SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3461-15T1

OCWEN LOAN SERVICING, LLC,

Plaintiff-Respondent,

v.

SEBAHATTIN KURUN,

Defendant-Appellant,

and

SELMA KURUN,

Defendant.

Submitted January 8, 2018 – Decided March 27, 2018

Before Judges Accurso and O'Connor.

On appeal from Superior Court of New Jersey, Chancery Division, Burlington County, Docket No. F-059544-09.

Sebahattin Kurun, appellant pro se.

Phelan Hallinan Diamond & Jones, PC, attorneys for respondent (Brian J. Yoder, on the brief).

PER CURIAM

Defendant Sebahattin Kurun appeals from the denial of his motion to vacate a default judgment of foreclosure, contending plaintiff Ocwen Loan Servicing, LLC "has been the subject of numerous law suits regarding illegal mortgage transactions" and "has not shown any willingness to deal in good faith" in this matter. Because the record reveals plaintiff established it complied with all the steps necessary to enter the final judgment, and defendant failed to demonstrate excusable neglect, a meritorious defense or the existence of exceptional circumstances to justify setting it aside, we affirm. See US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 457 (2012).

Defendant borrowed $279,750 from Montgomery Mortgage Capital Corporation in April 2006, evidenced by a thirty-year note secured by the non-purchase money mortgage he and his wife gave to Montgomery's nominee, Mortgage Electronic Registration Systems, Inc. The loan went into default in August 2009. Three months later, MERS assigned the mortgage to GMAC Mortgage, LLC, which filed a foreclosure complaint the following day. After efforts to serve defendant and his wife in New Jersey were unsuccessful, GMAC had them personally served in New York, where they were apparently residing. Defendants failed to answer the complaint and default was promptly entered against them in January 2010.

GMAC filed its motion for final judgment in June 2010, where it remained pending when this court issued its decision in Bank of New York v. Laks, 422 N.J. Super. 201, 213 (App. Div. 2011), holding the only cure for a mortgagee's failure to provide the name and address of the lender in the pre-suit notice of intention to foreclose required by the Fair Foreclosure Act, N.J.S.A. 2A:50-56(c)(11), is dismissal of the foreclosure complaint without prejudice. Because the notice of intention to foreclose GMAC sent to defendant and his wife apparently did not identify the lender, it withdrew its motion for final judgment.

Following the Supreme Court's decision in Guillaume, 209 N.J. at 458, overruling Laks to the extent it held "the only remedy available to a trial court for a violation of N.J.S.A. 2A:50-56(c)(11) is dismissal without prejudice," GMAC sought and obtained permission from the court in December 2012 to send new notices of intention to foreclose in certain pending, pre-judgment, uncontested foreclosure cases such as this one, correcting the defect in the original notices and providing lenders a new opportunity to cure.

GMAC sent defendant and his wife a corrected notice of its intention to foreclose in January 2013 by regular and certified mail to the property and their home in New York. Defendant did

not cure the default. The following June, GMAC assigned the mortgage to Ocwen, which recorded the assignment in the Burlington County Clerk's Office on July 8, 2013. The foreclosure complaint was amended the following December to reflect the assignment of the mortgage to Ocwen and its substitution as plaintiff.

Ocwen personally served defendant and his wife at the mortgaged premises in January 2014 by leaving a copy of the summons and amended complaint with a woman claiming to be defendant's mother-in-law, and, after unsuccessfully attempting to personally serve the couple at their home in New York, made substituted service on them there in March by regular and certified mail. Defendants did not answer the amended complaint, and default was entered against them in July 2014.

In January 2015, defendants filed a Chapter 7 bankruptcy action in New York, which stayed the foreclosure until the following June. Ocwen notified defendants in August it was ready to submit its proofs for final judgment. When defendants did not respond, Ocwen filed its motion for final judgment, which was entered unopposed in September. Ocwen served defendants with the final judgment in October 2015.

Defendant made its motion to vacate the judgment while Ocwen was attempting to schedule a sheriff's sale. Ocwen

opposed the motion with proofs of all the steps it had taken to enter judgment, and contended defendant had not attempted to demonstrate excusable neglect and could not show the existence of a meritorious defense. At oral argument, defendant conceded he had defaulted on the loan in 2009 and had not made any payments since then. He explained the financial difficulties his family had endured over the last several years and his desire to save his home. Defendant candidly admitted the defenses he raised in his R. 4:50 motion were the result of searching the internet for ways to stave off foreclosure. The judge denied the motion in a written opinion. Defendant's motion to stay the sheriff's sale was denied after defendant exhausted his statutory adjournments, and the property was sold to Ocwen at a sale in May 2016.

Defendant appeals, reprising the same generic arguments he made to the trial court. He has never disputed, however, the validity of the mortgage, his default or the amount due, see Cent. Penn Nat'l Bank v. Stonebridge, Ltd., 185 N.J. Super. 289, 302 (Ch. Div. 1982), and our review of the record makes clear the chain of recorded assignments, culminating in the one to Ocwen pre-dating the amended complaint, established its right to resort to the mortgaged premises to satisfy the indebtedness, Deutsche Bank Tr. Co. Ams. v. Angeles, 428 N.J. Super. 315, 318

(App. Div. 2012). Because defendant has not met his burden to demonstrate either excusable neglect, a meritorious defense or the existence of any exceptional circumstances warranting the setting aside of the final judgment, we affirm. See R. 4:50-1; Guillaume, 209 N.J. at 483.

Affirmed.