

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the 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-1986-20**

FULTON BANK, N.A., as
successor in interest by
merger to PREMIER BANK,

Plaintiff-Respondent,

v.

DAVID MERMELSTEIN,

Defendant-Appellant.

Argued March 31, 2022 – Decided April 11, 2022

Before Judges Haas and Mitterhoff.

On appeal from the Superior Court of New Jersey,
Chancery Division, Atlantic County, Docket No. F-
010825-11.

Justin T. Loughry argued the cause for appellant
(Loughry and Lindsay, LLC, attorneys; Justin T.
Loughry, on the briefs).

William T. Dudeck argued the cause for respondent
(Eastburn and Gray, P.C., attorneys; William T.
Dudeck, on the brief).

PER CURIAM

Defendant David Mermelstein appeals from the Chancery Division's March 23, 2021 order denying his motion to set aside the May 29, 2014 sheriff's sale held after defendant defaulted in a commercial foreclosure action involving property located in Egg Harbor Township (the property). We affirm.

The facts are not in dispute and are summarized in the Pennsylvania Superior Court's June 30, 2020 decision in Fulton Bank NA v. Mermelstein, No. 2567-EDA-2019, 2020 Pa. Super. Unpub. LEXIS 2108 (Pa. Super. Ct. June 30, 2020). On September 12, 2006, defendant executed a commercial loan agreement with Fulton Bank. Id. at 2. The loan documents were signed in Pennsylvania. Defendant planned to use the \$900,000 loan to finance a housing development on the property. Fulton Bank secured the loan with a promissory note and defendant pledged the property as collateral through a mortgage. Ibid.

On October 1, 2010, defendant defaulted on the loan and Fulton Bank obtained a \$999,657.78 judgment by confession against him in Pennsylvania on February 3, 2011. Id. at 3. As part of its efforts to collect the judgment, Fulton Bank filed a complaint for foreclosure in Atlantic County upon the mortgage it held on the property. Id. at 3-4. Defendant failed to file an answer to the complaint, and the court entered a default against him. The court entered a final

judgment of foreclosure in Fulton Bank's favor in March 2013. Id. at 4. That same month, a writ of execution directed the county sheriff to sell the property.

Before the sheriff conducted the sale, Fulton Bank assigned its interest in the judgments it held against defendant to Autumn Lane Associates, LLC (Autumn Lane). Ibid. Fulton Bank filed a motion to substitute Autumn Lane as the plaintiff in the foreclosure action, but the trial court denied this request. On May 29, 2014, the sheriff conducted the sale and sold the property to Autumn Lane. Id. at 6.¹

Defendant filed a petition in Pennsylvania seeking an order marking the judgment of confession satisfied and discharged. Id. at 1. The Court of Common Pleas of Montgomery County denied that request. Ibid. However, the court entered a deficiency judgment against defendant in the reduced amount of \$738,606.43 after giving him credit, among other things, for the monies Autumn Lane recouped at the sheriff's sale. Id. at 1, 12.

Defendant filed an appeal to the Pennsylvania Superior Court. Id. at 12. On June 30, 2020, that court affirmed the trial court's decision denying defendant's request to have the judgment marked satisfied and discharged. Id.

¹ On December 23, 2019, Autumn Lane sold the property to an unrelated company named Autumn Lane EHT, LLC.

at 1. It also vacated the deficiency judgment after finding that "the trial court did not have the statutory authority to determine the fair market value of the Egg Harbor Township, New Jersey property in this case or whether a deficiency existed with regard thereto." Id. at 25.

On December 28, 2020, defendant filed a motion in the Atlantic County foreclosure action seeking to set aside the May 29, 2014 sheriff's sale. Defendant alleged that because Fulton Bank had assigned its interests to Autumn Lane prior to the sale, the sale should not have been conducted. Defendant argued that if there was no valid sale, Autumn Lane should be barred from attempting to collect on its judgment "in any court of competent jurisdiction" until a new sale was held.

Following oral argument, Judge Michael J. Blee denied defendant's motion. In his concise oral opinion, the judge considered and rejected the same arguments defendant raises on appeal. Rule 4:65-5 states that objections to a sheriff's sale must be filed within ten days after the sale. Here, defendant had notice of both the foreclosure action and the May 29, 2014 sheriff's sale. However, he did not file his objection to the sale until December 28, 2020. Thus, even if a court could deem the sale voidable because Autumn Lane, rather than Fulton Bank, possessed the note, the mortgage, and the judgments at the time of

the sale, the judge concluded defendant failed to make a timely request for this relief. Because the sheriff's sale could not be set aside, Judge Blee also found there was no basis for an order barring Autumn Lane from pursuing recovery on its existing judgment against defendant.

Defendant now repeats the same contentions he unsuccessfully raised in the Chancery Division. We have considered defendant's arguments in light of the record and applicable legal principles, and conclude they are without sufficient merit to warrant discussion in a written opinion. See R. 2:11-3(e)(1)(E). We add the following brief comments.

A motion to vacate a sheriff's sale is governed by Rule 4:65-5, which states that any objection to the sale must be served within the ten days following the sale or before delivery of the deed, whichever is later. Defendant waited over six years to file a motion seeking to void the May 29, 2014 sheriff's sale. Under these circumstances, we discern no basis for disturbing Judge Blee's denial of defendant's motion.

Because the sheriff's sale could not be voided, there were also no grounds for barring Autumn Lane from attempting to recover on its judgment. In addition, this is a commercial foreclosure case and, therefore, Autumn Lane is

permitted to attempt to collect on its judgment even though it foreclosed on the property. See N.J.S.A. 2A:50-2.3(a).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION