SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5379-15T3

U.S. BANK NATIONAL ASSOCIATION,

Plaintiff-Respondent,

v.

CLAUDE GOULDING and
MICHELLE GOULDING,

Defendants-Appellants.

Argued January 23, 2018 – Decided February 9, 2018

Before Judges Carroll and Leone.

On appeal from Superior Court of New Jersey, Chancery Division, Bergen County, Docket No. F-007679-13.

Michelle Goulding, appellant, argued the cause pro se.

BJ Phoenix Finneran argued the cause for respondent (Zeichner Ellman & Krause, LLP, attorneys; Kerry A. Duffy, on the brief).

PER CURIAM

In this mortgage foreclosure action, defendants Claude Goulding and Michelle Goulding appeal from a July 8, 2016 order denying their motion for reconsideration of a March 7, 2016 order

declining to vacate a 2014 final judgment of foreclosure entered in favor of plaintiff U.S. Bank National Association. We affirm.

The record discloses that, on November 9, 2004, defendants borrowed $172,000 from Partners Mortgage, Inc. (Partners). Repayment was secured by a mortgage, which was recorded on December 14, 2004. Partners promptly assigned the mortgage to plaintiff by assignment dated November 15, 2004. The assignment was then recorded simultaneously with the mortgage on December 14, 2004. Additionally, an allonge was affixed to the note, thereby rendering the debt payable to plaintiff.

Defendants defaulted by failing to make the monthly payment due on January 1, 2009, and all payments that came due after. On September 14, 2011, plaintiff sent a notice of intention to foreclose (NOI) to the property address, which defendants deny receiving.

Plaintiff filed a foreclosure complaint on March 8, 2013. Defendants were served with the summons and complaint on March 16, 2013. Defendants did not file a responsive pleading, and default was entered against them on April 23, 2013. On May 24, 2013, plaintiff's counsel sent a notice advising defendants of their right to cure the mortgage default and that if they failed to do so plaintiff intended to apply for final judgment of foreclosure. In response, on July 10, 2013, defendants moved to stay the

foreclosure action and vacate the default, which the trial court denied on August 23, 2013.

Plaintiff filed an application for entry of final judgment on March 26, 2014. The application included, among other things, certified copies of the note, allonge, mortgage, and assignment of mortgage. On June 16, 2014, the trial court entered a final judgment of foreclosure.

On February 12, 2016, defendants filed a motion to vacate the final judgment pursuant to Rule 4:50-1. Among other things, defendants asserted the judgment was void because plaintiff lacked standing, the signatures on the note and mortgage were fraudulent, and plaintiff failed to serve defendants with a NOI.

Judge Menelaos Toskos denied the motion in a March 7, 2016 written opinion. Initially, the judge found the motion was untimely because defendants did not move to vacate the final judgment within the time constraints imposed by Rule 4:50-2. The judge nevertheless went on to address the merits, and found defendants failed to show excusable neglect, a meritorious defense, or "any of the required criteria under [Rule] 4:50-1 to vacate a judgment." Judge Toskos determined that plaintiff's possession of the note prior to the filing of the complaint was sufficient to confer standing, and that in any event "the law is clear that lack of standing does not constitute a meritorious

defense post judgment." The judge also observed that, in its opposition to the motion, plaintiff attached copies of the NOI that it sent to defendants on September 14, 2011. Finally, the judge rejected defendants' fraud claims, noting defendants had "made payments under the loan documents for several years . . . never raising the issue," and the claims were barred by "N.J.S.A. 2A:14-1[, which] provides for a six year statute of limitations for claims sounding in fraud."

Defendants moved for reconsideration, which Judge Toskos denied on April 29, 2016. On June 9, 2016, defendants filed another motion seeking reconsideration of the March 7, 2016 order. Judge Toskos denied the motion on July 8, 2016, again finding that defendants failed to satisfy the standards for reconsideration. This appeal followed.

On appeal, defendants renew their arguments that the judgment should be set aside because plaintiff is not the holder of the note and therefore lacks standing to foreclose, and that plaintiff failed to serve them with a NOI. Defendants further argue that plaintiff's proofs were insufficient to support entry of final judgment; the trial court misapplied the holder in due course doctrine; and their defenses of fraud and illegality survive even against holders in due course. We reject these arguments and affirm substantially for the reasons set forth in Judge Toskos'

cogent and well-reasoned written opinion denying defendants' motion to vacate the judgment. We add the following comments.

Under Rule 4:50—1, the trial court may relieve a party from an order or judgment for the following reasons:

> (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.

Motions made under Rule 4:50-1 must be filed within a reasonable time. R. 4:50-2; see also Deutsche Bank Trust Co. Ams. v. Angeles, 428 N.J. Super. 315, 319 (App. Div. 2012). Motions based on Rule 4:50-1(a), (b), and (c) must be filed within a year of the judgment. R. 4:50-2; accord Angeles, 428 N.J. Super. at 319. However, the one-year limitation for subsections (a), (b), and (c) does not mean that filing within one year automatically qualifies as "within a reasonable time." Orner v. Liu, 419 N.J. Super. 431, 437 (App. Div. 2011); R. 4:50-2.

> [T]he one-year period represents only the outermost time limit for the filing of a motion based on Rule 4:50-1(a), (b)[,] or (c). All Rule 4:50 motions must be filed within a reasonable time, which, in some circumstances, may be less than one year from entry of the order in question.
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> [Orner, 419 N.J. Super. at 437.]

A motion for relief under Rule 4:50-1 should be granted sparingly and is addressed to the sound discretion of the trial court, whose determination will not be disturbed absent a clear abuse of discretion. U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). "[A]buse of discretion only arises on demonstration of 'manifest error or injustice[,]'" Hisenaj v. Kuehner, 194 N.J. 6, 20 (2008) (quoting State v. Torres, 183 N.J. 554, 572 (2005)), and occurs when the trial court's decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Guillaume, 209 N.J. at 467 (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)). Accordingly, this court's task is not "to decide whether the trial court took the wisest course, or even the better course, since to do so would merely be to substitute our judgment for that of the lower court. The question is only whether the trial judge pursued a manifestly unjust course." Gittleman v. Cent. Jersey Bank & Trust Co., 103 N.J.

Super. 175, 179 (App. Div. 1967), rev'd on other grounds, 52 N.J. 503 (1968).

Here, we find no abuse of discretion by the trial court. Defendants' motion to vacate the foreclosure judgment was filed nearly two years after the judgment was entered. Consequently, to the extent the motion sought relief under Rule 4:50-1(a), based on mistake, inadvertence, surprise, or excusable neglect, or under Rule 4:50-1(c), based on fraud, misrepresentation, or misconduct, it was time-barred under Rule 4:50-2, as Judge Toskos properly found. Notably, defendants do not even address the timeliness issue on appeal.

Further, the judge did not err in concluding defendants were foreclosed from raising a standing argument for the first time after entry of final judgment. "[A] foreclosure judgment obtained by a party that lacked standing is not 'void' within the meaning of Rule 4:50-1(d)." Deutsche Bank Nat'l Tr. Co. v. Russo, 429 N.J. Super. 91, 101 (App. Div. 2012). In Russo, we further explained that equitable considerations may bar a defendant from raising a standing argument after final judgment. Id. at 99-100. "In foreclosure matters, equity must be applied to plaintiffs as well as defendants." Angeles, 428 N.J. Super. at 320. Where a defendant does not "raise the issue of standing until he had the advantage of many years of delay," the judge need not entertain

the claim. Ibid. Here, defendants waited approximately three years to assert the standing issue, and did so after default judgment had been entered.

In any event, the competent proofs in the record establish that plaintiff had physical possession of the note before filing the foreclosure complaint. Moreover, the assignment of the mortgage to plaintiff prior to the filing of the foreclosure complaint conferred standing upon plaintiff. Id. at 318 (stating that standing is conferred by "either possession of the note or an assignment of the mortgage that predate[s] the original complaint") (citing Deutsche Bank Nat'l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 216, 225 (App. Div. 2011)). Thus, defendants' standing argument is meritless.

Defendants' contention that plaintiff failed to serve them with a NOI, in violation of the Fair Foreclosure Act, N.J.S.A. 2A:50-53 to -68, is clearly belied by the record. We consequently conclude this argument lacks merit.

Additionally, Rule 4:50-1(f) does not provide defendants with a basis for relief under the facts presented. As noted, subsection (f) permits a judge to vacate a default judgment for "any other reason justifying relief from the operation of the judgment or order," and "is available only when 'truly exceptional circumstances are present.'" Guillaume, 209 N.J. at 484 (quoting

Hous. Auth. of Morristown v. Little, 135 N.J. 274, 286 (1994)). The applicability of this subsection is limited to "situations in which, were it not applied, a grave injustice would occur." Ibid. As plaintiff points out, defendants have been in default under the note and mortgage since 2009. On this record, defendants have not shown any such "exceptional circumstances" that would warrant relief under subsection (f), or any other section of the rule.

Finally, Judge Toskos correctly denied defendants' motion for reconsideration. The denial of a motion for reconsideration rests within the sound discretion of the trial judge. Fusco v. Bd. of Educ. of City of Newark, 349 N.J. Super. 455, 462 (App. Div. 2002). "Motions for reconsideration are granted only under very narrow circumstances." Ibid. We have long recognized that:

> Reconsideration should be used only for those cases which fall into that narrow corridor in which either (1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence.
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> [Ibid. (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)).]

Defendants failed to meet those criteria here.

Affirmed.