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This opinion shall not "constitute precedent or be binding upon any court."
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-1325-15T4

WELLS FARGO BANK, N.A.,

Plaintiff-Respondent,

v.

BLYTHE JOHNSON, her heirs,
devisees, and personal
representatives and his/her
their, or any of their
successors in right, title
and interest, MR. JOHNSON,
husband of Blythe Johnson, his
heirs, devisees, and personal
representatives and his/her,
their, or any of their successors
in right, title and interest,
and CACH of NJ, LLC,

Defendants-Appellants.

Submitted August 1, 2017 – Decided December 12, 2017

Before Judges O'Connor and Whipple.

On appeal from Superior Court of New Jersey,
Chancery Division, Hudson County, Docket No.
F-044840-14.

Law Offices of Montell Figgins, attorneys
for appellant (Montell Figgins, on the
brief).

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

PER CURIAM

In this foreclosure action, defendant Blythe Johnson appeals from the October 21, 2015 final judgment foreclosing her interest in her residential real property.¹ We affirm.

On April 29, 2009, defendant executed a note in favor of ISB Mortgage Company, LLC (ISB) in the sum of \$309,275. To secure such note, defendant executed a mortgage to ISB encumbering her residential property. That same day, ISB endorsed the note and assigned the mortgage to plaintiff Wells Fargo, N.A. Defendant subsequently entered into two loan modification agreements with plaintiff. The second agreement made the unpaid principal balance of the note \$317,506.77.

Defendant defaulted on the note and mortgage on January 1, 2014. Plaintiff filed a foreclosure complaint on October 24, 2014; defendant filed a timely answer. On February 5, 2015, the Chancery Court ordered that May 12, 2015 was the discovery end date. On April 24, 2015, defendant filed a motion for summary judgment. On June 17, 2015, the Chancery Court entered summary judgment in favor of plaintiff, struck defendant's answer, and

¹ Although there are two other named defendants, neither has appealed the final judgment. For simplicity, our reference to "defendant" in this opinion refers only to Blythe Johnson.

referred this matter to the Office of Foreclosure as an uncontested matter for further proceedings, see Rule 4:64-1(c). No objection was entered, see Rule 4:64-1(d)(3), and final judgment was entered on October 21, 2015.

On appeal, defendant contends: (1) plaintiff was not the holder of the note and thus lacked standing to foreclose upon plaintiff's mortgage; (2) plaintiff's claim the mortgage had been assigned to it was not supported by competent evidence; (3) defendant is entitled to vacatur of the final judgment pursuant to Rule 4:50-1(a) because she has a meritorious defense and demonstrated excusable neglect; (4) defendant is entitled to vacatur of the final judgment pursuant to Rule 4:50-1(f) as a matter of justice; and (5) the Chancery Court erred by entering summary judgment before discovery had been completed.

With the exception of the fifth argument, none of these arguments was raised before the Chancery Court. "Generally, an appellate court will not consider issues, even constitutional ones, which were not raised below." State v. Galicia, 210 N.J. 364, 383 (2012). As for the fifth argument, the Chancery Court determined the discovery defendant sought had been produced by plaintiff.

Moreover, the court found defendant failed to show how any further discovery would influence the outcome of the motion,


citing in support Wellington v. Estate of Wellington, 359 N.J. Super. 484 (App. Div.) certif. denied, 177 N.J. 493 (2003). In Wellington, we held a party who asserts a summary judgment motion is premature on the ground discovery is incomplete must demonstrate the likelihood the missing discovery would impact the court's decision on the motion. Id. at 496.

We concur with the court's analysis and disposition of this issue for the reasons set forth in its written decision.

Accordingly, the decision of the Chancery Court is affirmed.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION