SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0797-14T4

INDIAN FIELD AT HARDYSTON HOMEOWNERS ASSOCIATION, INC.,

Plaintiff-Respondent,

v.

MARK TRUDNOS,

Defendant-Appellant.

Argued November 28, 2017 – Decided January 29, 2018

Before Judges Reisner and Gilson.

On appeal from Superior Court of New Jersey, Chancery Division, Sussex County, Docket No. F-005265-13.

Mark Trudnos, appellant, argued the cause pro se telephonically.[1]

Richard B. Linderman argued the cause for respondent (Ansell Grimm & Aaron, PC, attorneys; Richard B. Linderman, of counsel; Jay B. Feldman, on the brief).

PER CURIAM

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[1] At appellant's request, the court permitted him to argue by telephone.

Defendant Mark Trudnos appeals from a July 10, 2014 final judgment of foreclosure in favor of plaintiff, Indian Field at Hardyston Homeowners Association, Inc. (Association).[2] He raises the following issues for our consideration:

> I. CAN A RESIDENT AND AMERICAN CITIZEN IN THE STATE OF NEW JERSEY BE DEPRIVED OF LIFE, LIBERTY OR PROPERTY, UNDER COLOR OF LAW, WITHOUT DUE PROCESS OF LAW.
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> II. IN ORDER TO HAVE STANDING TO FORECLOSE, A PLAINTIFF MUST SHOW BOTH (1) THAT DEFENDANT OWES A DEBT TO THE PLAINTIFF AND (2) THAT PLAINTIFF HAS A SECURITY INTEREST IN THE PROPERTY.
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> III. IS A DEFENDANT ENTITLED TO ANY FORM OF NOTICE UNDER N.J.S.A. 2A:50-53 ET SEQ. BEFORE A FORECLOSURE SUIT IS FILED BY AN HOA OR OTHER ALLEGED CREDITOR.
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> IV. CAN A PLAINTIFF ACTING ULTRA VIRES CREATE A SECURITY INTEREST IN PROPERTY WHERE NONE EXISTED BY REPEATEDLY FILING UNPERFECTED LIENS ONTO THE COUNTY RECORD.
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> V. THE APPELLATE DIVISION MUST DECIDE IF TWO SEPARATE COMPLAINTS BOTH RESULTING IN JUDGMENT FILED BY THE SAME PLAINTIFF AGAINST THE SAME DEFENDANT ON THE SAME OR SIMILAR CAUSES OF ACTION VIOLATES THE DOCTRINE(S) OF COLLATERAL ESTOPPEL/RES JUDICATA OR WHETHER THIS CONSTITUTES A MALICIOUS ABUSE OF PROCESS AND/OR A MALICIOUS USE OF PROCESS.

[2] After this appeal was filed, the property at issue was sold at a sheriff's sale, and defendant was evicted. However, this appeal is limited to the final foreclosure judgment entered on July 10, 2014, as opposed to any later orders entered by the court.

Having reviewed the record, we conclude that those arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the reasons stated by Judge William J. McGovern, III, in his written statements of reasons issued with the October 1, 2013 order denying all of defendant's pending motions; the February 18, 2014 order granting plaintiff partial summary judgment and referring the case to the Office of Foreclosure as an uncontested matter; and the April 11, 2014 order assessing counsel fees to be included in the final foreclosure judgment. We add the following brief comments.

The Association's governing documents require homeowners to pay assessments to the Association. They also authorize the Association to impose late fees for overdue assessments, pursue collection actions, file liens against properties owned by delinquent homeowners, foreclose on the liens, and obtain counsel fees for actions to enforce the Association's right to collect the assessments. Defendant admittedly failed to pay some of the Association's assessments. As a result, the Association filed liens against defendant's property, obtained judgments for the delinquent assessments, and filed an action to foreclose on the liens.

The Association's actions were lawful. "It is well established that membership obligations requiring homeowners in a

community to join an association and to pay a fair share toward community maintenance are enforceable as contractual obligations." Highland Lakes Country Club & Cmty. Ass'n v. Franzino, 186 N.J. 99, 111 (2006) (citing Paulinskill Lake Ass'n v. Emmich, 165 N.J. Super. 43, 45 (App. Div. 1978)). "Moreover, such recorded covenants also can create a lien on the property." Ibid. (citing Leisuretowne Ass'n, Inc. v. McCarthy, 193 N.J. Super. 494, 501 (App. Div. 1984)).

If, as occurred here, the liens remain unpaid, the Association has the right to foreclose on the property. Leisuretowne, 193 N.J. Super. at 501-02. Plaintiff was not required to serve defendant with a pre-suit notice of intent to foreclose, because the Fair Foreclosure Act, N.J.S.A. 2A:50-53 to -61, only applies to foreclosures of residential mortgages. See N.J.S.A. 2A:50-54. The Act does not apply to foreclosures of liens for unpaid association assessments.

Defendant, who represented himself throughout the litigation, filed multiple motions which the trial court found were both without merit and reflected fundamental misunderstandings as to the applicable law. He also forestalled plaintiff's collection and foreclosure litigation by filing for bankruptcy twice. His actions greatly increased plaintiff's expenses for what otherwise would have been relatively straightforward litigation to collect

about $6500 in overdue assessments. As a result, we find no abuse of the trial court's discretion in adding a substantial amount of counsel fees to the foreclosure judgment. See Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001) (absent "a clear abuse of discretion," a trial court's fee award will not be overturned).

Defendant also misunderstands the legal effect of his bankruptcy filings. When defendant emerged from bankruptcy, his personal debts were discharged. However, under the bankruptcy laws, the pre-existing liens against his property remained, as did plaintiff's right to foreclose on those liens. See Party Parrot, Inc. v. Birthdays & Holidays, Inc., 289 N.J. Super. 167, 174 (App. Div. 1996) (citing Johnson v. Home State Bank, 501 U.S. 78, 82-83 (1991)).

Affirmed.