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Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1981-15T4

JJN, LLC, d/b/a OCEAN ROLLING  
CHAIRS, JH GROUP, LLC,  
JOHN TAIMANGLO and STEPHANIE  
TAIMANGLO,

Plaintiffs-Appellants,

v.

CHRISTINE PALUMBO, f/k/a  
CHRISTINE GALIANI, 105 LINCOLN,  
LLC, and TRIDENT TITLE COMPANY,

Defendants-Respondents.

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Submitted<sup>1</sup> November 13, 2017 – Decided January 11, 2018

Before Judges Messano and Vernoia.

On appeal from Superior Court of New Jersey,  
Law Division, Atlantic County, Docket No. L-  
6664-14.

John Taimanglo and Stephanie Taimanglo,  
appellants pro se (Thomas P. Connelly, Jr.,  
on the brief).

Christine Palumbo, respondent pro se.

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<sup>1</sup> Appellants requested oral argument but failed to appear, and respondents submitted without oral argument.

Reger Rizzo & Darnall, LLP, attorneys for respondent Trident Title Company (Andrew J. Luca, on the brief).

Finestein & Malloy, LLC, attorneys for respondent 105 Lincoln, LLC (Russell M. Finestein, on the brief).

PER CURIAM

Plaintiffs John Taimanglo, Stephanie Taimanglo, JH Group, LLC and JJJN, LLC (doing business as Ocean Rolling Chairs), appeal from orders granting summary judgment to defendant 105 Lincoln, LLC, denying their motion to amend the complaint, denying their motion for entry of default against defendant Christine Palumbo, and dismissing claims asserted against defendants 105 Lincoln, Palumbo and Trident Title Company.

In January 2014, plaintiffs filed a complaint in the Chancery Division against Christine Palumbo and 105 Lincoln. The complaint alleged that in November 2006, JH Group loaned \$200,000 to Giancarlo Presta and Domenico Michienzi, who were the members of Longobarbi Real Estate Ventures, LLC. Longobarbi used the loan monies to purchase property in Brigantine. The loan was secured by a mortgage between Presta and Michienzi, as mortgagors, and JH Group.

As alleged in the complaint, in December 2007, Longobarbi transferred ownership of the property by quitclaim deed to Palumbo. She executed a lease with Presta permitting his continued operation

of a restaurant on the property conditioned on her agreement to repay Presta's and Michienzi's debt to JH Group. Almost five years later, in September 2012, Palumbo sold the property to 105 Lincoln for \$80,000. The complaint further alleged that Palumbo failed to pay JH Group the monies owed to it by Presta and Michienzi and that 105 Lincoln had knowledge of JH Group's mortgage when it purchased the property from Palumbo.

In addition to the allegations about the property and mortgage, the complaint alleged John Taimanglo made personal loans to Palumbo which she failed to repay. JH Group and JJJN, LLC, which are owned by John Taimanglo and Stephanie Taimanglo, further alleged they operated a business known as Ocean Rolling Chairs, which transported people on the Atlantic City boardwalk in four-wheeled rolling carts. They alleged Palumbo agreed to sell advertising on the carts for an agreed-upon commission, but misappropriated funds their clients paid for the advertising.

In the complaint, plaintiffs asserted three causes of action against Palumbo and 105 Lincoln. Plaintiffs sought an order requiring 105 Lincoln to execute a \$200,000 mortgage in their favor on the property (count one), and declaring that an equitable mortgage existed on the property in favor of JH Group (count two). The complaint also asserted a cause of action for unjust enrichment (count three) based on the allegation that Palumbo and 105 Lincoln

were unjustly enriched by taking title to the property without paying the monies Presta and Michienzi owed to JH Group.

Plaintiffs also asserted claims against Palumbo related to the alleged personal loans made by John Taimanglo and Palumbo's alleged misappropriation of funds from Ocean Rolling Chairs's clients. The complaint alleged conversion and misappropriation (count four), breach of contract (count five), unjust enrichment (counts six and seven), quantum merit (count eight), and tortious interference (count nine) against Palumbo.

In July 2014, the Chancery Division judge heard argument on 105 Lincoln's motion for summary judgment. The judge determined he could not compel execution of a \$200,000 mortgage as plaintiffs requested in count one because the original mortgage never constituted a valid lien on the property. The court found the mortgage was never executed by an owner of the property and that it was "axiomatic that a mortgage to constitute a valid lien or encumbrance must be executed by the owner." The record also showed that the mortgagors, Presta and Michienzi, never held title to the property. The court granted 105 Lincoln's motion for summary judgment on count one, but denied the motion as to counts two and three, finding there were fact issues as to whether 105 Lincoln had notice of an alleged encumbrance on the property prior to its purchase of the property.

105 Lincoln later renewed its motion for summary judgment on counts two and three. After argument, the court determined there was insufficient competent evidence showing 105 Lincoln had notice of any alleged encumbrance on the property prior to its purchase of the property. The court found 105 Lincoln was a bona fide purchaser of the property without any prior notice of any purported encumbrance or mortgage.

In addition, the court considered the record from a 2009 Chancery Division matter in which Longobarbi, Presta and Michienzi sued Palumbo, John Taimanglo, Stephanie Taimanglo and JH Group (the Longobarbi matter). The plaintiffs in that matter claimed in part that Longobarbi transferred the property to Palumbo at John Taimanglo's insistence to permit Taimanglo to refinance the property to raise funds for other investments. The plaintiffs sought a rescission of the transfer of title to the property to Palumbo and made other claims against the defendants for monies allegedly owed.

The Longobarbi matter was settled. The record showed that as a condition of the settlement, JH Group, John Taimanglo and Stephanie Taimanglo forgave any and all alleged debts owed to them by Longobarbi, Presta and Michienzi, including the \$200,000 loan. The parties also agreed Palumbo retained full ownership of the property. The settlement record also revealed that the defendants

in that action, including JH Group, John Taimanglo, Stephanie Taimanglo and Palumbo resolved any and all claims they may have had against each other.

Here, in its decision on 105 Lincoln's summary judgment motion, the court found there was no basis for plaintiffs' causes of action for an equitable mortgage and unjust enrichment because in the Longobarbi matter they forgave the alleged debt underlying the mortgage upon which those causes of action were founded. The court determined that the settlement of the Longobarbi matter

resolved, at least as it relates to the parties to that action, all claims . . . that all parties, each and every party had or may have had against other parties at that particular time, including any potential crossclaims that one co-defendant may have had or believed that he, she it had against other co-defendants.

The judge therefore granted 105 Lincoln's motion for summary judgment on counts two and three. The only claims remaining after the court granted 105 Lincoln's motion were those against Palumbo.

Four days prior to the December 8, 2014 scheduled trial date on those claims, plaintiffs obtained new counsel. He appeared on the first day of trial and requested an adjournment. Plaintiffs' counsel represented that "due to the [court's] summary judgment order" dismissing all of the claims against 105 Lincoln, the case constituted of only "a breach of contract case for monetary

damages" against Palumbo. Counsel requested that the matter be transferred to the Law Division, and the judge granted the request.

After the matter was transferred to the Law Division, plaintiffs moved to amend the complaint to assert three additional causes of action against Palumbo, 105 Lincoln and, for the first time, Trident. Plaintiffs sought to add claims for violation of the Uniform Fraudulent Transfer Act, N.J.S.A. 25:2-20 to -34, aiding and abetting, and civil conspiracy. The claims were based on the same factual allegations supporting the causes of action the Chancery Division judge dismissed prior to the transfer of the matter to the Law Division. The court granted Trident's motion for leave to intervene to oppose the plaintiffs' motion to amend the complaint.

In March 2015, while their motion to amend the complaint was pending, plaintiffs filed a new complaint in the Law Division. The new complaint was based on the same factual allegations included in the proposed amendment to the original complaint, asserted the same three claims plaintiffs sought to add to the original complaint in their pending motion, and included Trident as a defendant.

On June 18, 2015, the court denied plaintiff's motion to amend the original complaint to assert the new claims against Palumbo, 105 Lincoln and Trident. The court determined that the

newly asserted claims were based on the alleged mortgage the Chancery Division judge previously determined could not exist as a matter of law because the debt underlying the purported mortgage was forgiven in the 2010 settlement of the Longobarbi matter. The court also reiterated the Chancery Division's findings that no mortgage was ever executed by an owner of the property. The court again determined that because there was no enforceable underlying debt, plaintiff's request to assert new causes of action based on either the debt or mortgage had no support in the law. The court concluded it would be futile to permit an amendment of the complaint asserting such claims.

At a point that is not clear from the record, the court entered an order consolidating the original action that was transferred from the Chancery Division with the action plaintiff filed in March 2015. In June 2015, the court dismissed the March 2015 complaint because it asserted claims identical to those plaintiffs sought to add on June 18, 2015, by way of amendment to the original complaint. The judge therefore dismissed the March 2015 complaint for the same reasons he denied plaintiffs' motion to add the claims to the original complaint.

As a result of the dismissal of the March 2015 complaint, the only remaining causes of action were those in the original complaint alleging Palumbo breached loan obligations to John



Taimanglo and misappropriated monies owed to plaintiffs from the Ocean Rolling Chairs's business. Prior to trial, plaintiffs requested entry of default against Palumbo because she did not file an answer to the March 2015 complaint. The judge denied the request because he previously dismissed the March 2015 complaint based on his finding the complaint did not assert legally cognizable causes of action. The judge determined that although Palumbo had not previously formally moved for dismissal of the March 2015 complaint, the reasons underlying his prior dismissal of the complaint should apply to Palumbo as well.

Plaintiffs' remaining causes of action against Palumbo, as alleged in the original complaint, were tried before a jury. During the trial, Palumbo testified she had a prior long-standing intimate relationship with John Taimanglo, who is married to Stephanie Taimanglo. Plaintiffs' counsel then moved to sever Stephanie Taimanglo's claims against Palumbo from John Taimanglo's claims against Palumbo. Plaintiffs' counsel further requested leave to amend the complaint to assert claims on behalf of Stephanie Taimanglo against Palumbo for adultery, tortious interference with the marriage contract and alienation of affection. The court denied the motion, finding counsel's request to sever claims and add wholly new claims should have been made prior to trial.

The jury returned a no-cause verdict in Palumbo's favor on all of the causes of action. This appeal followed.

On appeal, plaintiffs make the following arguments:

A.

The trial court committed plain and/or harmful legal error by granting summary judgment to 105 Lincoln because it did not hear expert testimony or make any actual finding regarding fair market value of the property.

B.

The trial court abused its discretion and committed plain and/or harmful error [by] denying the plaintiffs['] motion to amend their complaint, because in New Jersey, liberal amendments to pleadings are to be allowed, there was no procedural bar, and amendment was not futile.

C.

The trial court committed plain and/or harmful error by dismissing the plaintiffs' fraudulent transfer and related claims against [d]efendants 105 Lincoln LLC and Trident Title Company because there was no procedural bar to those claims.

D.

The trial court committed plain and/or harmful error [by] denying the plaintiffs' motion for default judgment against [d]efendant Palumbo because Palumbo never filed an answer.

E.

The trial court committed plain and/or harmful error [by] denying the plaintiffs['] trial motion to sever and to amend their complaint

in New Jersey, liberal amendments to pleadings are to be allowed, there were no procedural bar to amendment, and amendment was not futile.

F.

The trial court's errors in dismissing the plaintiffs' fraudulent transfer and related claims against [d]efendants 105 Lincoln, Trident and Palumbo unfairly truncated and prejudiced the plaintiffs' presentation of their case to the jury, and the judgment in favor of [d]efendant Palumbo must therefore be reversed.

We have considered these arguments in light of the applicable legal standards and have determined they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm each of the challenged orders substantially for the reasons set forth by the three judges who ably addressed and thoroughly decided each of the challenged issues in the trial court. We add only the following brief comments.

Plaintiffs' asserted and proposed claims against 105 Lincoln, Palumbo and Trident that were dismissed or denied prior to trial are founded upon an alleged mortgage securing a debt owed to them by Presta and Michienzi. As the Chancery Division judge recognized and correctly decided in the first instance, all of the claims founded upon the purported mortgage could not be sustained as a matter of law. The undisputed facts showed that in their settlement of the Longobarbi matter in 2010, plaintiffs forgave

Presta, Michienzi, and Longobarbi from any and all alleged debts and other obligations due to the plaintiffs. Despite plaintiffs' numerous efforts to reassert and repackage those claims, they remained legally deficient for the same reason throughout the litigation. Each judge who was required to address the issue recognized what plaintiffs continue to ignore: plaintiffs cannot impose or enforce a mortgage untethered to any outstanding debt. Gotlib v. Gotlib, 399 N.J. Super 295. 312 (App. Div. 2008) (citation omitted) ("A mortgage secures a debt; 'without an obligation to secure there can be no valid mortgage.'").

Affirmed.

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



CLERK OF THE APPELLATE DIVISION