SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1541-21

JACOB M. DEUTSCH,

Plaintiff-Respondent,

v.

IEDU TECHNOLOGY, LLC,

Defendant,

and

XIU QUIN LIU, and
HUIJUN WANG,[1]

Defendants-Appellants.

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Submitted November 14, 2022 - Decided November 23, 2022

Before Judges Whipple, Mawla and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Somerset County, Docket No. L-0303-20.

[1] Appellant's surname was misspelled in caption of the complaint as "Lui."

Miller, Meyerson & Corbo, attorneys for appellants (Nirmalan Nagulendran and Gerald D. Miller, on the briefs).

Law Office of Kirsten B. Ennis, LLC, attorney for respondent (Kirsten B. Ennis, on the brief).

PER CURIAM

Defendants Xiu Quin Liu and Huijun Wang appeal from an August 30, 2021 order granting plaintiff Jacob M. Deutsch summary judgment, and a September 3, 2021 order entering a judgment in plaintiff's favor for $534,063.28. We reverse both orders for the reasons expressed in this opinion.

In August 2016, defendants borrowed $500,000 from plaintiff pursuant to a promissory note bearing an eighteen percent per year interest rate. The note required defendants to pay $7,500 per month of interest-only payments for one year, and then the entire balance of the loan would be due on August 30, 2017. If defendants defaulted, the entire loan amount would be payable, along with interest, costs of collection, and reasonable attorneys' fees. The note also provided for mortgages on various properties owned by defendants, to secure payment to plaintiff as follows:

> The [l]ender has been given a [m]ortgage dated A[ugust] 30, 2016, to protect the [l]ender if the promises made in this [n]ote are not kept. [Defendants] agree to keep all promises made in the [m]ortgage covering property [defendants] own located at 183

> BALDWIN AVENUE . . . , 18 PERRINE AVENUE . . . , 251 ACADEMY STREET . . . , 197 HALLADAY STREET . . . [,] and 50 GLENWOOD AVENUE, Unit 410 . . . , all of which are located in . . . Jersey City . . . .

Wang certified plaintiff was an experienced lender, and David Knapp was his closing attorney. She stated plaintiff initially wanted to collateralize a single property, but then wanted to include more properties to lower his risk. As a result, Wang asked Liu to collateralize her properties as well to secure the loan, and together they mortgaged five properties as collateral to the note.

The mortgages were never recorded. Defendants made interest payments from September 2016 through January 2017, totaling $45,000. Liu paid plaintiff $100,000 in February 2017, which Wang certified was an attempt to pay off a significant amount of the principal. In March 2017, defendants paid $92,600 from the sale of one of their properties. Wang paid another $60,000 to plaintiff through a wire transfer. There were no payments made after March 2017.

In March 2017, IEDU Technology, using Knapp as the closing attorney, sold the Glenwood Avenue property for $426,000. In August 2017, Liu sold the Perrine Avenue property for $458,000. In May 2018, she transferred the Baldwin Avenue property to an LLC not a party to this case, owned solely by Wang. The Halladay Street property was subject to a foreclosure and therefore was never in defendants' possession.

After Liu paid plaintiff $100,000 in February 2017, Knapp advised defendants still needed to make the monthly interest payment of $7,500 based on a $500,000 principal.[2] According to Wang, she and Liu "started to sense something was wrong[,]" so they consulted another attorney who advised the loan was usurious because the maximum interest allowable for this type of loan under New Jersey law was sixteen percent. Defendants emailed Knapp, who they believed represented them and plaintiff, explaining the eighteen percent interest rate was usurious, but they would still pay back the principal. Knapp then offered to renegotiate the loan to a sixteen percent interest rate, but defendants declined.

In March 2020, plaintiff filed a complaint seeking a judgment in the amount of the loan, interest payments, accumulated late fees, attorneys' fees, and costs of suit. After a default was entered and then vacated, defendants answered the complaint and asserted, among other defenses, that the loan was usurious and contrary to law.

Following arbitration, plaintiff moved for summary judgment. He asserted defendants "have a reputation in the local business community as savvy

[2] The note provided the $90,000 in interest owed could not be reduced by pre-paying the principal, unless the loan was paid off within the first six months, in which case the interest due would be halved to $45,000.

and experienced real estate investors. . . . Although mortgages were prepared, they were never recorded as . . . [d]efendant[s] were making payments under the [n]ote." Plaintiff sought a judgment, including interest and late fees, totaling $483,000.51.

The motion judge found as follows:

> Based upon these facts the plaintiff[] argue[s] and the court agrees there is no evidence whatsoever that the defendants intended to give any security on any of the properties listed in the promissory note and, accordingly, the note is subject to the exception provided for in N.J.S.A. 31:1-1(e)(1).
>
> It is clear that in the New Jersey statutory scheme, unrecorded mortgages are of no force and effect.

The judge cited N.J.S.A. 46:22-1, which was repealed in 2012, and N.J.S.A. 46:26A-12, for the same proposition. The latter statute states:

> A deed or other conveyance of an interest in real property shall be of no effect against subsequent judgment creditors without notice, and against subsequent bona fide purchasers and mortgagees for valuable consideration without notice and whose conveyance or mortgage is recorded, unless that conveyance is evidenced by a document that is first recorded.
>
> [N.J.S.A. 46:26A-12.]

He continued:

> [I]f you look at [Resolution Trust Corporation v. Minassian, 777 F. Supp. 385 (D.N.J. 1991),] . . . [it] makes it clear that N.J.S.A. 31:1-1(e)(1) is restricted only by [N.J.S.A. 2C:21-19(a)], a penal statute, which caps the maximum interest rate at [thirty] percent.
>
> . . . .
>
> I find that there is no issue of material fact here.
>
> The plaintiff is entitled to summary judgment.

Plaintiff testified regarding the amount due at the subsequent proof hearing and defense counsel presented proof that Wang offered an additional check towards payment of the loan in April 2017, which plaintiff refused. The judge ultimately entered a judgment totaling $534,063.28, representing $491,850 for the sums due through the date of judgment and $42,213.28 in attorneys' fees.

I.

We review a grant of summary judgment under the same standard as the motion judge. Rowe v. Mazel Thirty, LLC, 209 N.J. 35, 41 (2012). We must determine whether there are any genuine issues of material fact when the evidence is viewed in the light most favorable to the non-moving party. Ibid. "[T]he legal conclusions undergirding the summary judgment motion itself [are

reviewed] on a plenary de novo basis." Est. of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 385 (2010).

Defendants argue the motion judge erred because the loan was usurious and, therefore, contrary to the law. They also allege there were numerous factual disputes, which should have thwarted the entry of summary judgment.

II.

Our State's "policy against usury" requires a "sympathetic sweep" because our "[u]sury laws exist to protect oppressed borrowers . . . ." Ferdon v. Zarriello Bros., Inc., 87 N.J. Super. 124, 133-34 (Law Div. 1965). "Under New Jersey law if a loan is usurious, the lender may nevertheless recover the principal of the loan, the amount or value actually lent, without interest or costs of the action." Id. at 128 (citing N.J.S.A. 31:1-3).

N.J.S.A. 31:1-1(a) establishes a maximum interest rate of sixteen percent for "written contract[s] specifying a rate of interest." "Loans in the amount of $50,000[] or more" are exempt from the sixteen percent maximum "except loans where the security given is a first lien on real property" used for residential purposes. N.J.S.A. 31:1-1(e)(1). N.J.S.A. 31:1-1(b) gives the Commissioner of the New Jersey Department of Banking and Insurance the power to make regulations that "provide . . . the value which may be taken for any loan secured

by a first lien on real property . . . ." The minimum threshold for first liens on residential property is six percent, and the maximum is "not more than the Monthly Index of Long Term United States Government Bond Yields . . . for the second preceding calendar month plus an additional [eight percent] per annum rounded off to the nearest quarter of [one percent] per annum." Ibid. The Commissioner has established the current methodology at three and a half percent above the Monthly Index of U.S. Bond Yields for two calendar years prior. See N.J.A.C. 3:1-1.1(b).

"If a transaction resolves itself into a security, whatever may be its form and whatever name the parties may choose to give it, it is, in equity, a mortgage." J.W. Pierson Co. v. Freeman, 113 N.J. Eq. 268, 270 (1933). "In its substance, the mortgage is essentially a security for payment of a debt." Feldman v. Urb. Com., Inc., 64 N.J. Super. 364, 373 (Ch. Div. 1960) (citation omitted).

It is a well-settled principle an unrecorded mortgage or deed is only void as against subsequent judgment creditors, bona fide purchasers, and mortgagees for valuable consideration. Siligato v. State, 268 N.J. Super. 21, 28 (App. Div. 1993); Garwood v. Garwood, 9 N.J.L. 193, 195-96 (N.J. 1827); Campion v. Kille, 14 N.J. Eq. 229, 234 (N.J. Ch. 1862). N.J.S.A. 46:26A-12(c) states: "A deed or other conveyance of an interest in real property shall be of no effect

against subsequent judgment creditors without notice, and against subsequent bona fide purchasers and mortgagees for valuable consideration . . . ." (emphasis added). The fact the mortgage is not recorded renders it "void . . . against none others, and expressly provides that as between the parties and their heirs it shall be valid and operative." Garwood, 9 N.J.L. at 196.

Our inquiry is also governed by "familiar rules of contract interpretation." Barila v. Bd. of Educ. of Cliffside Park, 241 N.J. 595, 615 (2020) (quoting Serico v. Rothberg, 234 N.J. 168, 178 (2018)). "It is well-settled that [c]ourts enforce contracts based on the intent of the parties, the express terms of the contract, surrounding circumstances and the underlying purpose of the contract." Id. at 615-16 (alteration in original) (internal quotations omitted) (quoting In re Cnty. of Atlantic, 230 N.J. 237, 254 (2017)). "The plain language of the contract is the cornerstone of the interpretive inquiry; 'when the intent of the parties is plain and the language is clear and unambiguous, a court must enforce the agreement as written, unless doing so would lead to an absurd result.'" Id. at 616 (quoting Quinn v. Quinn, 225 N.J. 34, 45 (2016)).

We part ways with the motion judge's interpretation of N.J.S.A. 46:26A-12(c). The statute does not stand for the proposition that unrecorded mortgages are of no force and effect. Such an interpretation effectively rewrites the statute,

whose original purpose is "to protect subsequent judgment creditors, bona fide purchasers, and bona fide mortgagees against the assertion of prior claims to land based upon any recordable but unrecorded instrument." Cox v. RKA Corp., 164 N.J. 487, 507 (2000) (internal quotations omitted) (quoting 29 N.J. Practice, Law of Mortgages § 102 at 386 (Roger A. Cunningham & Saul Tischler) (1975)).

Our law does "not support interpretations that render statutory language as surplusage or meaningless . . . ." Burgos v. State, 222 N.J. 175, 203 (2015). The motion judge's interpretation of N.J.S.A. 46:26A-12(c), as applied to N.J.S.A. 31:1-1(e)(1), violated this maxim. The Legislature carefully constructed this statute to apply only to bona fide purchasers, subsequent judgment creditors, and purchasers for value. N.J.S.A. 46:26A-12. The motion judge's ruling expanded the statute, rendering it meaningless. For these reasons, the mortgages here, although unrecorded, were effective as between the parties. Siligato, 268 N.J. Super. at 28.

We also reject the finding defendants never intended the mortgages to apply to the properties listed in the note. Again, we must construe the note as written, Barila, 241 N.J. at 617, and it specifically provided that a mortgage would secure defendants' payment and listed the properties to be encumbered.

Because the terms of the note and the mortgage language were unambiguous, we must "enforce the agreement as written, unless doing so would lead to an absurd result." Id. at 616. We discern no ambiguity here. The note stated the mortgages were given to secure the loan. It also gave plaintiff the power to file a deed in lieu of foreclosure on any of the listed properties if defendants defaulted on the loan—a power only available to a party who had been given a mortgage, recorded or not.

Because the unrecorded mortgages were valid, and the language of the note unambiguously created a mortgage between the parties, we turn to the usury issue. N.J.S.A. 31:1-1(a) states a "written contract specifying a rate of interest" is capped at sixteen percent. The statutory exception for loans exceeding $50,000 does not apply when the loan is a first lien on residential property with less than seven dwelling units. N.J.S.A. 31:1-1(e)(1).

The interest rate charged by plaintiff exceeded the limit established by N.J.S.A. 31:1-1(a). The next question is whether the statutory exception for first liens on residential mortgages applied. As the motion judge correctly noted, the Halladay Street property was foreclosed upon prior to the entry of the note and was not a mortgaged property. The parties disputed whether the High Street property was already encumbered by a mortgage. However, this does not

persuade us the interest charged was lawful because the note still encumbered the Academy Street, Perrine Avenue, and Glenwood Avenue properties, and these properties met the requirements of N.J.S.A. 31:1-1(e)(1).

The maximum allowable interest rate on these properties was six and a half percent,[3] and the note therefore violated N.J.S.A. 31:1-1(b), (e)(1), and N.J.A.C. 3:1-1.1(b). Because we conclude the note was usurious, plaintiff may only recover the principal without interest or costs. Ferdon, 87 N.J. Super. at 128 (citing N.J.S.A. 31:1-3).

To the extent we have not addressed an argument raised on the appeal, it is because it lacks sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Reversed. We do not retain jurisdiction.

[3] This is calculated according to the Commissioner's formula established in N.J.A.C. 3:1-1.1(b), which is authorized by N.J.S.A. 31:1-1(b). The treasury bond yield two years prior to the execution of the note was 3.09 percent as of market close on Friday August 29, 2014. See Market Yield on U.S. Treasury Securities at 30-Year Constant Maturity, Quoted on an Investment Basis, St. Louis Fed, https://fred.stlouisfed.org/series/DGS30 (last visited Nov. 1, 2022). According to the Commissioner's formula at N.J.A.C. 3:1-1.1, three and one-half percent must be added to this, rounded off to the nearest one-quarter of a percent, for a final value of six and one-half percent.