SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0635-21

ASPEN PROPERTIES GROUP, LLC, AS TRUSTEE OF AG4 REVOCABLE TRUST,

Plaintiff-Respondent,

v.

FRANK A. CIAMPI, a/k/a FRANK CIAMPI,

Defendant-Appellant,

and

UNITED STATES OF AMERICA,

Defendant.

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Submitted October 26, 2022 – Decided August 7, 2023

Before Judges Accurso and Firko.

On appeal from the Superior Court of New Jersey, Chancery Division, Monmouth County, Docket No. F-007563-20.

Frank Ciampi, appellant pro se.

Stern & Eisenberg, attorneys for respondent
(Christopher A. Saliba, on the brief).

PER CURIAM

Frank Ciampi appeals from summary judgment striking his answer in this residential foreclosure case, as well as from the denial of his motion for reconsideration and the entry of final judgment in foreclosure. He argues certain procedural irregularities in the conduct of the foreclosure action precluded the entry of judgment. We agree and thus are constrained to reverse both the entry of final judgment and the order striking defendant's answer, and remand for further proceedings.

The essential facts are easily summarized. Defendant obtained a $75,000 home equity line of credit from PNC Bank in 2006, secured by a mortgage on his home in Keyport. In June 2020, foreclosure counsel for plaintiff Aspen Properties Group, LLC as Trustee of AG4 Revocable Trust, the alleged assignee of the note and mortgage, sent defendant a notice of intention to foreclose the mortgage. Plaintiff filed its complaint two months later, alleging, among other things, that the loan went into default in January 2013 for non-payment and that the notice of intention "was mailed in accordance

with the Fair Foreclosure Act." Defendant denied both allegations in his answer.

After some discovery, plaintiff filed a motion for summary judgment striking defendant's answer returnable February 19, 2021. Defendant wrote the judge a letter dated February 8, 2021, requesting a two-week adjournment to allow him additional time to prepare his response. The letter, which was copied to plaintiff's counsel, noted counsel had denied consent to the adjournment. The letter in defendant's appendix bears two "received" stamps: one from the Monmouth Vicinage Civil Division dated February 11, 2021, and the other from the Superior Court Clerk's Office dated March 8, 2021.[1]

Without ruling on defendant's request for an adjournment, the court entered an order on February 22, 2021, granting plaintiff summary judgment

[1] Plaintiff asserts in its brief that defendant on March 8, 2021, "uploaded" an adjournment letter "to [the] court's electronic docket . . . requesting a one-motion cycle adjournment" of the summary judgment motion returnable February 22, which "the trial court marked . . . as received but not filed" on March 9, "because plaintiff's summary judgment motion was decided on February 22, 2021." Counsel does not note the date of the letter defendant supposedly "uploaded," and the eCourts notice included in plaintiff's appendix is not dated. The notice states it was "electronically mailed" to plaintiff's counsel, but not "electronically mailed" to defendant, whose mailing address is on the notice. Counsel also does not state whether the firm received a copy of defendant's February 8, 2021 letter, which notes a copy to the firm, near the time it was sent.

and striking defendant's answer. The order states it was "Granted as unopposed based on moving papers." Plaintiff moved for final judgment a month later. Defendant opposed the motion and filed his own motion for reconsideration. Besides providing the court the details of his adjournment request, defendant contended he did not default on the credit line in 2013 but continued to make payments until August 2018. Defendant also contended the notice of intention was not sent "return receipt requested" as required by the Fair Foreclosure Act.

In a brief oral argument, defendant, representing himself, rested on his papers. Plaintiff's counsel did not address the adjournment request, simply asserting defendant "had the ability to oppose the summary judgment motion," which he did not. Counsel also argued, however, that "[a] lot of the issues that are being raised" were "really identical to what was raised on summary judgment," and had "really become subject to res judicata and collateral estoppel." Counsel argued plaintiff provided a certification on the summary judgment motion that the payment default occurred in 2013, and the United States Postal Service's "tracking results confirmed that the [notice of intention] was actually delivered and provided to an individual at the mortgaged property address shortly after it was sent." Finally, counsel contended "even if the

reconsideration motion was granted . . . you know, there really aren't a lot of defenses of the foreclosure action so plaintiff would just ask that the motion be denied in its entirety and, you know, we be able to proceed, Judge."

In a brief opinion from the bench, the judge stated "[u]nder D'Atria [v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990)], I don't think that there's anything I didn't consider the first time and there's no law that I believe that I misapplied." The judge found

> based on the proofs before me the last time and this time that under Thorpe v. Floremoore, 20 N.J. Super. 34 [(App. Div. 1952)], the plaintiff has established a prima facie case to foreclose. There has been execution, [recording] and a default and/or non-payment.
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> I find the plaintiff certainly has standing to bring this based on a number of factors, not the least of which being that plaintiff not only has a valid assignment but possession of the original note itself and I find that the evidence supplied in particular the certification of John Briseno certainly provided an adequate basis to support the entry of the motion for summary judgment and the appropriate order and I find compliance with the Fair Foreclosure Act.
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> So based on all of those things, I'm going to deny the motion that is filed for reconsideration.

We believe our brief rendition of what occurred in the trial court makes plain this foreclosure judgment cannot stand. We are, of course, aware of the

demands placed on our General Equity judges by the number of foreclosures on their dockets, and that the proceedings in this matter took place while the court system was operating remotely because of the COVID-19 pandemic, putting enormous strains on judges and vicinage staff. But those facts cannot be allowed to excuse our failure to give defendant his day in court.

It appears the judge was never made aware of defendant's timely adjournment request. One-cycle adjournments are routinely granted on motions in our courts, and we expect the judge may well have granted defendant's request here had he been aware of it. And although there is no right of appeal from an order for summary judgment striking a defendant's answer in a foreclosure proceeding, and thus Rule 1:7-4 may not technically apply, there is no question it is in the nature of a dispositive motion requiring findings of fact and conclusions of law. See Allstate Ins. Co. v. Fisher, 408 N.J. Super. 289, 300-01 (App. Div. 2009) (explaining the obligation of the trial court to make factual findings and state its legal conclusions in ruling on summary judgment). See also R. 1:6-2(f) (requiring a statement of reasons on interlocutory orders if the court "concludes that explanation is either necessary or appropriate"). "Granted as unopposed based on moving papers" is an inadequate statement of reasons for summary judgment in a residential

foreclosure, even on an unopposed motion. See Est. of Doerfler v. Fed. Ins. Co., 454 N.J. Super. 298, 302 (App. Div. 2018).

Our greater concern, however, is what occurred on defendant's motion for reconsideration. Although defendant documented his timely request for an adjournment of the summary judgment motion, neither plaintiff's counsel nor the court addressed the issue. More important, defendant raised two issues of contested fact on his reconsideration motion: that plaintiff failed to serve the notice of intention "by registered or certified mail, return receipt requested" as expressly required by N.J.S.A. 2A:50-56(a) to (b), and that he did not default on the mortgage when plaintiff claimed, the former going to plaintiff's ability to bring the action. See US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 476 (2012).

The trial judge, however, failed to sufficiently address either issue, making only the conclusory statement that "[t]here has been . . . a default and/or non-payment," and there'd been "compliance with the Fair Foreclosure Act." The judge concluded there was nothing he "didn't consider the first time and there's no law that [he] believe[d] that [he] misapplied," without apparently realizing he'd made no findings of fact or conclusions of law "the first time."

We reject as wholly inappropriate plaintiff's argument to the trial court that "even if the reconsideration motion was granted . . . you know, there really aren't a lot of defenses of the foreclosure action so plaintiff would just ask that the motion be denied in its entirety and, you know, we be able to proceed, Judge." We are, of course, aware the only material issues in a foreclosure are the validity of the mortgage, the amount due, and the right of the mortgagee to resort to the mortgaged premises. Great Falls Bank v. Pardo, 263 N.J. Super. 388, 394 (Ch. Div. 1993), aff'd, 273 N.J. Super. 542 (App. Div. 1994). We do not, however, agree the narrowness of the claims, and thus the defenses, in a foreclosure action means there is no point in providing defendants the opportunity to contest the plaintiff mortgagee's proofs in response to a motion for summary judgment.

We offer no opinion on the validity of the defenses defendant claims to have to the foreclosure; we find only that he was inappropriately denied a fair opportunity to present them to the court and to challenge plaintiff's prima facie case on summary judgment. We accordingly vacate both the final judgment and the summary judgment striking defendant's answer and remand to the trial court for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

Vacated and remanded.

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

CLERK OF THE APPELLATE DIVISION