SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2704-16T2

M&T BANK,

Plaintiff-Respondent,

v.

LEAH TRESS, MR. TRESS,
husband of LEAH TRESS,

Defendant-Appellant,

and

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC. AS NOMINEE FOR
OLYMPIA MORTGAGE CORP.; GOLFVIEW
TOWNHOUSE CONDOMINIUM ASSOCIATION,

Defendants.

Submitted February 12, 2018 – Decided March 14, 2018

Before Judges Accurso and Vernoia.

On appeal from Superior Court of New Jersey, Chancery Division, Ocean County, Docket No. F-064054-09.

Leah Tress, appellant pro se.

Stern, Lavinthal & Frankenberg, LLC, attorneys for respondent (Mark S. Winter, of counsel and on the brief).

PER CURIAM

Defendant Leah Tress appeals from the entry of final judgment, contending the trial court erred in granting plaintiff M&T Bank's motion to reinstate its complaint and denying her application to vacate default and permit her the opportunity to argue plaintiff's predecessor in this action, PB Investment Holdings, LLC successor by merger to PB Reit Inc., did not possess the note and mortgage when it filed its foreclosure complaint. We affirm.

Defendant borrowed $78,000 from Olympia Mortgage Corp. in October 2003, secured by a thirty-year mortgage on her condominium. The mortgage was made to Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for Olympia. Defendant has been in default of her obligations under the note and mortgage since October 2008.

MERS executed an assignment of mortgage to PB Investment Holdings on December 7, 2009. PB Investment filed its foreclosure complaint the same day. Defendant failed to answer after being personally served, not at the premises. Plaintiff entered default against defendant but did not proceed to final judgment. Instead, the case was administratively dismissed without prejudice in September 2013 under R. 4:64-8 for failure to prosecute.

In September 2015, PB Investment moved to reinstate its complaint, establish the mortgage was not a residential mortgage entitling defendant to the protections of the Fair Foreclosure Act and to substitute M&T Bank as plaintiff. In support of the application, counsel for plaintiff submitted a certification attesting to the recording of the assignment to M&T Bank and to there being a rent-paying tenant unrelated to defendant living in the premises. The court granted the motion permitting reinstatement "provided the motion [for final judgment] is filed not later than January 19, 2016," permitting substitution of M&T Bank upon reinstatement and declaring the mortgage was not a residential mortgage within the meaning of the Fair Foreclosure Act, R. 4:64-1 and R. 4:64-2.

Plaintiff did not file its motion to reinstate the complaint until May 6, 2016, well after the deadline the court had imposed for doing so. Counsel for plaintiff submitted a certification attributing the delay to plaintiff's discovery that the servicer could not locate the original note, preventing plaintiff from moving for final judgment without an order permitting it to do so with only a copy. It included a request for such an order in its notice of motion, supported by a certification of an officer of M&T Bank explaining that when M&T took an assignment of the mortgage, servicing of the loan was

transferred from Bank of America, N.A. to M&T. Bank of America, however, was unable to locate the original note and has since provided M&T with a lost note affidavit, a true copy of which was attached. The bank officer also certified defendant had contacted M&T "to discuss loss mitigation options, including a short sale," but those discussions were not successful.

Defendant opposed the motion to reinstate. The court granted the motion reinstating the action in the name of M&T Bank and permitting it to proceed to final judgment with a copy of the note, stating "for the reasons set forth in the moving papers, this [c]ourt is satisfied that [p]laintiff has established sufficient good cause to reinstate this matter and further, [d]efendant will not suffer any prejudice."

Defendant moved for reconsideration or, in the alternative, to permit her to file an answer out of time, denying all of the allegations of the complaint and raising the affirmative defenses of lack of standing, unjust enrichment, equitable estoppel and lack of privity. Plaintiff opposed the motion, contending it had submitted proof its predecessor had been assigned the note and mortgage when its predecessor filed the complaint, that defendant was personally served with the pleadings, failed to answer and "has failed to offer any evidence to explain failing to [a]nswer the [c]omplaint or for

not attempting to file an [a]nswer for almost six (6) years." Plaintiff further noted its motion for final judgment was pending unopposed in the Foreclosure Unit. Defendant claims to have filed a reply, but it is not in the appendix. The court, "having read the papers submitted" and "having found that defendant has provided no basis for this court to reconsider its prior order reinstating this foreclosure matter; AND for the reasons set forth in plaintiff's opposition," entered an order denying defendant's motion.

Defendant did not oppose final judgment, which was entered on November 18, 2016. Defendant appeals, contending the court abused its discretion in permitting reinstatement of the complaint and not permitting her to file an answer out of time. We disagree.

Although R. 4:43-3 requires only a showing of good cause for setting aside the entry of default, N.J. Mfrs. Ins. Co. v. Prestige Health Grp., LLC, 406 N.J. Super. 354, 360 (App. Div. 2009), and the Supreme Court has reiterated, in the context of a foreclosure case, that the standard for setting aside the entry of a default is decidedly less stringent than that of setting aside a default judgment, US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (citing Pressler & Verniero, Current N.J. Court Rules, cmt. on R. 4:43-3 (2012)), we do not find the judge

erred in denying defendant's motion under the circumstances of this case.

Defendant does not dispute that neither she nor her family lives in the property or that she has not made a mortgage payment since 2008. She has never explained why she failed to answer the complaint when personally served in 2010. Her contention that plaintiff's predecessor had not been assigned the note and mortgage when it filed its complaint on December 7, 2009, is belied by the recorded assignment. We have refused to reopen a foreclosure judgment even when it was clear the mortgagee had not been assigned the mortgage at the time it filed its foreclosure complaint where the homeowner only raised the issue after "he had the advantage of many years of delay," observing "[i]n foreclosure matters, equity must be applied to plaintiffs as well as defendants." Deutsche Bank Tr. Co. Ams. v. Angeles, 428 N.J. Super. 315, 320 (App. Div. 2012).

Although this matter had not proceeded to judgment, Angeles is instructive here. We see no reason to have permitted defendant, who had already obtained the benefit of many years delay, to continue to receive rent from the mortgaged premises and not pay her mortgage while she litigated a frivolous defense. Equity counselled permitting plaintiff to proceed to

final judgment under the circumstances confronting the trial court.

In her reply brief, defendant argues the judge improperly failed to state reasons for the orders granting reinstatement and denying reconsideration, relying instead on "the reasons set forth in the moving papers," and "the reasons set forth in plaintiff's opposition." Although the orders are not appealable as of right, and thus not among those requiring a written statement of reasons under R. 1:7-4, we disapprove of the practice employed by the judge here. That the only order appealable as of right in a foreclosure is entered by a judge in Trenton on recommendation by the Foreclosure Unit does not diminish the obligation of the judge hearing the case to explain his orders without reliance on unspecified reasons advanced by one of the parties. See Pressler & Verniero, Current N.J. Court Rules, cmt. on R. 1:7-4 (2018). Because the reasons for the orders defendant complains of here are clear, however, the failure of the judge to make those reasons explicit is of no moment.

Affirmed.