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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4039-09T4

CENTRAL JERSEY BANK, N.A.,

Plaintiff-Appellant,

v.

TWO EIGHT ONE APPLE, LLC;
GEORGE R. STENECK, JR., and
HEY-DADDY BAGELS, INC.,

Defendants,

and

JOHN PAOLANTONIO, JR.,

Defendant-Respondent.

Submitted January 24, 2011 - Decided March 14, 2011

Before Judges Sabatino and Alvarez.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-2574-09.

Maggs & McDermott, LLC, attorneys for appellant (James A. Maggs and Tennant D. Magee, Sr., on the brief).

Joseph Meehan, attorney for respondent.

PER CURIAM

Plaintiff Central Jersey Bank, N.A., appeals from the partial denial of summary judgment on its claim against

defendants Two Eight One Apple, LLC, George R. Steneck, Jr., and Hey-Daddy Bagels, Inc. For the reasons that follow, we reverse.

Central Jersey sued the named defendants, including John Paolantonio, Jr., to recover amounts due on a $550,000 loan secured by a promissory note, guaranties, and other documents. Defendant Two Eight One Apple, LLC, is designated as the borrower on the loan documents; Steneck, Paolantonio, and Hey-Daddy Bagels are guarantors on separate commercial guaranties. Paolantonio's potential liability is limited to $50,000. Repayment of the loan is secured not only by the promissory note and guaranties, but also by a mortgage issued on real property owned by Two Eight One Apple.

Two Eight One Apple has been in default on the loan since March 19, 2009; additionally, it has not paid real estate taxes on the mortgaged premises. As a result, Central Jersey advanced $31,404.16 to satisfy outstanding real estate taxes and incurred $6405.40 in legal fees. Central Jersey calculates the total amount due as of December 21, 2009, including principal, interest, real estate taxes, and counsel fees, to be $663,691.04.

On February 19, 2010, the Law Division granted Central Jersey's unopposed motion for summary judgment as to the liability of the borrower and two guarantors, Steneck and Hey

Daddy Bagels, but denied its request that judgment be entered for an amount certain, namely, $663,691.04. The judge declined to do so because of potential crossclaims as between guarantors, because of Paolantonio's limited liability, and because Central Jersey did not seek summary judgment against Paolantonio.

An application for reconsideration was filed and denied by order dated March 22, 2010. That decision was made by a second judge, the first having retired in the interim. Thereafter, Central Jersey's request that the matter be addressed by interlocutory appeal was granted. Although Paolantonio filed a brief in opposition to Central Jersey's appeal, he actually supports the application for summary judgment in an amount certain against the other defendants, despite the fact such an award would not resolve any potential or remaining crossclaims or disputes between the parties. A merits brief was filed by the remaining defendants, but suppressed on procedural grounds not pertinent to this appeal.

Our standard of review on a motion for summary judgment is de novo. Dugan Constr. Co. v. N.J. Tpk. Auth., 398 N.J. Super. 229, 238 (App. Div.), certif. denied, 196 N.J. 346 (2008). In this instance, the amount owed is not controverted; hence, there is no material factual dispute. The question is whether the trial court's order was correct on the law. Bennett v. Lugo,

368 N.J. Super. 466, 479 (App. Div.), certif. denied, 180 N.J. 457 (2004).

Neither Law Division judge cited any authority for the proposition that a specified amount could not be entered, subject to subsequent allocation as between defendants. As characterized by Central Jersey, the basis for the court's decision to deny the requested relief was that Paolantonio's guaranty was limited to $50,000, resulting in likely crossclaims against the other defendants. Resolution of these inevitable conflicts, however, did not require delay in the docketing of a judgment in the total amount due to Central Jersey. Nothing about the situation precludes Central Jersey from summary judgment in its favor. The fact that Paolantonio's liability is limited does not bar the lender from summary judgment against other defendants. A more precise allocation of the indebtedness can abide future proceedings.

Consideration of Midstates Resources Corp. v. Burgess & Fenmore, 333 N.J. Super. 531 (App. Div.), certif. denied, 165 N.J. 676 (2000), is illustrative. In that case, Burgess and Fenmore were liable under a commercial loan note as the principals of a partnership. Id. at 533. Each executed personal guaranties securing repayment of the loan. Id. at 534. The note's assignee filed suit solely against one of the

guarantors and the partnership. Judgment for an amount certain was entered and the defendants appealed. Id. at 533. We found judgment entered against only one guarantor to be proper despite the pending crossclaim between the partners. Id. at 535.

Similarly, in Great Falls Bank v. Pardo, 273 N.J. Super. 542 (App. Div. 1994), the plaintiff brought suit pursuant to a commercial note against a corporation and foreclosure was ultimately sought to satisfy the loan. Id. at 544. The defendant requested a stay of judgment pending resolution of crossclaims against other defendants in a related action. Id. at 545. In denying the defendant's request, we noted that, generally, a bank can proceed directly against a guarantor regardless of any potential further proceedings which may be necessary to allocate the financial obligation as among the debtors. Id. at 547.

Accordingly, it is our view that the decision denying Central Jersey judgment for a sum certain was issued in error.

Reversed.