SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2488-15T3
A-3336-15T3

NATIONSTAR MORTGAGE, LLC,[1]

Plaintiff-Respondent,

v.

YONATHAN COHEN and ROSALIE COHEN,

Defendants-Appellants.

Submitted October 17, 2017 – Decided December 26, 2017

Before Judges Fisher and Moynihan.

On appeal from Superior Court of New Jersey, Chancery Division, Ocean County, Docket No. F-018195-10.

Yonathan Cohen and Rosalie Cohen, appellants pro se.

McElroy, Deutsch, Mulvaney & Carpenter, LLP, attorneys for respondent (Ryan P. Mulvaney, of counsel and on the brief).

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[1] Nationstar Mortgage, LLC, originally pleaded as Bank of America, NA.

PER CURIAM

Yonathan Cohen and Rosalie Cohen (defendants) appeal from a January 13, 2016 foreclosure judgment, and a March 4, 2016 order denying their motion to vacate that judgment and granting leave to correct scrivener's errors in a writ of execution that was entered with the judgment. These matters have been consolidated, and we affirm both the entry of the judgment and denial of the motion.

Defendants executed a note for $200,000 to Bank of America (BOA), which was secured by a recorded mortgage encumbering their realty in Lakewood. Defendants defaulted on payments in December 2009. BOA sent defendants a Notice of Intent (NOI) to foreclose on January 21, 2010, and filed a foreclosure complaint on March 24, 2010, with which defendants were served. Defendants did not file an answer, and default was entered on June 17, 2010. The mortgage was assigned to Nationstar Mortgage, LLC, on September 6, 2013, and the assignment was recorded on November 12 of that year. BOA took no action,[2] and the complaint was administratively dismissed on December 20, 2013. A Chancery Division judge, over

[2] A moratorium issued after Superstorm Sandy halted the prosecution of foreclosure actions in mid-December 2012 until April 16, 2013.

defendants' objection, granted BOA's motion to reinstate the case to active status on July 25, 2014, subject to plaintiff filing a motion for final judgment by February 28, 2015.[3] The motion for final judgment was not timely filed. BOA moved to extend the time to file the motion and to substitute Nationstar[4] as plaintiff. Both motions were granted by a second Chancery Division judge on September 4, 2015; defendants' motion to reconsider was denied on December 11, 2015. An uncontested judgment of foreclosure was entered on January 13, 2016. Defendants' motion to vacate the final judgment and dismiss the foreclosure action was filed on February 9, 2016, and was denied on March 4, 2016, by a third Chancery Division judge.

Defendants argue:

> [POINT I]
>
> NATIONSTAR COULD NOT RIGHTFULLY PROSECUTE THIS FORECLOSURE ACTION IN THE NAME OF [ITS] PREDECESSOR IN INTEREST BANK OF AMERICA[.]
>
> [POINT II]
>
> NATIONSTAR COULD NOT PROSECUTE [ITS] FORECLOSURE ACTION IN THE NAME OF [ITS] [PREDECESSOR] BANK OF AMERICA BECAUSE[,] THOUGH BANK OF AMERICA WAS THE PREDECESSOR OF

[3] The date in the order is February 28, 2014, but defendants acknowledge the correct date as February 28, 2015.

[4] A remedial NOI was sent to defendants by Nationstar in October 2014.

THE MORTGAGE[,] BANK OF AMERICA AND NATIONSTAR DID NOT SHARE A COMMON FORECLOSURE ACTION; THE MAIN THRUST OF THE FORECLOSURE ACTION IS NOT [SHARED] ALIKE BY THE TWO ENTITIES[.]

[POINT III]

THOUGH BANK OF AMERICA APPEARED AT THE COURT[-]ORDERED MEDIATION SESSIONS[,] BANK OF AMERICA HAD NO AUTHORITY TO DO SO[,] CONSEQUENTLY DEFENDANTS/APPELLANTS WERE DEPRIVED OF THEIR NONWAIVABLE RIGHTS [TO] MEDIATION[.]

[POINT IV]

THE CASE LAW OF LAKS[5] SUPPORTS DEFENDANTS/APPELLANTS REQUEST FOR RELIEF[.]

[POINT V]

COURT RULE 4:64-8 STATES A REINSTATEMENT OF A FORECLOSURE MATTER MAY BE PERMITTED ONLY ON MOTION FOR GOOD CAUSE SHOWN ABSENT . . . EXCEPTIONAL CIRCUMSTANCES BEING SHOWN AND WITH THE HEREIN MATTER HAVING NOT [BEEN] REINSTATED AND THEREBY REMAINING DISMISSED[,] IT WAS IMPROPER FOR THE TRIAL COURT TO ALLOW PLAINTIFF A SECOND OPPORTUNITY TO REINSTATE[.]

[POINT VI]

THE HEREIN MATTER CONTAINS A FORECLOSURE FILING ISSUE THAT[,] ACCORDING TO THE NOTICE TO THE BAR DATED APRIL 23, 2014[,] QUALIFIES AS A DEFICIENCY THAT WOULD WARRANT THE MOTION APPLICATION TO BE RETURNED TO THE FILER FOR CORRECTION BEFORE BEING ACCEPTED FOR FILING THE NOTICE WAS ISSUED IN ORDER TO SECURE THE JUDICIARY'S COMMITMENT TO ENSURE DUE PROCESS IN FORECLOSURES[.]

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[5] Bank of New York v. Laks, 422 N.J. Super. 201 (App. Div. 2011).

[POINT VII]

DEFENDANTS/APPELLANTS ARE ENTITLED TO RELIEF BECAUSE THE NAMING OF BANK OF AMERICA ON THE WRIT OF EXECUTION WAS NOT A MERE SCRIVENER'S ERROR[.]

These arguments are without sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E). We add the following remarks.

Where, as here, "the court has entered a default judgment pursuant to Rule 4:43-2, the party seeking to vacate the judgment must meet the standard of Rule 4:50-1." US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). We review the court's decision whether to vacate or set aside the judgment under an abuse of discretion standard. Guillaume, 209 N.J. at 467.

"The trial court's determination under [Rule 4:50-1] warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion," namely where the "decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Guillaume, 209 N.J. at 467 (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

Although defendants did not specify which sections of the Rule they were asserting, none of them provide grounds for defendants' prayers for relief. Under Rule 4:50-1(a), a defendant must show excusable neglect and a meritorious defense. Guillaume,

209 N.J. at 468. Relief under Rule 4:50-1(f) is reserved for "exceptional situations" where "truly exceptional circumstances are present." Morristown Hous. Auth. v. Little, 135 N.J. 274, 286 (1994) (quoting Bauman v. Marinaro, 95 N.J. 380, 395 (1984)). Defendants have failed to satisfy either criteria, or any other section of the rule. Defendants seemingly argued fraud, R. 4:50-1(c), and that the judgment was void, R. 4:50-1(d), to the third Chancery Division judge; there is no merit to those contentions. A motion to vacate based on fraud, pursuant to Rule 4:50-1(c), requires movant to "allege with specificity the representation, its falsity, materiality, the speaker's knowledge or ignorance, and reliance." Palko v. Palko, 73 N.J. 395, 401 (1977) (Schreiber, J., dissenting); see also State v. Hill, 267 N.J. Super. 223, 226 (App. Div. 1993), rev'd on other grounds, 136 N.J. 292 (1994). Again, defendants made no specific allegations.

And, even if defendants were correct that plaintiff lacked standing to bring the complaint, in the "post-judgment context, lack of standing would not constitute a meritorious defense to the foreclosure complaint." Deutsche Bank Nat'l Trust Co. v. Russo, 429 N.J. Super. 91, 101 (App. Div. 2012). Standing is therefore "not a jurisdictional issue in our State court system and . . . a foreclosure judgment obtained by a party that lacked standing is not 'void' within the meaning of Rule 4:50-1(d)." Ibid.

"The only material issues in a foreclosure proceeding are the validity of the mortgage, the amount of the indebtedness, and the right of the mortgagee to resort to the mortgaged premises." Great Falls Bank v. Pardo, 263 N.J. Super. 388, 394 (Ch. Div. 1993), aff'd o.b., 273 N.J. Super. 542 (App. Div. 1994). "[W]e [have] held that either possession of the note or an assignment of the mortgage that predated the original complaint confer[s] standing." Deutsche Bank Tr. Co. Ams. v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012) (citing Deutsche Bank Tr. Co. Ams. v. Mitchell, 422 N.J. Super. 214, 216 (App. Div. 2011)).

There is no dispute that BOA possessed the note at the time it filed the foreclosure complaint. The assignment of mortgage to Nationstar was made and recorded prior to the administrative dismissal. The complaint was reinstated, and Nationstar was substituted as plaintiff in the original complaint. We agree with the second Chancery Division judge that no harm befell defendants by allowing the substitution because "[t]here was a recognition all along of their obligation. Their obligation to repay the money is not altered by who the current note holder is in the litigation"; and we agree with the third Chancery Division judge who, in denying defendants' motion to vacate, ruled BOA was permitted to continue its original action, and that Nationstar, as assignee, was properly substituted as plaintiff prior to the

entry of final judgment. The substitution simply continued the foreclosure action involving the same property and same documents, save for the assignment of mortgage. The second Chancery Division judge also found it appropriate to allow plaintiff to continue the litigation notwithstanding its failure to comply with the July 25, 2014 order, finding defendants suffered no harm by plaintiff's failure to file a timely NOI pursuant to that order, and that defendants participated in mediation and in "ongoing discussions" in an attempt to resolve the foreclosure.[6] We also note no agreement was reached during mediation because defendants' "debt to income ratio [was] too high" to qualify for a modification.

It is also undisputed that defendants defaulted in payments on the note and never answered the complaint; and that, notwithstanding receipt of two NOIs, and defendants' argument that they were confused because BOA, not Nationstar, was identified as the plaintiff until the latter stages of litigation, defendants never attempted to contact either entity to avail themselves of any right set forth in either NOI, including by curing the default. The foreclosure judgment was properly entered and defendants' motion to vacate that judgment was properly denied.

Affirmed.

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[6] Defendants did not appeal the second Chancery Division judge's order of September 4, 2015.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

CLERK OF THE APPELLATE DIVISION