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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0709-16T3

U.S. BANK NATIONAL ASSOCIATION
AS TRUSTEE FOR THE BENEFIT OF
HARBORVIEW 2005-1 TRUST FUND,

Plaintiff-Respondent,

v.

LINDA A. GOE,

Defendant-Appellant,

and

MR. GOE, husband of LINDA
A. GOE and RIVERVIEW AT CITY
PLACE CONDOMINIUM ASSOCIATION,

Defendants.

Argued November 16, 2017 – Decided December 6, 2017

Before Judges Simonelli and Haas.

On appeal from Superior Court of New Jersey,
Chancery Division, Bergen County, Docket No.
F-022652-15.

Henry A. Loeb argued the cause for appellant
(Blumberg & Rosenberg, PA, attorneys; Mr.
Loeb, on the briefs).

Margaret S. Stefandl argued the cause for
respondent (Sandelands Eyt LLP and Stern

Lavinthal & Frankenberg, LLC, attorneys;
Robert D. Bailey, on the brief).

PER CURIAM

In this foreclosure matter, defendant Linda A. Goe appeals from the September 21, 2016 final judgment. Defendant also appeals from the April 11, 2016 order, which denied her motion for summary judgment and cross-motion to inspect the original note, and granted summary judgment to plaintiff U.S. Bank National Association as Trustee for the Benefit of Harborview 2005-1 Trust Fund. We affirm.

The following facts are supported by certifications from plaintiff's authorized representatives, which were based on their review of the original loan documents and their personal knowledge of how the documents are maintained, as well as defendant's statement of material facts and other evidence in the record.

On October 29, 2004, defendant, by her attorney-in-fact Brian D. Goe, executed a thirty-year adjustable rate note to K. Hovnanian American Mortgage, LLC (KHAM) in the amount of \$490,050. To secure payment of the note, defendant executed a mortgage to Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for KHAM and its successors and assigns, on her property located in Edgewater. The mortgage was recorded with the Bergen County Clerk on November 17, 2004, and re-recorded on March 6, 2006, to correct

a missing legal description of the property. Defendant defaulted on August 1, 2009, and has not made any mortgage payments since that date.

On June 8, 2011, MERS, as nominee for KHAM, executed an assignment of mortgage to plaintiff, which assigned both the mortgage and note to plaintiff. The assignment was recorded with the Bergen County Clerk on June 16, 2011. On January 25, 2013, MERS, as nominee for KHAM, executed a corrective assignment of the mortgage to plaintiff in order to include a legal description of the subject property.

Under a limited power of attorney between Nationstar Mortgage LLC (Nationstar) and plaintiff, Nationstar, as servicer, was appointed as attorney-in-fact with the authority to pursue a foreclosure complaint on plaintiff's behalf. On July 25, 2014, Nationstar received the collateral file with the original note and remained in possession of the original note through the filing of the complaint. Plaintiff's authorized representative attached a true copy of the original note, indorsed in blank, to her certification.

On June 11, 2012, plaintiff sent defendant a notice of intention to foreclose. After defendant failed to cure, on June 25, 2015, plaintiff filed a foreclosure complaint. At the time

of the filing of the complaint, plaintiff was in possession of the original note and had been assigned the mortgage.

On January 4, 2016, plaintiff produced a copy of the original note in response to defendant's notice to produce. Defendant did not object to production of a copy of the original note, see R. 4:18-1(b)(4). Instead, shortly before oral argument on the parties' respective motions for summary judgment, defendant filed a cross-motion to produce the original note. On the day of oral argument, plaintiff's counsel produced the collateral file and the original note. Defendant argued the document produced did not appear to be the original note.

Defendant did not challenge the validity of the note and mortgage, or deny default or receipt of the notice of intention to foreclose. She also did not challenge plaintiff's standing to file the foreclosure complaint. Rather, she challenged plaintiff's standing to enforce the note under the New Jersey Uniform Commercial Code (UCC) arguing, as she does in this appeal, that plaintiff failed to establish it possessed the original note prior to instituting this foreclosure action and the UCC exceptions to possession are inapposite. Plaintiff also argued, as she does here, that the endorsements on the note were not done in order.

In an April 11, 2016 written opinion, the motion judge granted plaintiff's motion for summary judgment and denied defendant's

motion for summary judgment and cross-motion to produce. The judge found defendant's arguments were mere speculation that did not give rise to any evidence or favorable inference that could be drawn therefrom. The judge concluded that plaintiff established a prima facie right to foreclose, and the evidence established plaintiff had possession of the note prior to filing the complaint and standing to foreclose and enforce the note. This appeal followed.

Our review of a ruling on summary judgment is de novo, applying the same legal standard as the trial court. Conley v. Guerrero, 228 N.J. 339, 346 (2017). Thus, we consider, as the trial judge did, "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995)). Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburg, 224 N.J. 189, 199 (2016) (quoting R. 4:46-2(c)).

"To defeat a motion for summary judgment, the opponent must 'come forward with evidence that creates a genuine issue of material fact.'" Cortez v. Gindhart, 435 N.J. Super. 589, 605 (App. Div. 2014) (quoting Horizon Blue Cross Blue Shield of N.J. v. State, 425 N.J. Super. 1, 32 (App. Div.), certif. denied, 211 N.J. 608 (2012)), certif. denied, 220 N.J. 269 (2015). "[C]onclusory and self-serving assertions by one of the parties are insufficient to overcome the motion." Puder v. Buechel, 183 N.J. 428, 440-41 (2005) (citations omitted).

"If there is no genuine issue of material fact, we must then 'decide whether the trial court correctly interpreted the law.'" DepoLink Court Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (citation omitted). We review issues of law de novo and accord no deference to the trial judge's legal conclusions. Nicholas v. Mynster, 213 N.J. 463, 478 (2013). Applying the above standards, we conclude that summary judgment was appropriate.

"As a general proposition, a party seeking to foreclose a mortgage must own or control the underlying debt." Deutsche Bank Nat'l Trust Co. v. Mitchell, 422 N.J. Super. 214, 222 (App. Div. 2011) (citation omitted). To show ownership or control, the plaintiff must establish there was a valid assignment of the mortgage or possession of the original note that pre-dated the

original complaint. Ibid. "[E]ither possession of the note or an assignment of the mortgage that predated the original complaint confer[s] standing." Deutsche Bank Trust Co. Ams. v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012) (emphasis added) (citing Mitchell, supra, 422 N.J. Super. at 216, 225). Moreover, a plaintiff need not actually possess the original note in order to have standing to file a foreclosure complaint. Mitchell, supra, 422 N.J. Super. at 225. A plaintiff can establish standing as an assignee if it presents an authenticated assignment of the note indicating that it was assigned the note before it filed the complaint. Ibid. Lastly, under the UCC, the note may be enforced by the holder of the note, or a non-holder in possession of the note who has the rights of the holder. N.J.S.A. 12A:3-301.

Here, the competent evidence in the record confirms that plaintiff had both possession of the original note and an authenticated assignment of the mortgage and note that pre-dated the complaint. Accordingly, plaintiff had standing to foreclose. As the holder of the note, plaintiff was entitled to enforce it in a foreclosure proceeding. Defendant's arguments to the contrary lack sufficient merit to warrant further discussion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION