NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

FIRST NIAGARA BANK, NA Appellee v. ALFONSO J. SEBIA AND PAMELA G. SEBIA, Appellants	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2561 EDA 2013

Appeal from the Order August 23, 2013
in the Court of Common Pleas of Carbon County
Civil Division at No.: 12-0688

BEFORE: SHOGAN, J., OTT, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.: **FILED APRIL 23, 2014**

Appellants, Alfonso J. and Pamela G. Sebia, appeal from the order of August 23, 2013, which granted summary judgment in favor Appellee, First Niagara Bank, N.A., in this mortgage foreclosure action. For the reasons discussed below, we affirm.

On October 7, 2005, Appellants executed a mortgage for $270,000.00 with Harleysville National Bank and Trust Company, a predecessor in interest to Appellee. Harleysville National Bank and Trust Company merged with Appellee on April 9, 2010. Appellants defaulted on the mortgage in February 2011.

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* Retired Senior Judge assigned to the Superior Court.

Appellee filed the instant action in mortgage foreclosure on March 28, 2012. Appellants filed an answer with new matter on April 12, 2012. Appellee served Appellants with a request for admissions and request for production of documents on April 25, 2012. Appellants replied on May 4, 2012.

Appellee filed the instant motion for summary judgment on September 17, 2012. Appellants filed an answer on October 18, 2012. Following oral argument on November 29, 2012, the trial court granted Appellee's motion for summary judgment.

The instant, timely appeal followed. Pursuant to the trial court's order, Appellants filed a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b) on September 12, 2013. On November 1, 2013, the trial court filed an opinion. ***See*** Pa.R.A.P. 1925(a).

On appeal, Appellants raise the following issue for our review:

> 1. Is [s]ummary [j]udgment proper where genuine issues of material fact remain?

(Appellants' Brief, at 3).

Appellants claim that the trial court erred in granting Appellee's motion for summary judgment. The applicable scope and standard of review are as follows.

> Pennsylvania law provides that summary judgment may be granted only in those cases in which the record clearly shows that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law. The moving party has the burden of proving that no genuine issues of

> material fact exist. In determining whether to grant summary judgment, the trial court must view the record in the light most favorable to the non-moving party and must resolve all doubts as to the existence of a genuine issue of material fact against the moving party. Thus, summary judgment is proper only when the uncontroverted allegations in the pleadings, depositions, answers to interrogatories, admissions of record, and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. In sum, only when the facts are so clear that reasonable minds cannot differ, may a trial court properly enter summary judgment.
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> . . . With regard to questions of law, an appellate court's scope of review is plenary. The Superior Court will reverse a grant of summary judgment only if the trial court has committed an error of law or abused its discretion. Judicial discretion requires action in conformity with law based on the facts and circumstances before the trial court after hearing and consideration.

Cresswell v. Pa Nat'l Mut. Cas. Ins. Co., 820 A.2d 172, 177 (Pa. Super. 2003) (citation and emphasis omitted).

Appellants aver that the trial court erred in granting summary judgment because there are genuine issues of material fact remaining: namely, a dispute over the fees awarded to Appellee. (***See*** Appellant's Brief, at 5-12). We disagree.

> The Pennsylvania Rules of Civil Procedure allow disposition of a case on summary judgment only where the record demonstrates an absence of factual questions material to the elements of the disputed causes of action. We have held accordingly that:
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> > [A] proper grant of summary judgment depends upon an evidentiary record that either (1) shows the material facts are undisputed or (2) contains insufficient evidence of facts to make out a *prima facie* cause of action or defense[.] . . . [t]he non-moving party must adduce sufficient evidence on an issue essential to its case and on which it

> bears the burden of proof such that a jury could return a verdict favorable to the non-moving party.

Sass v. AmTrust Bank, 74 A.3d 1054, 1058-59 (Pa. Super. 2013), *appeal denied*, --- A.3d ----, (Pa. February 4, 2014) (citation and quotation marks omitted).

Further, the Pennsylvania Rules of Civil Procedure provide that:

> Averments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication. A general denial or a demand for proof, except as provided by subdivisions (c) and (e) of this rule, shall have the effect of an admission.

Pa.R.C.P. 1029(b).

In the context of mortgage foreclosure proceedings, this Court has held that "general denials by mortgagors that they are without information sufficient to form a belief as to the truth of averments as to the principal and interest owing must be considered an admission of those facts." ***First Wisconsin Trust Co. v. Strausser***, 653 A.2d 688, 692 (Pa. Super. 1995) (citation omitted). Here, the record demonstrates that Appellants made only general denials regarding the allegations in the complaint, including the amounts owed to Appellee. (***See*** Answer to Complaint and New Matter, 4/12/12, at unnumbered page 2 ¶ 7). By making only a general denial of the amounts owed in their answers, Appellants have admitted those facts. Thus, a genuine issue of material fact no longer existed at summary judgment. ***See N.Y. Guardian Mortg. Corp. v. Dietzel***, 524 A.2d 951,

952 (Pa. Super. 1987) (citing ***Cercone v. Cercone***, 386 A.2d 1 (Pa. Super. 1978)).

As noted, Appellants made only general denials with respect to the averments in the complaint, thus effectively admitting the allegations set forth therein. Further, Appellants, in their response to the motion for summary judgment, failed to produce their own calculation of the fees and did not provide any specific explanation as to why they believe the amount sought was incorrect. (***See*** Answer to [Appellee]'s Motion for Summary Judgment, 10/18/12, at 1-5; ***id.*** at 4 ¶ 19). In order to raise a genuine issue of material fact at summary judgment, a defendant must do more than rest on the pleadings; he or she must meet the burden of producing facts to counter the plaintiff's averments. ***See N.Y. Guardian Mortg. Corp.***, ***supra*** at 952-53.

A specific denial of the amount due can constitute a genuine issue of material fact that precludes the grant of summary judgment. ***See First Mortg. Co. of Pa. v. McCall***, 459 A.2d 406, 408 (Pa. Super. 1983). However, Appellants here, like the appellant in ***McCall***, made only general denials in their answer to the complaint, which our Court concluded in ***McCall*** was insufficient to maintain the issues for summary judgment. ***See id.*** at 407-08. Further, in ***McCall***, the appellant in her answer did state that "[t]he amount of the loan is $100,000 less payments made to date." ***Id.*** at 407. This Court found that "it [was] arguable" that the statement

represented "a specific denial of the amount due, which is a material fact in this case." ***Id.*** at 408.

Lastly, in ***McCall***, we ultimately found that despite this specific dispute regarding the amount of the judgment, the trial court correctly granted summary judgment because the appellee supported its motion for summary judgment with an affidavit, which supported the amount claimed, while the appellant did not. ***See id.*** at 408. We stated that the appellant could not "rely upon [her] pleadings to controvert those facts presented by the moving parties' [affidavits]." ***Id.*** (citation omitted).

Here, Appellants never made any such specific denials in their answers. (***See*** Answer to Complaint and New Matter, 4/12/12, at unnumbered page 2 ¶ 7). Further, as in ***McCall***, Appellee's motion for summary judgment contained an affidavit, which supported the amount claimed. (***See*** [Appellee's] Motion for Summary Judgment, 7/18/12, Exhibit K, at 79a-82a).[1] However, Appellants' response did not contain any affidavits supporting their contention that the amount of fees or other monies owed was erroneous. (***See*** Answer to [Appellee]'s Motion for Summary Judgment, 10/18/12, at 1-5). Because Appellants did not do so, they failed to raise properly a genuine issue of material fact with respect to the disputed fees for purposes of summary judgment. Thus, they have not

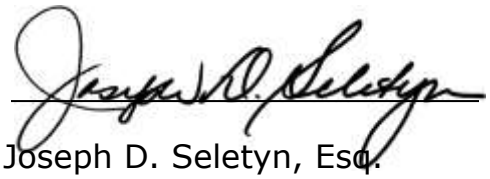
[1] [Appellee's] motion for summary judgment does not have page numbers; therefore, we have cited to the page numbers in the reproduced record.

shown that the trial court abused its discretion or made an error of law in granting summary judgment. ***See Cresswell***, ***supra*** at 177; ***First Wisconsin Trust Co.***, ***supra*** at 692; ***N.Y. Guardian***, ***supra*** at 952-53; ***McCall***, ***supra*** at 407-08.

Accordingly, for the reasons discussed above, we find that the trial court neither abused its discretion nor committed an error of law in this matter. ***See Cresswell***, ***supra*** at 177. Thus, the grant of summary judgment was proper.

Order affirmed. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/23/2014