SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1272-21

SUMMIT CAPITAL PARTNERS, L.P., a New Jersey Limited Partnership,

Plaintiff-Respondent,

v.

Estate of LYNN LIEF RANDAZZO, estate of PAUL RANDAZZO in his capacity as Substitute Executor of LYNN LIEF RANDAZZO, BRYAN CULLEN, in his capacity as Substitute Executor of the estate of LYNN LIEF RANDAZZO, and in his capacity as Executor of the estate of PAUL RANDAZZO, and DANIELLE MAGLIARO, in her capacity as Substitute Executrix of the estate of LYNN LIEF RANDAZZO, and in her capacity as Executrix of the estate of PAUL RANDAZZO, TWIN LEGACY, LLC, a New Jersey limited liability company, and PARTNER ENGINEERING AND SCIENCE, INC., a New

Jersey corporation,

Defendants-Appellants.

Submitted October 20, 2022 – Decided November 30, 2022

Before Judges Haas and Mitterhoff.

On appeal from the Superior Court of New Jersey, Chancery Division, Hunterdon County, Docket No. SWC-F-006868-20.

Saul Roffe, attorney for appellants.

Mandelbaum Barrett PC, attorneys for respondent (Arla D. Cahill, on the brief).

PER CURIAM

In this commercial foreclosure dispute, defendants, the Estate of Lynn Lief Randazzo, Estate of Paul Randazzo in his capacity as substitute executor of Lynn Lief Randazzo, Bryan Cullen in his capacity as substitute executor of the estate of Lynn Lief Randazzo, Danielle Magilaro,[1] in her capacity as substitute executrix of the estate of Lynn Lief Randazzo, Twin Legacy, LLC, and Partner Engineering and Science, Inc. (collectively "defendants") appeal from the court's December 3, final judgement in favor of plaintiff Summit Capital

[1] The name Danielle Magliaro appears to be spelled incorrectly as "Magilaro" in the caption and court documents and as "Magliero" in the judge's opinion.

Partners, L.P., awarding possession and damages in the amount of $1,129,420.97. We affirm, substantially for the reasons set forth in Judge Margaret Goodzeit's thorough and thoughtful April 30, 2021 written decision.[2]

We discern the following facts from the record. On September 15, 2014, The Estate of Lynn Lief Randazzo and Paul Randazzo, in his capacity as substitute executor of the estate, borrowed $1,200,000 from plaintiff. The following documents were prepared and executed in connection with the loan: a promissory note; a mortgage; a security agreement; an absolute assignment of rents and leases; an absolute assignment of leases, rents and profits; and a subordination, non-disturbance, and attornment agreement in favor of plaintiff. The note and non-purchase money mortgage, recorded by the clerk of Hunterdon County on September 29, 2014, encumbers real property located in Readington Township, Hunterdon County, New Jersey identified as Block 35, Lots 1 and 25.

[2] The property sold at a sheriff's sale on March 30, 2022. Plaintiff argues that the sale of the property renders defendants' case moot. Cinque v. New Jersey Dep't of Corr., 261 N.J. Super. 242, 243 (App. Div. 1993) (citing Oxfeld v. New Jersey State Board of Educ., 68 N.J. 301, 303–04 (1975) ("It is firmly established that controversies which have become moot or academic prior to judicial resolution ordinarily will be dismissed."). However, because plaintiff did not make a motion to dismiss the appeal, we address the merits of defendants' argument.

On March 3, 2020, plaintiff declared defendants in default based on the occurrence of multiple "Events of Default" described in the duly executed note and mortgage: (1) the estate transferred title to the mortgaged property in violation of the loan documents to defendant Twin Legacy, LLC pursuant to a deed dated January 17, 2020; (2) a construction lien was filed against the mortgaged property by defendant Partner Engineering and Science, Inc, and the lien remains of record; and (3) the estate failed to diligently pursue the environmental remediation of the mortgaged property. Pursuant to the acceleration clauses contained in the default section of the note and mortgage, the full amount of unpaid principal, interest, and any other amounts due under the note, plus the lender's collection costs and attorneys' fees became due.[3]

On June 26, 2020, plaintiff filed a complaint for foreclosure and possession against defendant. On June 30, 2020, plaintiff's summons, filed complaint, and case information statement was served upon defendants. Defendants were required to file responsive pleadings by August 4, 2020. On July 30, 2020, defendant Danielle Magliaro attempted to file a "Non-Contested

[3] To date, defendants have not cured the "Events of Default" declared under the March 3, 2020 notice of default and have not paid the full amount of unpaid principal, interest, and any other amounts due under the note, plus the lender's collection costs and attorneys' fees.

Answer." The court clerk rejected the filing because the submitted document appears on eCourts as a scanned copy of the initial foreclosure complaint. The rejection of the filing is clearly set forth on eCourts.

On August 10, 2020, plaintiff filed notices of entry of default against all defendants for their respective failure to file an answer or otherwise move for an extension of time. Plaintiff's counsel mailed the filed notices of entry of default to each of the defendants via regular and certified mail, return receipt requested. [4]On August 18, 2020, through counsel, defendants filed a motion to vacate the August 10, 2020 entry of default against defendants. On August 19, 2020, without the leave of the court, defendants also attempted to file a "Contested Answer" which was not filed because default had already been entered. On August 28, 2020, the court clerk entered the following message on the ECourtsDocket Sheet:

> DEFICIENCY NOTICE: re: CONTESTED ANSWER [CHC2020201524] -Your answer has not been filed. Defendants were defaulted on 08/10/2020. A motion to vacate default is required. Fee will be returned under separate cover.

Plaintiff opposed defendants' motion to vacate the entry of default.

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[4] True and correct copies of the certified mail receipts were provided by plaintiff.

On September 11, 2020, the court granted defendants' motion and issued an order to vacate the entry of default. The annexed statement of reasons permitted defendants seven additional days to submit an answer. To date, defendants have not filed their answer and the required filing fee. Defendants allege they were unaware of the September 11, 2020 order because they did not receive an automatic eCourts notification of their own motion's disposition.[5]

Seven months later, on April 30, 2021, the court granted plaintiff's motion to reinstate default against defendants for failure to file an answer within the time provided by the rules of the court. A copy of plaintiff's motion papers were contemporaneously mailed by regular and certified mail to defendants pursuant to Rule 4:43-1. The court granted the application and ordered that plaintiff's complaint "shall be deemed uncontested and shall be transmitted to the foreclosure unit for further handling."

On December 3, 2021, the judge entered an unopposed Order of Judgement of Foreclosure by default.

On appeal, defendant raises the following arguments:

POINT I

STANDARDS FOR REVIEW OF DEFAULT JUDGMENT.

[5] Defendants incorrectly dated the order as September 20, 2020 in their brief.

POINT II

THE SUPERIOR COURT WAS IN ERROR IN GRANTING PLAINTIFF A DEFAULT JUDGMENT.

An appeal of the grant of a default judgment is reviewed under the abuse of discretion standard. U.S. Bank National Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). When nothing more than an entry of default pursuant to Rule 4:43-1 has occurred, relief from that default may be granted on a showing of good cause. Rule 4:43-3; Pressler & Verniero, Current N.J. Court Rules, comment on R. 4:43-3 (2012) ("stating that '[t]he required good-cause showing for setting aside an entry of default pursuant to this rule is clearly a less stringent standard than that imposed by [Rule] 4:50-1 for setting aside a default judgment'"). Guillaume 209 N.J. at 466-67. However, the party seeking to vacate the default must demonstrate both (1) a meritorious defense and (2) a lack of contumacious behavior. See O'Connor v. Altus, 67 N.J. 106, 129 (1975).

With these guiding principles in mind, we discern no abuse of discretion in the judge's entry of judgment by default against defendants. On September 11, 2020, the judge vacated the August 10, 2020 order of default and granted defendants seven additional days to file an answer. The judge provided defendants this opportunity after noting their unsuccessful attempts to file an answer. Despite this opportunity, defendants took no action to defend the case.

Defendants argue that their inaction regarding the September 11, 2020 order should be excused because they did not receive an automatic email notification from eCourts indicating that their motion had been granted. As the judge found: "Defendant[s'] counsel's failure to check eCourts since the filing of their motion is insufficient grounds upon which to avoid default." Moreover, defendants' assertion that they intended to litigate the matter is, as Judge Goodzeit found, a bald assertion that does not suggest a meritorious defense.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION