SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2386-15T1

HSBC BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR MASTR REPERFORMING LOAN TRUST 2005-2,

Plaintiff-Respondent,

v.

RICHARD LAWRENCE, his heirs, devisees, and personal representatives and his/her, their, or any of their successors in right, title and interest,

Defendant,

and

FELICIA ENUYOKAN, his wife, his heirs, devisees, and personal representatives and his/her, their, or any of their successors in right, title and interest,

Defendant-Appellant,

and

Furniture King, Inc., and Midland Funding, LLC,

Defendants-Respondents.

Submitted April 24, 2017 – Decided May 2, 2017

Before Judges Nugent and Haas.

On appeal from Superior Court of New Jersey, Chancery Division, Essex County, Docket No. F-045319-13.

Montell Figgins, attorney for appellant.

Reed Smith, LLP, attorneys for respondent HSBC Bank (Henry F. Reichner, of counsel and on the brief).

PER CURIAM

In this mortgage foreclosure matter, defendant Felicia Enuyokan appeals from a final judgment of foreclosure entered by default on November 23, 2015. We affirm.

We derive the following procedural history and facts from the record. Defendant formerly held title to a residence in Orange. On August 7, 2003, defendant and her now-deceased husband (collectively "the borrowers") executed a note to Security Atlantic Mortgage Co., Inc. ("Security") in the amount of $274,811. To secure payment, the borrowers executed a mortgage encumbering the residence in favor of Mortgage Electronic Registration Systems ("MERS"[1]), as nominee for Security. The mortgage was recorded with the Essex County Clerk's Office on August 26, 2014.

[1] Banks often sell mortgages to one another and, rather than publicly recording the transfers at the county recorder of deeds, they self-track the mortgage assignment through MERS. "MERS is a private corporation which administers a national electronic registry that tracks the transfer of ownership interests and

On August 4, 2006, the borrowers entered into a loan modification agreement, which increased the amount of the loan to $279,950.78. On January 20, 2011, the borrowers executed a second loan modification agreement. Under this agreement, the loan principal was raised to $302,034.28, but the borrowers were able to lower their yearly interest rate from 6.5% to 4.875%, thus saving them approximately $230 a month.

On October 22, 2012, MERS assigned the mortgage to plaintiff HSBC Bank, N.A. The assignment was recorded with the Essex County Clerk's Office on October 24, 2012.

On January 1, 2013, the borrowers defaulted on the loan. On December 5, 2013, plaintiff filed its foreclosure complaint. Defendant filed an answer with affirmative defenses and counterclaims on January 27, 2014.

On July 16, 2014, plaintiff filed a motion for summary judgment, which defendant did not oppose. However, on September 2, 2014, the parties agreed to the entry of a consent order. Under the terms of this order, defendant's answer was "deemed to be non-contesting, and all [of her] affirmative defenses and/or claims [were] voluntarily dismissed with prejudice[,]" together with her counterclaims. The parties also agreed that the matter would be

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servicing rights in mortgage loans." Bank of New York v. Raftogianis, 418 N.J. Super. 323, 332 (Ch. Div. 2010).

"returned to the Office of Foreclosure, where it shall proceed to [j]udgment in an uncontested manner[.]"

In the interim, plaintiff agreed to evaluate defendant for a modification of her loan, provided she filed the application no later than September 15, 2014. Although plaintiff could not guarantee that defendant would be able to qualify for a third loan modification, it agreed to postpone seeking a final judgment of foreclosure for ninety days.

Defendant did not secure a modification of the loan. On October 20, 2015, plaintiff filed a motion for the entry of a final judgment of foreclosure. On November 23, 2015, the Chancery Division entered the final judgment by default in accordance with the terms of the parties' consent order. This appeal followed.

On appeal, defendant contends for the first time that plaintiff lacked standing to foreclose on the mortgage and that plaintiff "violat[ed] the covenant of good faith and fair dealing" during the loan modification process. We have considered defendant's contentions in light of the record and applicable legal principles and conclude that they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add the following brief comments.

Here, default was entered against defendant by agreement of the parties pursuant to the September 2, 2014 consent order. It

is well established that "an order . . . consented to by the attorneys for each party . . . is . . . not appealable." New Jersey Schools Constr. Corp. v. Lopez, 412 N.J. Super. 298, 308 (App. Div. 2010) (quoting Winberry v. Salisbury, 5 N.J. 240, 255, cert. denied, 340 U.S. 877, 71 S. Ct. 123, 95 L. Ed. 638 (1950)). Because defendant consented to having her answer deemed uncontested, with all of her affirmative defenses and counterclaims voluntarily dismissed with prejudice, defendant is barred from challenging the final judgment of foreclosure.

Just as importantly, defendant concedes in her reply brief that the arguments she attempts to present on appeal "were not raised at the trial level[.]" We will ordinarily decline consideration of an issue not properly raised before the trial court, unless the jurisdiction of the court is implicated or the matter concerns an issue of great public importance. Zaman v. Felton, 219 N.J. 199, 226-27 (2014) (citing Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)). Neither situation exists here and, because defendant did not contest plaintiff's standing to foreclose or its compliance with the covenant of good faith and fair dealing before the trial court, the record is plainly insufficient to permit appellate review. Therefore, we decline to consider these contentions for the first time on appeal.

Affirmed.