



Supreme Court of New Jersey
Single-Justice Disposition on Application for Emergent Relief (*Rule 2:9-8*)

Case title: James B. Nutter and Company v. Melvene L. Kennedy

Supreme Court
docket number: 087506 (S-5-22)

Appellate Division
docket number (if available): A-003902-21

Applicant's name: Melvene L. Kennedy

The applicant's request for permission to file an emergent motion and any related request for a temporary stay or other relief pending disposition of an emergent motion are DENIED for the following reason(s):

- ☐ 1. The matter does not concern a genuine emergency or otherwise does not warrant adjudication on short notice. The applicant may file a regular motion for review by the Superior Court, Appellate Division in the ordinary course.
- ☐ 2. The Appellate Division has entered an order or judgment, and the matter is not emergent or otherwise does not warrant adjudication on short notice. The applicant may file a regular motion for review by the Supreme Court in the ordinary course.
- ☐ 3. The application concerns an order entered during or on the eve of trial as to which there is no prima facie showing that immediate interlocutory intervention is required. The applicant may file a regular motion in the appropriate court for review in the ordinary course.
- ☐ 4. The applicant must obtain a signed order or disposition from the Appellate Division before requesting relief from the Supreme Court.
- ☒ 5. Other:

The applicant has failed to demonstrate a preliminary entitlement to emergent relief under *Crowe v. De Gioia*, 90 N.J. 126, 132-34 (1982). The applicant may file a regular motion for review by the Supreme Court in the ordinary course.

Date: 9/28/2022

By:

A handwritten signature in dark ink, appearing to read "Fabiana Pierre-Louis", written over a horizontal line.

Name: Justice Fabiana Pierre-Louis

**Superior Court of New Jersey
Appellate Division**

Appellate Division

Docket Number

(if available) **A-3902-21**

Trial Court or Essex County Superior
Agency Below: Court – Chancery Div.

Trial Court or

Agency Docket

Number: F-11556-14

**JAMES B. NUTTER AND COMPANY v.
MELVENE L. KENNEDY**

Case Name

**Disposition on Application for
Permission to File
Emergent Motion - Denied**

Do Not Fill in This Section – For Court Use Only

The application of MELVENE KENNEDY for leave to file an emergent motion on short notice is **Denied** for the following reasons:

- ☐ The application on its face does not concern a threat of irreparable injury, or a situation in which the interests of justice otherwise require adjudication on short notice. The applicant may file a motion with the Clerk's Office in the ordinary course.
- ☐ The threatened harm or event is not scheduled to occur prior to the time in which a motion could be filed in the Clerk's Office and decided by the court. If the applicant promptly files a motion with the Clerk's Office it shall be forwarded to a Panel for decision as soon as the opposition is filed.
- ☐ The applicant did not apply to the trial court or agency for a stay, and obtain a signed court order, agency decision or other evidence of the ruling before seeking a stay from the Appellate Division.
- ☐ The application concerns an order entered during trial or on the eve of trial as to which there is no prima facie showing that the proposed motion would satisfy the standards for granting leave to appeal.
- ☐ The timing of the application suggests that the emergency is self-generated, given that no good explanation has been offered for the delay in seeking appellate relief. Due to the delay, we cannot consider a short-notice motion within the time frame the applicant

seeks, without depriving the other party of a reasonable time to submit opposition. And the magnitude of the threatened harm does not otherwise warrant adjudicating this matter on short notice despite the delay. If the applicant promptly files a motion with the Clerk's Office it shall be forwarded to a Panel for decision as soon as the opposition is filed.

☒ Other reasons:

When we denied defendant's emergent application for a stay pending appeal last Friday, we continued our interim stay until today to allow "the Supreme Court a reasonable time to respond to any immediate application by Kennedy for further stay relief." Defendant did not make immediate application to the Supreme Court. Instead, she waited until yesterday to ask us to reconsider our order, claiming we must do so immediately to prevent her irreparable harm.

Having reviewed Kennedy's most recent filing, including the transcript of August 5, 2022 submitted yesterday, we find no basis to reconsider our order of September 23, 2022 denying the stay pending appeal and we will not further continue the interim stay beyond close of business today. As defendant has been advised by Ms. Kennett, any further relief will have to come from our Supreme Court.

Allison E. Accurso

ALLISON E. ACCURSO, P.J.A.D.

9/28/2022

Date

#2014-0346

POWERS KIRN, LLC
728 Marne Highway, Suite 200
Moorestown, NJ 08057
(856) 802-1000
Attorneys for Plaintiff
Sarah E. Powers, Esquire - 030501994

James B. Nutter and Company

Plaintiff

vs.

Melvane L. Kennedy, et al.

Defendant(s)

: SUPERIOR COURT OF NEW JERSEY
: CHANCERY DIVISION
: ESSEX COUNTY

:
: Docket No.F 011556 14

:
: CIVIL ACTION

:
: **FINAL JUDGMENT**
:

This matter being opened to the Court by POWERS KIRN, LLC, attorneys for the Plaintiff, and it appearing to the Court that the Summons and Complaint have been duly issued and returned served upon the Defendants, Melvane L. Kennedy, JPMorgan Chase Bank, National Association, fka Washington Mutual Bank, FA, State of New Jersey, and the Clerk having entered a default against said Defendants for failure to plead or otherwise defend or having answered and the Court deemed the answer stuck or non-contesting, and the Plaintiff's

nond and mortgage and assignment of mortgage having been presented and marked as Exhibits by the Court, and proofs having been submitted of the amount due on Plaintiff's mortgage, and sufficient cause appearing;

IT IS on this **5th day of June 2018** ORDERED AND ADJUDGED that the Plaintiff is entitled to have the sum of \$ 100,881.39 together with interest at the contract rate of 3.875% on \$89,359.54 the principal sum in default, including advances, if any, from April 30, 2018 to June 5, 2018, the date of the entry of final judgment, and lawful interest thereafter on the total sum due plaintiff together with costs of this suit to be taxed, including a counsel fee of \$ raised and paid in the first place out of the mortgaged premises; and it is further

ORDERED that the Plaintiff or purchaser at Sheriff's sale duly recover against the said Melvene L. Kennedy, JPMorgan Chase Bank, National Association, fka Washington Mutual Bank, FA, State of New Jersey, the possession of the premises mentioned and described in the said Complaint, with the appurtenances; and it is further

ORDERED and adjudged that the mortgaged premises be sold to raise and satisfy in the first place unto the Plaintiff in the sum of \$ **100,881.39**, secured by a certain mortgage dated May 13, 1999, together with interest at the contract rate of 3.875% on \$89,359.54 being the principal sum in default, including advances, if any, from April 30, 2018 to June 5, 2018, the date of the entry of final judgment, and lawful interest thereafter on the total sum due the Plaintiff until the same be paid and satisfied and also the costs of the aforesaid Plaintiff with interest thereon and that an Execution for that purpose duly issue out of this Court directed to the To the Sheriff of Essex County, commanding him or her to make sale according to law of the mortgaged premises described in the Complaint, and out of the monies arising from such sale that he pay to the Plaintiff its said debt with interest thereon as aforesaid, and its costs aforesaid,

and in case more money shall be realized by said sale than shall be sufficient to answer such several payments, that such surplus be brought into this Court to abide the further order of this Court, and that the Sheriff of Essex County shall make his report of sale without delay as required by the Rules of this Court; and it is further

ORDERED and adjudged that the Defendants, and each of them, stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to said mortgaged premises described in the Complaint when sold as aforesaid by virtue of this judgment.

Notwithstanding anything herein to the contrary, this judgment shall not affect the rights of any person protected by the New Jersey Tenant Anti-Eviction Act, N.J.S.A. 2A:18-61.1, et seq., the right of redemption given the United States of America under 28 U.S.C. Section 2410, the limited priority rights for the aggregate customary condominium assessment for the six month period prior to the recording of any association lien as allowed by N.J.S.A. 46:8B-21 or rights afforded by the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq. or N.J.S.A. 38:23C-4. Affordable housing properties are subject to the Uniform Availability Restrictions of N.J.A.C. 5:80-26.5(e).

/s/ Paul Innes
PAUL INNES, P. J. Ch

Respectfully Recommended
R. 1:34-6 OFFICE OF FORECLOSURE