

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LUIS E. MUNOZ AND : CIVIL ACTION  
DEBORAH N. MUNOZ :  
 :  
v. :  
 :  
SOVEREIGN BANK : NO. 06-2876

MEMORANDUM

Bartle, C.J.

September 18, 2006

Plaintiffs Luis E. Munoz and Deborah N. Munoz have sued defendant Sovereign Bank in this diversity action seeking a declaratory judgment that Sovereign Bank violated the Pennsylvania Deficiency Judgment Act (the "Act"), 42 Pa. Cons. Stat. Ann. § 8103. Further, plaintiffs are seeking recovery based on breach of contract, conversion and fraud. Before the court is defendant's motion to dismiss the complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

Under Rule 12(b)(6), a claim should be dismissed only where it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Cal. Pub. Employees' Ret. Sys. v. Chubb Corp., 394 F.3d 126, 143 (3d Cir. 2004). All well-pleaded allegations in the complaint must be accepted as true, and all reasonable inferences are drawn in favor of the non-moving party. Id. We may consider "the allegations contained in the complaint, exhibits attached

thereto, and matters of public record." Beverly Enterprises, Inc. v. Trump, 182 F.3d 183, 190 n.3 (3d Cir. 1999); Pension Benefit Guar. Corp. v. White Consol. Indus. Inc., 998 F.2d 1192, 1196 (3d Cir. 1993). The parties' memoranda frequently refer to filings in the Court of Common Pleas of Philadelphia County and the United States Bankruptcy Court, District of New Jersey. As matters of public record, the court may properly consider these records on a motion to dismiss. In deciding such a motion, a court also may consider "document[s] *integral to or explicitly relied upon* in the complaint ... without converting the motion [to dismiss] into one for summary judgment." In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997) (emphasis in original) (quoting Shaw v. Digital Equip. Corp., 82 F.3d 1194, 1220 (1st Cir. 1996)).

For present purposes, we accept as true the following facts. Plaintiffs borrowed money from Sovereign Bank to purchase a commercial property and going business at 4401 Castor Avenue in Philadelphia, Pennsylvania. Plaintiffs subsequently defaulted on the loan. On November 28, 2003, Sovereign Bank confessed judgment against plaintiffs and their business, General Farmers Market, for \$1,149,210.09 in the Court of Common Pleas of Philadelphia County. Thereafter, Sovereign Bank commenced a foreclosure action against plaintiffs' commercial property on Castor Avenue and obtained a default judgment for \$1,116,334.84 on April 7, 2004.

Plaintiffs filed bankruptcy under Chapter 11 on May 28, 2004. However, the bankruptcy proceeding was later converted to a Chapter 7 proceeding. Sovereign Bank obtain relief from the automatic bankruptcy stay pursuant to 11 U.S.C. § 362(d) to continue with foreclosure actions against plaintiffs in Pennsylvania and New Jersey. It executed against the commercial property on Castor Avenue and purchased the property at sheriff's sale for \$31,000. The deed was delivered to Sovereign Bank and recorded on September 24, 2005. Plaintiffs' residential property in Moorestown, New Jersey was then sold on January 31, 2006, with plaintiffs' consent, pursuant to a judicial sale. Sovereign Bank, which held a second mortgage on the residential property, received \$587,000 from the judicial sale toward the satisfaction of its judgment against plaintiffs.

Plaintiffs' complaint alleges that Sovereign Bank failed to comply with the Pennsylvania Deficiency Judgment Act. The Act prevents creditors from purchasing a debtor's real property, often at below market value, and continuing to execute on the debtor's other property to satisfy the judgment without considering the fair market value of the previously executed-upon property when determining the balance due on the judgment. The Act provides:

Whenever any real property is sold, directly or indirectly, to the judgment creditor in execution proceedings and the price for which such property has been sold is not sufficient to satisfy the amount of the judgment, interest and costs and the judgment creditor seeks to collect the balance due on said

judgment, interest and costs, the judgment creditor shall petition the court to fix the fair market value of the real property sold.

42 Pa. Cons. Stat. Ann. § 8103(a).

Judgment creditors must file a petition with the court to fix the fair market value of the real property within six months of the sale. 42 Pa. Cons. Stat. Ann. § 5522(b)(2). The six month period begins on the date the deed is delivered to the creditor, not the date of the sheriff's sale. Fidelity Bank, N.A. v. Bourger, 663 A.2d 213, 215 (Pa. Super. Ct. 1995). If, at the expiration of the six month period, the creditor has failed to file a petition to fix the fair market value of the property, the debtor may then file a petition with the court:

[S]etting forth the fact of the sale, and that no petition has been filed within the time limited by section 5522 to fix the fair market value of the property sold, whereupon the court, after notice as prescribed by general rule, and being satisfied of such facts, shall direct the clerk to mark the judgment satisfied, released and discharged.

42 Pa. Cons. Stat. Ann. § 8103(d).

Sovereign Bank argues that the facts alleged by plaintiffs, even if true, do not establish that it has violated the Act. Specifically, Sovereign Bank maintains that: (1) it did not execute against plaintiffs' residential property; (2) at the time the residential property was sold, it still had two months to petition the court to fix the fair market value of the commercial property on Castor Avenue under the Act; and (3)

plaintiffs failed to object to the judicial sale of their residential property.

Sovereign Bank misinterprets the requirements under the Act. The language of the statute does not require fair market value to be fixed only when the creditor executes against a second property. The statute requires the creditor to petition the court before "seek[ing] to collect the balance due . . . ." 42 Pa. Cons. Stat. Ann. § 8103(a) (emphasis added). Sovereign Bank's obligations under the Act were triggered by the receipt of the deed for the commercial property on Castor Avenue. Whether or not the sale of the residential property is deemed an execution, Sovereign Bank is subject to the Act's requirements simply by continuing to collect the balance of the judgment.

Sovereign Bank contends that it was not subject to the Act because it acted against the residential property within four months after the deed for the commercial property was recorded. We disagree. The six month period a creditor has to file a petition to fix fair market value under the Act does not give the creditor a six month window in which to undermine the protection the Act affords a debtor. The creditor during that period is not given carte blanche to collect the difference between the judgment and the price which the creditor paid at the sheriff's sale of the first property subject to foreclosure. Auerbach v. Corn Exch. Nat'l Bank & Trust Co., Philadelphia, 148 F.2d 709, 712 (3d Cir. 1945), Valley Trust Co. of Palmyra v. Lapitsky, 448 A.2d 608, 611-12 (Pa. Super. Ct. 1985). Without a court first

determining the fair market value of the commercial property on Castor Avenue, it is impossible to know what, if any, deficiency remains in the judgment against plaintiffs.

Finally, Sovereign Bank maintains that plaintiffs consented to the judicial sale of their residence. The Act states: "Any agreement made by any debtor at any time, either before or after or at the time of incurring any obligation, to waive the benefits of this section or to release any obligee from compliance with the provisions hereof shall be void." 42 Pa. Cons. Stat. Ann. § 8103(e). This provision was inserted into the Act to prevent loan or mortgage companies, with their superior bargaining power, from requiring a debtor or mortgagor to forego the benefit of the Act in return for a loan. Fidelity Fed. Sav. & Loan Assoc. v. Capponi, 684 A.2d 580, 586 (Pa. Super. Ct. 1996). Thus, the deficiency waiver contained in plaintiffs' residential property mortgage does not bind plaintiffs and does not exempt Sovereign Bank from complying with the Act. Although Sovereign Bank argues that plaintiffs could have objected to the judicial sale of their residential property, any failure to object to the judicial sale does not relieve Sovereign Bank of its duties under the Act. Accordingly, its motion to dismiss plaintiffs' declaratory judgment action under the Pennsylvania Deficiency Judgment Act will be denied.

Plaintiffs' claims for breach of contract, conversion and fraud are derived from Sovereign Bank's alleged violation of the Act. In addition, plaintiffs claim that Sovereign Bank made

certain misrepresentations regarding the repercussions of failing to consent to the judicial sale of their residential property. At this stage in the proceedings, accepting all well-plead allegations as true, Sovereign Bank has failed to show that there are no circumstances under which plaintiffs may obtain relief. Defendant's motion to dismiss these claims will also be denied.

