Society*, Del. Supr., 379 A.2d 1132, 1135 (1977).

⁵See *Deibler v. Atlantic Properties, Inc.*, Del. Supr., 652 A.2d 553, 558-59 (1995).

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. All other motions are DENIED. The judgment of the Court of Chancery is AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh
Justice