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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2143-16T3

DITECH FINANCIAL, LLC,

Plaintiff-Respondent,

v.

DOMINIC J. RUGGIERO,

Defendant-Appellant,

and

RUBY RUGGIERO, GATEWAY PARK CONDOMINIUM, and JP MORGAN CHASE BANK, N.A.,

Defendants.

Submitted January 22, 2018 – Decided March 6, 2018

Before Judges Messano and O'Connor.

On appeal from Superior Court of New Jersey, Chancery Division, Monmouth County, Docket No. F-040989-14.

John J. Hopkins, III, attorney for appellant.

Pluese, Becker & Saltzman, LLC, attorneys for respondent (Robert F. Thomas, on the brief).

PER CURIAM

In this residential mortgage foreclosure action, defendant Dominic J. Ruggiero appeals from a January 20, 2017 order denying his motion to stay the sheriff's sale on the mortgaged premises and to vacate the final judgment in foreclosure. We affirm.

I

We glean the following from the record. In 2005, defendant borrowed $99,500 from Mortgage Electronic Registration Systems, Inc. (MERS), nominee for GMAC Mortgage Corporation (GMAC), and executed a mortgage in MERS' favor using his recently acquired condominium as collateral. In 2012, MERS assigned its interest in the mortgage to GMAC.

In March 2013, defendant made his last mortgage payment. Plaintiff, then doing business as Green Tree Servicing, LLC, was the servicer of the loan. In May 2013, plaintiff sent defendant a Notice of Default and Intent to Foreclose, but to no avail. The notice states plaintiff was both the servicer of the loan and the lender. In June 2013, GMAC assigned the mortgage to plaintiff. In September 2014, plaintiff filed a complaint against defendant to foreclose upon the mortgage.

On April 21, 2015, the Federal Trade Commission and the Consumer Fraud Protection Bureau filed a complaint against plaintiff in the United States District Court, District of Minnesota, alleging, among other things, that it had engaged in deceptive and aggressive collection tactics, and had failed to adequately advise borrowers of loss mitigation options.

Two days later, on April 23, 2015, the district court issued a permanent injunction against plaintiff and ordered it to pay a fine of forty-eight million dollars. In addition to other measures, the court ordered plaintiff to implement a plan to provide "affected consumers" loss mitigation options. In the interim, plaintiff was ordered to suspend any pending foreclosure sales to the extent necessary to permit such consumers to be solicited and considered for loss mitigation options.

Defendant fit the definition of "affected consumer." However, the record reveals that between March 2013 and July 2016, plaintiff sent defendant thirteen letters advising him that he might be eligible for mortgage modification assistance. Notwithstanding these solicitations, defendant declined to follow through and determine if any mortgage modification plan was suitable to him.

On June 26, 2015, plaintiff prevailed on its motion for summary judgment. Defendant's cross motion to dismiss the complaint was denied. It is not clear from the record the specific grounds defendant asserted in support of his motion to dismiss the complaint.

In August 2015, plaintiff was renamed Ditech Financial, LLC. On June 10, 2016, a final judgment in foreclosure was entered in plaintiff's favor in the amount of $99,246.32, plus counsel fees of $1142.46. Thereafter, on January 20, 2017, the court entered an order denying defendant's motion to stay the sheriff's sale and to vacate the final judgment in foreclosure.

We discern from the court's findings denying the motion that defendant asserted the same arguments he had raised in his prejudgment motion to dismiss the complaint, plus two additional arguments. Those two new arguments were: (1) plaintiff violated a federal statute, two federal regulations, and the April 23, 2015 order of injunction for allegedly failing to make loan modification assistance programs available to its customers; and (2) defendant was not permitted into the court's mediation program.

Because the arguments were the same, the court declined to reconsider any argument that had been raised and decided in defendant's motion to dismiss the complaint. In essence, the

court found defendant failed to provide any basis to reconsider its decisions on such arguments. See R. 4:49-2.

The court rejected defendant's argument plaintiff failed to provide mortgage modification assistance to defendant in accordance with the injunction order, finding the record demonstrated plaintiff had sent defendant thirteen letters advising him of loss mitigation options and offered two trial modification plans. With respect to defendant's claim he had not been permitted into the court's mediation program, the court noted defendant failed to apply for mediation.

II

Defendant appeals from the January 20, 2017 order.[1] Despite the trial court's limited rulings, defendant raises a host of arguments for our consideration:

> POINT I: PURSUANT TO THE FEDERAL SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION AND ITS APPLICATION, EVERY STATE COURT MUST

[1] In his brief, defendant asserts he is appealing from "all orders, judgments and writs entered after April 23, 2015," but his notice and amended notice of appeal reflect he is appealing from only the January 20, 2017 order. "[I]t is only the judgments or orders or parts thereof designated in the notice of appeal which are subject to the appeal process and review." Pressler & Verniero, Current N.J. Court Rules, cmt. 6.1 on R. 2:5-1 (2018); see also Campagna ex rel. Greco v. American Cyanamid Co., 337 N.J. Super. 530, 550 (App. Div. 2001) (refusing to consider an order not listed in the notice of appeal).

GIVE DEFERENCE TO A FEDERAL STAY WHICH HAS BEEN ENTERED AGAINST THIS PLAINTIFF.

POINT II: THE TRIAL JUDGE VIOLATED THE HOLDINGS UNDER THE NEW JERSEY FAIR FORECLOSURE ACT BY ALLOWING A SERVICING COMPANY TO PROCEED WITH A FORECLOSURE.

POINT III: THE PLAINTIFF HAS VIOLATED FEDERAL LAW IN ITS ADMINISTRATION OF FORECLOSURE PROCEEDINGS BY FAILING TO PARTICIPATE IN THE LOAN MODIFICATION PROGRAM AS REQUIRED UNDER THE DODD-FRANK ACT AND REGULATION Z WHICH IS ALSO A VIOLATION OF THE FAIR FORECLOSURE ACT (FFA).

POINT IV: THE PLAINTIFF GREEN TREE FAILED TO FOLLOW THE DOCTRINE OF SUBSTANTIAL COMPLIANCE TO CURE THE BLATANT DEFECTS IN THEIR FORECLOSURE COMPLAINT.

POINT V: THE PLAINTIFF IS NOT THE MORTGAGE HOLDER AND THEREFORE THIS COMPLAINT MUST BE DISMISSED.

Here, the only decisions subject to challenge are those the court made when it denied defendant's motion to stay the sheriff's sale and to vacate the final judgment. Those decisions are: (1) declining to reconsider any argument defendant raised in his motion to dismiss the complaint; (2) rejecting defendant's claim plaintiff violated the order of injunction by failing to provide him with mortgage modification assistance; and (3) rejecting defendant's claim he had not been permitted to participate in the court's mediation program.

It is well settled an application to vacate a foreclosure judgment is subject to an abuse of discretion standard. United States v. Scurry, 193 N.J. 492, 502-03 (2008) (citing Wiktorowicz v. Stesko, 134 N.J. Eq. 383, 386 (E. & A. 1944)). An abuse of discretion occurs where a decision was "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Flagg v. Essex County Prosecutor, 171 N.J. 561, 571 (2002) (citation omitted). Our courts also review the denial a motion to stay under this standard. See Avila v. Retailers & Mfrs. Distribution, 355 N.J. Super. 350, 354 (App. Div. 2002).

To the extent any of the arguments defendant asserts on appeal were considered by the court at the time defendant moved to dismiss the complaint, we do not address them. As previously noted, when the court considered defendant's motion to stay the sheriff's sale and to vacate the final judgment of foreclosure, it observed that all but two of defendant's arguments had been asserted when defendant moved for dismissal of the complaint; at that time, defendant's arguments were considered and rejected. When confronted with the same arguments in the motion that led to the entry of the January 20, 2017 order, the court indicated there was no reason to reconsider and decide any of those decisions anew.

On appeal, defendant does not assert the trial court erred by failing to reconsider such decisions. Even if he had, defendant appeals from only the January 20, 2017 order and not the order denying his motion to dismiss the complaint. See W.H. Industries, Inc. v. Fundicao Balancins, Ltda, 397 N.J. Super. 455, 458-59 (App. Div. 2008) (considering only the order denying reconsideration because it was the only order designated in the notice of appeal); see also Fusco v. Bd. of Educ. of City of Newark, 349 N.J. Super. 455, 461-62 (App. Div. 2002) (reviewing only the denial of the plaintiff's motion for reconsideration and refusing to review the original grant of summary judgment because that order was not designated in the notice of appeal).

Even if the court erred by not reconsidering and changing any of its prior decisions, defendant failed to identify what those previous decisions were and, more importantly, did not provide a copy of the court's oral or written statement of reasons on such decisions. See R. 2:6-1(a)(1)(I) (the appendix must contain parts of the record "essential to the proper consideration of the issues."). Without a statement of reasons, we would have been unable to evaluate the trial court's reasoning for those decisions.

Defendant argues plaintiff violated the law by failing to participate in a loan modification program. We find no merit in

this contention. First, defendant does not provide the citation to those laws or, more importantly, the specific provisions he claims plaintiff violated. See R. 2:6-2(a) (requiring a legal argument be supported with reference to legal authority). Second, defendant fails to set forth any argument articulating how the trial court erred when it found the record established plaintiff had participated in such programs and offered defendant loss mitigation options. Accordingly, we reject this argument.

The remaining arguments either were not raised before the trial court or, for the reasons previously stated, were not addressed by it. As for the former, "[g]enerally, an appellate court will not consider issues, even constitutional ones, which were not raised below." State v. Galicia, 210 N.J. 364, 383 (2012) (citing Deerfield Estates, Inc. v. E. Brunswick, 60 N.J. 115, 120 (1972)). As for the latter, defendant does not challenge the court's decision to decline reconsidering its previous decisions.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION