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APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY
DOCKET NO. F-4497-23

JOSEPH LAZARUS and RENAH LAZARUS,

Plaintiffs,

v.

HABIB TAWIL and LILLY TAWIL, husband and wife; MEIR HILLEL; COLUMBIA CAPITAL CO.; and CHARLES TAWIL a/k/a CHARLES C. TAWIL,

Defendants.

OPINION

Decided January 27, 2025.

Elliott Almanza, Esq. (Goldenberg, Mackler, Sayegh, Mintz, Pfeffer, Bonchi & Gill, attorneys for plaintiffs Joseph Lazarus and Renah Lazarus).

Eric S. Landau, Esq. (Law Office of Eric S. Landau, LLC, attorneys for defendant Habib Tawil).

Steven W. Ward, Esq. (Giordano, Halleran & Ciesla, P.C., attorneys for defendant Lilly Tawil).

John T. Lillis, Jr., Esq. (Kennedy Lillis Schmidt & English, attorneys for defendant Meir Hillel).

FISHER, P.J.A.D. (t/a, retired on recall).

Plaintiffs in this foreclosure action seek certification as final, pursuant to Rule 4:42-2(a), of a judgment entered in their favor that resolves less than all issues as to all parties. Because the rule-based requirements have been met, and because the equities favor allowing plaintiffs' pursuit of enforcement of their judgment notwithstanding pending unresolved factual disputes of claims that are of no interest to them, the motion will be granted.

This action has been the subject of prior dispositive motions that ultimately led to determinations that plaintiffs Joseph and Renah Lazarus were entitled to foreclose a mortgage they hold on the Deal home owned by defendants Habib Tawil and Lilly Tawil, as well as on their claim that their mortgage has priority over the mortgage on which defendant Meir Hillel seeks foreclosure. The court also summarily determined that Hillel was entitled to a judgment of foreclosure on his mortgage. The reasons for all those determinations are set forth in this court's May 24, 2024 written opinion. After those determinations, the court referred the matter to the Office of Foreclosure for entry of a final judgment.

Final judgment was entered on September 18, 2024. A few weeks later, Hillel moved to amend the judgment. Defendant Lilly Tawil, armed with new counsel, cross-moved for relief from the prior dispositions but only insofar as they related to Hillel's mortgage and his foreclosure claim. Lilly acknowledged, as she must, that she and her husband Habib were represented by counsel throughout these proceedings as well as in an earlier related Law Division action the resolution of which played a large role in Hillel's current foreclosure claim. But Lilly claims she was not an active participant in the settlement of that earlier Law Division action or in these proceedings, and that "the more [she] learns, the more it becomes clear that [she has] been taken advantage of by Hillel and [her] husband[, Habib]." Lilly Tawil Certification (November 14, 2024), ¶ 2. She claims, among other things, that even though she signed the documents that resurrected the debt once owed to Hillel and other documents that form the foundation for Hillel's foreclosure action, she never saw the entire documents and was otherwise kept in the dark about those transactions. Id., ¶s 31-36.

By way of a November 22, 2024 order and decision, this court held that it should

> provid[e] a platform for Lil[l]y to assert [her] allegations without foreclosing any of the obstacles Hillel has presented as a bar to the relief she seeks. The prior orders, insofar as they entered relief against Lil[l]y are vacated; she will be allowed to file her amended answer to Hillel's cross-claim and her own

> cross-claims against Hillel. Because she seeks no relief with respect to the dispositions rendered in favor of plaintiffs Lazarus, today's determinations in no way alter the relief obtained by plaintiffs Lazarus.

That determination – that plaintiffs' judgment was completely adjudicated and will be unaffected by Lilly's claims against Hillel and Habib – was the impetus for plaintiffs' current motion to certify its judgment as final or, in the alternative, for severance.[1]

To be sure, our court rules favor "a single and complete trial" followed by "a single and complete review," Appeal of Pa. R. Co., 20 N.J. 398, 404 (1956); see also State v. Reldan, 100 N.J. 187, 205 (1985), and what plaintiffs seek runs counter to that policy since, if the judgment is certified as final, it will be appealable as of right while the Lilly-Hillel-Habib dispute referred to in the November 22, 2024 order will continue on in this court. But our rules also acknowledge exceptions to the one-trial-one-appeal policy. For example, Rule 4:42-2(a) recognizes a trial court's authority to certify a partial judgment as final "(1) upon a complete adjudication of a separate claim; or (2) upon complete adjudication of all the rights and liabilities asserted in the litigation as to any party; or (3) where a partial summary judgment or other order for payment of part of a claim is awarded." In making such a determination, a court must find

[1] Because of the court's determination on the Rule 4:42-2(a) part of the motion, the request for severance has been rendered moot.

two things: (1) the situation falls within one of the three subparts of Rule 4:42-2(a) just quoted, and (2) the order to be certified would be "subject to process to enforce a judgment" under Rule 4:59. See Janicky v. Point Bay Fuel, Inc., 396 N.J. Super. 545, 550 (App. Div. 2007).

There is no doubt that the September 18, 2024 judgment entered in plaintiffs' favor is qualified to be certified as final because it constitutes, under Rule 4:42-2(a)(1), a complete adjudication of a separate claim – both plaintiffs' right to foreclose on its first-position mortgage and the precise amount due have been precisely and fully determined[2] – and because, but for the lack of finality as to the entire lawsuit, the judgment would be enforceable under Rule 4:59. Indeed, there is no real dispute or colorable argument about it; Rule 4:42-2(a)'s requirements have been met.

Instead, in arguing against certification, Hillel invokes concerns about the prejudice that might befall him if the matter proceeds to a sheriff's sale without a final adjudication of his foreclosure action. For example, Hillel has provided a real estate broker's certification that asserts the property could be sold "on the open market in 2025 for about $7.0 million" but, because of the recently enacted Community Wealth Preservation Program, see N.J.S.A. 2A:50-64(p); L. 2023,

[2] The September 18, 2024 judgment also constitutes a complete adjudication of all the rights and liabilities asserted in the litigation as to any party – here, plaintiffs – and thus fits subsection (2) of Rule 4:42-2(a).

c. 255, § 3 (eff. Jan. 12, 2024), plaintiffs would be able to "set the upset price at their claim level of about $2.0 million, and then the property could be sold at the upset price wiping out Hillel's claim and second mortgage." Jeanlouis Certification (January 2, 2025), ¶s 11, 13-17.

The court, however, need not presently decide whether Hillel might be prejudiced in this or any other way because those questions are premature. The sole question to be decided at this moment is whether – plaintiffs having established a prima facie right to certification – it is equitable to frustrate their enforcement efforts because of a dispute between one of the two debtors and another party claiming to hold a second mortgage on the same property – disputes about which plaintiffs have no interest. Putting the issue that way provides the answer. Plaintiff has done nothing but pursue to a successful end its clear rights in this matter; it should not be held hostage in proceeding further merely because of unresolved issues that do not otherwise involve them. The court finds no sound reason at this time to delay plaintiffs.

As noted above, what concerns the opponents of plaintiffs' motion is what might occur if plaintiffs' collection efforts reach a sheriff's sale. Whether there may be some reason to delay a sheriff's sale is a matter that has yet to fully ripen. The Legislature has provided grounds on which a sheriff's sale may be adjourned, see N.J.S.A. 2A:17-36, that could delay enforcement for a long

enough period to allow for an adjudication of Lilly's claims against Hillel and her husband. The court also possesses the discretion and equitable authority to delay a sheriff's sale even beyond what the statute permits, see Wells Fargo Home Mortg., Inc. v. Stull, 378 N.J. Super. 449 (App. Div. 2005); Bankers Trust Co. of Calif., N.A. v. Delgado, 346 N.J. Super. 103 (App. Div. 2001); see also N.J.S.A. 2A:17-36 (declaring that "a court of competent jurisdiction may, for cause, order further adjournments" (emphasis added)), and in that way, the court may, in its discretion, further prevent what might be an inequitable result should plaintiffs' enforcement efforts get that far. In short, the concerns expressed by Hillel and others in opposition to this motion – about the potential prejudice and other complications that might be caused by a sheriff's sale prior to the resolution of the remaining factual disputes – may prove illusory since it may be that those remaining claims could be finally resolved before a sheriff's sale might ever occur.[3]

So, the court finds no rule-based or equitable reason to delay plaintiffs' pursuit of their rights in this foreclosure action and will, therefore, certify as final the September 18, 2024 judgment entered in plaintiffs' favor.

[3] The court will conduct a case management conference in the immediate future to schedule whatever steps need to be taken to adjudicate the disputes between and among Lilly, Hillel, and Habib.