

NOT TO BE PUBLISHED WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

Wells Fargo Bank, N.A.,

Plaintiff,

v.

Joanne Tartaglia a/k/a Joanna Khorami,
et al.

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: BERGEN COUNTY
DOCKET NO. F-11387-22

OPINION

Decided: August 20, 2024

Appearances: LOGS Legal Group LLP (Kathleen M. Magoon, Esq., appearing) for Plaintiff.

Defendants Michael Khorami and Robert Khorami, appearing *pro se*.

Griffin Alexander, P.C. (William Rodriguez, Esq., appearing) for Franklin Heights
Condominium Association, Inc.

HON. EDWARD A. JEREJIAN, P.J.Ch.

This matter is before the Court by way of a Motion for the Distribution of Surplus Funds filed by plaintiff Wells Fargo Bank, N.A. (“Plaintiff”), by and through its attorneys, LOGS Legal Group LLP (Kathleen M. Magoon, Esq., appearing), on February 27, 2024. Michael Khorami and Robert Khorami (collectively, the “Defendants”), appearing *pro se*, filed opposition on April 2, 2024. Subsequently, on April 3, 2024, Defendants filed a Cross-Motion for the Distribution of Surplus Funds. Plaintiff thereafter submitted a reply on April 23, 2024. On May 2, 2024, defendant Franklin Heights Condominium Association (the “Association”) filed opposition to Defendants’

Cross-Motion. Subsequently, on May 17, 2024, the Association filed its own Motion for the Distribution of Surplus Funds, which was administratively transferred to the Court on June 12, 2024. The matter was disposed of on the papers on August 20, 2024.

DISTRIBUTION OF SURPLUS FUNDS

When a foreclosure sale raises more funds than are necessary to satisfy the amounts set forth in the judgment, the sheriff is to deposit the surplus monies with the Court pending further order. According to N.J.S.A. 2A:50-37:

The monies arising from a sale pursuant to this section shall be applied to pay off and discharge the moneys ordered to be paid, and the surplus, if any, shall be deposited with the court and the same shall be paid to the person or persons entitled thereto, upon application therefor, as the court shall determine. Such surplus monies may be invested at interest on such security as the court shall order pending application therefor by the person or persons entitled thereto.

An application for the distribution of surplus funds may be presented to the Chancery Division at any time after a foreclosure sale. R. 4:64-3. R. 4:64-3(b) controls applications for surplus money distributions for non-parties to the foreclosure judgment, and provides that:

A motion made by a non-party to the judgment of foreclosure shall be filed in the vicinage. A motion for payment of surplus money prior to the delivery of the deed also shall be filed in the vicinage. The sheriff or other officer making the sale shall accept the receipt or order of the person to whom such surplus, or any part of it, is ordered to be paid, as payment to that extent of the purchase money, or may pay the same to such person. Payments shall be made in accordance with R. 4:57-2.

Distribution of surplus funds is made in accordance with the order of priority. National Mort. Co. v. Syriaque, 293 N.J. Super. 547, 552 (Ch. Div. 1994). Upon application of an interested party, the court will make a determination that includes “an examination of the priorities of the junior lienholders and the resolutions of any disputes regarding any priority or amount. Holiday

Trenton, Inc. v. Goldberger, Moore & Novick Urban Renewal, L.P., DDS# 34-2-1314 (App. Div.), cert. den'd, 185 N.J. 389 (2005).

“N.J.S.A. 2A:50-37 . . . allows a subsequent judgment creditor to apply to share in the surplus funds.” Morsemere Fed. Sav. & Loan Asso v. Nicolaou, 206 N.J. Super. 637, 643 (App. Div. 1986). Claims of junior encumbrancers will be paid out if there are surplus monies in the order in which their liens attached to the mortgaged property See FUNB v. DeBaro, DDS#15-4-1070 (Ch. Div. 2005), see also Scott T. Tross, New Jersey Foreclosure Law and Practice §16-3 at 386 (2013). Only after the junior lien holders are paid, is the former owner-mortgager entitled to any surplus.

When resolving claims to surplus monies, New Jersey courts have noted that surplus funds resulting from a foreclosure sale are not deemed to be personalty; rather, such funds continue to be considered realty insofar as liens or vested rights in the mortgaged premises are considered. Vineland Sav. & Loan Ass'n v. Felmev, 12 N.J. Super. 384, 392 (Ch. Div. 1950) (“surplus funds resulting from a sale under a mortgage foreclosure of realty are deemed not to be converted into personalty but continue to maintain their classification as realty”). In other words, surplus money from the foreclosure of real property is not a general asset of the owner; instead, surplus money stands in the place of the foreclosed real property, and the liens and interests that previously attached to that real property at the time the complaint is filed now attach to the surplus. “Surplus funds take on the character of the land, at least with respect to junior encumbrancers whose liens existed at the time of the foreclosure.” Nicolaou, 206 N.J. Super. at 642. Thus, for example, the lien of any subordinate mortgage is deemed to continue against any surplus funds as if the mortgaged premises had not been sold.

Generally speaking, the claims of junior encumbrancers will be paid out of surplus monies

in the order in which their liens attached to the mortgaged property. FUNB v. DeBaro, DDS#15-4-1070 (Ch. Div. 2005). Surplus money arising from a foreclosure must be used to satisfy subordinate mortgages, liens, and judgments according to their respective priority *before* any surplus can be turned over to the owner or successor to the equity of redemption. Resolution Trust Corp. v. Griffin, 290 N.J. Super. 88, 92 (Ch. Div. 1994) (“[t]he plaintiff is entitled to no more than that from the proceeds of sale; the junior lien holders (and after them, the former owner-mortgagor) are entitled to the surplus according to their priorities”) (emphasis added).

The owner of the equity of redemption is entitled to collect any surplus monies which remain after payment of junior encumbrancers. Atlantic City Nat’l Bank v. Wilson, 108 N.J. Eq. 213, 219 (E. & A. 1931). Normally, the equity of redemption is held by the mortgagor. However, if the mortgagor has conveyed the equity of redemption, the transferee would be entitled to any surplus which remains. On the death of the owner of the equity of redemption, his or her administrator is only entitled to so much of the surplus monies as are necessary to pay debts of the estate; the residue is to be paid directly to the decedent’s heirs.

Plaintiff is the holder of two mortgages on the mortgaged property (the “Property”). The first mortgage, which was foreclosed upon in this action, was executed on December 2, 2004. Within that mortgage, the amount of the obligation amounted to \$120,000.00. Plaintiff obtained a judgment foreclosing upon this mortgage on February 14, 2023. The amount due sought at final judgment totaled \$158,040.23.

In the instant complaint, Plaintiff included a count in which it sought to join the second mortgage. This mortgage, encumbering the Property, was recorded on May 19, 2006 in Mortgage Book 15917 at Page 373. This second mortgage was joined as a subordinate lien held by Plaintiff in addition to the first mortgage foreclosed upon.

After the Sheriff's Sale of the Property, the amount Plaintiff intended to claim was satisfied in full. Surplus money from the sale amounted to \$188,178.86. Multiple parties seek to receive a distribution either in full or in part of the surplus funds. First, Plaintiff seeks partial distribution of the surplus funds in the amount of \$167,033.38 in order to recoup some of the amount due on the debt owed for its junior lien. Second, Defendants seeks to receive a full distribution of the surplus to be equally apportioned among them. Finally, the Association seeks a distribution in the amount of \$20,545.32 in order to satisfy a judgment entered in favor of the Association.

Defendants oppose Plaintiff's application for surplus funds arguing that Plaintiff has already been satisfied by way of the Sheriff's Sale. Defendants therefore argue that the remaining funds are a part of Joanne Tartaglia's estate.

In addition, Defendants maintain that the foreclosure had fallen through twice, and only upon the third attempt to sell the Property to the third-party bidder was the sale successful. Defendants claim that the only reason the sale was finally completed was due to a deal executed between Plaintiff and the successful third-party bidder in which the third-party bidder would "pay for only one mortgage." It is asserted that Plaintiff had the opportunity to receive the amounts owed on the second mortgage and failed to do so. Defendants argue that as a result of this deal, Plaintiff allowed the Property to be sold "clearly with no lien" and have therefore forfeited their claim. In other words, Defendants contend that there is no lien, so Plaintiff cannot be entitled to any surplus monies.

Plaintiff asserts that it is entitled to a distribution of surplus funds as a result of its secondary lien on the Property. Plaintiff argues that as a result of its properly recorded secondary lien, it is to receive any surplus funds prior to any other party seeking same.

Where a mortgagee holds multiple mortgages covering the same property, they should

foreclose those mortgages in one action. As noted above, in the instant matter, Plaintiff is the holder of two mortgages encumbering the Property. As part of its complaint foreclosing on its first mortgage, Plaintiff properly included a count seeking to foreclose on its second mortgage. Moreover, Plaintiff has established the priority of its second mortgage by way of Dennis Myshkovskiy's Certification.¹ Included in the Myshkovskiy Cert. is a Schedule of Amount Due establishing the amount owed to Plaintiff per the second mortgage. Significantly, no party contests the priority of Plaintiff's second mortgage.

The only objection to Plaintiff receiving surplus funds is Defendants argument that the first mortgage was satisfied, and the Property was sold with clean title. However, this argument fails to understand that the subordinate lien attaches to the surplus funds accumulated from the Sheriff's Sale. See Vineland Sav. & Loan Ass'n, 12 N.J. Super. at 392. Since the surplus monies stand in the place of the foreclosed property, Plaintiff's second mortgage continues against the surplus funds and attaches to those monies. See Nicolaou, 206 N.J. Super. at 642.

The Defendants' argument against the Plaintiff's ability to claim surplus funds is without merit. It is true that, when a first priority lien is foreclosed, the property is sold free and clear of all liens. That said, New Jersey courts have consistently recognized that Surplus funds resulting from a sale under a mortgage foreclosure of realty are deemed to retain the character of land insofar as the liens or the vested rights in the realty are concerned. W. Sav. Fund Soc'y v. Goodman, 103 N.J. Super. 307, 309, 247 A.2d 151, 152 (Super. Ct. 1968) (“[n]o doubt when the surplus monies arose in this case, they stood in the place of the land”); Servis v. Dorn, 76 N.J. Eq. 241, 243 (Ch. 1909) (“[s]urplus money arising upon a sale of land under a decree of foreclosure stands in place of the land itself in respect to lien upon or vested rights therein”); Arnett v. Finney, 29 N.J. Eq.

¹ Dennis Myshkovskiy is the Vice President Loan Documentation of Plaintiff.

309, 310 (E. & A. 1878) (“the sum realized from [the foreclosure] sale must now, according to the record, be regarded simply as the proceeds of the mortgaged premises, and, as such, should be applied to the payment, in their proper order, of such debts as had been secured by valid liens on the mortgaged premises”).

The logic of defendants’ argument would essentially prohibit any lienholder or judgment creditor from asserting a claim against the surplus funds because all the liens and judgments are cleared from the title by the foreclosure. Such a reality would be completely incongruous with the court’s consistent holding – for well over a century – that the surplus funds can and should be applied to satisfy the debts secured by valid liens that existed against the mortgaged property. Therefore, Plaintiff’s is entitled to seek satisfaction of its second mortgage from the surplus funds.

With respect to the Association’s Motion, the Association is not entitled to all the amounts being requested in its motion. The Association is requesting to be paid over \$20,000.00. A little less than half that amount is due to a lien that was recorded against the Property due to unpaid dues. The Association can recover the full amount of the recorded lien. However, all of the other amounts are an accounting of charges against the unit, and there is no information in the Association’s motion indicating that those amounts were reduced to a lien or judgment that was recorded against the Property prior to the Sheriff’s Sale. Thus, the Association does not have a claim against the surplus funds for those amounts that were not recorded in a lien or judgment.

Regarding Defendants’ Cross-Motion for the Distribution of Surplus Funds, this must be denied due to the fact that the remaining junior encumbrances have not been paid. As stated above, surplus money arising from a foreclosure must be used to satisfy subordinate mortgages, liens, and judgments according to their respective priority *before* any surplus can be turned over to the owner or successor to the equity of redemption. Resolution Trust Corp., 290 N.J. Super. at 92. Therefore,

a claim for the surplus funds can be made upon the satisfaction of any remaining junior encumbrancers.

CONCLUSION

Accordingly, the order of priority is 1) the amount due on Wells Fargo's second mortgage in the amount of \$167,033.38; 2) the Association's recorded lien in the amount of \$9,431.25; and 3) any remainder to the Defendants.

Plaintiff's motion is granted in its entirety. The Association's motion is granted in part as to the amount of its lien actually recorded. Defendants motion is granted in part as to any surplus monies remaining.