SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1817-16T2

PENNYMAC CORP.,

Plaintiff-Respondent,

v.

RAYMOND WILLHARD,

Defendant-Appellant.

Submitted May 1, 2018 – Decided May 7, 2018

Before Judges Fisher and Natali.

On appeal from Superior Court of New Jersey, Chancery Division, Essex County, Docket No. F-037698-09.

Law Offices of Kenneth C. Marano, attorneys for appellant (Kenneth C. Marano, on the brief).

Blank Rome LLP, attorneys for respondent (Francis X. Crowley and Michael P. Trainor, on the brief).

PER CURIAM

In this foreclosure appeal, defendant argues that the Chancery judge erred in 2016 by refusing to vacate a 2015 order; that 2015 order memorialized the court's refusal to vacate a 2010

order that denied defendant's motion to vacate his default. We find no merit in defendant's arguments and affirm.

There is no dispute that, in 2005, defendant executed a note in favor of Washington Mutual Bank and provided WaMu with a mortgage on his Newark property. In 2008, JPMorgan Chase obtained all WaMu's loans and commitments, thereby succeeding to WaMu's rights on the note and mortgage in question here.

In February 2009, defendant defaulted on the note; Chase commenced this action five months later. Defendant failed to timely answer the complaint, and default was entered against him in November 2009.

Seven months later, defendant moved to vacate the default. On August 11, 2010, Chancery Judge Kenneth S. Levy implicitly denied that relief[1] but permitted defendant leave to engage in foreclosure mediation. Mediation never occurred; instead, defendant commenced a Chapter 7 bankruptcy proceeding.

To comply with U.S. Bank, N.A. v. Guillaume, 209 N.J. 449 (2012), Chase served defendant in November 2013 with a "remediated" notice of intention to foreclose. In February 2015, defendant

[1] Defendant had — despite the default — presented an answer to the complaint that the court had filed. The August 11, 2010 order memorialized that defendant had withdrawn his answer. The order also transferred the matter to the Office of Foreclosure. In short, defendant remained in default.

again moved to vacate the default, claiming Chase lacked standing. Chancery Judge Harriet F. Klein denied that motion on March 19, 2015, but she barred Chase from seeking final judgment for 120 days to allow both sides to mediate in good faith. The record also reveals that, on April 30, 2015, Chase assigned its interest in the note and mortgage to PennyMac Corp., which was substituted for Chase by unopposed motion in January 2016.

The mediation permitted by Judge Klein's March 19, 2015 order never occurred, and PennyMac applied for entry of final judgment in April 2016. Defendant responded, objecting to the amount claimed and asserting that a lack of evidence to support a finding that the mortgage in question was assigned to PennyMac.

In light of the response to PennyMac's application for final judgment, Chancery Judge Donald Kessler granted defendant leave to move for reconsideration of Judge Klein's March 19, 2015 order. Defendant filed such a motion,[2] which Judge Kessler denied by determining that defendant had merely reargued what had been previously argued when Judge Klein ruled and because defendant failed to satisfy the standards for granting reconsideration. An order memorializing that determination — and returning the matter

[2] Defendant labeled his filing as a motion to vacate default, but Judge Kessler correctly viewed it as a reconsideration motion. Midland Funding LLC v. Albern, 433 N.J. Super. 494, 498 n.3 (App. Div. 2013).

to the Office of Foreclosure — was entered on November 17, 2016. Final judgment was entered six days later.

Defendant appeals, arguing that Judge Kessler: (1) "abused his discretion" and "overlooked material facts" in denying his motion, and (2) "erred or misapplied the controlling decisional law which otherwise would have enabled him to hear" defendant's motion. We find insufficient merit in these arguments to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

We add only that defendant had more than a few bites at this apple in seeking to fend off foreclosure. No genuine dispute about standing or any other germane issue was ever demonstrated. PennyMac undoubtedly had standing to pursue foreclosure because Chase succeeded to WaMu's interests and Chase later assigned its interest in the note and mortgage to PennyMac, which was permitted to proceed by unopposed motion.

Affirmed.