

NOT TO BE PUBLISHED WITHOUT
THE APPROVAL OF THE COMMITTEE ON OPINIONS

WELLS FARGO BANK, N.A.,

Plaintiff,

v.

WILLIAM J. MUNIER; STATE OF
NEW JERSEY; MIDLAND FUNDING
LLC; DISCOVER BANK; and
UNITED STATES OF AMERICA,

Defendants.

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION: BERGEN COUNTY

DOCKET NO. F-015036-18

OPINION

Decided: April 20, 2020

Elizabeth L. Wassall, attorney for plaintiff (Shaprio & DeNardo, LLC, attorneys)

Kenneth Rosellini, attorney for defendant

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

Before the court is a motion filed by defendant William J. Munier to vacate the Sheriff's sale that took place on February 28, 2020. Mr. Munier asserts he had a loss mitigation application on file with plaintiff more than thirty-seven days prior to the sale, thereby precluding a sale until a decision on the application was made. Plaintiff counters that loss mitigation review was terminated on February 19, 2020 for failure to timely submit missing documents. For the reasons set forth below, defendant's motion is denied.

I. Findings of Fact and Procedural Posture

Plaintiff initiated this foreclosure action on July 19, 2018, alleging defendants Jean A. Forty-Munier and William J. Munier defaulted on the subject loan on September 1, 2017. Default was entered against defendants on or about November 7, 2018. Defendants then moved to vacate the default, which application was resolved by way of a consent order precluding application for final judgment for 120 days. On July 5, 2019, plaintiff obtained an uncontested order for final judgment in the amount of \$877,781.85. A Sheriff's sale was scheduled for August 16, 2019; however, it was disclosed that Jean A. Forty-Munier passed away on or about April 2019. As a result, plaintiff withdrew the Writ of Execution. An Alias Writ of Execution issued on October 24, 2019.

At the time of her death, Ms. Forty-Munier was the sole owner of the property, which served as defendants' principal matrimonial residence. On November 20, 2019, defendant William J. Munier filed a motion to vacate Final Judgment and the Writ of Execution on grounds Ms. Forty-Munier had passed, and her heirs, if any, needed to be added as party defendants to the litigation. The record revealed, however, that co-borrower/co-defendant William J. Munier was the decedent's sole heir. Defendant's motion was denied, but after hearing oral argument on a motion for reconsideration, the court ordered plaintiff to apply to the Office of Foreclosure for an Amended Final Judgment and Writ of Execution. In addition, plaintiff was ordered to file a Notice of Dismissal as to Ms. Forty-Munier. Accordingly, an Amended Final Judgment in the amount of \$877,781.85 issued on February 14, 2020, along with an Amended Writ of Execution. The Sheriff's sale was scheduled for February 28, 2020.

On the sale date, Mr. Munier filed an emergent application to stay the sale. In his application, he certified as follows:

There is an open short sale that is pending with no decision to date. There is an escalated review with the presidents [sic] office. Case number is xxxxxxx. All the documents have been submitted and the woman's name is Vanessa Jones at Ext xxxxxxx. They need it to go through the retry team and require no less than 37 days for the review and decision. I am requesting a stay of 45 to 60 days for the short sale approval to be granted.

(Emphasis supplied).

In balancing the equities, the court concluded there was no good cause to delay the foreclosure sale. The servicer would not re-evaluate the application absent the court adjourning the sale for the requisite thirty-seven day period. Moreover, if short sale approval was granted, defendant would likely need several weeks more to close title. Finally, plaintiff objected to any further delay, urging the sale be allowed to take place as scheduled. The property was sold to a third-party bidder that same day.

In support of the instant motion to vacate the sale, Mr. Munier relies solely on the certification of his counsel Kenneth Rosellini. Mr. Rosellini states that Mr. Munier, with assistance from paralegal Candice Watkins, initiated the loss mitigation application with the loan servicer more than thirty-seven days prior to the February 28, 2020 sale. Further, Mr. Rosellini contends the application was complete or facially complete at least thirty-seven days before the Sheriff's sale, requiring the servicer to evaluate the file prior to the sale.

The record, however, paints a different picture.

Sherri W. McManus, Wells Fargo's Vice President of Loan Documentation, states the application was received by plaintiff on January 24, 2020, less than thirty-seven days before the sale. In fact, the parties agree the loan review commenced on or about January 28, 2020. More significantly, while Mr. Rosellini contends the application was complete or facially complete at the time of its submission, a January 30, 2020 letter advises Mr. Munier the application was

deemed incomplete due to two missing documents, namely, IRS Form 4506-T and the Mortgage Assistance Application. Submission of the documents was required by February 18, 2020.

In addition, on January 31, 2020, Leslie County, Research Remediation Analyst II for Wells Fargo, emailed Mr. Rosellini to acknowledge receipt of Mr. Munier's package and to advise him of the missing documents that were due no later than February 18, 2020. Yet, Mr. Rosellini avers Ms. County continued to review the file even after the sale, suggesting she was unaware of a deficiency with the paperwork.

Further, the record contains an email from Elizabeth Wassall, counsel for Wells Fargo, to Mr. Rosellini on January 31, 2020 marked "VERY URGENT", advising him to pay attention to the February 18, 2020 due date for the missing documents. Another email was sent to Mr. Munier and Mr. Rosellini from Ms. County on February 5, 2020 marked "2nd Request" specifying the missing documents. On the same date, Ms. Wassall emailed Mr. Rosellini with the subject line: "VERY URGENT", urging him to respond to the "multiple voicemail messages over the past few days concerning loss mitigation" to which he was unresponsive. "Be sure to call my client asap."

On February 11, 2020, Ms. County emailed Mr. Munier and Mr. Rosellini to advise that the above-referenced missing documents had to be submitted by February 18, 2020 in order for the review process to continue. On February 19, 2020, one day after the due date for the missing documents, Wells Fargo sent a letter to Mr. Munier, with a copy to Mr. Rosellini, advising that the review process had been terminated due to the missing documents. On February 24, 2020, a second letter issued to Mr. Munier, with a copy to Mr. Rosellini, stating that recent information supplied by Mr. Munier had been reviewed along with the account's current standing and history, and the account was deemed ineligible for assistance.

In sum, the thorough and well-documented record does not support defendant's contention that his application was complete or facially complete at least thirty-seven days prior to the foreclosure sale. To the contrary, it is clear that despite plaintiff's and Ms. Wassall's repeated reminders and warnings that certain missing documents were due, defendant failed to respond.

II. Conclusions of Law

The Chancery Division has the authority to set aside a sheriff's sale and order a resale of property on a discretionary basis. Crane v. Bielski, 15 N.J. 342, 346 (1954); First Trust Nat'l Assoc. v. Merola, 319 N.J. Super. 44, 49 (App. Div. 1999). A Sheriff's sale should be set aside, however, only in rare instances where it is necessary for compelling reasons to remedy a plain injustice. E. Jersey Sav. & Loan Assoc. v. Shatto, 226 N.J. Super. 473, 476 (Ch. Div. 1987); Karel v. Davis, 122 N.J. Eq. 526, 528 (E. & A. 1973). In an application to vacate a sale, the movant bears the burden of proof. Shatto, supra, 226 N.J. Super. at 479. Acceptable grounds for setting aside a sale include fraud, mistake, or irregularities in the sale proceedings. Karel, supra, 122 N.J. Eq. at 528. The power wielded by the Court is governed by the circumstances of each individual case and the court should use its broad discretion "guided by considerations of justice and equity and not by whim or caprice." Id. At 529.

Here, defendant urges the sale should be set aside on other grounds. Specifically, the Real Estate Settlement Procedures Act ("RESPA"), 12 C.F.R. 1024.1 to 1024.41, prohibits a servicer from conducting a foreclosure sale if a borrower submits a complete loss mitigation application more than thirty-seven days before the scheduled sale date. Id. at §1024.41(g). Instead, the servicer must evaluate the file within thirty days of receipt of the complete application. Id. at §1024.41(c)(1). A loss mitigation application is considered "facially complete" when all missing documents have been submitted. Id. at §1024.41(c)(2)(iv). If the servicer later discovers certain

documents are needed, it must promptly request the information, “and treat the application as complete . . . until the borrower is given a reasonable opportunity to complete the application.”

Ibid. (Emphasis supplied).

Mr. Munier was given ample opportunity to complete the application, yet it remained incomplete, facially or otherwise. As such, the RESPA prohibition against proceeding to a foreclosure sale pending evaluation of a complete loss mitigation application does not apply here. Assuming, arguendo, the application was complete thirty-seven days before the sale, defendant offers no support for his contention that setting aside the sale is an appropriate remedy.

Also noteworthy is Mr. Munier’s certification in the February 28, 2020 application to stay the sale. Therein, he plainly states the application for short sale approval was being submitted to the “retry” team, signifying the review process was starting anew provided a thirty-seven day window was in place.

In Deutsche Bank Trust Co. Americas v. Angeles, 428 N.J. Super. 315, 320 (App. Div. 2012), the court held “[i]n foreclosure matters, equity must be applied to plaintiffs as well as defendants.” Here, defendant seeks to set aside the Sheriff’s sale not to save the property, but to conduct a short sale whereby plaintiff would receive approximately \$350,000.00¹ in partial satisfaction of its judgment for \$877,781.85. Instead, plaintiff sold the property to a third-party bidder who is required to tender the balance due thirty days from the sale date.

Additionally, defendant has failed to shoulder the burden of demonstrating fraud, mistake, or irregularities in the sale proceeding. Nor has defendant met the bar of establishing a plain injustice that requires remediation.

¹ Although the proposed contract for sale has a purchase price of \$375,000.00, the net proceeds contemplate payment of the realtors’ commission and other closing costs.

In sum, the court concludes the equities in this matter lie in favor of plaintiff; therefore, the foreclosure sale will not be disturbed.

Based on the foregoing, defendant's motion is denied. An Order accompanies this decision.