SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1523-21

BARBARA H. FLEISHER and MICHAEL GINN, CUST. EDEN GINN, UNIF TRAN. MIN ACT PA,

Plaintiffs-Respondents,

v.

ROSE E. COLON, a/k/a ROSE COLON, KIM-AHN NGUYEN, THE STATE OF NEW JERSEY,

Defendants,

and

RONALD HOROWITZ,

Defendant-Appellant.

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Argued October 25, 2022 – Decided November 9, 2022

Before Judges Whipple, Smith and Marczyk.

On appeal from the Superior Court of New Jersey, Chancery Division, Monmouth County, Docket No. F-003115-07.

Ronald Horowitz, appellant, argued the cause pro se.

Andrew L. Unterlack argued the cause for respondent (Eisenberg, Gold & Agrawal PC, attorneys; Andrew J. Unterlack, on the brief).

PER CURIAM

Defendant Ronald Horowitz appeals from the trial court's order dated January 21, 2022, divesting him of interest in 421 Highway 19, Marlboro, New Jersey (property) and extinguishing his judgment lien as a result of the foreclosure action. The court further denied Horowitz's motion to vacate the court's April 3, 2013 order for final foreclosure judgment. We vacate the trial court's order extinguishing Horowitz's lien and remand for further proceedings. Because we determine Horowitz is entitled to pursue his junior judgment lien consistent with the April 3, 2013 order, we need not vacate that order and, therefore, affirm the denial of the cross-motion.

I.

We derive the following from the record. Rose Colon was the previous owner of the subject property against which plaintiff Barbara Fleisher held a mortgage (plaintiff's mortgage). In August 2003, Kim-Anh Nguyen filed a

chancery action in the Superior Court against Colon, concerning another mortgage on the property (Nguyen mortgage). Pursuant to a court order dated June 10, 2005, in the Nguyen chancery action, Nguyen obtained a judgment in the amount of $120,000 against Colon. Colon subsequently initiated bankruptcy proceedings in the District Court of New Jersey on October 14, 2005, and received a discharge for in personam liability as to the Nguyen judgment.

On February 1, 2007, plaintiff filed a complaint in foreclosure alleging she held a mortgage on the property and had priority over any other encumbrance to title, including Nguyen's interest. On May 24, 2007, Nguyen filed a contesting answer and counterclaim asserting priority over plaintiff's mortgage. Colon filed a motion to cancel and discharge the judgment, which was granted without any opposition. By order dated September 7, 2007, Nguyen's judgment against Colon was canceled and discharged. As a result of the September 7, 2007 order, plaintiff filed a motion for summary judgment to strike Nguyen's contesting answer and to dismiss her counterclaim in the foreclosure action. On February 21, 2008, the court granted plaintiff's motion and entered an order striking Nguyen's answer and dismissing her counterclaim.

The court permitted plaintiff to file an amended complaint for foreclosure against Horowitz, which plaintiff served on February 21, 2008. Horowitz filed

a non-contesting answer to the foreclosure complaint on June 30, 2008. On September 29, 2010, the trial court entered a final judgment in foreclosure. Nguyen subsequently filed an appeal, and we remanded the matter to the trial court for further proceedings. Fleisher v. Colon, No. A-2807-10 (App. Div. Feb. 6, 2012). Thereafter, plaintiff and Nguyen engaged in extensive discovery and motion practice. On April 3, 2013, the trial court entered an order of final foreclosure fixing the amount of the Nguyen mortgage at $92,000 and granting Nguyen priority over plaintiff's mortgage in that amount. Nguyen appealed, and we affirmed the trial court's decision. Fleisher v. Colon, No. A-4214-12 (App. Div. May 20, 2014).

On June 27, 2013, Nguyen filed a foreclosure action against Colon, plaintiff, Horowitz, and the State of New Jersey seeking to foreclose the Nguyen mortgage. While that action was pending, Nguyen and the underlying title insurance carrier entered into a settlement to resolve the claims. Thereafter, the trial court entered an order on September 26, 2014, permitting the deposit of $92,000 into court in satisfaction of Nguyen's claimed interest in the property and thereby dismissing Nguyen's foreclosure action.

Horowitz was Colon's counsel in her dispute with Nguyen. During that litigation, the trial court denied Horowitz's motion to be relieved as counsel, and

a balance remained due and owing to him at the end of the underlying litigation. Horowitz thereafter sued Colon and obtained a judgment in the amount of $27,787.65 on October 18, 2005. However, the April 3, 2013 order for final foreclosure judgment indicated Horowitz was "absolutely debarred and foreclosed of and from all equity of redemption of, in and to said mortgaged premises described in the complaint and amended complaint when sold as aforesaid by virtue of this judgment."

On June 21, 2016, plaintiff accepted a deed in lieu of foreclosure (DIL) from Colon. Plaintiff contends she obtained the property through the DIL in fee simple, free and clear of any encumbrances based on the April 3, 2013 order. Plaintiff asserts she has been in continued possession of the property and expended large sums of money to pay the taxes and assessments which have been levied against the property, none of which have been repaid to plaintiff by Nguyen, Horowitz, or any other party.

Plaintiff filed a motion on September 22, 2021, requesting the court to enter an order declaring Nguyen's and Horowitz's rights in the property to be divested by virtue of the foreclosure action, barring Nguyen and Horowitz of all equity of redemption in the property, and declaring Nguyen's and Horowitz's judgments discharged and canceled. Horowitz filed an opposition and cross-

motion to vacate the trial court's April 3, 2013 order, claiming service was defective and the order was improperly entered. On January 21, 2022, the trial court granted plaintiff's application to divest and denied Horowitz's cross-motion to vacate. This appeal followed.

II.

Horowitz contends that while he filed a non-contesting answer in the 2007 foreclosure action, he did not participate in those proceedings, and was only periodically copied on submissions to the court. Horowitz maintains he did not know about the trial until the motion filed by plaintiff in September 2021. Horowitz claims he was not served with the order for final judgment of foreclosure from April 3, 2013. Horowitz argues that by filing the non-contesting answer, he was not contesting the validity of the priority of the mortgages. However, he wanted to memorialize his right to seek surplus funds and to otherwise receive notice in connection with the suit. Horowitz contends that his judgment lien was not before the court, and he should have received notice when plaintiff submitted the proposed order for judgment.

Horowitz notes the April 3, 2013 foreclosure judgment correctly recognized and recited the validity of Horowitz's judgment. Although Horowitz

asserts various arguments in his appeal,[1] at oral argument he narrowly focused on the trial court barring enforcement of his judgment lien. Because our decision turns on that issue, we need not address the remaining arguments. Horowitz contends that although the April 3, 2013 order correctly recognized his judgment lien, the trial court misconstrued this order and improperly divested his judgment lien in the January 21, 2022 order. In short, Horowitz seeks to reinstate his judgment lien consistent with the April 3, 2013 order.

Plaintiff contends she accepted a DIL based on the April 3, 2013 foreclosure order and the belief that there were no surplus funds available for Horowitz's junior lien. Plaintiff advised for the first time at oral argument the property had been sold since the trial court's decision in January 2022. Plaintiff indicates there was no equity in the property beyond the amount due to plaintiff. Therefore, there is nothing available to satisfy Horowitz's junior judgment lien. However, that issue was not part of the record and is not properly before us at this juncture.

[1] Horowitz argued extensively that he did not receive proper notice of the foreclosure order, and the trial court abused its discretion by not vacating the September 3, 2013 order pursuant to Rule 1:13-1 and Rule 4:50-1.

III.

The April 3, 2013 order for final foreclosure judgment indicated Colon and Horowitz were "debarred and foreclosed of . . . all equity of redemption . . . in . . . said mortgaged premises . . . when sold . . . by virtue of this judgment." Importantly, however, the court's order recognized the continuing validity of Horowitz's judgment lien. Specifically, the order stated, "[i]t further appearing to the court that Ronald Horowitz would be entitled to payment of his judgment or a part thereof from any surplus remaining following payment in full of the Nguyen mortgages and thereafter the mortgage of plaintiffs . . . ." That is, while the Horowitz judgment lien was junior to the Nguyen and plaintiff's mortgages, he still had a valid lien. The order only foreclosed his equity of redemption rights for the property.

Plaintiff subsequently filed a motion in September 2021 to "divest" Horowitz's judgment lien "by virtue of the foreclosure action."[2] Plaintiff contended when she accepted a DIL from Colon on June 21, 2016, she believed she had acquired the property "free and clear of all encumbrances." Plaintiff

[2] The motion was primarily directed at co-defendant Nguyen, but that matter is not before us on this appeal.

further indicated the "Horowitz Judgment was divested pursuant to the April 3, 2013 order."

The trial court granted the motion to divest Horowitz's judgment lien nunc pro tunc by relying on the portion of the April 3, 2013 order stating Horowitz was foreclosed from any equity of redemption.[3]

IV.

The issue before us is whether the trial court correctly interpreted the April 3, 2013 order, which is purely a legal question. This, in turn, guides our standard of review. "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995). Rather, our review is de novo. Dep't of Env't Prot. v. Kafil, 395 N.J. Super. 597, 601 (App. Div. 2007).

The trial court mistakenly relied on the provision of the April 3, 2013 order foreclosing Horowitz from "all equity of redemption" in determining it divested him of his judgment lien. Equity of redemption is understood to be the

[3] The balance of the court's oral decision addressed whether Horowitz had proper notice of the order and exercised reasonable diligence under Rule 4:50-1. Because we decide this case based on the trial court's interpretation and application of the April 13, 2013 order, we need not address these issues.

defaulting mortgagor's right to prevent foreclosure proceedings on the property and redeem the mortgaged property by discharging the debt secured by the mortgage within a reasonable period of time. Equity of Redemption, Cornell Law Dictionary (Online Ed. 2021). This provision of the April 3, 2013 order relied upon by the trial court did not operate to invalidate Horowitz's junior judgment lien. In fact, the order specifically recognized Horowitz would be entitled to payment of his judgment from any surplus remaining following the payment of the Nguyen mortgage and plaintiff's mortgage. Plaintiff's DIL does not impact Horowitz's right to the judgment lien. It may be there will ultimately be no proceeds available to Horowitz as a junior judgment lien holder. However, the April 3, 2013 order did not invalidate his judgment lien and, therefore, the trial court should not have invalidated his lien in the January 21, 2022 order. Accordingly, we vacate the January 21, 2022 order invalidating Horowitz's judgment lien.

We were advised at oral argument the property was sold subsequent to the January 21, 2022 order. Accordingly, we remand because the record before us does not adequately address the current status of the property and its impact, if any, on Horowitz's junior judgment lien. Plaintiff contends Horowitz's lien is moot based on the sale of the property and the absence of any surplus funds to

pay his lien. That issue, however, is not before this court, and the trial court must address it upon proper application from the parties. Finally, because of our ruling vacating the order divesting Horowitz's judgment lien, we do not disturb the trial court's denial of the cross-motion to vacate the April 3, 2013 order for final foreclosure judgment.

We vacate in part, affirm in part, and remand for further proceedings. We do not retain jurisdiction.