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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5266-15T2

ANIM INVESTMENT COMPANY,

Plaintiff-Appellant,

v.

GEORGE SHALHOUB and KATHLEEN
SHALHOUB, d/b/a GJ SHALHOUB, INC.,

Defendants-Respondents.

Argued September 28, 2017 – Decided February 28, 2018

Before Judges Simonelli and Gooden Brown.

On appeal from Superior Court of New Jersey,
Chancery Division, Bergen County, Docket No.
F-030508-15.

Arnold G. Shurkin argued the cause for
appellant.

Kevin J. Bloom argued the cause for
respondents (Law Offices of Abe Rappaport,
attorneys; Kevin J. Bloom, on the brief).

PER CURIAM

Plaintiff Anim Investment Company appeals from a June 30,
2016 Chancery Division order, granting defendants' motion for

summary judgment and dismissing plaintiff's foreclosure complaint with prejudice. We affirm.

We briefly summarize the relevant facts, which are undisputed and viewed in a light most favorable to plaintiff. See Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). On September 19, 1990, defendants George and Kathleen Shalhoub executed a five-year note for \$178,100, secured by a mortgage on their River Vale property in favor of Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Mina Investment Company. The note and mortgage had a maturity date of October 1, 1995. The mortgage was recorded on September 25, 1990. Defendants immediately defaulted on the mortgage on November 1, 1990, and remained in default. On October 14, 1997, the mortgage was assigned to plaintiff and the assignment was recorded on October 22, 1997. On February 12, 2015, plaintiff filed a Notice of Intent to foreclose in compliance with the Fair Foreclosure Act, N.J.S.A. 2A:50-56, and, on August 31, 2015, a foreclosure complaint. On October 5, 2015, defendants filed a contesting answer asserting affirmative defenses, including expiration of the statute of limitations.

Defendants moved for summary judgment, arguing that the complaint was barred by the statute of limitations codified in

N.J.S.A. 2A:50-56.1,¹ which took effect on August 6, 2009, and applied retroactively to their mortgage. After hearing oral

¹ N.J.S.A. 2A:50-56.1 provides:

An action to foreclose a residential mortgage shall not be commenced following the earliest of:

a. Six years from the date fixed for the making of the last payment or the maturity date set forth in the mortgage or the note, bond, or other obligation secured by the mortgage, whether the date is itself set forth or may be calculated from information contained in the mortgage or note, bond, or other obligation, except that if the date fixed for the making of the last payment or the maturity date has been extended by a written instrument, the action to foreclose shall not be commenced after six years from the extended date under the terms of the written instrument;

b. Thirty-six years from the date of recording of the mortgage, or, if the mortgage is not recorded, [thirty-six] years from the date of execution, so long as the mortgage itself does not provide for a period of repayment in excess of [thirty] years; or

c. Twenty years from the date on which the debtor defaulted, which default has not been cured, as to any of the obligations or covenants contained in the mortgage or in the note, bond, or other obligation secured by the mortgage, except that if the date to perform any of the obligations or covenants has been extended by a written instrument or payment on account has been made, the action to foreclose shall not be commenced after [twenty] years from the date on which the

argument and requesting supplemental briefing, in a June 30, 2016 written decision, Judge Edward Jerejian agreed that N.J.S.A. 2A:50-56.1 "[met] the criteria for retroactive application" under Gibbons v. Gibbons, 86 N.J. 515, 523 (1981), Phillips v. Curiale, 128 N.J. 608, 617 (1992), and In re D.C., 146 N.J. 31, 50 (1996).

The judge reasoned:

In New Jersey, a two-part test is used for determining whether a statute could be applied retroactively:

The first part questions "whether the Legislature intended to give the statute retroactive application." The second part involves "whether retroactive application of that statute will result in either an unconstitutional interference with 'vested rights' or a 'manifest injustice.'" [Ibid.] (quoting [Phillips, 128 N.J. at 617]).

Elaborating on the two-part test, the court in In re D.C. specified:

In applying this test generally, there are three circumstances that will justify a retroactive application of a statute: (1) where the Legislature has declared such an intent, either explicitly or implicitly; (2) where the statute is curative; and (3) where the expectations of the parties warrant retroactive application. [Id. at 50-51]. . . . However, even if a statute is found to apply

default or payment on account thereof occurred under the terms of the written instrument.

retroactively based on those factors, under the second prong of the basic test, retroactive application must not "result in 'manifest injustice' to a party adversely affected by such application." Id. at 51

Judge Jerejian acknowledged that "the legislature did not specify whether the statute should be applied retroactively" However, the judge concluded that the statute was "meant to be curative, and provide guidance on an issue that was previously unaddressed." Moreover, according to the judge, plaintiff failed to "offer any reason why a retroactive application would result in manifest injustice," or "why the expectations of the [d]efendants do not warrant retroactive application."

Turning to the applicable limitations period contained in N.J.S.A. 2A:50-56.1, Judge Jerejian explained:

Under this statute, there are three triggering events which commence the running of the statute of limitations period, after which a mortgage foreclosure action cannot be brought. Whereas [N.J.S.A.] 2A:50-56.1(c) is triggered by nonpayment or default, [N.J.S.A.] 2A:50-56.1(a) is triggered by the date fixed for making . . . the last payment or the maturity date. Here, the Note and Mortgage states on its face: "[s]aid principal sum and the interest to be paid as follows: \$1,899.33 on the first day of November 1990, and a like sum on the first day of each and every month thereafter, until the first day of October 1995, when the balance of the unpaid principal and interest shall be due and payable." . . .

Here, the mortgagors took out a five-year loan on September 19, 1990. The Note and Mortgage specifies that the maturity date is October 1, 1995. Applying the plain language of the limitations period described in subsection (a), an action to foreclose on the Mortgage is timely as long as it is commenced no later than six years from October 1, 1995, the maturity date set forth on the Note and Mortgage. Six years from the maturity date would provide [p]laintiff until October 1, 2001 to file a timely [c]omplaint. . . . Thus, the earliest date triggered by the [statute] is October 1, 2001, six years from the maturity date stated on the Note It is immaterial what the date of default is, as subsection (c) is not the applicable statute on this matter.

In opposing the application of N.J.S.A. 2A:50-56.1(a) to the mortgage, plaintiff pointed to the inter-relationship and consistency between N.J.S.A. 2A:50-56.1(a) and "[N.J.S.A.] 12A:3-118(a) of the Uniform Commercial Code" governing proceedings "on the underlying Note" and providing an identical six year statute of limitations. According to plaintiff, because "a foreclosure action [was] not a lawsuit on the Note, [N.J.S.A.] 2A:50-56.1(a) [was] inapplicable." In rejecting plaintiff's argument, Judge Jerejian reasoned:

Contrary to [p]laintiff's argument, [N.J.S.A.] 2A:50-56.1(a) sets forth a six year statute of limitations from the date of maturity. A foreclosure proceeding and its accompanying statute of limitation is uniquely distinct and separate from a proceeding on the underlying Note under [N.J.S.A.] 12A:3-118(a).

Elaborating on this issue, the court notes that the District Court in Hartman v. Wells Fargo Bank, N.A. (In re Hartman), Nos. 15-4437 (ES) & 15-5060 (ES), 2016 U.S. Dist. LEXIS 40470, (D.N.J. Mar. 28, 2016)[,] compared the difference between an action commenced on an obligation to pay and an action to foreclose, finding:

[A]s noted by the [d]efendants, the statute's silence with respect to the effect of acceleration on the mortgage foreclosure limitations period is particularly significant since New Jersey's statute of limitations for negotiable instruments, [N.J.S.A.] 12A:3-118(a), specifically addresses acceleration^[2]

Thus, there is no doubt that the New Jersey legislature knows how to clearly draft a statute that provides for the commencement of a statute of limitations from an accelerated due date. The fact that the legislature did not include such language when it enacted [N.J.S.A.] 2A:50-56.1 is evidence that it did not intend for the six-year limitations period to commence upon acceleration of a mortgage

Plaintiff's argument would also be contrary to [Security National Partners Limited Partnership v. Mahler, 336 N.J. Super. 101 (App. Div. 2000)], which held that the "claim that the foreclosure suit is governed by the same six-year statute of limitations [applying

² N.J.S.A. 12A:3-118a provides "[a]n action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date."

to notes] is contrary to long settled case law and has no merit."

Judge Jerejian also rejected plaintiff's reliance on Specialized Loan Servicing, LLC v. Washington, No. 2:14cv-8063-SDW 2015 U.S. Dist. LEXIS 105794 (D.N.J. Aug 12, 2015), explaining:

Plaintiff relies on Specialized Loan Servicing, which he states is directly on point. Plaintiff explains the District Court in that case held that a twenty (20) year statute of limitations applied to plaintiff's foreclosure action and that commencement date began to run on the agreed maturity date.

The District Court in Specialized Loan Servicing addressed the issue of the term "accelerated" in [N.J.S.A.] 2A:50-56.1(a), which was never clearly defined. [Id. at *12.] The District Court found that neither the date of filing of the [c]omplaint nor the default date would constitute an acceleration of a mortgage. Id. at *14. To accept such an interpretation would render [N.J.S.A.] 2A:50-56.1(c) "superfluous and insignificant," and without a functional purpose. Id. at *13. For those reasons, the District Court found that the maturity date was not accelerated to the alleged dates of default or the date of the filing of the [c]omplaint; instead, the District Court held that the terms of the Note and Mortgage provided that the Mortgage would mature on March 1, 2037, the date fixed for the making of the last payment. Id. at *15. Additionally, [the] [c]ourt opined that in that circumstance, the twenty[-]year statute of limitations promulgated under [N.J.S.A.] 2A:50-56.1(c) was the pertinent subsection to be applied in that case, as it would trigger the earliest date under the statute. [Ibid.]

Based on the foregoing, Specialized Loan Servicing does not support [p]laintiff's proposition that subsection (a) applies only to lawsuits for damages on the Note and [thirty-six] years or [twenty] years apply to the commencement of a foreclosure action in the Chancery Division. The dispute between the parties in Specialized Loan Servicing concerned whether it was appropriate to calculate the maturity date as accelerated for the purpose of applying the six year statute of limitations under [N.J.S.A.] 2A:50-56.1(a), not whether subsection (a) is inapplicable to all foreclosure actions. The case simply does not stand for the proposition that subsection (a) does not apply at all to foreclosure matters. Further, [p]laintiff offers no authority to evidence the legislature's intent that it limited subsection (a) to lawsuits on the Mortgage Note itself.

. . . .

The limitations period described in subsection (a) of [N.J.S.A.] 2A:50-56.1 is unambiguously defined as six years from "the maturity date set forth in the mortgage or the note." The [c]ourt sees no reason why acceleration would change the commencement of the limitations period from that date.

Therefore, applying the six-year limitations period in N.J.S.A. 2A:50-56.1(a), the judge concluded that plaintiff's action to foreclose was untimely and thus barred. Noting that "the purpose of a statute of limitations is to ensure defendants a fair opportunity to defend against claims, to prevent parties from sitting on their rights, and to promote repose[,]" Judge Jerejian entered a memorializing order on June 30, 2016, dismissing

the foreclosure complaint with prejudice, and this appeal followed.

On appeal, plaintiff argues "the court erred by applying N.J.S.A. 2A:50-56.1(a) to the mortgage in question." Plaintiff asserts that N.J.S.A. 2A:50-56.1(a) does not apply to "mortgage foreclosure actions" and to hold otherwise renders "parts (b) and (c) of the statute . . . meaningless." Plaintiff contends that "mortgage foreclosure actions" continue to follow Security National Partners, prescribing a twenty-year limitations period, and applying N.J.S.A. 2A:50-56.1 retroactively "to all pre-existing mortgages" deprives "plaintiff of an existing substantive right to foreclose that existed prior to August 6, 2009," when the statute became effective. Plaintiff continues by renewing the arguments rejected by Judge Jerejian. Like the judge, we reject plaintiff's arguments and affirm substantially for the reasons expressed in Judge Jerejian's comprehensive and well-reasoned written decision. We add the following brief comments.

When reviewing the grant of summary judgment, we analyze the decision applying the "same standard as the motion judge." Globe Motor Co. v. Igdalev, 225 N.J. 469, 479 (2016) (quoting Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)).

That standard mandates that summary judgment be granted "if the pleadings, depositions, answers to interrogatories and admissions on

file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law."

[Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co., 224 N.J. 189, 199 (2016) (quoting R. 4:46-2(c)).]

"When no issue of fact exists, and only a question of law remains, [we] afford[] no special deference to the legal determinations of the trial court." Ibid. (citing Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). Because issues involving the applicable statute of limitations are purely legal in nature, our review is plenary. State v. Perini Corp., 221 N.J. 412, 425 (2015).

No published case has interpreted the limitations provision of N.J.S.A. 2A:50-56.1(a), however, the plain language of the statute is the best indicator of the Legislature's intent. See Tumpson v. Farina, 218 N.J. 450, 467 (2014) ("In construing any statute, we must give words 'their ordinary meaning and significance,' recognizing that generally the statutory language is 'the best indicator of [the Legislature's] intent.'" (alteration in original) (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). "If the plain language leads to a clear and unambiguous result, then our interpretive process is over." Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J.

189, 195 (2007). It is only when there is ambiguity in the language that we turn to extrinsic evidence, such as legislative history. Id. at 195-96.

Generally, newly enacted laws are applied prospectively. James v. N.J. Mfrs. Ins. Co., 216 N.J. 552, 556 (2014). This approach is based on "long-held notions of fairness and due process." Cruz v. Cent. Jersey Landscaping, Inc., 195 N.J. 33, 45 (2008). That practice, however, is no more than a rule of statutory interpretation meant to "aid the court in the search for legislative intent." Twiss v. State, 124 N.J. 461, 467 (1991). As such, it "is not to be applied mechanistically to every case." Gibbons, 86 N.J. at 522. Rather, in Johnson v. Roselle EZ Quick LLC, 226 N.J. 370, 386-89 (2016), our Supreme Court reaffirmed the inquiry articulated in Gibbons and Phillips to guide the retroactivity analysis.

Applying those principles, we agree with Judge Jerejian that N.J.S.A. 2A:50-56.1 was intended to be curative, and to provide guidance on an issue that was previously unaddressed by statute. Further, we are satisfied that the expectations of the parties warrant retroactive application, and we discern no basis to conclude that a retroactive application would result in manifest injustice, particularly in these circumstances where plaintiff

inexcusably delayed asserting its rights for over fourteen years.³ We also agree that subsection (a) of the statute applies. N.J.S.A. 2A:50-56.1(a) unequivocally provides that the statute of limitations for a mortgage foreclosure action will expire six years from the date fixed for the making of the last payment or the maturity date set forth in the mortgage or the note. In this case, six years from the October 1, 1995 maturity date of the note and the mortgage was October 1, 2001, rendering plaintiff's August 31, 2015 filing of its foreclosure complaint untimely.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION

³ In a certification submitted in opposition to defendants' summary judgement motion, plaintiff's counsel averred that "[p]laintiff did not accelerate the [m]ortgage or declare a default" because defendants "had several [m]ortgages [on the property] that had priority" over plaintiff's mortgage.