SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5149-16T1

MCCORMICK 106, LLC,

Plaintiff-Respondent,

v.

STANLEY F. FENNER,

Defendant-Appellant,

and

MRS. FENNER, wife of STANLEY F. FENNER, IRIS C. DIPASALEGNE and SUN NATIONAL BANK,

Defendants.

Submitted February 26, 2018 – Decided April 3, 2018

Before Judges Messano and O'Connor.

On appeal from Superior Court of New Jersey, Chancery Division, Essex County, Docket No. F-029322-15.

Stanley F. Fenner, appellant pro se.

Pluese, Becker, & Saltzman, LLC, attorneys for respondent (Stuart H. West, on the brief).

PER CURIAM

Defendant Stanley F. Fenner appeals from the final judgment of foreclosure entered against him as the mortgagor on a home equity line of credit secured by a purchase money mortgage. We affirm.

I

In 2010, Fenner obtained a home equity line of credit (loan) from Sun National Bank (Sun) in the amount of $75,000. Fenner signed a document entitled Credit Agreement and Disclosure (note) setting forth the terms of the loan. To secure payment of the note, Fenner gave a mortgage to Sun against the equity in investment property he owned. Attached to the note was an allonge, which contained an endorsement to plaintiff, McCormick 106, LLC. In April 2013, Fenner made his last payment on the loan, causing it to go into default under the terms of the note.

In March 2015, Sun assigned the mortgage to plaintiff. After serving Fenner with a Notice of Intent to Foreclose, plaintiff filed a complaint in August 2015. Fenner filed an answer, raising various defenses. After discovery concluded, both parties filed competing motions for summary judgment; plaintiff's motion was granted and Fenner's was denied.

In a meticulous decision, Judge Donald A. Kessler resoundingly dispelled the validity of Fenner's claims. These

contentions were: (1) the loan was neither a note nor mortgage; (2) plaintiff lacked standing to pursue the foreclosure action; (3) a certification submitted by plaintiff's agent in support of plaintiff's motion was not based upon personal knowledge or competent evidence; (4) documents plaintiff submitted in support of its motion, including the mortgage and its assignment to plaintiff, were not properly authenticated; and (5) he was not in default.

After providing its analysis on each issue, the court determined plaintiff established its right to foreclose and that there were no genuine issues of material fact in dispute concerning such right. Because the matter was no longer contested, the court transferred it to the Office of Foreclosure, and plaintiff moved for entry of final judgment in foreclosure.

Fenner filed a certification objecting to the motion, arguing plaintiff failed to produce the original or certified copies of "the mortgage, evidence of indebtedness, assignments or any other original document upon which its claim is based." Although unclear, read indulgently, his certification also sought the dismissal of plaintiff's complaint.

According to its opinion addressing defendant's objections, the court noted Fenner further argued plaintiff's

representative's certification of amount due "was not competent to certify the authenticity of the documents due to her lack of personal knowledge." The record does not include a copy of the document in which Fenner made this argument, but it is not disputed that he did so.

The court readily disposed of and rejected all of Fenner's contentions. The court noted Fenner did not make a specific objection to the calculation of amount due, see Rule 4:64-1(d)(3); thus, none of his objections were relevant. That is, once Fenner's answer and affirmative defenses were stricken, the case proceeded as an uncontested action. See R. 4:64-1(c) ("An action to foreclose a mortgage . . . shall be deemed uncontested if, as to all defendants, . . . all the contesting pleadings have been stricken or otherwise rendered noncontesting."). Accordingly, Fenner's failure to assert any relevant objection cleared the way for entry of the final judgment of foreclosure.

The court treated Fenner's request to dismiss the complaint as one for reconsideration of the order granting plaintiff summary judgment. The court determined there was no basis to revisit the summary judgment order. The court found Fenner failed to bring to the court's attention any evidence the court had overlooked, see Rule 4:49-2, or any new information he could not have provided when the summary judgment motion was initially

under consideration, see D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990).

After rejecting Fenner's arguments, the court returned this matter to the Office of Foreclosure. On June 19, 2017, the court entered a final judgment in foreclosure.

II

On appeal, Fenner asserts the following arguments for our consideration:

> POINT I — IN ORDER FOR FINAL JUDGMENT TO BE GRANTED, PLAINTIFF MUST SATISFY THE REQUIREMENTS AS TO PROOFS, AS CLARIFIED BY THE NEW JERSEY SUPREME COURT IN U.S. BANK NATIONAL ASSOCIATION V. GUILLUAME, 209 N.J. 449; AND REGARDING R. 4:64-1(d), R. 4:64-2, R. 4:64-2(a), R. 4:64-2(c), AND R. 4:64-2(d).
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> POINT II — IN ORDER TO HAVE STANDING TO FORECLOSE, A PLAINTIFF MUST SHOW BOTH (1) THAT DEFENDANT OWES A DEBT TO PLAINTIFF AND (2) THAT PLAINTIFF HAS A SECURITY INTEREST IN THE PROPERTY.
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> POINT III — TRANSFER OF THE NEGOTIABLE INSTRUMENT IS GOVERNED BY THE UNIFORM COMMERCIAL CODE, WHICH REQUIRES PHYSICAL POSSESSION AND INDORSEMENT OF A NOTE PAYABLE TO ORDER.
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> POINT IV — SUN NATIONAL BANK DID NOT TRANSFER THE NOTE TO McCORMICK 106, LLC BEFORE (OR AFTER) THE COMPLAINT WAS FILED; AND McCORMICK 106, LLC DID NOT HAVE POSSESSION OR CONTROL OR HOLDER OF THE NOTE AND THE NON-EXISTING MORTGAGE BEFORE OR AFTER THE COMPLAINT WAS FILED; AND FURTHER, CERTIFICATIONS MUST BE BASED ON FIRST HAND PERSONAL KNOWLEDGE, AND SIGNED

A. PLAINTIFF DOES NOT FALL WITHIN THE THREE CATEGORIES WITHIN THE UCC, "PERSON ENTITLED TO ENFORCE" A NEGOTIABLE INSTRUMENT, CAUSE EVEN POSSESSION AND OWNERSHIP DOES NOT ESTABLSIH ENFORCEMENT RIGHTS.

POINT V - PLAINTIFF'S ALLEGED POSSESSION INTEREST IN THE NOTE SUPPORTED ONLY BY AN ASSIGNMENT OF MORTGAGE FAILS TO MEET THE REQUIREMENTS OF THE UNIFORM COMMERCIAL CODE AND DOES NOT GIVE RISE TO A CLAIM OF RELIEF AGAINST THE MAKER OF THE NOTE; AND DEFENDANT IS NOT in DEFAULT OF COPIED UNAUTHENTICATED NOTE AND MORTGAGE

POINT VI — PLAINTIFF, McCORMICK'S CLAIM OF ASSIGNMENT WAS UNSUPPORTED BY COMPETENT EVIDENCE, AND THEREFORE McCORMICK 106, LLC, FAILED EVENT TO SHOW AN OWNERSHP INTEREST IN THE NOTE

POINT VII — AS PLAINTIFF, McCORMICK FAILED TO SHOW THAT IT WAS THE HOLDER OF THE NOTE THE ASSIGNEE OF THE MORTGAGE IT IS NOT A PROPER PARTY TO THE FORECLOSURE ACTION AND LACKS STANDING TO FORECLOSURE.

A. WHETHER PLAINTIFF McCORMICK 106, LLC, in THIS INSTANT MATTER LACKS JURSIDICTION TO COMMENCE AND PROSECUTE THIS ACTION.

B. IF DEFENDANT SHOULD PREVAIL IN THIS QUEST FOR AN APPEAL, WHETHER DEFENDANT'S REQUEST OF ATTORNEY FEES WAS TIMELY AND PROPER.

In his brief, Fenner raises a host of issues in an endeavor to show plaintiff was not entitled to the final judgment. Many arguments were not asserted when he was before the General Equity court and, "[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)). Even if these arguments had been raised, the General Equity court did not address them and, thus, we decline to do so in the first instance. Duddy v. Gov't Emps. Ins. Co., 421 N.J. Super. 214, 221 (App. Div. 2011).

Some of Fenner's arguments were not briefed, and we do not address these arguments, either. An issue that is not briefed is deemed waived. See Fantis Foods v. N. River Ins. Co., 332 N.J. Super. 250, 266-67 (App. Div. 2000); Pressler & Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2018). The remaining arguments, identified above, were addressed by Judge Kessler. Having reviewed the record and Fenner's claims of error, we affirm for substantially the same reasons expressed by Judge Kessler in his two written opinions. We add only the following brief comments.

There is no question plaintiff proved its entitlement to the entry of final judgment in foreclosure. It cannot be reasonably disputed that plaintiff had standing to pursue this action. Sun assigned the mortgage to plaintiff before plaintiff filed its complaint in foreclosure, establishing 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). Plaintiff established the validity of the mortgage, the amount of the indebtedness and default, and its right to foreclose on the mortgaged property. Great Falls Bank v. Pardo, 263 N.J. Super. 388, 394 (Ch. Div. 1993), aff'd, 273 N.J. Super. 542 (App. Div. 1994). Finally, the documents plaintiff submitted in support of its application satisfied the requirements of Rule 4:64-2, warranting the entry of the final judgment in foreclosure.

Affirmed.