

Peng v. Landmark Bldg. & Dev. Corp.

Superior Court of New Jersey

February 21, 2018, Decided

DOCKET NO. A-4114-14T1

Reporter

2018 N.J. Super. Unpub. LEXIS 393 *

ELVIRA PENG, Plaintiff-Appellant, v. LANDMARK BUILDING & DEVELOPMENT CORP., KARL E. SENSEMAN, RORY SENSEMAN, LANDIS TITLE CORP., CITI MORTGAGE INC., and (COMMERCE BANK) n/k/a TD BANK and MERS, Defendants-Respondents, and LARRY YACUVILLI, Defendant.

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Core Terms

Mortgage, orders, amended complaint, res judicata

Opinion

[*1] APPELLATE DIVISION

Before Judges O'Connor and Vernoia.

On appeal from Superior Court of New Jersey,

Law Division, Cumberland County, Docket No.

L-1059-14.

Elvira Peng, appellant pro se.

Phillip S. Van Embden, PC, attorneys for respondents Landmark Building Development Corp., Karl E. Senseman, Rory Senseman and

Landis Title Corp. (Teri L. Giordano, on the brief).

Sills Cummis & Gross PC, attorneys for respondents Citi Mortgage Inc. and MERS (Joshua N. Howley, of counsel and on the brief; Megan L. Wiggins, on the brief).

Brown & Connery, LLP, attorneys for respondent

TD Bank (Jeffrey R. Johnson and Michael J.

Watson, on the brief).

PER CURIAM

Plaintiff **Elvira Peng** appeals from: a March 20, 2015 order

denying her motion to vacate orders entered by United States

District Court Judge Renee Marie Bumb, and dismissing the complaint

as to defendants Citi Mortgage, Inc. and Commerce Bank n/k/a TD

Bank, N.A.; an April 13, 2015 order dismissing the complaint as

to defendants Landmark Building Dev. Co., Karl E. Senseman, Rory

Senseman and Landis Title Corp.; and April 24, 2015 orders

dismissing the complaint as to defendant MERSCORP Holdings Inc.

(MERS) and denying plaintiff's [*2] motion for a temporary restraining

order and preliminary injunction.¹ We affirm.

¹ Although Larry Yacuvilli is named as a defendant in the

complaint, the record is devoid of any evidence he was served with the complaint or participated in the matter before the trial court. We also note the case information statements filed by the respective defendants indicate that the orders under appeal are not final orders. See [R. 2:2-3](#) (permitting appeals of right only "from final judgments of the Superior Court trial divisions"). The record on appeal, however, does not include any evidence suggesting the orders from which plaintiff appeals are not final

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i.

Plaintiff's complaint is the fourth she has filed asserting fraud, federal and state statutory claims, and common law claims arising out of her November 2004 purchase of a residence from defendant Landmark Building Dev. Co., the financing of the purchase with Commerce Bank, and the 2006 refinancing of the mortgage with Citi Mortgage. Central to her claims is the allegation that the square footage of the residence was greater than what was represented at the time of purchase and that, as a result, her [*3] real estate taxes, mortgage escrows and other costs associated with the purchase were greater than she reasonably understood.

On December 16, 2011, plaintiff and Daniel Chiong filed a pro se complaint in the Law Division against Citi Mortgage and Commerce Bank. In part, the complaint alleged that the square footage of the residence had been misrepresented and claimed that Citi Mortgage and Commerce Bank made misrepresentations and took other unlawful actions in connection with the 2004 mortgage and 2006 refinance.

While the state court action was pending, on January 18, 2012 plaintiff filed a complaint in the United States District Court

judgments within the meaning of [R. 2:2-3](#), and defendants have not moved for dismissal of the appeal claiming the orders are interlocutory.

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for the District of New Jersey alleging the same claims against Citi Mortgage, Commerce Bank and MERS. The state court action was removed to federal court, and Judge Bumb consolidated the two actions.

Citi Mortgage and MERS moved to dismiss the complaint. The District Court granted the motion without

prejudice, and allowed plaintiff and Chiong thirty days to file an amended complaint. [*4] On May 18, 2012, they filed an amended complaint in the District Court naming the City of Vineland, Landmark Building Dev. Co., Landis Title Corp., Citi Mortgage and Commerce Bank as defendants. The complaint asserted claims for fraud, breach of contract, violation of the Consumer Fraud Act, N.J.S.A. 56:8 -1 to -206, and violation of various federal statutes. Again, the claims were founded on the alleged misrepresentation of the square footage of the residence, and the 2004 and 2006 financings.

Defendants moved for dismissal of the amended complaint. After hearing oral argument, Judge Bumb entered a September 24, 2012 order dismissing the amended complaint with prejudice against Vineland and dismissing federal statutory claims with prejudice, and provided plaintiff and Chiong an opportunity to re-plead their fraud claims.

In October 2012, plaintiff and Chiong moved for leave to file a second amended complaint. In a September 17, 2013 written

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opinion and order, Judge Bumb denied the motion, finding that "having provided [p]laintiffs with several opportunities to cure the deficiencies in their complaint . . . further amendments would be futile," and dismissed the [*5] first amended complaint as to all remaining defendants with prejudice. Plaintiff and Chiong did not appeal the court's order.

More than a year later, on December 29, 2014, plaintiff filed a complaint in the Law Division in Cumberland County alleging the same claims based on the same facts as those alleged in the first amended complaint in the federal action. Plaintiff named Landmark Building Dev. Co., Landis Title Corp., Karl E. Senseman, Rory Senseman, Citi Mortgage, Commerce Bank, and MERS as defendants. At different times, defendants subsequently moved to dismiss the complaint.

In separate detailed written decisions and orders entered on March 20, 2015, April 13, 2015, and April 24, 2015, Judge Richard J. Geiger dismissed the complaint with prejudice as to all defendants.² The judge held the claims asserted in the complaint were a virtual mirror image of those asserted in plaintiff's first amended complaint in the federal action. Noting that the claims were dismissed with prejudice in the federal court, the judge

2 The March 20, 2015 order also denied plaintiff's motion to vacate Judge Bumb's dismissal orders.

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determined the complaint was barred [*6] under the doctrine of res

judicata and by the entire controversy doctrine. See generally,

[Wadeer v. N.J. Mfrs. Ins. Co., 220 N.J. 591, 605 \(2015\)](#) (discussing

the principles and policies underlying the entire controversy doctrine and res judicata). The judge further determined plaintiff's claims were time-barred under the statute of

limitations, see [N.J.S.A. 2A:14-1](#), and otherwise failed to state

a claim upon which relief could be granted, [R. 4:6-2\(e\)](#).

This appeal followed. On appeal, plaintiff argues the court

erred in dismissing her complaint with prejudice and requests reversal of the trial court orders.

We first note that plaintiff's brief on appeal does not include any legal argument that the motion court erred by

dismissing her claims based on res judicata or entire controversy

grounds.³ An issue that is not briefed is deemed

waived. [Jefferson Loan Co. v. Session, 397 N.J. Super. 520, 525](#)

3 Plaintiff's brief does not include point headings as required

by [Rule 2:6-2\(a\)\(6\)](#). An appellate court may refrain from

consideration of arguments not properly submitted under point headings. [Mid-Atl. Solar Energy Indus. v. Christie, 418 N.J. Super. 499, 508 \(App. Div. 2011\)](#). See also Pressler & Verniero, Current N.J. Court Rules, cmt. 2 to [R. 2:6:2](#) at 691 (2018). Although plaintiff failed to include the required point headings, we reviewed the brief to discern the arguments she made in [*7] support

of her appeal.

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n.4 (App. Div. 2008); see also [Zavodnick v. Leven, 340 N.J. Super.](#)

94, 103 (App. Div. 2001); [R. 2:6-2\(a\)\(6\)](#).

In any event, based on our review of the record, we discern

no basis to reverse the court's orders, and find insufficient

merit in plaintiff's contentions to warrant a discussion in a

written opinion. [R. 2:11-3\(e\)\(1\)\(E\)](#). We affirm substantially for

the reasons in the judge's well-reasoned March 20, 2015, April 13,

2015 and April 24, 2015, written decisions and orders dismissing

the complaint based on res judicata and entire controversy

grounds.⁴

Affirmed.

4 Because the complaint was properly dismissed on res judicata and entire controversy grounds, it is unnecessary to address plaintiff's claim the court erred by finding the complaint was barred by the statute of limitations.

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