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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0052-15T4

PMT NPL FINANCING 2014-1,

Plaintiff-Respondent,

v.

JEFFREY VILINSKY and PNINA VILINSKY,

Defendants-Appellants,

and

MRS. JEFFREY VILINSKY, his wife, BANK OF AMERICA, N.A. and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. as nominee for QUICKEN LOAN SYSTEMS, its successors and assigns,

Defendants.

Argued January 11, 2017 – Decided February 28, 2017

Before Judges Accurso and Manahan.

On appeal from Superior Court of New Jersey, Chancery Division, Bergen County, Docket No. F-1709-13.

Joshua W. Denbeaux argued the cause for appellants (Denbeaux & Denbeaux, attorneys; Mr. Denbeaux, on the brief).

Michael P. Trainor argued the cause for respondent (Blank Rome, LLP, attorneys; Donna M. Bates and Mr. Trainor, on the brief).

PER CURIAM

Defendants Jeffrey and Pnina Vilinsky appeal from a final judgment of foreclosure following a trial in the Chancery Division. Defendants contend the "trial court clearly erred when it concluded that the documents produced at trial sufficiently established that ownership of the note and mortgage were transferred to plaintiff" PennyMac Corp.[1] Because we find no error in the court's finding that PennyMac possessed the note and mortgage at the time it filed its foreclosure complaint, we affirm.

At trial, PennyMac presented one witness, Jay Schwegel.[2] Schwegel testified he was employed by PennyMac Loan Services, LLC (PennyMac Servicing), servicer of defendants' loan, as manager of foreclosure, REO [real estate owned] regional

[1] PennyMac Corp. filed the complaint in this matter and prosecuted the foreclosure through trial. Several months before the entry of the final judgment, the court entered an order substituting PMT NPL Financing 2014-1 for PennyMac. We continue to refer to PennyMac as plaintiff, notwithstanding the substitution.

[2] Defendants rested without presenting any evidence.

operations. According to Schwegel, PennyMac Servicing is the exclusive servicer for all of PennyMac's loans.

Schwegel explained how PennyMac Servicing assumes servicing loans PennyMac purchases from another lender, in what he termed a "loan boarding process." Upon PennyMac's purchase of a loan, the prior servicer presents the collateral file containing the original loan documents and any assignments to PennyMac Servicing's third-party repository for safe-keeping, and submits the loan documentation and servicing records, including the loan history and payment ledger, electronically to PennyMac Servicing through an encrypted web portal.

Once those records are loaded into PennyMac Servicing's system, it "scrubs" the data to ensure it is complete and accurate, verifying any discrepancies against the original documents in the collateral file. After completing those tasks and a twelve-month credit check to account for any payments made on the loan, PennyMac Servicing begins servicing the new loan. Schwegel explained at that point, "those notes and figures from the prior servicer . . . basically . . . become the basis of our loan from that point forward."

From his review of PennyMac Servicing's records, Schwegel was able to authenticate, at trial, the original $471,100 promissory note from the collateral file that defendant Jeffrey

Vilinsky executed to Quicken Loans, Inc. in March 2007. The original note was endorsed, without recourse, to CitiMortgage, Inc, "By: Quicken Loans, Inc.[,] Scott Johnson," and an attached allonge contained a further endorsement, in blank, without recourse by CitiMortgage, Inc., "By and through its Attorney in Fact[,] PNMAC Capital Management LLC[,] Michael Whitfield[,] Attorney in Fact."

Schwegel also identified from PennyMac Servicing's collateral file, a true copy of the mortgage defendants gave to Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for Quicken Loans, its successors and assigns, recorded in the office of the Clerk of Bergen County on April 9, 2007 in book 16669, page 1, and two recorded assignments. The first, from MERS to CitiMortgage, was dated December 29, 2009 and recorded in the Assignment Book on March 11, 2010, and the second, from CitiMortgage to PennyMac, was dated March 25, 2011 and recorded April 26, 2011. Schwegel testified the recorded copies were provided to PennyMac Servicing as part of the loan boarding process and that it did not possess the originals of those documents.

Schwegel testified that from his review of PennyMac's records made in the regular course of its business, that defendants' loan was sold by CitiMortgage to PennyMac on

February 23, 2011, and PennyMac Servicing thereafter took possession of the collateral file and began servicing the loan on April 15, 2011, with the gap representing the time it took to complete the loan boarding process. When asked how he "knew" that, Schwegel explained the loan history notes in PennyMac's system, acquired from CitiMortgage, reflect it would "be selling this loan to PennyMac Corp. on February 23, 2011," PennyMac Servicing has the original promissory note "signed in blue ink," that it produced for inspection at trial, and PennyMac's "system reflects that [the note] is held by PennyMac, Corp., and we as PennyMac Loan Services are the loan servicer."

Schwegel further testified from PennyMac Servicing's records that the loan went into default on June 1, 2009 and no payments had been made since. On cross-examination, Schwegel conceded that PennyMac Corp. purchased the loan after default, that any of PennyMac Servicing's records that pre-date "the winter/spring of 2011 when this alleged transaction occurred are records that were created by CitiMorgage," that he had never seen "any contract evidencing the purchase of the Vilinsky loan by PennyMac Corp.," that he had "not seen anything that suggests PennyMac Corp. paid any money or other consideration to CitiMortgage to acquire the note and mortgage," that he did not "know on what date [PennyMac Servicing's third-party custodian]

obtained possession of the original note," and that he did not know when the stamps purporting to assign the note were placed on the note and allonge, who the individuals signing those endorsements were or if they were indeed attorneys in fact for the entities they claimed. Schwegel also admitted he had not taken "screen shots" of the computer records he reviewed in preparing to testify and did not have copies of those records in court.

Based on that testimony, Judge Contillo admitted the note, mortgage and assignments into evidence and concluded that plaintiff had established its standing to proceed to foreclose the mortgage by a preponderance of the evidence. The judge noted he had previously denied summary judgment to PennyMac on the basis of the certification offered by its witness regarding its chain of title because the information was "untestable." He explained he did so "[b]ecause even though the plaintiff says it's so and even though the defendant doesn't prove it's not so or even raise any competent contrary evidence that it's not true, the moving party is not entitled to any of the inferences. . . . When we come to trial, it's a different matter."

In reviewing the "evidence that has to be established at the end of the proceeding[,] . . . that the plaintiff controlled the underlying debt prior to the commencement of this lawsuit,"

the judge found the evidence established defendant Jeffrey Vilinsky executed the note to Quicken Loans in March 2007 and subsequently defaulted on his obligations in June 2009. He further found that plaintiff "[has] the original note with the subsequent annotations, being the endorsement and the allonge, present in court." The judge "credit[ed] the testimony of the witness, which is supported by the internal consistencies of the documents themselves, including the assignments, that they've had control of the note since well before the lawsuit was filed."

Judge Contillo concluded that nothing presented at trial had given him any reason to doubt "the credibility or reliability or authenticity or correctness of either of the assignments that vested the ultimate mortgage in this plaintiff." Accordingly, the judge found "this plaintiff is entitled to foreclose or at least proceed to the next stage of the foreclosure; which is, the matter will be referred back to the Office of Foreclosure."

On appeal, defendants reprise the arguments made to the trial court that plaintiff's witness lacked personal knowledge of the facts underlying plaintiff's claim. They contend "[t]he court should have rejected plaintiff's witness' testimony, denied the admission of plaintiff's evidentiary proofs, and

entered an order in favor of defendants." We reject those arguments.

Final determinations by a trial court presiding over a non-jury case are subject to a limited and well-established standard of review: "'we do not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" In re Trust Created By Agreement Dated December 20, 1961, ex rel. Johnson, 194 N.J. 276, 284 (2008) (quoting Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974)). We review a trial court's evidentiary rulings only for abuse of discretion. Estate of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 382-84 (2010).

Applying those standards here, we find no reason to disturb the trial court's careful findings. The only issue at trial was whether plaintiff could prove it controlled the note and mortgage at the time it filed its foreclosure complaint on January 15, 2013. See Deutsche Bank Trust Co. Ams. v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012). Plaintiff presented the original note signed by defendant Jeffrey Vilinsky and a copy of the recorded mortgage along with two subsequently

recorded assignments. The recorded assignment to plaintiff pre-dated the filing of the complaint by almost two years.

The proofs at trial established, certainly by a preponderance of the evidence, that PennyMac was a person entitled to enforce the note, endorsed in blank, as a holder, having acquired it, based on the testimony of a witness the court deemed credible, prior to its having filed its foreclosure complaint. See N.J.S.A. 12A:3-203b, 3-301; Bank of N.Y. v. Raftogianis, 418 N.J. Super. 323, 331 (Ch. Div. 2010). The note itself was admissible as a business record pursuant to N.J.R.E. 803(c)(6) and properly authenticated pursuant to N.J.R.E. 901, the original "blue ink" signature under these circumstances being sufficient to support a finding that the document was what plaintiff purported it to be, the original note signed by defendant Jeffrey Vilinsky, see N.J.S.A. 12A:3-308.

Contrary to defendants' contentions, there is no requirement that Schwegel possess personal knowledge of the events reflected in those records. See New Century Fin. Servs., Inc. v. Oughla, 437 N.J. Super. 299, 326 (App. Div.), certif. denied sub nom., MSW Capital, LLC v. Zaidi, 218 N.J. 531 (2014). Schwegel testified based on his personal knowledge of records made in the regular course of his employer's business, at or near the time of the events, and recorded by persons with

knowledge of the activity and transactions memorialized in the records. Nothing more was required, especially in the absence of any credible challenge to the trustworthiness of the documents. See State v. Sweet, 195 N.J. 357, 370 (2008), cert. denied, 557 U.S. 934, 129 S. Ct. 2858, 174 L. Ed. 2d 601 (2009).

Even were we convinced by defendants' argument that Schwegel could not testify that PennyMac acquired the note prior to the foreclosure based on his review of his employer's computerized records, which we are not, defendants could not overcome the properly admitted recorded assignments, which provided an alternate means of establishing its standing to prosecute the foreclosure. See Angeles, supra, 428 N.J. Super. at 318. Judge Contillo found plaintiff presented proof of a recorded assignment pre-dating the filing of the foreclosure complaint. As "proof of recording creates a presumption of delivery," Thorpe v. Floremoore Corp., 20 N.J. Super. 34, 37 (App. Div. 1952), plaintiff established its standing, pursuant to N.J.S.A. 46:9-9, by "present[ing] an authenticated assignment indicating that it was assigned the note before it filed the original complaint," Deutsche Bank Nat'l Trust Co. v. Mitchell, 422 N.J. Super. 214, 225 (App. Div. 2011).

Accordingly, we affirm the judgment of foreclosure, substantially for the reasons expressed by Judge Contillo in his

cogent and comprehensive opinion from the bench at the conclusion of trial.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION