

2015 WL 1737683

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UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of New Jersey,
Appellate Division.

MADISON EQUITIES OF PATERSON,
L.L.C., Plaintiff–Respondent,

v.

Maria ALVAREZ and Ramon
Verano, Defendants–Appellants,
and

Rafael Dela Cruz, Richard Parra,
Carlos Palacio Tenant, Defendants.

Submitted March 18, 2015.

| Decided April 17, 2015.

On appeal from Superior Court of New Jersey, Chancery
Division, Passaic County, Docket No. F–49151–10.

Attorneys and Law Firms

[Mario M. Blanch](#), for appellants.

David Kessler & Associates, L.L.C., attorneys for respondent
([Adam S. Kessler](#), on the brief).

Before Judges [ASHRAFI](#), [KENNEDY](#) and [O'CONNOR](#).

Opinion

PER CURIAM.

*1 Defendants Maria Alvarez and Ramon Verano appeal from a March 24, 2014 order denying their motion to vacate a final judgment in foreclosure entered in favor of plaintiff Madison Equities of Paterson, L.L.C. We affirm.

I

On May 29, 2007, defendant Maria Alvarez borrowed \$510,000 from Greenpoint Mortgage Funding, Inc. In exchange, she signed a promissory note and mortgage on property she owned in Paterson, New Jersey. Defendants

Rafael DelaCruz, Richard Parra, and Ramon Verano also executed the mortgage but as accommodation parties.¹

On October 4, 2010, Greenpoint Mortgage Funding, Inc., filed a foreclosure complaint when the mortgage payments fell into arrears. Greenpoint assigned the mortgage and note to Citigroup Global Markets Realty Corp., which subsequently assigned the mortgage and note to Waterfall Victoria Mortgage Trust (Waterfall) on March 15, 2011.

On October 21, 2011, Waterfall and Alvarez entered into a stipulation. Under the terms of the stipulation Alvarez consented to the entry of a foreclosure judgment and Waterfall agreed to forbear from exercising its right to request a sheriff's sale if Alvarez paid Waterfall \$5,000 per month for eleven months, commencing on December 15, 2011, making the last payment due on October 11, 2012.² However, the stipulation further provided that Alvarez was to resume paying the monthly mortgage on the first day of each month, beginning November 1, 2012. The failure to make any of the monthly payments when due was considered an “event of default” that authorized the lender to proceed with a foreclosure sale.

On June 11, 2012, Waterfall assigned the note and mortgage to plaintiff. The record reveals that thereafter Alvarez did not make all of the payments required under the stipulation. Although she claims she made all of the monthly payments of \$5,000 from December 15, 2011 to October 15, 2012, she does not dispute that she did not make regular monthly payments commencing November 1, 2012.

On January 31, 2013, plaintiff served defendants with a notice of motion to request the entry of default. On April 24, 2013, plaintiff sent to defendants a copy of an order stating default had been entered on April 17, 2013. On April 26, 2013, plaintiff sent defendants a fourteen day notice to cure, advising them that if they failed to respond in accordance with the Fair Foreclosure Act, *N.J. S.A. 2A:50–58(a)(2)*, plaintiff would submit proofs for entry of final judgment on May 13, 2013. Defendants did not take any action.

On August 7, 2013, plaintiff mailed to defendants a copy of a notice of motion for entry of final judgment. Defendants did not file a response to the motion. On September 26, 2013, a final judgment in foreclosure was entered in the amount of \$578,137.34, together with interest and attorneys' fees; plaintiff mailed a copy of the final judgment to defendants on September 30, 2013. On September 26, 2013,

a writ of execution was filed that permitted the sheriff to schedule a sheriff's sale of the mortgaged property. The sale was scheduled for December 17, 2013; plaintiff mailed to defendants a copy of an advertisement of the sale as it appeared in the newspaper.

*2 On December 9, 2013, defendants, who had been represented by counsel since the previous summer, filed a motion to vacate final judgment pursuant to *Rule* 4:50–1(a), (c),(e), and (f). Defendants also exercised their statutory right to adjourn the sheriff's sale pursuant to *N.J.S.A. 2A:17–36*; the sale was adjourned to January 7, 2014 and then to January 14, 2014.

On January 13, 2014, defendants filed an application for an order to show cause to stay the sale. To enable it to hear defendants' motion, then returnable on January 17, 2014, the court stayed and adjourned the sale to January 21, 2014. After the motion was argued the court reserved decision. The sale was adjourned to January 28, 2014, and then to February 4, 2014. The sale went forward on this latter date. Plaintiff bought the property at the sale. On March 24, 2014, the court issued a written decision denying defendants' motion.

On appeal, defendants contend the trial court erred when it denied defendants' motion to vacate the judgment in foreclosure, claiming they are entitled to relief under *Rule* 4:50–1(a) and (c). Specifically, they argue they discharged their obligations under the stipulation by paying \$5,000 per month over the subject eleventh month period; therefore, under the terms of the stipulation, the judgment in foreclosure should not have been entered but instead the foreclosure complaint dismissed.

Defendants further allege that, by accepting \$55,000 from them and by failing to dismiss the foreclosure complaint, plaintiff engaged in predatory loaning practices, violated the Consumer Fraud Act (CFA), *N.J.S.A. 56:8–1* to –20, and breached the stipulation. Finally, defendants contend they did not receive notice of the sheriff's sale, and that the trial court erred by failing to adjourn the sale until after their motion was decided.

We find no merit in these contentions and affirm.

II

We consider defendants' arguments in light of *Rule* 4:50–1(a) and (c), which provide, in pertinent part:

On motion, with briefs and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; ...

(c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

....

A trial court's determination under this Rule warrants substantial deference and we will not disturb the result unless it represents a clear abuse of discretion. *See DEG, LLC v. Twp. of Fairfield*, 198 N.J. 242, 261 (2009); *Hous. Auth. of Morristown v. Little*, 135 N.J. 274, 283 (1994). Abuse of discretion may be found when a decision is “ ‘made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.’ ” *Iliadis v. Wal-Mart Stores, Inc.*, 191 N.J. 88, 123 (2007) (quoting *Flagg v. Essex Cnty. Prosecutor*, 171 N.J. 561, 571 (2002)); accord *U.S. Bank Nat. Ass'n v. Guillaume*, 209 N.J. 449, 466–468 (2012).

*3 To obtain relief under subsection (a) of the Rule, a defendant must show excusable neglect and a meritorious defense. *Dynasty Bldg. Corp. v. Ackerman*, 376 N.J. Super. 280, 285 (App.Div.2005) (citing *Marder v. Realty Constr. Co.*, 84 N.J. Super. 313, 318 (App.Div.), *aff'd*, 43 N.J. 508 (1964)). Defendants have shown neither. In fact, defendants do not address the issue of excusable neglect by proffering what event or obstacle impaired them from taking action before the judgment was entered.

Further, there is no meritorious defense. Defendants failed to abide by the terms of the stipulation. Even if defendants fully paid plaintiff \$55,000 over the course of the subject eleven months, they breached the stipulation by failing to make other payments required under the agreement. When they did not make these other payments, plaintiff was permitted to proceed with the foreclosure action.

After carefully considering the record and the briefs, we conclude defendants' remaining arguments are without sufficient merit to warrant discussion in a written opinion. *R. 2:11–3(e)(1)(E)*.

Affirmed.

All Citations

Not Reported in A.3d, 2015 WL 1737683

Footnotes

- 1 An accommodation party is one who signs an instrument “for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument” [N.J.S.A. 12A:3-419\(a\)](#).
- 2 The \$5,000 monthly payment included interest in the amount of \$1,614.02; \$1,019.59 to be put into escrow for taxes; \$238.17 to be put into escrow for insurance; and past due interest, late fees, outstanding corporate and escrow advances, and other fees advanced for defendants' benefit in the amount \$2,128.22.

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