

F I L E D

May 08, 2015

MARYBETH ROGERS, J.S.C.

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Superior Court of New Jersey
Chancery Division: Hudson County
Docket Number: F-031289-14

Pennymac Corp.

Plaintiff

vs.

Order Dismissing Foreclosure Complaint

Carol Anne Crystal, et al

Defendant

This matter having been opened to the Court by Adam S. Tuttle, Esq., attorney for the Defendant, Carol Anne Crystal appearing upon notice to the Plaintiff's attorney Phelan Hallinan & Diamond, Esqs., attorney for the Plaintiff, Pennymac Corp., and the Court having considered the certification and submissions filed in this matter heard the argument of counsel and good cause shown;

IT is on this 8th day May, 2015

~~ORDERED the within Foreclosure Complaint of the Plaintiff is dismissed with prejudice for the reasons set forth on the record.~~

* See Court's reasoning on page 2-4.


MARYBETH ROGERS, J.S.C.

F-32189-14

Defendant seeks an Order dismissing Plaintiff's Complaint, arguing that the Statute of Limitations has run.

In support of his position, Defense Counsel relies on Washington v. Specialized Loan Servicing, LLC (In re Washington), 2014 Bankr. LEXIS 4649 (Bankr. D.N.J. Nov. 5, 2014), which is currently on appeal. In In re Washington, the Defendant defaulted on his mortgage on June 1, 2007. No. 14-14573-TBA, 2014 Bankr. LEXIS 4649 (U.S. Bankr. Ct. D. NJ Nov. 5, 2014) Plaintiff chose to accelerate the loan in accordance with the mortgage. Defendant eventually filed a motion for summary judgment in which he argued that Plaintiff's declaration of default and acceleration advanced the maturity date of the mortgage so that under N.J.S.A. § 2A:50-56.1, which requires the mortgagee to file a foreclosure action within 6 years of the maturity date of the mortgage, Plaintiff cannot pursue the foreclosure of the property. The court agreed. The court stated that,

In light of [Plaintiff's] acceleration of the maturity date of the underlying debt as of June 1, 2007, and because neither Debtor nor [Plaintiff] took any action under either the mortgage instruments, or the Fair Foreclosure Act, to de-accelerate the maturity date, [Plaintiff's] right file a foreclosure complaint expired 6 years after the June 1, 2007 acceleration date under N.J.S.A. 2A:50-56.1(a).

Id. at 39.

In relying on In Re Washington, Defense Counsel argues that it is undisputed that the Defendant defaulted on her adjustable mortgage loan on December 1, 2007 and the mortgage lender, pursuant to the Note and Mortgage, accelerated the mortgage loan. Therefore, Defendant argues, the maturity date of the accelerated mortgaged loan is December 1, 2007. Defendant further states that the current foreclosure complaint was not filed until July 31, 2014, which is clearly in excess of six years after the loan default date of December 1, 2007. Accordingly, Defendant contends, Plaintiff is time barred in its foreclosure action and its Complaint should be dismissed with prejudice.

Plaintiff argues that Defendant's reliance on the above decision is misplaced as the decision is non-precedential and not binding on this Court; the decisions is at best

persuasive and at the worst, a misinterpretation of the plain meaning of N.J.S.A. 2A:50-56.1.

In support of its position, Plaintiff focuses on the statute itself. It argues that, when interpreting a statute, a court must first look to the statute and ascribe to the statutory words their ordinary meaning and significance and read them in context with related provision so as to give sense to the legislation as a whole. DiProspero v. Penn., 183 N.J. 477, 492-493 (2005). Further, a court should not resort to extrinsic interpretive aids if the statutory language is clear and unambiguous and susceptible to only one interpretation. Id. N.J.S.A. 2A:50-56.1 clearly and unambiguously states that a foreclosure action shall not be commenced six years after the date fixed for the making of the last payment or the maturity date *set forth in the mortgage or note*. In the present case, both the note and mortgage, set forth the date of June 1, 2035, as the date of maturity. Therefore, pursuant to subsection (a) of N.J.S.A. 2A:50-56.1, which clearly and unambiguously refers to a date certain, the Plaintiff would be barred from commencing a foreclosure action after June 1, 2041.

Plaintiff also notes that the N.J.S.A. 2A:50-56.1 states, that a complaint will be time barred after the earliest applicable time limitation. Therefore, a plain reading of the statute proves that proper statute of limitation in the present case is subsection (c). The proper time limitation, then, pursuant to subsection (c) results in the Plaintiff being barred from commencing a foreclosure action after December 1, 2027, which is twenty years from the date of the uncured default. If this Court were to accept Defendant's argument that the maturity date was accelerated to the date of default, such an interpretation would ignore the plain meaning of the statute and would render N.J.S.A. 2A:50-56.1(c) superfluous and insignificant. Such a result would violate the cardinal principal of statutory construction "that a statute ought, upon the whole be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." TRW, Inc. v. Andrews, 534 U.S. 19, 31 (2001). Further, following the bankruptcy court's interpretation of N.J.S.A. 2A:50-56.1(a) renders subsection (c) moot as a mortgagor's default must occur and be declared before acceleration of the maturity date. Therefore,

subsection (c) will never be the earlier date as the “accelerated maturity date” will always be the earlier event.

Here, Plaintiff’s argument must prevail. First and foremost, In Re Washington is not binding on this Court. Second, the decision is currently being appealed. Lastly, this Court believes that the plain interpretation of the Statute is controlling on this Court. If one reads N.J.S.A. 2A:50-56.1, it is clear that subsection (a) sets the statute of limitations six years from the date fixed for the making of the last payment or the maturity date **set forth in the mortgage or the note, bond, or other obligation**. Why would the legislature put the language “set forth in the mortgage or the note...” if it intended the maturity date to change if the mortgage was accelerated? Moreover, when interpreting a statute, a court must first look to the statute and ascribe to the statutory words their ordinary meaning and significance and read them in context with related provision so as to give sense to the legislation as a whole. DiProspero v. Penn, 183 N.J. 477, 492-493 (2005). Based on the above, it would not make sense for this Court to ignore language in the statute and ascribe that provision a completely difference meaning. Thus, since the statute states “**an action to foreclose a residential mortgage shall not be commenced following the earliest of,**” and then lists the categories of years, the statute of limitations in this case would fall under subsection (c), which is 20 years from the date of default, which is December 1, 2027. See N.J.S.A. 2A:50-56.1. Since Plaintiff’s Complaint was filed on July 31, 2014, Plaintiff’s Complaint was timely filed. Based on the foregoing, Defendant’s Motion is DENIED.