SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3200-20

U.S. BANK TRUST, NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS TRUSTEE OF LH-NP-STRAT DELAWARE OWNER TRUST,

Plaintiff-Respondent,

v.

303 SOUTH 18TH AVENUE, LLC, STATE OF NEW JERSEY, LENORD TOUGH, and TIMOTHY POUTH,

Defendants,

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CHRISTOPHER E. SLAUGHTER,

Appellant.

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Submitted April 27, 2022 – Decided May 11, 2022

Before Judges Hoffman and Geiger.

On appeal from the Superior Court of New Jersey, Chancery Division, Essex County, Docket No. F-005248-20.

Christopher E. Slaughter, appellant pro se.

Tae H. Whang, attorney for respondent.

PER CURIAM

In this commercial mortgage foreclosure action, appellant Christopher E. Slaughter appeals from a June 9, 2021 final judgment of foreclosure and a Chancery Division order denying reconsideration of the Chancery Court's March 5 and April 1, 2021 orders. We affirm.

We take the following facts from the record. On March 18, 2019, defendant 303 South 18th Avenue, LLC borrowed the sum of $154,700 from Atlas Capital Group (Atlas). To secure the loan, 303 South 18th Avenue, LLC executed a promissory note (note), mortgage, assignment of rents, and security agreement.

On March 20, 2019, Atlas assigned the note to The Rama Fund, LLC (Rama) through an allonge.[1] On April 30, 2019, Rama assigned the note to PS Funding, Inc. via an allonge. On February 20, 2020, PS Funding, Inc. assigned the note to LH-NP-STRAT Delaware Owner Trust via an allonge.

[1] An allonge is a document attached to a promissory note or other negotiable instrument containing an endorsement that transfers the note or negotiable instrument over to a third party or bearer.

The mortgage was similarly assigned. On March 20, 2019, Atlas assigned the mortgage to Rama via two assignments of mortgage that were recorded on March 22 and May 29, 2019, respectively. On April 30, 2019, Rama assigned the mortgage to PS Funding, Inc. via an assignment that was recorded on May 7, 2019. In turn, PS Funding, Inc. assigned the mortgage to plaintiff U.S. Bank Trust, N.A., not in its individual capacity, but solely as trustee of LH-NP-STRAT Delaware Owner Trust via an assignment effective as of February 20, 2020, which was recorded on February 27, 2020. Plaintiff remained the holder of the note and mortgage.

303 South 18th Avenue, LLC defaulted on the note and mortgage by failing to make the payments due on November 1, 2019, and thereafter. Plaintiff filed its complaint on April 3, 2020. Defendants were served with the summons and complaint, including 303 South 18th Avenue, LLC, which owned the mortgaged premises.

A November 16, 2020 order granted plaintiff's motion to correct the names of defendant John Doe #1 to Lenord Tough and John Doe #2 to Timothy Pouth. On November 18, 2020, plaintiff filed a request and certification to enter default as to defendants State of New Jersey, Lenord Tough, and Timothy Pouth. On

January 20, 2021, plaintiff filed a request and certification to enter default as to 303 South 18th Avenue, LLC.

Slaughter is not a defendant in the foreclosure action. He does not own the mortgaged premises. He is not a borrower on the note or a mortgagor. 303 South 18th Avenue, LLC, is the borrower and mortgagor. 303 South 18th Avenue, LLC did not file a responsive pleading or otherwise contest the foreclosure.

Slaughter is the manager of 303 South 18th Avenue, LLC, and guaranteed payment of the note. He did not possess a right of redemption.

Slaughter moved to intervene, which plaintiff opposed. On March 5, 2021, the trial court issued an oral decision and order denying the motion. The order noted:

> Proposed intervenor executed a guarantee only. Not needed in foreclosure because he was not a borrower or mortgagor. So no right of redemption. Judgment on the guaranty was already entered under Law Division Docket [No.] L-2508-20. Plaintiff is not seeking any amount here in excess of the $188,133.34 [plus] $200 costs it was awarded in the Law Division. Therefore, no prejudice to [d]efendant not being permitted to intervene.

Slaughter moved for reconsideration and to set aside default. On April 1, 2021, the motion was denied. The written statement of reasons noted that

Slaughter's moving papers contained "nothing new" and did not establish grounds for reconsideration under the case law.

On May 6, 2021, Slaughter filed a second motion for reconsideration. The court issued a May 28, 2021 order denying the motion. The order stated: "Mr. Slaughter's motion does not address the Intervenor issues raised and decided in the [c]ourt's [o]rders of March 5 and April 1. Moreover, there is nothing new presented or that could not have been presented in the prior applications. Finally, [p]laintiff's proofs refute Mr. Slaughter's allegations."

Plaintiff moved for entry of final judgment of foreclosure. The motion was granted. 303 South 18th Avenue, LLC did not oppose the motion. A final judgment of foreclosure was entered on June 9, 2021.

This appeal followed. Slaughter argues that he was entitled to permissively intervene and that the trial court failed to consider the defenses he raised in his motion for reconsideration.

Slaughter's arguments lack sufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(1)(E). Plaintiff submitted proofs that demonstrated it was entitled to foreclose on the note and mortgage.

Slaughter was not a borrower on the loan or a mortgagor. The note was given and executed by 303 South 18th Avenue, LLC. Slaughter signed the note

on behalf of 303 South 18th Avenue, LLC, in his capacity as its manager. Slaughter guaranteed payment of the note. He submitted no evidence that 303 South 18th Avenue, LLC had not defaulted on the note and mortgage. Indeed, a money judgment had already been entered against Slaughter for $188,133.34 in his capacity as guarantor in a separate Law Division action.

The trial court correctly applied Rule 4:33-1 in denying Slaughter's motion to intervene. To claim intervention as of right, a party must upon timely application establish "an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." R. 4:33-1. Slaughter did not satisfy those criteria. As the manager of the property and not an owner or borrower, Slaughter had no individual interest relating to the property that would entitle him to intervention. Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563, 571 (App. Div. 1998).

Rule 4:33-2 allows for permissive intervention "in an action if the claim or defense and the main action have a question of law or fact in common." "The test is 'whether the granting of the motion will unduly delay or prejudice the adjudication of the rights of the original parties,'" Looman Realty Corp. v. Broad

St. Nat'l Bank of Trenton, 74 N.J. Super. 71, 78 (App. Div. 1962) (quoting Salitan v. Magnus, 28 N.J. 20, 26 (1958)), "and whether intervention will eliminate the need for subsequent litigation[,]" Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 341 (1996). We review for abuse of discretion. City of Asbury Park v. Asbury Park Towers, 388 N.J. Super. 1, 12 (App. Div. 2006).

Here, judgment had already been entered against Slaughter in a parallel collection action enforcing the payment guarantee he executed. In that action, Slaughter was served with process but failed to appear or answer the complaint. Moreover, Rule 4:33-3 sets the procedure for permissive intervention and requires that the motion be "accompanied by a pleading" and the "appropriate filing fee" to be paid at the time of filing the motion to intervene. Slaughter did not submit a pleading or the filing fee for a responsive pleading. We discern no abuse of discretion.

Slaughter also sought to vacate the default entered against defendants. Because intervention was denied, the trial court correctly denied the application. Slaughter had no standing to protect the rights of the defaulting defendants.

Although Slaughter did not brief this issue on appeal, for sake of completeness we note that that the loan was not a "consumer credit transaction that [was] secured by the principal dwelling of a consumer." 15 U.S.C. §

1641(g)(2). This was a commercial loan secured by a mortgage on commercial property, not Slaughter's principal dwelling. Accordingly, plaintiff was not required under the Truth in Lending Act (TILA), 15 U.S.C. § 1601 to -1667f, to give notice of the assignment of the mortgage.

Finally, the trial court correctly applied Rule 4:49-2 in denying Slaughter's motions for reconsideration. Slaughter contends his motion for reconsideration brought new information that raised a factual and legal issue warranting reconsideration. We disagree. The record supports the trial court's finding that the new allegations failed to "address the intervenor issues raised and decided in the Court's Orders" and that "there is nothing new presented or that could not have been presented in the prior applications."

Reconsideration is properly utilized only in that "narrow corridor" of cases in which the court "expressed its decision based on a palpably incorrect or irrational basis," or where "it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence[.]" Cummings v. Bahr, 295 N.J. Super 374, 384 (App. Div. 1996) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401-02 (Ch. Div. 1990)). Slaughter did not satisfy that standard.

"We review the trial court's denial of [defendant's] motion for reconsideration for abuse of discretion." Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021) (citing Kornbleuth v. Westover, 241 N.J. 289, 301 (2020)). We discern no abuse of discretion.

For these reasons, Slaughter did not demonstrate any factual or legal basis to vacate the default entered against defendants. That aspect of his motion was also correctly denied.

To the extent we have not specifically addressed any additional arguments that Slaughter raised in the trial court, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.