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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-3389-16T3

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff-Respondent,

v.

THOMAS GISSUBEL,

Defendant-Appellant,

and

EILEEN GISSUBEL; UNITED STATES
OF AMERICA; PANTHER VALLEY
PROPERTY OWNERS ASSOCIATION,
INC.; and JOHN KOSTNER, BY
LIBERTY MUTUAL, SUBROGEE,

Defendants.

Submitted February 28, 2018 — Decided March 28, 2018

Before Judges Currier and Geiger.

On appeal from Superior Court of New Jersey,
Chancery Division, Warren County, Docket No.
F-355553-09.

Thomas Gissubel, appellant pro se.

Stern, Lavinthal & Frankenberg, LLC, attorneys
for respondent (Mark S. Winter, of counsel and
on the brief).

PER CURIAM

Defendant Thomas Gissubel (defendant) appeals from a March 3, 2017 order denying his motion to stay the residential mortgage foreclosure action and grant him an exception to the entire controversy doctrine to permit him to pursue his claims against plaintiff Federal National Mortgage Association in the Law Division. For the following reasons, we affirm.

On December 30, 2003, defendant executed a promissory note to HSBC Mortgage Corp. (HSBC) for \$272,000 secured by a mortgage on their residence in Allamuchy Township. The mortgage was recorded on June 14, 2004. On January 19, 2004, HSBC assigned the mortgage to Mortgage Electronic Registration Systems, Inc. (MERS). The assignment was recorded on March 31, 2005. Defendant defaulted on the loan on August 1, 2008.

On July 7, 2009, MERS assigned the mortgage to BAC Home Loans Servicing, LP f/k/a Countrywide Home loans Servicing, LP (BAC). The assignment was recorded on August 6, 2009.

On July 8, 2009, BAC filed a complaint in foreclosure. On December 23, 2009, defendant filed an answer and affirmative defenses. Pursuant to the Mortgage Stabilization and Relief Act,

N.J.S.A. 55:14K-82 to -87, the parties entered into a period of forbearance from December 15, 2009, through June 15, 2010.

On December 16, 2009, defendant filed a motion to dismiss the complaint, alleging failure of consideration, fraud, lack of standing, violation of the Constitution and 12 U.S.C. § 24, and failure to apply payments on account. Plaintiff opposed the motion on procedural and substantive grounds. On August 6, 2010, the trial court denied defendant's motion to dismiss. On August 27, 2010, defendant filed a motion for reconsideration, arguing lack of standing and payment. On June 16, 2011, the trial court denied defendant's motion for reconsideration, finding no basis to dismiss the complaint.

On August 2, 2011, plaintiff filed a motion to dismiss and suppress defendant's pleadings for failure to answer discovery. On September 27, 2011, the trial court struck defendant's answer without prejudice for failure to provide discovery. On October 26, 2011, defendant filed a motion to allow answer and defenses.

On September 29, 2014, plaintiff filed a motion to permit remediation of the notice of intention to foreclose and to substitute Bank of America, N.A. as plaintiff. On November 10, 2014, the trial court granted plaintiff's motion.

On January 5, 2015, defendant filed a notice of appeal (Docket No. A-2557-14). Because the appeal was interlocutory and defendant

did not file a motion for leave to appeal, the appeal was dismissed as interlocutory, without prejudice, on June 11, 2015.

On August 7, 2015, plaintiff filed a motion to substitute Federal National Mortgage Association (Fannie Mae) as plaintiff. On September 10, 2015, the trial court granted plaintiff's motion.

On October 5, 2015, defendant filed a motion to vacate the order substituting Fannie Mae as plaintiff. On November 20, 2015, the trial court denied defendant's motion. As part of its ruling, the trial court found plaintiff had standing to foreclose.

On March 18, 2016, defendant filed a motion for summary judgment. His motion was not supported by an affidavit or certification. Plaintiff filed a cross-motion to strike defendant's answer with prejudice. On May 16, 2016, the trial court denied defendant's motion and granted plaintiff's cross-motion. The matter was then returned to the Office of Foreclosure as uncontested.

On June 20, 2016, defendant filed a motion for reconsideration of the May 16, 2016 order. On August 5, 2016, the trial court denied defendant's motion for reconsideration, rejecting defendant's argument that plaintiff lacked standing.

On January 9, 2017, plaintiff filed a motion for entry of final judgment. On February 3, 2017, final judgment was entered in favor of plaintiff.

On February 7, 2017, defendant filed a motion to stay further action in the foreclosure and to grant him an exception to the single controversy doctrine to allow him to pursue his affirmative claims against plaintiff in the Law Division. On March 3, 2017, the trial court denied defendant's motion. In her comprehensive written statement of reasons, Judge Margaret Goodzeit engaged in the following analysis:

Although the Rules lack specific guidance on the application of R. 4:64-5 to counterclaims and third-party claims, the handful of judicial decisions addressing the issue generally agree that such claims will be considered germane if they either challenge the plaintiff's right to foreclose or would reduce the amount of debt outstanding. See Family Sav. Bank v. De Vincentis, 284 N.J. Super. 503 (App. Div. 1995). This conclusion comports with the general rule that "[t]he only material issues in a foreclosure proceeding are the validity of the mortgage, the amount of the indebtedness, and the right of the mortgagee to resort to the mortgaged premises," Great Falls Bank v. Pardo, 263 N.J. Super. 388, 393 (Ch. Div. 1993). And, although the rule seems to prohibit claims for money damages, the Appellate Division has held that:

[a]ny conduct of a mortgagee known to the mortgagor prior to the institution of a foreclosure that could be the basis of an independent action for damages by reason of the mortgagee having brought the foreclosure could be raised as an equitable defense in the foreclosure. Joan Ryno, Inc. v. First Nat'l Bank of So. Jersey, 208

N.J. Super. 562, 570 (App. Div. 1986)(citing Leisure Technology v. Klingbeil, 137 N.J. Super. 353, 356 (App. Div. 1975)).

Germane claims, then, fall into two categories. In addition to the claim for foreclosure itself, the first category of germane claims includes those that challenge the right of the plaintiff to foreclose or otherwise dispute the amount of the defendant's indebtedness, and as such are permitted as equitable defenses to foreclosure. The second category of germane claims incorporates cross-claims that contest the priority or amount of a prior encumbrance. See R. 4:64-5 ("A defendant who chooses to challenge the validity, priority or amount of any alleged prior encumbrance shall do so by filing a cross-claim against that encumbrancer").

Here, defendant's instant motion and previously stricken Answer have not set forth any claims or defenses which are not germane to the foreclosure action and would require leave of Court or joinder to the instant proceeding.

Additionally, defendant's claims and defenses have been adjudicated on the merits and have been dismissed by the Court. The [c]ourt has previously considered defendant's arguments, as evidenced by the Orders previously issued . . . and finds that defendant's claims and defenses have all been addressed. For example, defendant's argument that plaintiff lacks standing to foreclose has been addressed by the [c]ourt, and the [c]ourt has found that plaintiff has standing to foreclose no less than five times and has provided detailed, written Statements of Reasons with three of the five Orders, with the remaining two having been explained on the record.

Furthermore, defendant's arguments raised in the instant motion are completely unsupported by facts. Defendant merely makes blanket, conclusory allegations against the plaintiff. Defendant has presented no evidence whatsoever that the plaintiff violated the New Jersey Fair Foreclosure Act and the Truth in Lending Act, that the plaintiff lacks standing and is guilty of consumer fraud, or [to] equitably deny plaintiff's foreclosure remedy Besides being wholly unsupported, defendant's arguments are not timely, as Final Judgment was entered in this case on February 3, 2017.

To the extent defendant's motion is construed as a motion to vacate the final judgment under Rule 4:50-1(f), the judge stated:

The [c]ourt finds that defendant's argument that the Final Judgment should be vacated under [Rule] 4:50-1(f) is without merit.

Relief from a Final Judgment or Order is available to a litigant pursuant to [Rule] 4:50-1. . . .

. . . .

The Rule is designed to provide relief from judgments in situations in which, were it not applied, a grave injustice would occur. A court may relieve a litigant from a judgment under the rule whenever necessary to prevent a manifest denial of justice.

The purpose of [Rule] 4:50-1 is to temper the interest in finality of judgments with the principle that justice should be done in every case. . . .

It is well settled that vacating a default judgment requires a showing of both

(1) excusable neglect and a (2) meritorious defense.

Here, the [c]ourt finds that neither excusable neglect nor a meritorious defense is present. Defendant has not shown excusable neglect and has fully participated in this litigation, which has gone on for almost eight years. As discussed above, defendant has not presented the [c]ourt with a meritorious defense in this motion and defendant's Answer has previously been stricken by the Court.

[(Citations omitted).]

This appeal followed. On appeal, defendant raises the following issues: (1) counterclaims brought in foreclosure actions remain permissive under Rule 4:64-5; (2) plaintiff violated the New Jersey Fair Foreclosure Act (FFA), N.J.S.A. 2A:50-53 to -73, the Truth in Lending Act (TILA), 15 U.S.C. §§ 1601 to -1667f, and the Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -20; (3) plaintiff lacks standing; and (4) the trial court has the express authority to grant equitable damages.

We first note defendant's notices of appeal identify only the March 3, 2017 order as the order being appealed.¹ It is well-settled we review "only the judgment or orders designated in the notice of appeal." 1266 Apartment Corp. v. New Horizon Deli, Inc., 368 N.J. Super. 456, 459 (App. Div. 2004) (citing Sikes v.

¹ Defendant's original, amended, and second amended notices of appeal only reference the March 3, 2017 order.

Twp. of Rockaway, 269 N.J. Super. 463, 465-66 (App. Div. 1994)); see also R. 2:5-1(f)(3)(A). Stated differently, any arguments defendant raises that fall outside the four corners of the notice of appeal likewise fall outside the scope of our appellate jurisdiction and are therefore not reviewable as a matter of law. Accordingly, defendant's appeal is limited to review of the March 3, 2017 order denying defendant's motion.

We review the denial of defendant's motion based upon an abuse of discretion standard. An abuse of discretion occurs when the trial judge's "decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012) (quoting Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002)). We find no such abuse of discretion and affirm substantially for the reasons expressed by Judge Goodzeit in her comprehensive statement of reasons. We add only the following brief comments.

"The only material issues in a foreclosure proceeding are the validity of the mortgage, the amount of the indebtedness, and the right of the mortgagee to resort to the mortgaged premises." Great Falls Bank v. Pardo, 263 N.J. Super. 388, 394 (Ch. Div. 1993), aff'd, 273 N.J. Super. 542 (App. Div. 1994). "Only germane counterclaims and cross-claims may be pleaded in foreclosure

actions without leave of court." R. 4:64-5. A counterclaim is germane if it is a "claim arising out of the mortgage foreclosed," Joan Ryno, Inc. v. First Nat'l Bank, 208 N.J. Super. 562, 570 (App. Div. 1986), or contests "the validity of the mortgage, the amount of the indebtedness, and the right of the mortgagee to resort to the mortgaged premises[,]" Sun NLF Ltd. P'ship v. Sasso, 313 N.J. Super. 546, 550 (App. Div. 1998); see 30A N.J. Practice, Law of Mortgages § 30.8 at 14 (Myron C. Weinstein) (2d ed. 2000).

The single controversy doctrine "requires a liberal rather than a narrow approach to the question of what issues are 'germane.'" Leisure Tech.-NE., Inc. v. Klingbeil Holding Co., 137 N.J. Super. 353, 358 (App. Div. 1986). The entire controversy doctrine requires parties to raise germane claims and defenses in the foreclosure action or they may be barred in a subsequent action. Sun NLF Ltd. P'ship, 313 N.J. Super. at 551. Here, defendant's statutory claims under the FFA, TILA, and CFA were germane to the foreclosure. See, e.g., Assocs. Home Equity Servs., Inc. v. Troup, 343 N.J. Super. 254, 271-73, 273 n.5 (App. Div. 2001) (finding defendant's statutory claims, including those under TILA and CFA, "germane" because "[a] successful recoupment defense acts to reduce the amount the plaintiff can recover on the claim for the debt when the counterclaim arises from the same

transaction"). Therefore, the claims fall within the single controversy doctrine.

In denying defendant's motion for an exception to the single controversy doctrine, the judge recounted the prior orders she had entered denying defendant's numerous pre-judgment motions. Those rulings, in part, rejected defendant's claims and defenses as meritless. Thus, contrary to defendant's contentions, there has been a ruling on the merits.

Defendant further argues the trial court erred by denying his motion to stay further action in the foreclosure. He filed his motion after final judgment was entered against him. Defendant sought to stay the foreclosure to raise his claims in a separate, future action in the Law Division. The argument lacks 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