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THE APPROVAL OF THE COMMITTEE ON OPINIONS

WILMINGTON SAVINGS FUND SOCIETY, FSB, AS TRUSTEE OF STANWICH MORTGAGE LOAN TRUST A,

Plaintiff,

vs.

DEBRA R. SCHNEEWEISS AND LEON REITZENSTEIN, HER HUSBAND; BOARDWALK REGENCY CORP; MARINA ASSOCIATES T/A/ HARRAHS CASINO HOTEL AC; SPONZILLI LANDSCAPING GROUP INC; LAW OFFICES OF LOUIS G DEANGELIS LC; MSE REALTY LLC; MEDALLION BANK; MEDALLION FINANCIAL CORP., MEDALLION BUSINESS CREDIT LLC; ORADELL ANIMAL HOSPITAL; STATE OF NEW JERSEY; MEDALLION BUSINESS CREDIT, A DIVISION OF MEDALLION FINANCIAL CORP.; UNITED STATES OF AMERICA; SPONZILLI LANDSCAPE GROUP, INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION

BERGEN COUNTY

DOCKET NO. F-013586-17

**OPINION**

Decided: August 25, 2020

Mara P. Codey, attorney for defendants, Sponzilli Landscaping Group, Inc. and Sponzilli Landscape Group, Inc. (Mandelbaum Salsburg, P.C.)

Patricia A. Staiano, attorney for defendant, Debra R. Schneeweiss (Bruce S. Etterman on the brief), (Hellring Lindeman Goldstein & Siegal LLP)

Neda K. Mohebbi, attorney for defendant, Leon Reitzenstein (Mueller Law Group)

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BEDRIN MURRAY, J.T.C. (temporarily assigned)

## I. Introduction

Before the court are two motions for distribution of surplus funds, one filed by defendant/co-mortgagor Debra R. Schneeweiss and the other by defendants/judgment creditors Sponzilli Landscaping Group, Inc. and Sponzilli Landscape Group, Inc. (Sponzilli). Defendant/co-mortgagor Leon Reitzenstein, spouse of Ms. Schneeweiss,[1] did not file a motion seeking the surplus funds nor an objection to the Sponzilli motion, but opposes his wife's motion on grounds the monies are entireties property that cannot be severed without the written consent of both spouses. Ms. Schneeweiss rejects this argument; further, she argues the Sponzilli judgment is solely against Mr. Reitzenstein and should be satisfied, albeit partially, from his half of the surplus, leaving her half intact.[2] In response, Sponzilli asserts Ms. Schneeweiss is bound by the court's prior order declaring its judgment to be next in priority after plaintiff. After hearing oral argument, the parties were given the opportunity to submit post-hearing memoranda of law. For the reasons set forth below, the court concludes both mortgagors are liable for the Sponzilli judgment, which will be satisfied in first place from the surplus funds. Ms. Schneeweiss will then be paid her one-half interest in the remaining fund.

## II. Findings of Fact and Procedural Posture

On July 30, 2007, defendants Leon Reitzenstein and Debra Schneeweiss, a married couple, executed a note in the amount of $1,435,000.00 in favor of Bank of America, N.A. On even date, defendants executed and delivered a mortgage to Bank of America, N.A., recorded in the Bergen

[1] Ms. Schneeweiss and Mr. Reitzenstein are in the process of divorcing, although at the time the record closed, no judgment of divorce had been entered.
[2] As explained below, one-half the surplus funds are insufficient to satisfy the Sponzilli judgment.

County Clerk's Office in Book 16929 at page 612. The mortgage encumbered property commonly known as 440 Hillside Avenue, Alpine, New Jersey 07620. Bank of America, N.A. assigned the mortgage to Christiana Trust, a Division of Wilmington Savings Fund Society, FSB. The mortgage was then assigned to plaintiff.

Defendants defaulted on the mortgage loan on May 1, 2016, prompting plaintiff to file a complaint in foreclosure on or about May 31, 2017. Among the defendants was judgment creditor Sponzilli. While the complaint recited a certain lien recorded in the Bergen County Clerk's Office on June 23, 2010 in the amount of $40.990.00,[3] the attached abstract instead showed a judgment in favor of Sponzilli, dated July 11, 2011 in the amount of $31,000.00. Sponzilli filed a non-contesting answer seeking judgment on its liens against both mortgagors. At the time plaintiff applied for final judgment, Richard Sponzilli submitted a certification of amount due for inclusion therein, adding per diem interest through May 10, 2018 to the July 11, 2011 judgment. No objection was made to Sponzilli's claim by either Ms. Schneeweiss or Mr. Reitzenstein.

Through apparent oversight, the final judgment and writ of execution entered on May 21, 2018 failed to include the Sponzilli judgment. Sponzilli then filed a motion to amend the judgment and writ of execution to include its judgment lien in the amount of $35,985.48. In his supporting certification, attorney Stuart Gold stated that Sponzilli had recorded judgments against defendants/mortgagors Debra R. Schneeweiss and Leon Reitzenstein. In fact, the recorded judgment, J-223516-2011, names Chauffeured Services Unlimited LLC and Leon Reitzenstein as debtors, but not Debra R. Schneeweiss. Regardless, no opposition to Sponzilli's motion was filed by Ms. Schneeweiss or Mr. Reitzenstein. The proposed order entered on July 6, 2018, however,

[3] As detailed herein, the lien referenced in the complaint was in fact a Notice of Unpaid Balance and Right to File Lien, advising of a potential construction lien against the subject property owned by Debra R. Schneeweiss and Leon Reitzenstein.

was incorrectly worded to place Sponzilli in first priority position, as opposed to plaintiff. The matter was resolved by the entry of an amended judgment on August 21, 2018, clarifying the Sponzilli judgment in the sum of $35,985.48 would be paid in second place out of the mortgaged premises after plaintiff's judgment had been satisfied.

The subject property was sold at Sheriff's sale on June 7, 2019. After paying plaintiff's judgment and sheriff's fees, surplus funds in the amount of $60,506.06 were deposited with the Superior Court Trust Fund. The instant motions for distribution of surplus followed.

## **III**. **Conclusions of Law**

N.J.S.A. 2A:50-37 provides in pertinent part:

> The moneys arising from [a foreclosure sale] shall be applied to pay off and discharge the moneys ordered to be paid, and the surplus, if any, shall be deposited with the court and the same shall be paid to the person or persons entitled thereto, upon application therefore, as the court shall determine.

An application for distribution of surplus funds must be made on notice to all parties, including defaulting defendants whose claims are not included in the writ of execution for payment from the sale proceeds. See R. 4:64-3(a). In the instant matter, the movants supplied proofs that notice to all parties was given. No other claims were asserted.

The court, upon application, shall determine the priority of all lien claims. See Morris v. Glaser, 106 N.J. Eq. 585, 588 (Ch. 1930), aff'd., 110 N.J. Eq. 661 (E. & A. 1932) ("Upon such an application any and all controversies between defendants respecting their rights in such surplus moneys may be settled and determined.") Here, Sponzilli is the sole lienholder claiming the funds, obviating a priority determination.[4] Moreover, the August 21, 2018 order amending final judgment places Sponzilli in first place after plaintiff's judgment is paid. Nevertheless, two

[4] The record indicates all other liens against Ms. Schneeweiss have been discharged.

controversies remain for the court's determination, to wit: (1) whether the Sponzilli judgment should be paid only from Mr. Reitzenstein's share, given Ms. Schneeweiss in not named as a debtor; and (2) whether the surplus monies are entireties property that can be severed only with the written consent of both spouses, thereby denying Ms. Schneeweiss her one-half share of the remainder.

As to the first issue, Ms. Schneeweiss asks the court to modify the Sponzilli judgment entered on August 21, 2018 to reflect it shall be satisfied only from her spouse's share of the surplus. In this scenario, Mr. Reitzenstein's one-half share would leave Sponzilli, due $35,985.48, with a shortfall of nearly $6,000.00. Ms. Schneeweiss would collect the remaining one-half surplus of $30,253.03.[5]

Ms. Schneeweiss relies on the judgment itself, which names Chauffeured Services Unlimited LLC and Leon Reitzenstein as debtors. She also attaches to her certification a Notice of Unpaid Balance and Right to File Lien executed by Richard Sponzilli on June 18, 2010, and recorded in the Bergen County Clerk's Office on June 23, 2010. The date, amount due, and recording data on the notice are identical to those recited in the complaint, and the court finds they refer to the same lien.[6] The notice states that a construction lien is to be claimed against the interests of Leon Reitzenstein and Debra Schneeweiss for improvements to their residence, including demolition, patio installation, hardscape and plantscape. In her certification, Ms. Schneeweiss states she believes the "lien" is the same amount due that resulted in the judgment. The record supports such a finding. In short, while the judgment names Mr. Reitzenstein and a corporate entity as debtors, there is no doubt it stems from unpaid improvements made to the

[5] Ms. Schneeweiss offers, in the alternative, to pay the remainder due Sponzilli out of her purported share of the surplus in order to satisfy the judgment.

[6] The complaint recites only that a lien was filed by Sponzilli and includes the above recording data; however, the complete notice is attached to Ms. Schneeweiss's certification.

subject property for the benefit of both Ms. Schneeweiss and Mr. Reitzenstein. As such, the court concludes the judgment should be equitably enforced against Ms. Schneeweiss.

In addition, the court previously ordered that the Sponzilli judgment in the amount of $35,948.48 was second in priority to plaintiff's judgment and must be paid from the mortgaged premises. Ms. Schneeweiss argues the order is improper because the court was misinformed by Sponzilli that the judgment was against both husband and wife. The record contains no explanation, however, as to why she did not object to either Sponzilli's calculation of amount due or its motion to amend final judgment. Both were filed more than one year before the instant application seeking, in part, to modify the judgment.

By way of opposition, Sponzilli suggests the application should be considered as an untimely motion for reconsideration. R. 4:49-2 requires a motion to alter or amend a judgment or non-interlocutory order to be filed within twenty days after service of the order upon a party. Here, Ms. Schneeweiss's motion to modify the judgment was filed more than a year after the order was served upon the parties. In addition, "[R]econsideration under Rule 4:49-2 is a matter within the sound discretion of the court and is to be exercised 'for good cause shown and in the service of the ultimate goal of substantial justice.'" Casino Reinvestment Dev. Auth. v. Teller, 384 N.J. Super. 408, 413 (App. Div. 2006) (quoting Johnson v. Cyklop Strapping Corp., 220 N.J. Super. 250, 264 (App. Div. 1987), certif. denied, 110 N.J. 196 (1988)). "A litigant should not seek reconsideration merely because of dissatisfaction with a decision of the [c]ourt." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, "[r]econsideration should be utilized only for those cases which fall into that narrow corridor in which either 1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." Ibid.

Additionally, the Court may consider "new or additional information…which [the litigant] could not have provided on the first application." Id. at 402.

Here, Ms. Schneeweiss is not arguing the court's decision was palpably incorrect or irrational, or the court failed to properly consider probative evidence. Instead, she charges the court was presented with false information that she was a judgment debtor. At that time, Ms. Schneeweiss would have been armed with any evidence needed to refute this claim, as the Sponzilli judgment had been docketed nearly seven years earlier. In this regard, our Appellate Division has held a motion for reconsideration "is properly denied if based on unraised facts known to the movant prior to entry of judgment." Pressler & Verniero, Current N.J. Court Rules, Comment R. 4:49-2[2], (Gann) (citing Del Vecchio v. Hemberger, 388 N.J. Super. 179, 188-89 (App. Div. 2006); Palombi v. Palombi, 414 N.J. Super. 274, 289 (App. Div. 2010)). In sum, it is evident the instant motion does not meet the bar for reconsideration. The record provides no basis to disturb the court's August 21, 2018 order.

Based on the foregoing, the court concludes the Sponzilli judgment in the amount of $35,985.48 should be satisfied from the gross surplus proceeds, chargeable to both mortgagors.

Turning to the second issue presented, Mr. Reitzenstein urges the surplus funds are entireties property that may not be severed without the written consent of both spouses. This argument invokes two related statutes, N.J.S.A. 46:17-2, which defines when a tenancy by the entirety is created and extends entireties status to personal property, and N.J.S.A. 46:17-4, which prohibits the severing of said estate without the written consent of both spouses.[7] In short, he argues his consent, which he declines to give, is required before one-half the net surplus is

[7] These statutes were enacted in 1987 and approved on January 5, 1988 as part of a series of laws, N.J.S.A. 46:17-2 through 46:17-4, and became effective ninety days thereafter. They apply to all tenancies established on or after the effective date. L. 1987, c. 357, § 10.

distributed to his spouse. To that end, Mr. Reitzenstein contends the 1988 statutes supersede New Jersey common law, notably the holding in Ft. Lee Sav. & Loan Asso. v. Libutti, 55 N.J. 532 (1970).

In LiButti, the Court adopted the dissenting opinion below, reversing the majority's holding that "surplus money arising from a foreclosure sale of real property held by the entirety 'stands in the place of the land itself in respect to liens thereon or vested rights therein.'" Ft. Lee Sav. & Loan Asso. v. LiButti, 106 N.J. Super. 211, 213 (App. Div. 1969), rev'd, Ft. Lee Sav. & Loan Asso. v. LiButti, supra, 55 N.J. 532 (1970) (quoting Servis v. Dorn, 76 N.J. Eq. 241, 243 (Ch. 1909).[8]

In his dissent, Judge Carton rejected the notion that the surplus from a foreclosure sale of entireties property cannot be distributed to the creditor of one spouse until termination of the marriage by death or divorce. Id. at 216. Instead, he called "pure fiction" the idea that entireties status "becomes infused into the proceeds of sale and . . . abides in the proceeds for the indefinite future." Ibid. Judge Carton reasoned mortgagors knowingly encumber their property by executing a mortgage, thereby consenting to "their interest in the property [being] cut off by foreclosure and sale of the property" upon a default. Id. at 217. Therefore, the surplus funds are the result of a voluntary conversion from real property owned by the entirety to jointly held property that is severable. Id. at 217-18. (citing Hawthorne v. Hawthorne, 13 N.Y. 2d 82, 242 N.Y.S. 2d 50, 192 N.E.2d 20 (Ct. of App. 1963), holding "the proceeds of a fire insurance policy on realty held by the entirety was a voluntary conversion . . . and severable as jointly held personal property".

[8] It is worth noting the issue in LiButti was whether a junior lienholder, having a judgment against only one spouse, could satisfy its lien from the surplus money. Here, Mr. Reitzenstein does not object to the distribution of surplus to Sponzilli. He is silent as to who is liable for the debt. Instead, he objects to the surplus being divided and distributed to his wife.

Further, "the money existed only as the result of entering into a personal contract of insurance and did not arise as a matter of law.")

Mr. Reitzenstein counters the surplus funds fall under N.J.S.A. 46:3-17.2, wherein a tenancy by the entirety is created when:

> (a) A husband and wife together take title to an interest in real property or personal property under a written instrument designating both of their names as husband and wife; or
> (b) A husband and wife become the lessees of real property or personal property under a written instrument containing an option to purchase designating both of their names as husband and wife; or
> (c) An owner spouse conveys or transfers an interest in real property or personal property to the non-owner spouse and the owner spouse jointly under written instrument designating both of their names as husband and wife.
>
> [N.J.S.A. 46:3-17.2]

Here, there is no dispute the mortgagors owned the real property as tenants by the entirety, or that their estate was created after the effective date of the statute. The issue, however, is whether the surplus funds derived from the foreclosure sale satisfy the criteria for treatment as entireties property. In so concluding, Mr. Reitzenstein relies on a decision of the United States Bankruptcy Court for the Middle District of Florida in which the court, applying N.J.S.A. 46:3-17.2 and -17.3, held the sales proceeds of entireties property maintained their entireties status as a matter of law.[9] Jensen v. Montemoino (In re Montemoino), 491 B.R. 580, 587 (2012). The court found husband and wife together took title to an interest in personal property under a written instrument, namely the check, issued to and payable to both spouses. Ibid. While the check did not designate them as husband and wife, there was a presumption a tenancy by the entirety was created in the absence of

[9] The court determined New Jersey law applied "since New Jersey was the state in which (i) the real property was owned and sold; (ii) the sale was consummated; and (iii) the corresponding sales proceeds were issued to the Debtor and her husband." Montemoino, supra, 491 B.R. at 584.

contrary language.[10] Id. at 587-88. It followed, then, that the sales proceeds were shielded from execution by the trustee as the creditor of only one spouse under N.J.S.A. 46:17-4. Id. at 590. The court interpreted the statutory framework as intending "to provide greater protection to entireties property and to shield entireties assets from execution by creditors of a single spouse. Ibid.

The instant matter is disanalogous in that the funds at issue are not the sales proceeds of entireties property as in Montemoino, but surplus monies from a foreclosure sale of property owned by the entirety. Moreover, the clear-cut provisions of N.J.S.A. 46:17-2 have no application to surplus funds. Unlike sales proceeds of a real estate transaction, there is no vesting of title in the former property owners by written instrument or otherwise. Instead, surplus funds are deposited with the court to be distributed on application of defendants and junior lienholders. N.J.S.A. 2A:50-37, R. 4:64-3. See also Morris v. Glaser, supra, 106 N.J. Eq. at 588. In short, the former homeowners have a potential entitlement to the surplus funds, but may never realize that potential if the funds are exhausted by junior lienholders who outrank them in priority.

Further, N.J.S.A. 46:17-2, in extending entireties protection to personal property, does not carve out a necessary exception for surplus funds, which cannot meet its entireties test. Nor does the statute contain language that surplus funds maintain the entireties status of the foreclosed entireties property, thereby protecting the funds from severance by a debtor of one spouse. In sum, there is nothing in the statute that disturbs the Court's holding in Ft. Lee Sav. & Loan Asso. v. LiButti, supra, 55 N.J. 532. Here, "the statutory language is clear and unambiguous, and susceptible to only one interpretation", so that a court need not "resort to extrinsic interpretative aids". DiProspero v. Penn, 183 N.J. 477 (2005) (quoting Lozano v. Frank DeLuca Const., 178

[10] Here, the court referenced N.J.S.A. 46:17-3, which provides "[n]o instrument creating a property interest on the part of a husband and wife shall be construed to create a tenancy in common or a joint tenancy unless it is expressed therein or manifestly appears from the tenor of the instrument that it was intended to create a tenancy in common or joint tenancy." Id. at 587.

N.J. 513, 522 (2004)). In light of the foregoing, the court concludes the surplus funds at issue in this matter are not entireties property as defined in N.J.S.A. 46:17-2; nor do they attain that status in New Jersey case law. See Ft. Lee Sav. & Loan Asso. v. LiButti. Ibid.

For the sake of completeness, the court will address Mr. Reitzenstein's related argument. Assuming, arguendo, the surplus funds did maintain the entireties status of the previously owned property, Mr. Reitzenstein contends they may not be distributed to his wife without his consent. He relies on the decision in Jimenez v. Jimenez, 454 N.J. Super. 432 (App. Div. 2018), in support of this claim, despite the dissimilarity in facts. In Jimenez, the court held N.J.S.A. 46:3-17.4 precluded the partition and forced sale of real property owned by husband and wife as tenants by the entirety by a judgment creditor of only one spouse. Id. at 438. "Otherwise", wrote the court, "a free-wheeling spouse, by amassing such individual debt, could detrimentally 'affect' the other spouse's interests in their co-owned property." Ibid. As in Montemoino, the Jimenez court reviewed New Jersey case law prior to the enactment of N.J.S.A. 46:17-2 through N.J.S.A. 46:17-4, concluding the "equity-based case law" that allowed courts to apply equitable factors in determining if partition and forced sale of a non-debtor spouse's interest in marital property was appropriate, was now precluded by N.J.S.A. 46:17-4. Id. at 439 (citing Newman v. Chase, 70 N.J. 254, 265-66 (1976) (holding the remedy of partition in these circumstances was subject to equitable considerations as to both debtor and creditor)).

Although both the Montemoino and Jimenez cases are factually disparate from the matter under review, they provide ample guidance in discerning the intent of the 1988 statutory framework at issue herein. Simply put, at its core was protection of the entireties estate, whether comprised of real or personal property as defined in N.J.S.A. 46:17-2, from severance by a third-party creditor of one spouse.

It is against this backdrop that Mr. Reitzenstein urges the net surplus remaining not be distributed to Ms. Schneeweiss, his spouse. The court rejects this argument, and concludes that even if the funds were subject to the provisions of N.J.S.A. 46:17-2, the prohibition against one spouse severing the estate without the written consent of both spouses as provided in N.J.S.A. 46:17-4 does not apply to the distribution of surplus funds to husband and wife. In short, neither common nor statutory law supports such an outcome.

Based on the foregoing, the Sponzilli lien will be paid in full from the gross surplus funds. Thereafter, one-half of the remaining surplus funds will be released to Ms. Schneeweiss. As no motion for distribution has been filed by Mr. Reitzenstein, the balance of the surplus monies will remain deposited with the court.

An Order accompanies this decision.