

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
THIRD DEPARTMENT

Associates First Capital v. Crabill

51 A.D.3d 1186, 857 N.Y.S.2d 799 (N.Y. App. Div. 2008) · Decided May 8, 2008

SUMMARY

The New York Appellate Division, Third Department, held that the trial court should not have treated defendants’ opposition papers as waived solely because they were served less than seven days before the return date, where the delay was minimal, explained, and nonprejudicial. The court nevertheless affirmed summary judgment dismissing the defendants’ intentional-infliction-of-emotional-distress counterclaim because the alleged mortgage-collection conduct did not meet the stringent outrageousness requirement.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Lahtinen, J.; Peters, J.; Spain, J.; Rose, J.; Kavanagh, J.
JURISDICTION	New York
DECIDED	May 8, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order granting plaintiff summary judgment dismissing their counterclaims in a foreclosure-related dispute.
STANDARD OF REVIEW	The court reviewed whether Supreme Court properly rejected defendants' late opposition papers and whether the record raised a triable issue of fact warranting denial of summary judgment.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Georgianne Crabill, William Crabill v. Associates First Capital

TOPICS

- summary judgment
- intentional infliction of emotional distress
- civil procedure
- mortgages

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Supreme Court abused its discretion by refusing to consider defendants' opposition papers served less than seven days before the return date.
2. Whether defendants' evidence raised a triable issue of fact on their intentional-infliction-of-emotional-distress counterclaim.

HOLDINGS

1. Supreme Court erred in treating plaintiff's motion as unopposed and granting summary judgment solely because defendants' opposition papers were untimely, where the delay was less than one week, defendants supplied a detailed excuse, plaintiff showed no prejudice, and plaintiff used the additional time to submit a substantial reply.
2. Summary judgment dismissing defendants' intentional-infliction-of-emotional-distress counterclaim was proper because the alleged collection conduct, including foreclosure threats, embarrassing workplace calls, disputed statements about the debt, and resulting stress, did not constitute conduct sufficiently outrageous to satisfy the claim's rigorous standard.

KEY QUOTATIONS

“While a court can in its discretion accept late papers, CPLR 2214 and 2004 mandate that the delinquent party offer a valid excuse for the delay” (51 A.D.3d at 1187)

“Under such circumstances and in light of the preference for resolving cases on their merits, as well as the fact that lesser sanctions would have better addressed the short delay, we find that Supreme Court erred in considering plaintiff's motion unopposed and granting the motion upon such ground.” (51 A.D.3d at 1188)

“Such a cause of action will be “found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community”” (51 A.D.3d at 1188)

FACTUAL BACKGROUND

Defendants refinanced a prior loan secured by mortgages on their Albany County home and disputed the amount allegedly owed on a related credit life insurance account. They refused to pay while a nationwide class action concerning such accounts was pending and later received approximately \$2,100 from the class-action settlement. Defendants alleged that collection efforts, foreclosure threats, workplace telephone calls, misrepresentations about the amount owed, and the resulting stress supported an intentional-infliction-of-emotional-distress claim.

PROCEDURAL HISTORY

Plaintiff commenced a foreclosure action alleging that approximately \$10,000 remained due on a credit insurance account. Defendants asserted multiple counterclaims, including intentional infliction of emotional distress. After plaintiff reportedly discontinued the foreclosure action, it moved for summary judgment

dismissing the counterclaims. Supreme Court treated defendants' opposition as untimely and granted the motion as unopposed; the Appellate Division held that the late papers should have been considered but affirmed because the papers nevertheless failed to raise a triable issue on the intentional-infliction-of-emotional-distress claim.

DISPOSITION

affirmed

CASES CITED

- Thermo Spas v. Red Ball Spas & Baths, 199 A.D.2d 605, 606 (1993)
- Matter of Burkich, 12 A.D.3d 755, 756 (2004)
- Saha v. Record, 307 A.D.2d 550, 551 (2003)
- Aabel v. Town of Poughkeepsie, 301 A.D.2d 739, 739 (2003)
- Howell v. New York Post Co., 81 N.Y.2d 115, 122 (1993)
- Long v. Beneficial Fin. Co. of N.Y., 39 A.D.2d 11, 12-15 (1972)
- Ford Motor Credit Co. v. Hickey Ford Sales, 94 A.D.2d 902, 903 (1983), aff'd, 62 N.Y.2d 291 (1984)
- Gallagher v. Consolidated Edison Co. of N.Y., 162 A.D.2d 657, 658 (1990), appeal dismissed, 76 N.Y.2d 935 (1990)
- Crandall v. Bernard, Overton & Russell, 133 A.D.2d 878, 880 (1987), leave to appeal dismissed, 70 N.Y.2d 940 (1988)