SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0247-14T4

WELLS FARGO BANK, N.A.,

Plaintiff-Respondent,

v.

ANNA MARIE FORTE and
RICHARD FORTE,

Defendant-Appellant.

Submitted April 5, 2017 – Decided May 17, 2017

Before Judges Alvarez and Manahan.

On appeal from Superior Court of New Jersey, Chancery Division, Burlington County, Docket No. F-031426-13.

David J. Khawam, attorney for appellant.

Reed Smith, LLP, attorney for respondent (Henry F. Reichner, on the brief).

PER CURIAM

Defendants Anna Marie Forte and Richard Forte appeal from a January 31, 2014 order granting summary judgment to plaintiff Wells Fargo Bank, N.A. (Wells Fargo) and an August 1, 2014 final

judgment foreclosing their interest in certain residential real estate. We affirm both orders.

The foreclosure complaint filed by Wells Fargo averred that in August 2007, defendants executed a $1,060,000 note to World Savings Bank, FSB (World Savings). At the same time, defendants executed a mortgage to World Savings on a residential property in Medford, Burlington County. The mortgage was recorded. Defendants acknowledged execution of these documents in their brief in this appeal.

In December 2007, World Savings merged with, and changed its name to, Wachovia Mortgage, FSB (Wachovia). In November 2009, Wachovia merged with Wells Fargo. As a result, Wells Fargo became the holder of the note and mortgage.

In August 2007, a class action lawsuit was filed against Wachovia in the United States District Court for the Northern District of California, alleging that various aspects of the "Pick-a-Payment" loan product violated state and federal laws. Wachovia settled the class action lawsuit in December 2010, providing monetary and non-monetary relief to different classes of borrowers (the settlement). In Re Wachovia Corp. "Pick-a-Payment" Mortg. Mktg. and Sales Practices Litig., No. M:09-CV-2015 (N.D. Cal. Dec. 10, 2010).

Defendants were members of Settlement Class B. In May 2011, the final settlement was approved. As part of the settlement, defendants received and deposited a check in the amount of $178.04. Members of Settlement Class B were mailed a settlement notice (the notice) advising them of their rights and options in the settlement. The notice stated that "[a]s a member of Settlement Class B, you may be eligible to participate in the loan modification program" and that "[y]ou are also eligible to receive a payment from the [s]ettlement [f]und after the [c]ourt grants final approval to the [s]ettlement[.]" The notice clearly stated that "[u]nless you exclude yourself from the [s]ettlement, you can't sue [Wachovia], continue to sue, or be part of any other lawsuit . . . about the legal issues in this case."

On November 19, 2012, the Northern District of California issued an order in the class-action settlement, expressly retained continuing jurisdiction to interpret and enforce the settlement. In Re Wachovia Corp. "Pick-a-Payment" Mortg. Mktg. and Sales Practices Litig., No. 5:09-MD-02015-JF (N.D. Cal. Nov. 19, 2010).

Defendants defaulted on the note in March 2012. In July 2013, Wells Fargo sent defendants two Notices of Intent to Foreclose (NOI) advising them of the default and of their right to cure.

Wells Fargo filed a foreclosure complaint on September 3, 2013, and defendants filed a contesting answer on September 23, 2013. An order was entered on October 8, 2013, directing document production and responses to interrogatories.

On December 13, 2013, Wells Fargo filed a motion to uphold the settlement and for summary judgment, or in the alternative, to dismiss for failure to provide discovery. Oral argument was held before Judge Karen Suter on January 31, 2014.

The judge entered an order, accompanied by a statement of reasons, granting summary judgment in favor of Wells Fargo and upholding the settlement. The judge also granted Wells Fargo's motion to dismiss for failure to provide discovery and dismissed defendants' affirmative defenses and counterclaims. The matter proceeded as uncontested with the Office of Foreclosure and final judgment of foreclosure was entered on August 1, 2014. This appeal followed.

Defendants raise the following points on appeal:

POINT I

> THE MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED IN FAVOR OF PLAINTIFF BECAUSE THE MORTGAGE LOAN AT ISSUE IS VOID AND UNENFORCEABLE.

POINT II

> THE MOTION TO UPHOLD SETTLEMENT SHOULD NOT HAVE BEEN GRANTED BECAUSE THE CLASS ACTION

SETTLEMENT DOES NOT PRECLUDE APPELLANTS/DEFENDANTS' DEFENSES IN THIS CASE.

POINT III

THE MOTION TO DISMISS FOR FAILURE TO PROVIDE DISCOVERY SHOULD NOT HAVE BEEN GRANTED BECAUSE DEFENDANTS/APPELLANTS DID PROVIDE DISCOVERY IN ACCORDANCE WITH THE CASE MANAGEMENT ORDER DEADLINES.

In reviewing a grant of summary judgment, we apply the same standard under Rule 4:46-2(c) that governed the trial court. Wilson ex rel. Manzano v. City of Jersey City, 209 N.J. 558, 564 (2012). We must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). We give no deference to the motion judge's conclusions on issues of law, which are reviewed de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Applying this standard, the record amply supports the summary judgment order. The judge concluded the Northern District of California class-action settlement was entitled full faith and credit in New Jersey and defendants' acceptance of the settlement

payment in the class action precluded their claims against Wells Fargo in the instant foreclosure matter.

We are satisfied that the judge's factual findings concerning all of defendants' contentions are fully supported by the record and, in light of those facts, her legal conclusions are unassailable. We therefore affirm the summary judgment substantially for the reasons expressed in the judge's comprehensive written opinion. We add only the following.

Article IV, section 1 of the United States Constitution states: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." See also 28 U.S.C.A. § 1738 (providing that the judicial proceedings of the states are to be given full faith and credit in federal court). Our Supreme Court has noted that "the constitutional full faith and credit clause [and] the corresponding federal statute" do not "compel state courts to give preclusive effect to judgments of the federal courts." Watkins v. Resorts Int'l Hotel & Casino, 124 N.J. 398, 407 (1991). However, "[t]he rule that state courts must accord preclusive effect to prior federal court judgments is so settled that it is accepted as axiomatic" because "[t]hat respect is essential to the fair and efficient functioning of our federalist system of justice." Id. at 406 (citations omitted).

For a New Jersey court to give full faith and credit to a class action judgment of another court, "class members in that action must have been afforded 'the minimum procedural requirements'" of due process. Simmermon v. Dryvit Sys., Inc., 196 N.J. 316, 330 (2008) (quoting Kremer v. Chem. Constr. Corp., 456 U.S. 461, 481, 102 S. Ct. 1883, 1897-98, 72 L. Ed. 2d 262, 280 (1982)). These minimum procedural requirements are:

> notice plus an opportunity to be heard and participate in the litigation. The notice must be the best practicable, reasonably calculated, under all the circumstances to apprise [class members] of the pendency of the action and afford them an opportunity to present their objections. The notice should also describe the class members' rights in the action and provide them an opportunity to remove [themselves] from the class by executing and returning an opt out or request for exclusion form to the court.
>
> [Ibid. (alterations in original) (citations and internal quotation marks omitted).]

We only review whether the class action settlement provided "adequate safeguards to ensure that the notice to class members satisfied the requisites of due process." Id. at 332.

Here, the judge found defendants were provided with notice by mail and publication regarding: the nature and scope of the

class action; the opportunity to "opt-out" of the action; and their rights should they remain a class member. Even assuming defendants did not receive the notice, defendants waived their rights to sue Wells Fargo when they cashed the settlement check. As a result of the settlement, defendants' were barred from bringing the same claims in State court.

Defendants raise several arguments for the first time on appeal, including: (1) the marketing of the loan violated the Consumer Fraud Act; (2) they are not bound by the class action settlement due to a prior Attorney General settlement; (3) there was no evidence they were served notice of the class action; and (4) the release was void under New Jersey law. This court ordinarily will not address an issue on appeal that parties have not raised to the trial court absent concerns involving "the jurisdiction of the trial court" or "matters of great public interest." Zaman v. Felton, 219 N.J. 199, 226-27 (2014) (quoting State v. Robinson, 200 N.J. 1, 20 (2009)); R. 2:6-2. In this matter, the record does not involve jurisdiction or "matters of great public interest" such as to support a finding that the interest of justice compels our consideration of issues not presented to the trial court.

Notwithstanding that the only matters before the judge were the enforceability of the class action settlement and discovery, we conclude our analysis by noting the "only material issues in a

foreclosure proceeding are the validity of the mortgage, the amount of the indebtedness, and the right of the mortgagee to resort to the mortgaged premises." Great Falls Bank v. Pardo, 263 N.J. Super. 388, 394 (Ch. Div. 1993) (citations omitted) aff'd, 273 N.J. Super. 542 (1994). A party seeking to establish its right to foreclose on the mortgage must generally "own or control the underlying debt." Deutsche Bank Nat'l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 222 (App. Div. 2011) (quoting Wells Fargo Bank, N.A. v. Ford, 418 N.J. Super. 592, 597 (App. Div. 2011)); Bank of N.Y. v. Raftogianis, 418 N.J. Super. 323, 327-28 (Ch. Div. 2010) (citations omitted). In Deutsche Bank Trust Co. Americas v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012), we held that "either possession of the note or an assignment of the mortgage that predated the original complaint confer[s] standing," thereby reaffirming our earlier holding in Mitchell, supra, 422 N.J. Super. at 216.

Wells Fargo made a prima facie showing of its right to foreclose. Moreover, defendants have not proffered defenses unrelated to the loan origination or the settlement.

To the extent not specifically addressed herein, we conclude that defendants' remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.