SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3795-16T1

NATIONSTAR MORTGAGE, LLC,
d/b/a CHAMPION MORTGAGE
COMPANY,

Plaintiff-Respondent,

v.

JOHN D. ARMSTRONG, Heir and
Administrator for the Estate
of LULU B. ARMSTRONG,

Defendant-Appellant.

Argued February 27, 2018 – Decided March 20, 2018

Before Judges Reisner and Mayer.

On appeal from Superior Court of New Jersey, Chancery Division, Union County, Docket No. F-047868-10.

John D. Armstrong, appellant, argued the cause pro se.

Matthew Eyet argued the cause for respondent (Sandelands Eyet, LLP, and McCabe, Weisberg & Conway, LLC, attorneys; James A. French, on the brief).

PER CURIAM

Defendant John D. Armstrong, who is the heir and administrator of the estate of his mother, Lulu B. Armstrong, appeals from a March 31, 2017 final judgment of foreclosure. On this appeal, he raises the following points of argument:

> I. PLAINTIFF FAILED TO SERVE AND DELIVER TO THE [IMMEDIATE] FAMILY, HEIRS, PERSONAL REPRESENTATIVES AND DEFENDANTS THE REQUIRED NOTICE OF INTENT TO FORECLOSE IN VIOLATION OF THE FAIR FORECLOSURE ACT (FFA) — N.J.S.A. 2A:50-56 / 2A:50-53 ET SEQ.
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> II. PLAINTIFF FAILED TO COMPLY WITH RULE 4:64-1(B)(11) WHEN CONSTRUCTING ITS CONTENT OF MORTGAGE FORECLOSURE COMPLAINT WHICH VIOLATED R. 4:64-1(B)(11).
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> III. PLAINTIFF FAILED TO FILE THE REQUIRED ATTACHMENT KNOWN AS THE CERTIFICATION OF DILIGENT INQUIRY FORM WITH ITS FORECLOSURE COMPLAINT IN VIOLATION OF R. 4:64-1(A)(2) AND R. 1:5-6(C).
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> IV. THE ORIGINAL PLAINTIFF METLIFE BANK, NA ASSIGNED THE ORIGINAL MORTGAGE AND NOTE TO FANNIE MAE BEFORE IT FILED ITS FORECLOSURE COMPLAINT AS EVIDENCED BY THE ASSIGNMENT OF MORTGAGE AND ALLONGE DATED JUNE 10, 2009 TO FANNIE MAE.
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> V. THE HONORABLE TRIAL COURT HAS ERRED BY [FAILING] TO HEAR, CURE, QUASH OR ADJUDICATE THE DEFENDANT[']S MAY 13, 2014 MOTION FILING, WHICH PROMPTED THE [TRIAL COURT] TO VACATE A 2014 FINAL JUDGMENT ORDER ON AUGUST 25[,] 2015. THE [TRIAL COURT] DECISION WAS BASED ON THE COURT[']S PROCEDURAL ERROR TO HEAR THE DEFENDANT[']S MOTION FILED ON MAY 13, 2014.
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> VI. ON REMAND, IF GRANTED THIS MATTER SHOULD RESPECTFULLY BE HEARD BY A DIFFERENT JUDGE.

After reviewing the record in light of the applicable legal standards, we conclude that, with the exception of defendant's Point I, his appellate arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

As to Point I, our review of the trial court's interpretation of the Fair Foreclosure Act (FFA), N.J.S.A. 2A:50-56, is de novo. See D'Agostino v. Maldonado, 216 N.J. 168, 182-83 (2013). We agree with defendant that, before filing suit, plaintiff was required to serve the mortgagor's estate administrator with a notice of intent to foreclose (NOI), pursuant to the FFA, N.J.S.A. 2A:50-56. We reject the argument - asserted by plaintiff and accepted by the trial court - that plaintiff was not required to serve a NOI because the residential mortgage at issue was a reverse mortgage. We remand the case to the trial court for further proceedings consistent with this opinion.

I

In light of the issue to be addressed, we provide only a brief summary of the background. On June 10, 2009, defendant, acting on his mother's behalf, obtained in her name a $525,000 reverse mortgage, secured by her home in Cranford. Defendant signed his mother's name to the loan documents as her "attorney in fact." His mother died on September 2, 2009.

As required by federal law, on October 5, 2009, plaintiff sent defendant, as administrator of the estate, a notice advising him of "the options that are available to the estate for satisfying the loan balance" and avoiding foreclosure. See 24 C.F.R. § 206.125(a)(2). Those options included paying off the outstanding balance in full within thirty days. After the estate failed to satisfy the loan balance, plaintiff filed a foreclosure complaint, naming defendant's mother and her "heirs," on September 29, 2010. The complaint was later amended to add defendant and his wife.

Defendant filed an answer to the complaint, and after extensive motion practice, the court dismissed the answer and entered a final judgment of foreclosure. Among many other issues, defendant raised plaintiff's failure to serve a NOI. The trial court agreed with plaintiff's argument, that when the mortgagor on a reverse mortgage dies, the lender has an absolute right to obtain the property, with no right to cure, and therefore a NOI is not required.

After the foreclosure judgment was entered, the property was scheduled for a sheriff's sale, which we stayed pending this appeal.

II

The FFA requires a lender to serve a NOI before accelerating a residential mortgage loan or instituting a foreclosure action:

> Upon failure to perform any obligation of a residential mortgage by the residential mortgage debtor and before any residential mortgage lender may accelerate the maturity of any residential mortgage obligation and commence any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage, the residential mortgage lender shall give the residential mortgage debtor notice of such intention at least 30 days in advance of such action as provided in this section.
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> [N.J.S.A. 2A:50-56(a).]

In construing the statute, we first consider "the literal language of the statute, consistent with the Legislature's admonition that its words and phrases 'shall be read and construed with their context, and shall, unless inconsistent with the manifest intention of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning, according to the approved usage of the language.'" US Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 471 (2012) (quoting N.J.S.A. 1:1-1). "To the extent possible, the Court must derive its construction from the Legislature's plain language. If the language chosen by the Legislature is unambiguous, then the Court's 'interpretive process is over.'" Ibid. (citations omitted).

As noted, the FFA, by its terms, requires service of a NOI prior to the institution of any residential foreclosure action.[1] The statute contains no exception for reverse mortgages, and reading an exception into the statute would be contrary to its fundamental purpose, which is to allow property owners to avoid losing their property to foreclosure.[2] The FFA effectuates the Legislature's stated intent that "homeowners should be given every opportunity to pay their home mortgages, and thus keep their homes." N.J.S.A. 2A:50-54. "The notice of intention is a central component of the FFA, serving the important legislative objective of providing timely and clear notice to homeowners that immediate action is necessary to forestall foreclosure." Guillaume, 209 N.J. at 470.

Plaintiff concedes that some events of default under a reverse mortgage – for example, the mortgagor's failure to pay property

[1] As plaintiff's attorney indicated at oral argument, in the case of an ordinary, non-reverse mortgage, the lender serves the NOI on a deceased mortgagor's estate administrator. See N.J.S.A. 3B:10-30 (giving the estate administrator "the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate.").

[2] Where the Legislature intended to carve out an exception to the FFA's requirements, it did so in explicit language. For example, the FFA specifically states that its provisions "shall not apply to the foreclosure of a non-residential mortgage." N.J.S.A. 2A:50-62.

taxes — are curable and that a NOI must be served in that situation. But plaintiff argues that a NOI need not be served where, as here, the debtor on a reverse mortgage has died, because the mortgagor's death constitutes an incurable event of default. We cannot agree. The FFA, by its terms, does not require that the default be curable by a means other than paying off the loan, before a NOI is required.

As in this case, the default can be cured, and the property saved from forfeiture, by payment of the mortgage balance. In fact, federal law gives the debtor's estate the right to make the payment. See 24 C.F.R. § 206.125(a)(2)(i). For that reason, federal law requires the mortgagor on a reverse mortgage to serve the debtor's estate administrator with notice of the right to pay off the mortgage balance and save the property from foreclosure. 24 C.F.R. § 206.125(a)(2). Thus, plaintiff served defendant with the federally-required notice.

We also cannot accept plaintiff's further argument that the federal notice obligation replaces any state obligation to serve the NOI in this case. The lender's obligation to serve the NOI "is independent of any other duty to give notice under the common law, principles of equity, State or federal statute, or rule of court and of any other right or remedy the debtor may have as a result of the failure to give such notice." N.J.S.A. 2A:50-56 (e). Hence, the lender's obligation to serve a federally-required

notice on a reverse mortgagor's estate does not relieve the lender of the obligation to also serve the NOI under the FFA. Accordingly, plaintiff was obligated to serve the NOI on defendant, as his mother's estate administrator.

We next consider the appropriate remedy for the failure to serve the NOI. The court has some discretion in that regard. For example, "a court adjudicating a foreclosure action in which N.J.S.A. 2A:50-56(c)(11) is violated may dismiss the action without prejudice, permit a cure or impose such other remedy as may be appropriate to the specific case . . . ." Guillaume, 209 N.J. at 458. In this case, defendant received the federally-required notice of the right to pay off the mortgage in 2009, but took no action to pay it off. Moreover, defendant has greatly delayed the foreclosure by filing numerous, repetitive motions, leading to the imposition of sanctions and an order precluding him from filing further motions without the vicinage Assignment Judge's approval.

We conclude that the appropriate remedy here is a brief stay rather than dismissal of the foreclosure action without prejudice. We therefore remand this case to the trial court with direction to enter an order staying the foreclosure case for thirty days, to give defendant another chance to pay off the mortgage. If

defendant does not pay off the mortgage, the sheriff's sale may proceed.[3]

Remanded. We do not retain jurisdiction.

[3] Our stay of the sheriff's sale shall remain in effect until the trial court enters its stay order on remand.