SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0218-21

JP MORGAN CHASE BANK, NATIONAL ASSOCIATION,

Plaintiff-Respondent,

v.

CHARLES BERNHAMMER, INSTYLE ACCESSORY GROUP, LLC, LISA COSTELLO, STEVEN MITNICK, assignee, for the benefit of creditors of G & Y REALTY LLC, STATE OF NEW JERSEY, and FIA CARD SERVICES NA,

Defendants,

and

JORGE OTERO,

Defendant-Appellant.

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Submitted December 21, 2022 – Decided January 5, 2023

Before Judges Mayer and Enright.

On appeal from the Superior Court of New Jersey, Chancery Division, Hudson County, Docket No. F-026716-17.

Jorge Otero, appellant pro se.

McCalla Raymer Leibert Pierce, LLC, attorneys for respondent (Djibril Carr, on the brief).

PER CURIAM

Defendant Jorge Otero appeals from the following orders: a June 11, 2021 order denying his motion to vacate a final judgment of foreclosure; an August 27, 2021 order denying his motion for reconsideration of the June 11, 2021 order; and an October 8, 2021 order denying his motion for reconsideration of the August 27, 2021 order. We affirm all orders on appeal.

On December 21, 2006, defendant Charles Bernhammer and plaintiff JP Morgan Chase Bank, National Association (JP Morgan) executed a Home Equity Line of Credit Agreement (Agreement) in the amount of $150,000. Charles Bernhammer executed a mortgage, pledging property located at 714 3rd Street, Secaucus, New Jersey (property), to secure the loaned amount under the Agreement.

Thereafter, the property was subject to numerous transfers. Charles Bernhammer first conveyed the property to Roger Bernhammer by deed dated October 1, 2008. The property was later conveyed to defendant Instyle

Accessory Group, LLC (Instyle) and then to Otero by deed dated January 26, 2017. The Agreement and mortgage were never assigned or modified.

Charles Bernhammer failed to make payments due under the Agreement. After providing notice and an opportunity to cure, JP Morgan filed a foreclosure action. Initially, JP Morgan named only Charles Bernhammer and Instyle as defendants, but subsequently amended the foreclosure complaint in June 2018 to include Otero as a defendant.

Otero filed a contesting answer, alleging twenty-eight affirmative defenses and asserting counterclaims. Upon receipt of Otero's answer, JP Morgan filed a motion to strike the pleading, arguing that Otero did not have standing to challenge the validity of the loan documents or Charles Bernhammer's default related to the payments due under the Agreement. JP Morgan further asserted that Otero lacked the right to file counterclaims related to the Agreement because he was the property owner and not a borrower or mortgagor.

The motion judge agreed, and granted the motion to strike Otero's answer and counterclaims. Otero moved for reconsideration which the judge denied on December 7, 2018.

JP Morgan then applied for a final judgment of foreclosure. On December 30, 2019, Otero sent a letter to the court stating he intended to file an objection to the final judgment of foreclosure. On January 15, 2020, Charles Bernhammer attempted to file an objection to the amount due under the Agreement. Because Charles Bernhammer was represented by counsel in the foreclosure action, the court rejected his pro se objection. On January 28, 2020, the judge entered a final judgment of foreclosure in the amount of $220,041.95.

On March 22, 2021, more than a year after the final judgment of foreclosure, Otero filed a motion to vacate the judgment. He argued the judgment should be vacated because JP Morgan used a third-party certified mailing service, resulting in delayed delivery of certain filings, and there were discrepancies in the certifications filed by JP Morgan in support of the foreclosure action. JP Morgan responded that the certified mailing delay was limited to a notice of sale which did not occur due to COVID-19-related moratoriums. JP Morgan also countered each of Otero's claimed discrepancies, misrepresentations, and falsehoods in its supporting certifications related to the foreclosure.

In denying the motion to vacate the judgment, the judge noted Otero was not the obligor on the note and questioned Otero's "standing to even make this

argument." In finding that Otero was not the obligor on the note, the judge held Otero's argument "fell on deaf ears" and entered a June 11, 2021 order denying the motion.

Otero then filed two motions for reconsideration related to the judge's denial of his motion to vacate the foreclosure judgment. On reconsideration, Otero renewed the same arguments that he raised in his motion to vacate the foreclosure judgment. In addition, he argued the following: he had a right of redemption and standing under Rule 4:64-1(d)(3); he was not served with a notice of entry of final judgment; and there were discrepancies between the amount indicated in the notice of intent to foreclose and certification of amount due.

In denying Otero's first motion for reconsideration, the judge found the legal arguments presented by Otero were "similar, if not identical to[,] the original arguments [on] June 11." The judge further found Otero's argument that one of the certifications in support of the entry of final judgment relied on the knowledge of another party failed to present any legal basis upon which to vacate the judgment.

In denying Otero's second motion for reconsideration, the judge applied Rule 4:49-2 and found Otero's arguments were a repeat of the arguments in his

previous motion for reconsideration. The judge concluded the minor typographical errors and other deficiencies noted by Otero were unfounded or had no effect on the outcome of the litigation. Additionally, the judge found Otero failed to challenge any purported error in the calculation of the amount due with sufficient specificity.

We first consider Otero's argument that the judge erred in failing to vacate the judgment of foreclosure. We disagree.

Motions to vacate a judgment under Rule 4:50-1 are granted sparingly and we review such motions for abuse of discretion. U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). A trial court abuses its discretion if a decision lacks a "'rational explanation,'" represents an "'inexplicabl[e] depart[ure] from established policies,'" or rests on "'an impermissible basis.'" Ibid. (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

Rule 4:50-1 is "designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." Ibid. (quoting Mancini v. EDS, 132 N.J. 330, 334 (1993)). A decision to vacate a judgment lies within the sound discretion of the trial judge, guided by principles of equity. Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994). A motion to

vacate a judgment under Rule 4:50-1(a), (b), and (c) shall not be filed "more than one year after the judgment . . . was entered." R. 4:50-2; see also Deutsche Bank Nat'l Trust Co. v. Russo, 429 N.J. Super. 91, 99 (App. Div. 2012).

We perceive no basis to disturb the judge's denial of Otero's motion to vacate the foreclosure judgment under Rule 4:50-1. Clearly, Otero's motion was filed more than one year after entry of the judgment. Moreover, the judge properly found Otero failed to demonstrate any mistake, inadvertence, surprise, or excusable neglect consistent with Rule 4:50-1(a). Nor did Otero establish any other bases for relief under Rule 4:50-1, including the existence of exceptional circumstances. R. 4:50-1(f).

We next consider Otero's arguments that the judge erred in denying his motions for reconsideration. Again, we disagree.

We review the grant or denial of a motion for reconsideration for an abuse of discretion. Cummings v. Bahr, 295 N.J. Super. 374, 389 (App. Div. 1996). An abuse of discretion results "'when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Brunt v. Bd. of Trs., Police & Firemen's Ret. Sys., 455 N.J. Super. 357, 362 (App. Div. 2018) (internal quotation marks omitted)

(quoting Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015)).

A motion for reconsideration will generally be granted only when "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 did not consider, or failed to appreciate the significance of probative, competent evidence." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Given our deference to the motion judge's findings on reconsideration, we are satisfied that the judge did not abuse her discretion in denying Otero's reconsideration motions. Otero provided no new information, and the judge's prior orders were not palpably incorrect, irrational, or the result of any failure to consider competent evidence.

To the extent we have not addressed any of Otero's remaining arguments, we conclude those arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.