NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-2497-12T3
A-2498-12T3

WOODLAKE AT KING'S GRANT
CONDOMINIUM ASSOCIATION, INC.,

Plaintiff-Appellant,

v.

CHRISTOPHER COUDRIET,

Defendant-Respondent.

WOODLAKE AT KING'S GRANT
CONDOMINIUM ASSOCIATION, INC.,

Plaintiff-Appellant,

v.

DARREL MESEY,

Defendant-Respondent.

Argued November 4, 2013 – Decided April 1, 2014

Before Judges St. John and Leone.

On appeal from Superior Court of New Jersey, Chancery Division, Burlington County, Docket No. F-010054-11.

David J. Byrne argued the cause for appellant (Herrick, Feinstein LLP, attorneys; Mr. Byrne and Stefanie Lampf, on the brief).

Respondents Christopher Coudriet and Darrell Mesey have not filed a brief.

PER CURIAM

In this consolidated appeal, we must determine whether the motion judge erred by denying the application of plaintiff Woodlake at King's Grant Condominium Association, Inc. (the Association) to appoint a rent receiver for two condominium units separately owned by defendants Christopher Coudriet and Darrel Mesey. Because we conclude that the motion judge did not abuse her discretion, we affirm.

Woodlake at King's Grant is a residential condominium development in the Township of Evesham, established pursuant to the New Jersey Condominium Act, N.J.S.A. 46:8B-1 to -38. Mesey owns the unit located at 386 Woodlake Drive, while Coudriet owns the unit at 176 Woodlake Drive. Neither Coudriet nor Mesey occupies his unit. Both units are vacant and abandoned. Despite making demand for payment, the Association has not received assessments from Coudriet or Mesey for their respective unit.

Coudriet has failed to pay the Association more than $10,000 in assessments since 2010, and the Association has recorded liens against his unit. Coudriet took out a $198,150 mortgage on the unit, which was recorded in 2005 by mortgagee Wells Fargo Bank, N.A. (Wells Fargo). Wells Fargo initiated

foreclosure proceedings on the unit in 2010, and filed a motion for final judgment of foreclosure in 2012.

Mesey likewise has not paid assessments in excess of $10,000 since 2010, and the Association recorded liens against his unit as well. Mesey took out a mortgage in the original amount of $139,573 against his unit, which Wells Fargo, as mortgagee, recorded in 2009. Wells Fargo filed a foreclosure complaint in 2009, and moved for final judgment of foreclosure in 2012.

In 2011, the Association filed and served separate complaints against Mesey and Coudriet to foreclose on its liens. Neither defendant filed an answer, and the foreclosure unit thereafter entered default in each matter.

On February 16, 2012, the Association moved for an order appointing a rent receiver for each unit. On April 30, 2012, the motion judge denied each request, and the Association appealed from those orders. On January 24, 2013, we granted the Association's motions for leave to appeal and consolidated the two matters.

The Association seeks appointment of a receiver so that it may then rent out defendants' vacant units and use the proceeds to pay the overdue assessments. We accept, for purposes of this opinion, the Association's submissions demonstrating that its

assessment liens will remain unpaid after foreclosure because Wells Fargo's mortgage liens on the units exceed their fair market value. However, as the Association acknowledges, no tenants currently occupy either unit and hence there is no existing rent for a receiver to collect even if appointed.

The Association has not demonstrated that defendants have an affirmative obligation to rent their respective units, let alone any authority on the part of the Association itself to rent those units to new tenants. Nor have we been presented with any indication that defendants misappropriated rents.

We note that the Association has failed to present us with complete copies of its master deed and bylaws. Nevertheless, it does not contend that those documents, or any other agreement between the parties, provide for the appointment of a rent receiver.

Although it is not the primary lien-holder here and the Condominium Act does not expressly authorize such relief, the Association nevertheless contends that a Chancery Division judge has the power to appoint a rent receiver. The Association argues that the denial of its motion was erroneous as a matter of law, an abuse of discretion, and will result in a manifest denial of justice.

While the Association asserts that New Jersey courts have appointed receivers under similar circumstances and has provided this court with copies of such orders, no court has published an opinion on point. Our courts have, however, addressed the appointment of rent receivers with regard to mortgage indebtedness, and those decisions offer us some guidance.

At the outset, we note that even if the Association had contracted for the right to the appointment of a rent receiver, we have previously held that such appointment "solely in enforcement of a contractual right" is a "usurpation" of the judicial function and violative of public policy. Barclays Bank, P.L.C. v. Davidson Ave. Assocs., 274 N.J. Super. 519, 522-23 (App. Div. 1994). Though the existence of an express agreement is accorded due weight in determining whether to appoint a receiver, id. at 523-24, the application is always subject to equitable considerations in the Chancery Division judge's exercise of discretion. 30 New Jersey Practice, Law of Mortgages § 22.3, at 152-53 (2d ed. 2000)[hereinafter Law of Mortgages].

A mortgagee in a foreclosure action may be entitled to the appointment of a receiver in equity "when it appears necessary for the protection of the mortgagee." Fidelity Union Trust Co. v. Pasternack, 123 N.J. Eq. 181, 183-84 (E. & A. 1937). "Such

appointment is always within the sound discretion of the court." Law of Mortgages, supra, § 22.8 at 148 (citing Fidelity Union Trust, supra, 123 N.J. Eq. at 183; Barclays Bank, supra, 274 N.J. Super. at 520). Receivers will not be appointed as a matter of course, but only upon careful examination of the mortgagee's reasonable need for protection. See N.J. Nat'l Bank & Trust Co. v. Morris, 9 N.J. Misc. 444, 445 (Dist. Ct. 1931) (noting that "[t]his situation is commonly shown by evidence that the security is uncertain or precarious and that the mortgagor cannot be made to respond to any deficiency which may arise at the foreclosure sale"). In our most recent decision in this context, we framed the inquiry as whether the mortgagor's acts or omissions "ha[ve] created a real danger of impairment of the mortgagee's security." Barclays Bank, supra, 274 N.J. Super. at 520; see also Law of Mortgages, supra, § 22.2 at 148-49 (summarizing the historical evolution of the test for appointing a receiver in mortgage foreclosure actions).

Generally speaking, in the mortgage context, courts have focused on factors like: (1) the inadequacy of the mortgage security when compared to the outstanding mortgage debt; (2) the inability of the mortgagor to pay the debt; (3) the failure of the mortgagor to allocate rent for taxes, insurance, water rents, or interest on prior mortgages; and (4) the mortgagor's

failure to make necessary repairs, resulting in waste of the property. Law of Mortgages, supra, §§ 22.2 at 148-50, 22.8 at 158; cf. Restatement (Third) of Property: Mortgages § 4.3(a)(1997)("A mortgagee is entitled to the appointment of a receiver . . . if (1) the mortgagor is in default under the mortgage; (2) the value of the real estate is inadequate to satisfy the mortgage obligation; and (3) the mortgagor is committing waste.").

Courts have consistently ruled the mortgagee is entitled to recover rents collected after default from the mortgagor where a mortgage includes a provision assigning rents collected after default to the mortgagee. See Stanton v. Metro. Lumber Co., 107 N.J. Eq. 345, 347 (Ch. 1930)("Although it is held that the bank is not entitled to the rents as mortgagee, they, however, belong to it under the assignment contained in the mortgage . . . . The assignment, though conditional, became absolute upon default of the mortgage debt, and was valid and enforceable against the assignor"); see also Paramount Bldg. & Loan Ass'n v. Sacks, 107 N.J. Eq. 328, 330 (Ch. 1930)("It is, of course, competent for the parties to provide in the mortgage for the payment of rents and profits to the mortgagee, even while the mortgagor remains in possession"). Here, there is no contractual provision assigning rents collected after default to the Association.

Further, as the motion judge recognized, even though the prior mortgage indebtedness on each unit appears to far exceed the fair market value of the units, the Association is seeking the right to rent out each unit and collect the rents without giving notice to the mortgage lender and affording the lender the opportunity to be heard.

The motion judge, in her written statement of reasons, determined that the Association "has not shown that the extraordinary remedy of appointing a rent receiver is appropriate here." Assuming arguendo that a condominium association has the right to seek appointment of a rent receiver under appropriate circumstances, we find no abuse of discretion in denying such a request under the circumstances presented here.

"The appointment of any receiver is an extraordinary remedy and involves the delicate exercise of judicial discretion." First Nat'l State Bank v. Kron, 190 N.J. Super. 510, 513 (App. Div.), certif. denied, 95 N.J. 204 (1983). Thus, we review such exercise of the Chancery Division's equitable authority for abuse of discretion. See id. at 516; Fidelity Union Trust, supra, 123 N.J. Eq. at 183-84; cf. Horizon Health Ctr. v. Felicissimo, 135 N.J. 126, 137 (1994); Bubis v. Kassin, 353 N.J. Super. 415, 425 (App. Div. 2002). We are also limited in our

review of a judge's fact-finding, determining only whether the findings made could reasonably have been reached on "sufficient" or "substantial" credible evidence in the present record. *Close v. Kordulak Bros.*, 44 *N.J.* 589, 599 (1965); *see also* *Rova Farms Resort, Inc. v. Investors Ins. Co. of Am.*, 65 *N.J.* 474, 483-84 (1974). Governed by these standards, we find sufficient evidence in the record to support the judge's findings and no mistaken exercise of discretion in the application of the legal standard to these facts.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION