

Mortgage Electronic Registration Systems, Inc. v.
Powell

N.J.Super.A.D., 2007.

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UNPUBLISHED OPINION. CHECK COURT
RULES BEFORE CITING.

Superior Court of New Jersey, Appellate Division.

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., Plaintiff-Respondent,

v.

Wanda L. POWELL, Defendant-Appellant.

Submitted Oct. 22, 2007.

Decided Nov. 15, 2007.

SYNOPSIS

On appeal from Superior Court of New Jersey,
Chancery Division, Essex County, Docket No. F-
703-06.

Wanda L. Powell, appellant pro se.

Powers Kirn, LLC, attorneys for respondent ([Edward W. Kirn III](#), on the brief).

Before Judges [PARRILLO](#) and [SABATINO](#).

PER CURIAM.

*1 In this foreclosure action, defendant, Wanda L. Powell, pro se, appeals from an October 10, 2006 final judgment of foreclosure, entitling plaintiff, Mortgage Electronic Registration Systems, Inc., to the sum of \$624,181.53 plus \$6,391.82 in counsel fees from the proceeds of the sheriff's sale of the mortgaged premises. We affirm.

The material facts are undisputed. On May 31, 2005, defendant executed and delivered two mortgage notes to Countrywide Home Loans, Inc.: (1) a \$460,000 adjustable rate note that was payable over thirty years with a yearly interest rate of 6.25%; and (2) a \$115,000 adjustable rate note that had a repayment period of fifteen years with an initial yearly interest rate of 10.25%. On June 3, 2005, as security for the two notes, defendant, as mortgagor, executed and delivered two mortgages against her 74 Willow Street, Bloomfield, New Jersey residence,

to plaintiff as nominee for Countrywide Home Loans, Inc., which were then duly recorded.

Defendant subsequently defaulted under the terms of the first note and mortgage when she failed to make the monthly mortgage payment due on October 1, 2005 and all payments due thereafter. Consequently, plaintiff accelerated the loan and on January 11, 2006, filed a complaint seeking to foreclose the first mortgage on defendant's residence pursuant to the Fair Foreclosure Act, [N.J.S.A. 2A:50-53](#) to -68. After efforts to personally serve her failed, the summons and complaint were sent to defendant and confirmed via certified mail. Defendant appeared in the matter on March 10, 2006, and filed a contesting answer denying plaintiff's allegations; asserting affirmative defenses of lack of subject matter jurisdiction, failure to state a cause of action pursuant to the Fair Foreclosure Act, and collateral estoppel; demanding dismissal of plaintiff's complaint; and requesting counsel fees.

The Chancery Division judge, by order of June 5, 2006, denied defendant's motion to dismiss and granted plaintiff summary judgment, striking defendant's answer and affirmative defenses, and entering default against defendant "as though no answering pleading had been filed." After denying defendant's second motion to dismiss, the matter proceeded as uncontested, *R.* 4:64-1(c)(1), to entry of final judgment of foreclosure on October 10, 2006. That order directed plaintiff be paid \$624,181.53 plus interest and \$6,391.82 for counsel fees from the sheriff's sale of defendant's mortgaged premises, and barred and foreclosed defendant from all equity of redemption from the mortgaged premises. [FN1](#)

[FN1](#). After filing her notice of appeal, on February 5, 2007, defendant filed a voluntary bankruptcy petition. In conjunction, on February 7, 2007, defendant filed in this court a motion to stay the sheriff sale pending appeal, which we denied on February 14, 2007. On February 26, 2007, the

United States Bankruptcy Court for the District of New Jersey dismissed defendant's petition for failure to file missing documents. Defendant filed a second bankruptcy petition on April 24, 2007, but, on June 29, 2007, that petition was dismissed as well.

As best as can be determined, defendant pro se raises the following issues for our consideration:

I. THE CASE SHOULD BE DISMISSED FOR LACK OF PERSONAL JURISDICTION.

II. THE CASE SHOULD BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION.

III. THE TRIAL COURT VIOLATED DEFENDANT'S RIGHT TO DUE PROCESS AND THE NEW JERSEY FAIR FORECLOSURE ACT WHEN IT PROCEEDED WITHOUT PROPER DEBT VERIFICATION.

*2 IV. THERE WAS NO CAUSE OF ACTION DUE TO A DEFECTIVE COMPLAINT.

A. THE MORTGAGED RESIDENCE WAS NOT IN DEFENDANT'S POSSESSION.

B. THE DEBT WAS DISCHARGED PRIOR TO THE LAWSUIT.

C. THE ULTRA VIRES DOCTRINE PRECLUDES SUIT AGAINST DEFENDANT.

D. DEFENDANT HAS SOVEREIGN IMMUNITY.

V. THE TRIAL COURT ERRED BECAUSE PLAINTIFF FAILED TO PRESENT PRIMA FACIE EVIDENCE OF AN INJURED PARTY.

We have considered each of these issues in light of the record, the applicable law, and the arguments of counsel and defendant pro se, and we are satisfied that none of them is of sufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(1)(E). We add, however, the following comments.

Defendant's principal contentions are that the court lacked both subject matter and personal jurisdiction in this matter. We disagree.

Since lack of subject matter jurisdiction is a non-waivable defense, see R. 4:6-7, it "may be raised at

any time," even on appeal. [Macysyn v. Hensler](#), 329 N.J.Super. 476, 481 (App.Div.2000) (citation omitted); see also R. 4:6-2. "[A] court having subject matter jurisdiction is ... empowered to act in a specific controversy [within its subject matter jurisdiction] only if and to the extent it has jurisdiction over either the litigants or the subject matter of the controversy itself" [Last v. Audubon Park Assoes.](#), 227 N.J.Super. 602, 606 (App.Div.1988) (alterations in original) (quoting [Drobney v. Drobney](#), 146 N.J.Super. 317, 322 (App.Div.1977)), cert. denied, 114 N.J. 491 (1989). On this score, a foreclosure action, such as the present matter, that seeks a sale of the mortgaged premises is an action *quasi in rem*. [Montclair Sav. Bank v. Sylvester](#), 122 N.J. Eq. 518, 521 (E. & A.1937); [Cent. Penn Nat'l Bank v. Stonebridge Ltd.](#), 185 N.J.Super. 289, 302 (Ch. Div.1982) (citation omitted). In addition, it must be instituted in the state where the land is situated. [Guardian Life Ins. Co. of Am. v. Rita Realty Co.](#), 17 N.J. Misc. 87, 92 (Sup.Ct.1939). A foreclosure action involving lands situated in this State is brought in the Chancery Division, see R. 4:3-1(a)(1), and venue is laid in the county in which the mortgaged land is situated. [Countrywood Estates, Inc. v. Donnelly](#), 42 N.J.Super. 456, 459 (App.Div.1956); see also R. 4:3-2(a). Thus, "[t]he Chancery Division [will] ha [ve] in rem jurisdiction [if] the property is within New Jersey and subject to the court's control." [Last, supra](#), 227 N.J.Super. at 606 (citing [Drobney, supra](#), 146 N.J.Super. at 322). This is clearly the case here.

Defendant nevertheless argues that she enjoys "sovereign immunity" both as a member of an **Indi-antribe** because she is "Wanda Lee: Ben El Powell TM©, a Pre-Columbian Indigenous Sovereign Yamassee Muur/Moor," and as "the secured Private Party, Holder in due Course, by the Commercial Remedy in Law, Filing the UCC1 ... [and has] Regained [her] Divine Sovereign Human Rights." The mortgaged premises here in issue, however, have never been shown to be owned by a foreign sovereign, 28 U.S.C.A. § 1604, [Sablic v. Croat Line](#), 315 N.J.Super. 499, 510 (App.Div.1998), cert. denied, 158 N.J. 74 (1999), or belonging to an Indian Nation, derived from a colonial treaty with the

State. See [*Unalachtigo Band of Nanticoke-Lenni Lenape Nation v. State*, 375 N.J.Super. 330, 342, 345 \(App.Div.\), certif. denied, 184 N.J. 210 \(2005\)](#) (citations omitted). As to the latter, it has previously been determined that “the Yamassee do not have a treaty with the United States, are not recognized by the Bureau of Indians, and are not listed as a recognized **Indiantribe** in [*IRS Revenue Procedure 2002-64*](#).” *United States v. Sanders*, No. 1:05-CV-2458-JEC, 2007 U.S. Dist. LEXIS 64140, at *9 (N.D.Ga. Aug. 28, 2007) (holding that Yamassee members were required to pay federal income taxes). Thus, the Chancery Division had subject matter jurisdiction of the present matter.

*3 There was also personal jurisdiction over defendant. To be sure, if there is defective service, a judgment may be set aside as void for lack of personal jurisdiction without the need of the defendant to show a meritorious defense. R. 4:50-1(d); [*Jameson v. Great Atl. & Pac. Tea Co.*, 363 N.J.Super. 419, 425 \(App.Div.2003\), certif. denied, 179 N.J. 309 \(2004\)](#). Of course, a judgment void for lack of personal jurisdiction must be timely challenged. See [*City of Passaic v. Shennett*, 390 N.J.Super. 475, 486 \(App.Div.2007\)](#); [*Wohlegmuth v. 560 Ocean Club*, 302 N.J.Super. 306, 317 \(App.Div.1997\)](#). And “not every defect” in service of process constitutes a denial of due process qualifying defendant for relief from the default judgment. [*Rosa v. Araujo*, 260 N.J.Super. 458, 462 \(App.Div.1992\), certif. denied, 133 N.J. 434 \(1993\)](#) (citation omitted). Moreover, the defense of lack of personal jurisdiction is waivable and is, in fact, waived when the defendant appears without objection. See [*Hupp v. Accessory Distribs., Inc.*, 193 N.J.Super. 701, 711 \(App.Div.1984\)](#).

The primary method of obtaining in personam jurisdiction over real property owners in actions arising out of their realty or interest therein is through personal service. R. 4:4-4(a)(4). As to Rule 4:4-4's scope, ownership of real property in this State “is sufficient to confer ... personal jurisdiction [,]” even if ownership is through an out-of-state debtor. [*Ruiz v. Lloses*, 233 N.J.Super. 608, 611 \(App.Div.1989\)](#); see also [*Stern v. Stern*, 196 N.J.Super. 540, 544-45](#)

([*App.Div.1984*](#)) (holding that personal jurisdiction was conferred over a New York resident who served as trustee of New Jersey realty where the litigation involved interests in the realty).

In lieu of personal service, service may be made by registered, certified or ordinary mail, provided, however, that such service shall be effective for obtaining in personam jurisdiction only if the defendant answers the complaint or otherwise appears in response thereto, and provided further that default shall not be entered against a defendant who fails to answer or appear in response thereto.

[R. 4:4-4(c).]

Thus, optioned mail service is effective if an answer is filed and served. [*Citibank, N.A. v. Russo*, 334 N.J.Super. 346, 351-52 \(App.Div.2000\)](#).

And finally, as to service on absent defendants in quasi in rem actions such as the present matter, Rule 4:4-5 provides:

Whenever, in actions affecting specific property, or any interest therein, or any res within the jurisdiction of the court, ... wherein it shall appear by affidavit of the plaintiff's attorney or other person having knowledge of the facts, that a defendant cannot, after diligent inquiry, be served within the State, service may, consistent with due process of law, be made by ... the following ... method[]:

....

(c) ... by mailing, within 7 days after publication, a copy of the notice as herein provided and the complaint to the defendant, prepaid, to the defendant's residence or the place where the defendant usually receives mail....

*4 (1) The notice ... shall be in the form of a summons, without a caption....

(2) The inquiry ... shall be made by the ... plaintiff's attorney.... The affidavit of inquiry shall be made by the inquirer fully specifying the inquiry made, of what persons and in what manner, so that by the facts stated therein it may appear that diligent inquiry has been made for the purpose of effecting actual notice....

[R. 4:4-5(c)(1),(2).]

Thus, a diligent inquiry for the identity and location of the persons entitled to be noticed of the action shall be made. See [N.J. Tpk. Auth. v. Tootle, 59 N.J. 308, 313 \(1971\)](#). “A general appearance ... shall have the same effect as if the defendant had been properly served.” R. 4:4-6.

Here, the court enjoyed personal jurisdiction over defendant. In the first place, defendant did not raise this particular defense. In any event, plaintiff's foreclosure action was *quasi in rem* and defendant's mortgaged property is located in New Jersey; defendant received proper service of process and notice of the action by certified mail, R. 4:4-4(c); and most significantly, defendant made a general appearance, answered, and twice moved to dismiss the action.

Defendant nevertheless contends there was no personal jurisdiction because the mortgaged property was owned by “WANDA L. POWELL ©, ... a copyrighted *fiction*... [who] *IS NOT* a ‘juristic person’ nor a ‘defendant’ [over whom] the state would [have] exclusive jurisdiction.”^{FN2} Even so, service may be made on a person sufficiently “integrated with the [defendant]-organization that he [or she] will know what to do with the papers and that he or she ... [was] in a position ... [within the organization that the process server would reasonably assume that the person served had] authority to receive service.” [O'Connor v. Altus, 67 N.J. 106, 128 \(1975\)](#) (citation omitted). In any event, as noted, on March 10, 2006, defendant appeared in this matter and filed a contesting answer as well as affirmative defenses, undeniably conferring jurisdiction on the court.

^{FN2}. On February 28 and March 7, 2006, defendant recorded a trust, Wanda Lee Powell Trust, through a “UCC Financing Statement, New Construction Deed,” which she claims became the debtor on defendant's mortgaged residence. As to this “trust,” defendant alleges that the mortgaged property is held by a “copyrighted fiction” and, thus, “exempt from levy and foreclosure.”

Lastly, defendant raises a host of other challenges to the foreclosure judgment, including that the lender was unauthorized to lend money under the ultra vires doctrine; “that Countrywide Home Loans did not loan any money to assist in buying a house[;]” that plaintiff's attorneys “illegally acquired the alleged debt by assignment after said debt was discharged by Bond[;]” and that defendant had satisfied the debt by tendering “[her] promissory Note (which is my credit) and it was accepted by the lending institution, [then] the house in question was paid for.” These claims are equally meritless. R. 2:11-3(e)(1)(E).

“The only material issues in a foreclosure proceeding are the validity of the mortgage, the amount of the indebtedness, and the right of the mortgagee to resort to the mortgaged premises.” [Great Falls Bank v. Pardo, 263 N.J.Super. 388, 394 \(Ch. Div.1993\)](#), *aff'd*, [273 N.J.Super. 542 \(App.Div.1994\)](#) (citations omitted); *see also* R. 4:64-5. Here, there is no genuine issue of material fact that defendant's mortgage was valid, her loan was in default, she failed to establish valid defenses, and thus plaintiff was entitled to resort to the mortgaged premises.

*5 Affirmed.

N.J.Super.A.D., 2007.

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Not Reported in A.2d, 2007 WL 3376639 (N.J.Super.A.D.)

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