

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

KAMRAN KHAN,

Appellant

v.

WELLS FARGO BANK, N.A.,

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2905 EDA 2012

Appeal from the Order of August 28, 2012,
in the Court of Common Pleas of Philadelphia County,
Civil Division at No. 3683 February Term, 2012

BEFORE: STEVENS, P.J., WECHT and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

FILED MAY 30, 2013

This is an appeal from an order granting summary judgment in favor of Appellee. We affirm.

The background underlying this matter can be summarized in the following manner.

On February 29, 2012, Wells Fargo Bank, N.A. (hereinafter referred to as "Appellee") filed a complaint in mortgage foreclosure against Kamran Kahn (hereinafter referred to as "Appellant") for property located in Philadelphia, Pennsylvania. Appellant, proceeding *pro se*, filed an Answer on March 29, 2012. Appellee filed a Motion for Summary Judgment on July 20, 2012. Appellant filed an answer to the Motion for Summary Judgment on August 14, 2012. The Motion for Summary Judgment was granted on August 28, 2012.

*Retired Senior Judge assigned to the Superior Court.

Appellant – through counsel – filed the instant Appeal of the Order dated August 28, 2012. Appellant simultaneously filed a Statement of Matters Complained of (“1925(b) Statement”) on September 20, 2012. . . .

Trial Court Opinion, 11/07/12, at 1-2 (citations omitted).

Generally speaking, Appellant challenges the trial court’s decision to grant summary judgment in favor of Appellee. The principles governing our review of orders granting summary judgment can be summarized in the following manner:

The standards which govern summary judgment are well settled. When a party seeks summary judgment, a court shall enter judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense that could be established by additional discovery. A motion for summary judgment is based on an evidentiary record that entitles the moving party to a judgment as a matter of law. In considering the merits of a motion for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Finally, the court may grant summary judgment only when the right to such a judgment is clear and free from doubt. An appellate court may reverse the granting of a motion for summary judgment if there has been an error of law or an abuse of discretion. . . .

Swords v. Harleysville Insurance Companies, 883 A.2d 562, 566-67 (Pa. 2005) (citations omitted).

Appellant asks us to consider five issues. We initially observe that Appellant was required to raise the arguments underlying these issues in opposition to summary judgment; otherwise, they are waived. ***Lineberger v. Wyeth***, 894 A.2d 141, 147-48 (Pa. Super. 2006).

In response to Appellee's motion for summary judgment, Appellant filed two documents. He entitled his first document "[Appellant's] Response to [Appellee's] Motion of Summery [sic] Judgement [sic]." In this document, Appellant, for the most part, simply denied and admitted the averments in Appellee's motion for summary judgment. Appellant entitled the second document "[Appellant's] Brief in Support of the Answers to [Appellee's] Summery [sic] Judgement [sic] Motion." Notably, this "brief" does not offer a coherent argument supported by legal citation.

The only issue that Appellant arguably raised in opposition to Appellee's motion for summary judgment, and that he pursues on appeal, is the last issue in his appellate brief. Appellant's Brief at 19-20. In opposition to the motion for summary judgment, Appellant stated that Appellee sent an Act 91¹ notice to 1324 Locust Street, which, according to Appellant, is not his primary address. "[Appellant's] Brief in Support of the Answers to [Appellee's] Summery [sic] Judgement [sic] Motion," 08/14/12, at 1. According to Appellant, he never received the notice. ***Id.***

The trial court addressed this issue as follows.

To the extent that he did not receive the Act 91 notice, this claim is without merit. An Act 91 notice dated August 8, 2010 was sent to Appellant's primary address in Wynnewood, PA; Appellee attached proof of mailing of the notice to its Motion for Summary Judgment.

¹ Homeowner's Emergency Mortgage Act, 35 P.S. §§ 1680.401c *et seq.*

Trial Court Opinion, 11/07/12, at 6.

On appeal, Appellant maintains that a genuine issue of material fact remains as to whether he received an Act 91 notice. **See** Appellant's Brief at 19 ("The trial court erred when it granted summary judgment despite [Appellant's] defense that [Appellant] had not received an Act 91 notice prior to complaint in foreclosure being filed, thus divesting the court of jurisdiction[.]"). Appellant is due no relief.

Subsection 1680.401c(a)(1) of Act 91 states, "The provisions of this article shall not be applicable if . . . [t]he property securing the mortgage is not the principal residence of the mortgagor." 35 P.S. § 1680.401c(a)(1). Appellee is attempting to foreclose upon Appellant's property located at 1324 Locust Street, Philadelphia, Pennsylvania. In opposition to summary judgment, Appellant admitted that this property is not his primary address. "[Appellant's] Brief in Support of the Answers to [Appellee's] Summery [sic] Judgement [sic] Motion," 08/14/12, at 1. Because the property subject to Appellee's foreclosure action is not Appellant's principal residence, the provisions of Act 91 are not applicable to this matter. Consequently, Appellant's Act 91 claim fails to raise a genuine issue of material fact. For these reasons, we affirm the trial court's order.

Order affirmed.

J-S18041-13

Judgment Entered.

A handwritten signature in black ink, appearing to read "Kevin Gambetti", written over a horizontal line.

Prothonotary

Date: 5/30/2013