SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4987-16T3

WILMINGTON SAVINGS FUND SOCIETY, FSB, Doing Business as Christina Trust, not in its Individual Capacity, but Solely as Trustee for BCAT 2015-14ATT,

Plaintiff-Respondent,

v.

JUNG HEE CHOI, MRS. JUNG HEE CHOI, his wife, BONG JAE KIM, MRS. BONG JAE KIM, his wife,

Defendants-Appellants,

and

1ST CONSTITUTION BANK; ARMSTRONG SUTTON PLAZA, LLC; BEAUTY PLUS TRADING CO., INC.; CAPITAL ONE BANK USA NA; EAST WEST BANK; HACKENSACK UNIVERSITY MEDICAL CENTER; LYNN HENRY; JPMORGAN CHASE BANK, NA; MIDLAND FUNDING, LLC, ASSIGNEE CHASE BANK USA NA; MILES, INC.; MORRISON & COMPANY, PA; PNC BANK, NA; SEOULBANK; SINA INTERNATIONAL CORP.; TD BANK, NA; UNITED STATES OF AMERICA; WINDSOR PARK CONDOMINIUM ASSOCIATION, INC. and GREENWOOD TRUST CO.,

Defendants.

Submitted April 23, 2018 – Decided May 15, 2018

Before Judges Accurso and O'Connor.

On appeal from Superior Court of New Jersey, Chancery Division, Bergen County, Docket No. F-018016-16.

Law Offices of Park & Kim, LLC, attorneys for appellants (Kyungjoo Park, on the briefs).

Knuckles, Komosinski & Manfro, LLP, attorneys for respondent (Michel Lee, on the brief).

PER CURIAM

Defendants Jung Hee Choi and Bong Jae Kim appeal from the entry of final judgment of foreclosure, contending the trial court erred in entering judgment for plaintiff Wilmington Savings Fund Society, FSB, doing business as Christina Trust, not in its individual capacity, but solely as Trustee for BCAT 2015-14ATT and denying their application to vacate default and permit them the opportunity to argue defective service, fraudulent title search, failure to serve a notice of intent to foreclose or advise of the intent to enter final judgment thus depriving them of the ability to participate in federal and state programs to assist them in curing their default. Defendants further argue the trial court erred in accepting plaintiff's proof of amount due. Our review of the record

having convinced us that none of those arguments is of sufficient merit to warrant extended discussion in a written opinion, we affirm. R. 2:11-3(e)(1)(E).

Defendant Jung Hee Choi borrowed $387,000 from plaintiff's predecessor, Bank of America, in January 2007, executing a thirty-year note and, with defendant Bong Jae Kim, a purchase money mortgage on their condominium in Englewood. The loan went into default two years later in January 2009. As reflected in the 2016 foreclosure complaint and in plaintiff's counsel's certification of diligent inquiry pursuant to R. 4:64-1(a)(2), Bank of America assigned the mortgage to the Federal Home Loan Mortgage Corporation, which assigned it back to Bank of America, which further assigned it to plaintiff. Each of those assignments was recorded in Bergen County. The assignment to plaintiff was recorded on March 10, 2016, before the June 27, 2016 filing of the foreclosure complaint, thus establishing plaintiff's standing to pursue its foreclosure. See Deutsche Bank Tr. Co. Ams. v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012).

Plaintiff produced proof of having served notice of intent to foreclose on both defendants at the property sixty days prior to filing the complaint by regular and certified mail. Although the certified mail was returned unclaimed, the regular mail was

not returned. After plaintiff was unable to personally serve defendants at the property, which the process server found occupied by a tenant, plaintiff filed a certification of diligent inquiry detailing its efforts to personally serve defendants. Service was eventually made by publication in accordance with R. 4:4-5. When defendants failed to answer, default was entered against them in October 2016.

Defendants finally appeared in the action in response to plaintiff's motion for final judgment, served by regular and certified mail addressed to them at the property. They opposed the motion, claiming plaintiff "failed to submit documentation in support of its Amount Due Schedule" and "failed to comply strictly with the statutory requirements for the Notice of Intention to Foreclose." Defendants filed their own motion to vacate default alleging defective service of process, failure to search title (based on the misspelling of the name of one of defendants in the complaint) and that plaintiff failed to comply strictly with the Fair Foreclosure Act. They further claimed they should have been permitted "an opportunity for loan modification under the federal government's Make Home Affordable Program," to challenge the mortgage assignments, and that they "are the third-party beneficiary of the trust of the subject mortgage loan."

Judge Toskos denied defendants' motion to vacate default and their objection to the amount due, permitting plaintiff to proceed to final judgment. In two comprehensive statements appended to those orders, the judge addressed each of defendants' several arguments. In addressing defendants' motion to vacate default, the judge detailed the several attempts plaintiff undertook to personally serve defendants at the property and its search of motor vehicle records, social security records, voter rolls, tax records, postmaster records and telephone directories, of which indicated the property as a valid address for both defendants.

Finding defendants were validly served by publication pursuant to R. 4:4-5, the judge found defendants had not presented the court with good cause to vacate default, even under the liberal standard of R. 4:43-3 and O'Connor v. Altus, 67 N.J. 106, 129 (1975). He found that besides failing to explain how they happened to receive the notice of motion for final judgment mailed to the property but not personal service of the complaint or any of plaintiff's other notices mailed to the same address, defendants failed to "provide any credible competent evidence that would challenge Plaintiff's right to foreclose." See Great Falls Bank v. Pardo, 263 N.J. Super. 388, 394 (Ch. Div. 1993) (noting "[t]he only material issues in a

foreclosure proceeding are the validity of the mortgage, the amount of the indebtedness, and the right of the mortgagee to resort to the mortgaged premises"), aff'd, 273 N.J. Super. 542 (App. Div. 1994); Thorpe v. Floremoore Corp., 20 N.J. Super. 34, 37 (App. Div. 1952) (same).

Judge Toskos rejected each of defendants' objections to plaintiff's proofs for final judgment. He found no "credible competent evidence to rebut any of Plaintiff's figures," or in any way show they were incorrect. He specifically rejected defendants' claim that the misspelling of defendant's name as "Bon Jae Kim" instead of "Bong Jae Kim" or a typographical error in the schedule of amount due "negatively reflect on the trustworthiness of the content of the Schedule." Because defendants failed to offer conflicting proof or establish a contested fact to be resolved, the judge determined no hearing was necessary and that plaintiff was entitled to proceed to final judgment. See Mony Life Ins. Co. v. Paramus Parkway Bldg., Ltd., 364 N.J. Super. 92, 106 (App. Div. 2003). Defendants appeal, reprising the arguments they made to the trial court.

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, 466-67 (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 defendants' motion under the circumstances of this case.

Defendants do not dispute that they have not made a mortgage payment in almost ten years. Plaintiff's proof of amount due showed advances of over $64,000 for taxes and almost $10,000 for insurance. 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." Angeles, 428 N.J. Super. at 320.

Although this matter had not proceeded to judgment, Angeles is instructive here. We see no reason to have permitted defendants, who had already obtained the benefit of many years delay, to continue to maintain a tenant in the mortgaged premises and not pay their mortgage while they litigated a

plainly frivolous defense. Equity counselled permitting plaintiff to proceed to final judgment under the circumstances confronting the trial court.

Having considered defendants' arguments and reviewed the record on the motions, we affirm, substantially for the reasons expressed by Judge Toskos in the statements accompanying his orders of June 12, 2017.

Affirmed.