SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3879-14T3

DR. HENRILYNN D. IBEZIM
and MARY V. COMPTON,

Plaintiffs-Appellants,

v.

BANK OF AMERICA, N.A. and
JAMES R. LISA, ESQ.,

Defendants-Respondents,

and

CHICAGO TITLE INSURANCE
COMPANY, and ESTATE TITLE
MANAGEMENT INC.,

Defendants.

Submitted December 21, 2016 – Decided April 3, 2017

Before Judges Alvarez and Manahan.

On appeal from Superior Court of New Jersey, Law Division, Union County, Docket No. L-0591-13.

Henrilynn D. Ibezim and Mary V. Compton, appellants pro se.

Finestein & Malloy, L.L.C., attorneys for respondents Bank of America, N.A. (Daniel L.

Finestein and Russell M. Finestein, on the brief).

James R. Lisa, respondent pro se.

PER CURIAM

Plaintiffs Henrilynn Ibezim and Mary Compton appeal from a March 6, 2015 order granting summary judgment to defendant Bank of America, N.A. (BOA), and a March 6, 2015 order granting summary judgement to defendant James R. Lisa, and dismissing the complaint against him with prejudice. We affirm.

We discern the following facts from the motion record, viewed in a light most favorable to plaintiffs as the non-moving parties. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). On July 18, 2003, Compton acquired title to property located at 1434 Frances Lane, Plainfield for $200,000. The deed was recorded with the Union County Clerk's Office on August 13, 2003. Compton financed the majority of the purchase by executing a note to Fleet National Bank (Fleet) in the amount of $176,700. To secure payment, Compton executed a mortgage in favor of Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for Fleet. The Fleet mortgage was recorded on August 13, 2003, with the Union County Clerk's Office.

While Compton owned the property, Ibezim was the primary resident and made all mortgage and property tax payments. Compton

stayed at the home occasionally as a guest between 2003 and 2006, after which time she moved out of the area. According to Compton, she purchased the property because Ibezim, with whom she was in a dating relationship at the time, was not able to do the purchase himself due to financial issues relating to his student loans. Compton provided Ibezim with a power of attorney with regard to the property. Notwithstanding her ownership of the property, Compton rarely checked to determine if the mortgage payments were made by Ibezim.

On February 9, 2006, Compton obtained refinancing of the Plainfield property through the execution of an adjustable rate note in favor of Bank of America, N.A. (BOA), in the amount of $220,500. To secure payment, Compton executed a mortgage in favor of BOA (BOA mortgage), which was recorded with the Union County Clerk's office on February 15, 2008. Lisa served as the closing attorney, and his employee and notary public, Margarita Clark, acknowledged and notarized the mortgage documents. The BOA mortgage proceeds were used to satisfy the original Fleet mortgage in the amount $170,376.71 and outstanding tax liens totaling $1400.

The remaining $42,443.15 was disbursed into plaintiffs' joint BOA account.[1]

During her deposition, Compton stated she remembered signing documents to transfer the Plainfield property into her name, but does not recall if she signed the Fleet loan application. When shown the 2003 Fleet loan application, however, she acknowledged the signatures and handwritten initials as her own. As to the BOA mortgage, Compton also acknowledged the signatures and initials as her own, though she did not know how they got there. Furthermore, Compton agreed that the information pertaining to her employment, assets, and liabilities provided in the BOA mortgage application was accurate and asserted that no one else would have had access to that information. Lisa certified that he personally witnessed Compton sign the BOA mortgage.

On December 13, 2013, plaintiffs filed a first amended complaint against BOA, Lisa, Chicago Title Insurance Co., and Estate Title Management, Inc.[2] Plaintiffs alleged BOA and Lisa

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[1] In her deposition, Compton stated she was unaware of the joint BOA account with Ibezim and did not believe he would open up such an account without informing her. Nonetheless, BOA documents regarding the plaintiffs' joint and individual accounts were provided and legally certified by BOA custodian of records Paul A. Newman.

[2] The appellate record does not reference the initial complaint or the circumstances surrounding the amended complaint. Nor does the

collaborated in the issuance of a fraudulent mortgage and thus, it should be discharged due to violations of common law fraud, the New Jersey Consumer Fraud Act, Truth in Lending Act, contract law and negligence. The averments were premised almost entirely on plaintiffs' contention that Compton's signature on the BOA mortgage was a forgery. Further, plaintiffs averred that the inaccuracies in the loan application as to when the property was acquired, for how much, when the structure was built, and the amount of the then-existing lien all support their claim of fraud.[3]

On November 6 and 8, 2014, BOA and Lisa, respectively, moved for summary judgment to dismiss all claims with prejudice. In response, plaintiffs filed a motion in opposition and a cross-motion for summary judgment. The trial court conducted oral argument on January 16, 2015. On March 6, 2015, in granting both the BOA and Lisa motions for summary judgment, the court found:

> plaintiffs have provided no specific facts or concrete evidence to support a favorable jury verdict.

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appellate record indicate the status of the remaining two defendants.

[3] It further alleges that plaintiffs never received the $42,443.15 disbursement due to Lisa "or a cohort of Mr. Lisa" absconding with the funds. In the complaint, plaintiffs acknowledged they have "withheld" mortgage payments since October 2012 due to this dispute. Plaintiffs further alleged that BOA's reporting of plaintiffs' default to credit agencies "despite the clear and on-going dispute" resulted in "a negative credit impact" and constituted negligence.

> Moreover, the court finds that plaintiffs have submitted only self-serving assertions in support of their opinions that the subject documents are fraudulent, and have not demonstrated a genuine issue of material fact. . . . [T]he subject documents . . . have not been countered or explained by the plaintiffs.

Further, the court cited to excerpts from Compton's deposition as persuasive:

> Q: Is it correct that [you have] alleged your signature is a forgery on the 2006 loan documents?
>
> A: I am not alleging that my signature is a forgery, I am alleging the complete application is a forgery because it appears that is my signature.
>
> Q: I [do not] understand what [you are] saying. In other words, are you saying the loan application [was not] made by you?
>
> A: [That is] correct.
>
> Q: But are you alleging that your signature on the loan documents are forgeries?
>
> A: Those are my signatures I believe.
>
> Q: Okay. So you are not asserting that [they are] forgeries?
>
> A: No.

The court found Compton's statements were tantamount to an admission that her signatures on the documents were genuine and thus, her "self-serving assertion in court . . . is insufficient

to create an issue a material fact. . . . there is no question that plaintiff Compton signed all relevant documents and received the benefits of the [m]ortgage proceeds." The court therefore found no genuine issues of material fact existed and determined that defendants were entitled to judgment as a matter of law. Additionally, the court denied plaintiffs' cross-motion to strike Lisa's pleadings with prejudice for failure to provide discovery. The court entered orders memorializing its decision. This appeal followed.

Plaintiffs raise the following points on appeal:

POINT I

EXISTENCE OF GENUINE ISSUES.

POINT II

DEPENDENCE ON JAMES LISA.

POINT III

THE TWO BANKS OF AMERICA.

POINT IV

LOWER COURT DECISION.

After a careful review of the record, we conclude plaintiffs' arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following.

Our review of a ruling on summary judgment is de novo, applying the same legal standard as the trial court. Townsend v.

Pierre, 221 N.J. 36, 59 (2015). "Summary judgment must be granted if 'the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.'" Town of Kearny v. Brandt, 214 N.J. 76, 91 (2013) (quoting R. 4:46-2(c)).

Thus, we consider, as the trial judge did, "whether 'the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.'" Ibid. (quoting Brill, supra, 142 N.J. at 540). If there is no genuine issue of material fact, we must then "decide whether the trial court correctly interpreted the law." Massachi v. AHL Servs., Inc., 396 N.J. Super. 486, 494 (App. Div. 2007) (citation omitted), certif. denied, 195 N.J. 419 (2008). We accord no deference to the trial judge's conclusions on issues of law and review issues of law de novo. Nicholas v. Mynster, 213 N.J. 463, 478 (2013).

Although we must view the evidence in the light most favorable to the non-moving party, "[c]ompetent opposition requires competent evidential material beyond mere speculation and fanciful arguments." Cortez v. Gindhart, 435 N.J. Super. 589, 605 (App.

Div. 2014) (citation and internal quotation marks omitted), certif. denied, 220 N.J. 269 (2015). It is "well settled that '[b]are conclusions in the pleadings without factual support . . . will not defeat a meritorious application for summary judgment.'" Id. at 606 (alteration in original) (quoting Brae Asset Fund, L.P. v. Newman, 327 N.J. Super. 129, 134 (App. Div. 1999)); see also Puder v. Buechel, 183 N.J. 428, 440-41 (2005) ("[C]onclusory and self-serving assertions by one of the parties are insufficient to overcome the motion[.]"); Oakley v. Wianecki, 345 N.J. Super. 194, 201 (App. Div. 2001) (finding "unsubstantiated inferences and feelings" are insufficient to defeat a motion for summary judgment).

Here, viewing the record in its entirety, the court found the validity of Compton's signature was without question based upon Compton's admission. The court also found the documentary evidence from the transaction compelling. Based upon our review, we discern no basis to disturb the court's findings and conclusions on appeal. See Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 483-84 (1974).

Additionally, plaintiffs failed to prove by clear and convincing evidence that the signature was a forgery. To the contrary, we confer a presumption of the signature's authenticity as the result of the notarization. See Dencer v. Erb, 142 N.J.

Eq. 422, 426 (Ch. 1948) (citations omitted) ("A certificate of acknowledgment made by a duly authorized officer is regarded as prima facie evidence that the person therein named executed the instrument to which it is attached as his [or her] voluntary act and deed."); N.J.S.A. 2A:82-17.

In conclusion, we are satisfied upon our de novo review that the court's factual findings are based on sufficient credible evidence in the motion record and the legal conclusions drawn therefrom are unassailable.

Affirmed.