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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3427-20

NATIONSTAR MORTGAGE,
LLC,

Plaintiff-Respondent,

v.

NANDA K. KAR, MIDLAND
FUNDING, LLC, AND
THE TRAF GROUP, INC.,
F/K/A AMERICAN TRADING
COMPANY, ON BEHALF OF
NOTRE DAME HIGH SCHOOL,

Defendants,

and

SILPY KAR,

Defendant-Appellant.

Submitted May 16, 2022 – Decided May 26, 2022

Before Judges Fasciale and Firko.

On appeal from the Superior Court of New Jersey,
Chancery Division, Middlesex County, Docket No. F-
001766-15.

Silpy Kar, appellant pro se.

McCalla Raymer Leibert Pierce, attorneys for
respondent (Harold L. Kofman, on the brief).

PER CURIAM

In this residential foreclosure action, defendant Silpy Kar appeals from a June 17, 2021 order granting plaintiff Nationstar Mortgage, LLC's motion to enjoin her and her husband, co-defendant Nanda K. Kar¹ (collectively the Kars), from filing further motions without prior court approval. The judge also denied the Kars's motion to "remove unaccountable names from the list of defendants, sheriff's deed, and invalidate sheriff's deed." We affirm for the reasons set forth in Judge Vincent LeBlon's thorough and thoughtful oral opinion.

I.

We discern the following facts from the record. The Kars purchased the subject property located at 8 Montclair Court in East Brunswick. The Kars executed a mortgage note to Countrywide Bank (Countrywide) on September 15, 2006, in the principal amount of \$593,750. They secured the note by

¹ Defendant Nanda K. Kar is not participating in this appeal.

executing a mortgage to Mortgage Electronic Registration Systems (MERS) in the principal amount of the promissory note as a nominee for Countrywide. On October 4, 2006, the mortgage was recorded in the Middlesex County Clerk's Office (Clerk's Office).

On January 29, 2008, MERS assigned the mortgage to HSBC Bank, Nation U.S., National Association as Trustee for Deutsche Alt-A Securities Mortgage Loan Trust (HSBC). HSBC recorded the assignment in the Clerk's Office on February 8, 2008. HSBC commenced this action on January 15, 2015, by filing a foreclosure complaint against the Kars. The Kars failed to make the September 1, 2007 installment payment and have not made any payments since that date. HSBC also named Midland Funding, LLC (Midland) and The Traf Group, Inc. (Traf) as defendants in its complaint because they held subordinate liens to HSBC's mortgage. Midland held a judgment, entered on February 10, 2012, in the amount of \$1,064.62 against Nanda K. Kar that was docketed on February 22, 2013. Traf held a judgment, entered October 17, 2013, in the amount of \$11,570 against the Kars that was docketed on February 10, 2014.

The Kars answered the complaint on March 9, 2015. They admitted entering into the mortgage with Countrywide and did not deny defaulting on payments. The Kars also contended Countrywide returned partial payments to

them after an adjustable rate became effective; they were unaware Countrywide assigned the mortgage to MERS; and they never received official documentation plaintiff became their mortgage servicer.

On April 14, 2015, plaintiff requested the Chancery Division enter default against Midland and Traf because neither party responded to the complaint. On November 4, 2015, plaintiff moved for summary judgment and for the entry of default against the Kars. On December 4, 2015, a prior Chancery Division judge granted plaintiff's motion for summary judgment and ordered default be entered against the Kars.

Following the Chancery Division's order, on December 22, 2015, the Kars filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the District of New Jersey (Bankruptcy Court) (the first bankruptcy action). Thereafter, HSBC assigned the mortgage to plaintiff on March 15, 2016, which was recorded on June 9, 2016. On March 16, 2016, the Kars filed an adversarial proceeding in the Bankruptcy Court to ascertain the validity of the lien as to plaintiff and HSBC. The Kars alleged that plaintiff lacked standing to enforce the promissory note and mortgage against them and it has "refused and neglected to provide the original loan documentation to demonstrate entitlement" notwithstanding their multiple written requests.

On September 11, 2017, the Bankruptcy Court entered default judgment against the Kars, revoking their discharge pursuant to 11 U.S.C. § 727(a)(6), for failing to abide by a court order. The Bankruptcy Court subsequently dismissed the Kars's first bankruptcy action on February 26, 2018. Thereafter, on October 10, 2018, the Bankruptcy Court "determined that it [did] not have jurisdiction" and remanded the adversarial proceeding to the Chancery Division for further disposition.

On November 23, 2018, plaintiff filed a motion for substitution in the Chancery Division, which was granted on December 14, 2018. On May 2, 2019, plaintiff filed a motion for entry of final judgment against the Kars on notice to defendants. On June 10, 2019, over the Kars's objection, Judge Leblon granted plaintiff's motion and entered an order for final judgment of foreclosure. The judge found plaintiff was owed \$1,265,983.18 from the Kars on the mortgage, plus interest, and ordered them to pay a \$7,500 counsel fee to plaintiff. A writ of execution accompanied the order and directed the Middlesex County Sherriff to conduct a foreclosure sale of the property.

One month later, the Kars filed another Chapter 7 bankruptcy petition (the second bankruptcy action) on July 17, 2019. On September 18, 2019, the Bankruptcy Court granted plaintiff's application seeking in rem relief from the

automatic stay to pursue future bankruptcy proceedings. On November 11, 2019, the Bankruptcy Court ordered the Chapter 7 Trustee to abandon the bankruptcy estate's interest in the subject property.

On January 3, 2020, the Bankruptcy Court entered order discharging the Kars's debts. In addition to providing creditors cannot collect discharged debts, the order stated, "[h]owever, a creditor with a lien may enforce a claim against the debtors' property subject to that lien unless the lien was avoided or eliminated. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile." (Emphases added). On January 16, 2020, the Bankruptcy Court dismissed the second bankruptcy action.

On January 31, 2020, the Kars moved to stay the sheriff's sale scheduled for February 5, 2020. Their motion was denied. Consequently, the sheriff's sale proceeded on February 5, 2020, and the property was sold back to plaintiff through a bidding process. The sheriff's deed listed Midland and Traf as judgment creditors of the property.²

² In a separate action, the Chancery Division vacated the default judgment Midland held against Nanda K. Kar on April 26, 2021. Also, in another action between Traf and the Kars, the court vacated the default judgment entered against the Kars on May 18, 2021. The orders vacating the default judgments were filed more than one year after the delivery of the sheriff's deed to plaintiff.

On August 24, 2020, more than one year after the entry of final judgment, the Kars filed a motion under Rule 4:50-1(b) to vacate the final judgment of foreclosure and the sheriff's sale. They argued "they ha[d] new discovery showing that they were never served by HSBC for the first and second foreclosures." Plaintiff opposed the Kars's motion. On September 17, 2020, Judge LeBlon denied the Kars's motion as untimely because it was filed more than one year after the entry of final judgment contrary to Rule 4:50-1. And, the judge found there was no factual support to determine the Kars were not properly served with process. A memorializing order was entered.

Thereafter, the Kars filed the following motions:

- a second motion to vacate the final judgment and sheriff's sale on January 14, 2021
- a motion for reconsideration of the Chancery Division's September 28, 2020 order, filed on January 19, 2021
- a motion to restrain the private sale of the property on January 21, 2021.

Plaintiff opposed the three motions.

On February 22, 2021, the Kars filed their third post-sale motion seeking to invalidate the sheriff's deed for the first time since the sale occurred a year later. The Kars asserted the sheriff's sale and deed were invalid because plaintiff

allegedly violated the bankruptcy discharge order and discharged creditors, Midland and Traf, who were inappropriately listed in the sheriff's deed. In addition to opposing the Kars's motion, plaintiff filed a notice of cross-motion seeking to enjoin the Kars from filing future motions.

On March 5, 2021, Judge LeBlon denied the three motions filed by the Kars in January 2021. The Kars filed an emergent application with this court following entry of the March 5, 2021 orders denying their motions, which we denied on May 14, 2021. Plaintiff argued its cross-motion before Judge LeBlon telephonically on June 17, 2021. The Kars did not appear. The judge rendered an oral decision that day finding the Kars's motions "appear to be frivolous on their face" and their third motion to vacate does not indicate any "palatable basis for granting such a motion" because their letter memorandum does not offer any supporting "law, statute, or court rule." A memorializing order was entered that day denying the Kars's motion and granting plaintiff's cross-motion. This appeal ensued.

On appeal, defendant Silpy Kar presents the following argument for our consideration:

**TRIAL COURT ERRED AS VIOLATION OF
BANKRUPTCY DISCHARGE INJUNCTION WAS
NOT DISCUSSED. (Not raised below.)**

II.

We review a trial judge's decision declining to set aside a sheriff's sale for an abuse of discretion. See United States v. Scurry, 193 N.J. 492, 502 (2008); First Tr. Nat'l Assoc. v. Merola, 319 N.J. Super. 44, 49 (App. Div. 1999). Therefore, we defer to the judge's decision unless it was based on "a misconception of the applicable law." Merola, 319 N.J. Super. at 49 (quoting O'Neill v. City of Newark, 304 N.J. Super. 543, 550 (App. Div. 1997)).

Rule 4:65-5 governs sheriff's sales and objections. When a sheriff is authorized to sell real property, he or she "shall deliver a good and sufficient conveyance in pursuance of the sale unless a motion for the hearing of an objection to the sale is served within [ten] days after the sale or at any time thereafter before the delivery of the conveyance." R. 4:65-5. The party objecting must give notice "to all persons in interest." Ibid.

Rule 4:65-5 grants a debtor the "absolute right to redeem the property by tendering the full amount due" during the ten days following a sheriff's sale. Brookshire Equities, LLC v. Montaquiza, 346 N.J. Super. 310, 315 (App. Div. 2002) (citing Hardyston Nat'l Bank of Hamburg v. Tartamella, 56 N.J. 508, 513 (1970)). A debtor may extend this period by filing an objection to the sheriff's sale within the ten-day period. Id. at 316 (citing Hardyston, 56 N.J. at 513).

Under limited circumstances, a debtor may be permitted to file an objection "after the ten-day period and before conveyance of the deed," provided there is a "valid ground for objection." Id. at 317. Examples include "fraud, accident, surprise, irregularity, or impropriety in the sheriff's sale." Ibid. (citing Orange Land Co. v. Bender, 96 N.J. Super. 158, 164 (App. Div. 1967)).

As Judge LeBlon found, the Kars indisputably failed to object to the sheriff's sale within ten days as required by Rule 4:65-5. Thus, under the plain language of the Rule 4:65-5, the Kars failed to preserve their opportunity to object at a later time, unless they could establish a valid ground for an extension. We conclude the Kars failed to establish any "fraud, accident, surprise, irregularity, or impropriety in the sheriff's sale." Brookshire Equities, LLC, 346 N.J. Super. at 317. As Judge LeBlon found, the Kars's attempt to invalidate the sheriff's sale by naming Midland and Traf as party defendants was "to delay this matter and the eventualities that come along with it." Moreover, the judge emphasized the rules require plaintiff "to identify any [lienholder] or other persons or entities with an interest in the property." The judge was correct in his analysis.

We also reject Silpy Kar's argument that the judge erred in denying her motion to vacate the sheriff's sale and deed because the sale was conducted after

the Bankruptcy Court discharged the Kars of their debts and that it was error to continue noticing Midland and Traf on motions. Silpy Kar misunderstands the legal effect of her bankruptcy filings. When she (and her husband) emerged from bankruptcy, their personal debts were discharged. However, under the bankruptcy laws, the pre-existing liens against their property remained, as did plaintiff's right to foreclose on those liens. See Party Parrot, Inc. v. Birthdays & Holidays, Inc., 289 N.J. Super. 167, 174 (App. Div. 1996) (citing, in part, Johnson v. Home State Bank, 501 U.S. 78, 82-83 (1991)).

"A creditor who docketes a judgment against a debtor's property has a lien on all real property held by the judgment debtor in the State." Chemical Bank v. James, 354 N.J. Super. 1, 8 (App. Div. 2002).

Section 524(a) of the [Bankruptcy] Code indicates that a discharge voids any judgment only "to the extent that such judgment is a determination of the personal liability of the debtor with respect to [a discharged] debt" and operates to foreclose any act to collect "any such debt as a personal liability of the debtor." While a discharge in bankruptcy generally prohibits further in personam actions against the discharged debtor, it does not prohibit creditors from proceeding in rem against the debtor's property.

[Party Parrot, Inc., 289 N.J. Super. at 173-74 (second alteration in original) (emphases added) (quoting 11 U.S.C. § 524(a)); accord Gaskill v. Citi Mortg., Inc., 428 N.J. Super. 234, 241-42 (App. Div. 2012).]

Moreover, New Jersey has codified when a creditor has a judgment that was a docketed lien on real property the bankrupt owned "prior to the time he [or she] was adjudged a bankrupt, and not subject to be discharged or released under the provisions of the Bankruptcy Act, the lien thereof upon said real estate shall not be affected by said order and may be enforced." N.J.S.A. 2A:16-49.1 (emphasis added). "N.J.S.A. 2A:16-49.1 'clears the record as a housekeeping measure unless the judgment was not subject to discharge.' '[T]he controlling issue is whether or not the lien was "subject to be discharged or released" under the provisions of the Bankruptcy Code.'" Chemical Bank, 354 N.J. Super. at 9 (alterations in original) (citation omitted) (quoting Party Parrot, 289 N.J. Super. at 173).

Here, as a result of the discharge in the second bankruptcy action, the Kars were discharged of their personal obligations. See 11 U.S.C. § 524(a)(1). However, plaintiff, Midland, and Traf had valid, docketed liens on the subject property, which the Kars owned prior to the second bankruptcy petition being filed and at the time discharge was granted. With regard to plaintiff, it was foreclosing on its mortgage held on the property, making this an in rem action. It is a matter of well-settled law that a bankruptcy discharge "does not prohibit creditors from proceeding in rem against the debtor's property." Party Parrot,

289 N.J. Super. at 174. Consequently, pursuant to the Bankruptcy Code, N.J.S.A. 2A:16-49.1, and relevant case law, plaintiff was entitled to enforce its interest and the sheriff's sale was not improper. As a result, we find no abuse of the judge's discretion in denying the Kars's motion to vacate the sheriff's sale and deed.

To the extent we have not addressed the remaining arguments, we conclude that they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION