SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0544-16T1

CHRISTIANA TRUST, a Division of Wilmington Savings Fund, Society, FSB, not in its individual capacity but as Trustee of ARLP Trust 3,

Plaintiff-Respondent,

v.

ROBERT BEACH,

Defendant-Appellant,

and

MRS. BEACH, unknown spouse of Robert Beach, C&R OF NORTH FIELD INC., ASSIGNEE OF CAPE HEALTH ANESTHESIA LAWRENCE VIRGILIO DR. CAPE REGIONAL MEDICAL CENTER,

Defendants.

Submitted October 31, 2017 – Decided November 28, 2017

Before Judges Carroll and Mawla.

On appeal from Superior Court of New Jersey, Chancery Division, Cape May County, Docket No. F-002143-15.

Robert Beach, appellant pro se.

Powers Kirn, LLC, attorneys for respondent (Jeanette J. O'Donnell, on the brief).

PER CURIAM

Defendant Robert Beach appeals from a July 21, 2016 order denying his motion opposing entry of a final judgment of foreclosure in favor of plaintiff Christiana Trust. Plaintiff was previously granted summary judgment on December 17, 2015. We affirm.

The following facts are taken from the record. On June 26, 2007, defendant signed a note securing a mortgage on his home located in Marmora in the amount of $229,000. The mortgage was recorded by Mortgage Electronic Registrations Systems, Inc. (MERS) as nominee for Countrywide Home Loans, Inc. on August 10, 2007. MERS then executed an assignment of the mortgage to BAC Home Loans Servicing, LP (BAC), formerly Countrywide Home Loans Servicing, LP. The assignment was recorded on June 24, 2011, and a corrective assignment was later recorded on June 30, 2014. Bank of America, NA merged with BAC and subsequently assigned the mortgage to plaintiff. This assignment was recorded on January 30, 2014.

On January 20, 2015, plaintiff instituted a foreclosure action in the Chancery Division. Plaintiff filed a motion for summary judgment supported by the certification of Lucas Jon

Hansen, a foreclosure specialist with the servicing agent for plaintiff. Hansen certified that he personally reviewed the business records regarding the mortgage defendant signed and the underlying transactional documents for the assignments. His certification confirmed that based upon his review of the business records, defendant had defaulted on April 1, 2009.

Plaintiff also adduced a certification from Crystal Dunbar, another foreclosure specialist from the servicing agent for plaintiff. Dunbar certified to the interest due on the note from March 1, 2009. Her certification attached business records demonstrating the April 1, 2009 default date, and defendant's non-payment as of that date.

The trial court granted plaintiff summary judgment on December 17, 2015, and a final judgment of foreclosure was entered in favor of plaintiff in the amount of $401,356.42 on May 9, 2016. The property was sold at a sheriff's sale on October 26, 2016.

On appeal, defendant challenges plaintiff's standing to foreclose. He argues plaintiff did not possess the original note. Defendant also argues plaintiff failed to comply with the Fair Foreclosure Act, N.J.S.A. 2A:50-53 to -73, claiming the notice of intent to foreclose provided was inadequate because it identified the wrong lender. Defendant claims plaintiff did not produce objective evidence he defaulted as of April 1, 2009.

Our review of an order granting summary judgment is de novo. Graziano v. Grant, 326 N.J. Super. 328, 338 (App. Div. 1999). "[W]e review the trial court's grant of summary judgment . . . under the same standard as the trial court." Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016). The court considers all of the evidence submitted "in the light most favorable to the non-moving party," and determines if the moving party is entitled to summary judgment as a matter of law. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). The court may not weigh the evidence and determine the truth of the matter. Ibid. If the evidence presented "show[s] that there is no real material issue, then summary judgment should be granted." Walker v. Atl. Chrysler Plymouth, 216 N.J. Super. 255, 258 (App. Div. 1987) (citing Judson v. Peoples Bank and Tr. Co. of Westfield, 17 N.J. 67, 75 (1954)). "[C]onclusory and self-serving assertions by one of the parties are insufficient to overcome [summary judgment]." Puder v. Buechel, 183 N.J. 428, 440-41 (2005).

The right to foreclose arises upon proof of execution and recording of a mortgage and note, and default on payment of the note. Thorpe v. Floremoore Corp., 20 N.J. Super. 34, 37-38 (App. Div. 1952). Standing to foreclose derives from N.J.S.A. 12A:3-301, which states:

> "Person entitled to enforce" an instrument means the holder of the instrument, a nonholder in possession of the instrument who has the rights of a holder, or a person not in possession of the instrument who is entitled to enforce the instrument pursuant to 12A:3-309 or subsection d. of 12A:3-418. A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

We have stated that standing may be established through "either possession of the note or an assignment of the mortgage that predated the original complaint." Deutsche Bank Tr. Co. Ams. v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012).

The record here demonstrates plaintiff had standing to foreclose. Plaintiff offered the certification of Hansen, which proved the mortgage was assigned to plaintiff before the complaint for foreclosure was filed. Hansen's certification proved plaintiff held the note before the filing date of the complaint. His certification also established the mortgage was recorded before plaintiff filed its complaint. For these reasons, we reject defendant's argument that plaintiff lacked standing.

Next, defendant argues plaintiff failed to comply with the Fair Foreclosure Act. He argues the notice of intent to foreclose issued by plaintiff was invalid because it named the wrong lender. Defendant's argument lacks merit.

N.J.S.A. 2A:50-56(c)(11), in pertinent part, requires:

> c. The written notice shall clearly and conspicuously state in a manner calculated to make the debtor aware of the situation:
>
> . . . .
>
> (11) the name and address of the lender and the telephone number of a representative of the lender whom the debtor may contact if the debtor disagrees with the lender's assertion that a default has occurred or the correctness of the mortgage lender's calculation of the amount required to cure the default.

Here, the notice of intent to foreclose issued to defendant on February 10, 2014, complied with the statute, and specifically set forth plaintiff's name and address. Moreover, plaintiff was correctly noted as the lender because the note had been assigned to it on January 30, 2014, before issuance of the notice of intent to foreclose.

Lastly, as we noted above, plaintiff adduced the certifications of Hansen and Dunbar who both attested to the date defendant defaulted and provided the motion judge with the factual basis to award plaintiff summary judgment. Both Hansen and Dunbar attested to reviewing the business records and their certifications were unrebutted by any objective evidence to the

contrary. For these reasons, we reject defendant's argument plaintiff offered no proof of default.

Affirmed.