SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3995-16T4

OCWEN LOAN SERVICING, LLC,

Plaintiff-Respondent,

v.

SANDRA R. STIVES and CARLA N. STIVES,

Defendants-Appellants,

and

MR. STIVES, spouse of SANDRA R. STIVES, MR. STIVES, spouse of CARLA N. STIVES, and FOUR SEASONS AT WEATHERBY HOMEOWNERS ASSOCATION, INC.,

Defendants.

Submitted May 9, 2018 – Decided May 17, 2018

Before Judges Alvarez and Geiger.

On appeal from Superior Court of New Jersey, Chancery Division, Gloucester County, Docket No. F-014982-16.

Sandra R. Stives and Carla N. Stives, appellants pro se.

Blank Rome LLP, attorneys for respondent (Matthew M. Maher, on the brief).

PER CURIAM

In this residential mortgage foreclosure action, defendants Sandra R. Stives and Carla N. Stives (defendants) appeal from an April 6, 2017 final judgment of foreclosure entered in favor of plaintiff Ocwen Loan Services, LLC. We affirm.

The following facts are taken from the record. On October 22, 2010, defendants signed a $226,138 adjustable-rate mortgage note in favor of West Town Savings Bank. On the same day, defendants executed a purchase money mortgage to Mortgage Electronic Registration Systems, Inc. (MERS), solely as nominee for West Town Savings Bank, to secure the loan. The mortgage was recorded on November 8, 2010.

On January 21, 2013, MERS, as nominee for West Town Savings Bank, assigned the mortgage to GMAC Mortgage, LLC. The assignment was recorded on January 24, 2013. On December 3, 2014, GMAC Mortgage, LLC assigned the mortgage to plaintiff. The assignment was recorded on December 15, 2014.

Defendants defaulted on the loan installment that fell due on November 1, 2014. Defendants allege they submitted a loss mitigation application to plaintiff on February 2, 2015. According to plaintiff's letter dated March 26, 2015, defendants

"successfully completed the FHA Home Affordable Modification Program (HAMP) trial period." The letter also states a subordinated mortgage and note in the amount of $5006.97 were enclosed and requested defendants to "sign these documents in the presence of a notary and return them to [plaintiff's] office by [April 9, 2015]." The record contains no evidence that these documents were executed and returned to plaintiff.

On February 19, 2016, separate notices of intent to foreclose were sent to defendants. On May 26, 2016, plaintiff filed a foreclosure complaint. Defendants were personally served with the summons and complaint at their residence on June 13, 2016.

Defendants did not respond to the complaint. On August 5, 2016, plaintiff filed a request to enter default and certification of service. On August 22, 2016, plaintiff sent defendants a ten-day notice of entry of final judgment pursuant to the Fair Foreclosure Act, N.J.S.A. 2A:50-53 to -73. Defendants did not respond to the notice.

On March 7, 2017, plaintiff moved for entry of final judgment on notice to defendants. Defendants did not oppose the motion. On April 6, 2017, a final judgment of foreclosure and writ of execution in the amount of $223,338.88 plus interest, taxed costs, and counsel fees were issued by the Chancery Division judge. Defendants did not move to vacate the default pursuant to Rule

4:43-3 or to set aside the final judgment pursuant to Rule 4:50-1. Instead, they filed this appeal on May 19, 2017.

On appeal, defendants argue "[t]he trial court erred in granting summary judgment to [plaintiff] because [plaintiff] breached [its] duty of care to [defendants]." They further argue "[p]laintiff created the failure to perform obligation of a residential mortgage by the [defendants] by not applying mortgage payments approved as loan modification." Defendants contend plaintiff withheld information regarding the loan modification and successful completion of the trial period, returned payments to defendants, and should not be granted fees and penalties for unapplied loans.

Defendants' arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add the following brief comments.

Plaintiff established a prima facie right to foreclose by demonstrating "execution, recording, and non-payment of the mortgage." Thorpe v. Floremoore Corp., 20 N.J. Super. 34, 37 (App. Div. 1952). The mortgage was assigned to plaintiff, and the assignment was recorded prior to the filing of the complaint, conferring standing to foreclose. Deutsche Bank Tr. Co. Americas v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012) (citing Deutsche Bank Nat'l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 216,

225 (App. Div. 2011)). Defendants did not file a contesting answer.

Moreover, defendants do not provide any authority for the legal contentions upon which they rely. This omission, compounded by their failure to provide necessary factual support for the arguments they raise, is tantamount to failing to brief the issues raised.

Additionally, "the rule in New Jersey is that a direct appeal will not lie from a judgment by default." N.J. Div. of Youth & Fam. Servs. v. T.R., 331 N.J. Super. 360, 363 (App. Div. 2000) (quoting Haber v. Haber, 253 N.J. Super. 413, 416 (App. Div. 1992)). "The proper course was for [defendants] to apply to the trial court for relief from the default judgment pursuant to [Rule] 4:50-1 where [they were] obligated to demonstrate both excusable neglect and a meritorious defense." Id. at 364. Defendants, by directly appealing the default judgment, are "attempting to avoid the requirements of [Rule] 4:50-1." Haber, 253 N.J. Super. at 417. "Defendant[s'] voluntary conduct in absenting [themselves] from the proceedings should not give [them] a better advantage on direct appeal than [they] would have as a movant under [Rule] 4:50-1 where [they are] obligated to prove both excusable neglect and a meritorious defense." Ibid.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION