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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-1366-15T2

BAC HOME LOANS SERVICING,
L.P., f/k/a COUNTRYWIDE HOME
LOANS SERVICING, L.P.,

Plaintiff-Respondent,

v.

BRIDGETTE HODGES-LEONARD,

Defendant-Appellant,

and

CLARENCE LEONARD, MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC., AS NOMINEE FOR HOME LOAN
CENTER, INC., d/b/a LENDING
TREE LOANS,

Defendants.

Submitted March 7, 2017 – Decided April 6, 2017

Before Judges Gilson and Sapp-Peterson.

On appeal from Superior Court of New Jersey,
Chancery Division, Essex County, Docket No.
F-047986-10.

Bridgette Hodges-Leonard, appellant pro se.

Stern, Lavinthal & Frankenberg, L.L.C.,
attorneys for respondent (Mark S. Winter, of
counsel and on the brief).

PER CURIAM

Defendant Bridgette Hodges-Leonard appeals from a September 14, 2015 order denying her motion to vacate a final judgment entered in a foreclosure action. We affirm because defendant did not establish excusable neglect or a meritorious defense.

The material facts are established in the record. In November 2006, defendant and her husband obtained a loan for \$192,000 from Home Loan Center, Inc., d/b/a Lending Tree Loans (Home Loan). To secure that loan, defendant signed a promissory note (the Note) and executed a mortgage on property she owned in Newark. The mortgage was delivered to Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for Home Loan. In June 2009, defendant stopped making payments on the Note, and defendant has made no payment since that time.

On July 16, 2010, MERS, as nominee of Home Loan, executed an assignment of defendant's mortgage to BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P. (plaintiff or BAC). That assignment was recorded on August 30, 2010.

On September 30, 2010, BAC filed a complaint seeking to foreclose on the property secured by defendant's mortgage. BAC submitted an affidavit certifying that defendant was personally

served at her home with the complaint and related papers on December 22, 2010.

In January 2011, an attorney acting on behalf of defendant sent two letters to plaintiff's attorney seeking a forbearance of the foreclosure and representing that the property was defendant's principal residence. The record does not indicate that defendant ever retained that attorney or any other attorney to represent her in the foreclosure action. The record does establish that defendant never answered or formally responded to the foreclosure complaint.

In 2013, plaintiff filed an action to serve corrected notices of intent to foreclosure, including the notice sent to defendant. That action was filed in accordance with the New Jersey Supreme Court's order of April 4, 2012, allowing such summary actions to correct notices of intent to foreclose in accordance with the Court's decision in United States Bank National Ass'n v. Guillaume, 209 N.J. 449 (2012). Plaintiff certified that, thereafter, a corrected "Remedial Notice of Intention" letter was sent to defendant.

On May 15, 2014, plaintiff filed a motion for entry of default and served a copy of that motion on defendant. Defendant did not respond, and on July 30, 2014, the Chancery Court entered a default judgment against defendant.

In November 2014, plaintiff filed a motion for final judgment and served a copy of that motion on defendant. Again, defendant did not respond and, on December 15, 2014, a final judgment was entered in the foreclosure action. Plaintiff certified that a copy of that final judgment was served on defendant on February 19, 2015.

On June 10, 2015, defendant filed a motion to vacate the final judgment. In a supporting affidavit, defendant claimed that she was never served with the complaint. In a proposed answer, with affirmative defenses, defendant contends that plaintiff had no standing to bring the foreclosure action.

On September 14, 2015, the Chancery Court denied defendant's motion to vacate the final judgment. The court explained the reasons for the denial on the record. Specifically, the court reasoned that defendant had failed to satisfy the requirements of Rule 4:50-1 because defendant could not show excusable neglect or a meritorious defense. With regard to excusable neglect, the Chancery Court found that defendant had been on notice of the foreclosure action for almost four and a half years before she filed the motion to vacate the final judgment. The court also found that defendant failed to present a meritorious defense because plaintiff had demonstrated that it was assigned the

mortgage before it brought the foreclosure action and defendant failed to raise this defense in a timely manner.

On September 28, 2015, defendant filed a notice of appeal. In a motion before us, we ruled that defendant could pursue her appeal, but the appeal was limited to the September 14, 2015 order denying her motion to vacate the final judgment.

On this appeal, defendant, who is self-represented, makes two arguments. First, she contends that she was never served with the complaint and, therefore, she has shown excusable neglect. Second, she contends that she has a meritorious defense because plaintiff lacked standing to bring this foreclosure action. Neither of these arguments is supported by the record or the applicable law.

A party seeking to vacate a default judgment in a foreclosure action must satisfy Rule 4:50-1. Guillaume, supra, 209 N.J. at 467. That rule provides that

the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under [Rule] 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon

which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.

[R. 4:50-1.]

"The trial court's determination under the rule warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion[,]" namely where the "decision is 'made without a rational explanation, inexplicably depart[s] from established policies, or rest[s] on an impermissible basis.'" Guillaume, supra, 209 N.J. at 467 (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

Defendant first contends that she was not served with the complaint. Plaintiff provided an affidavit of service certifying that defendant was personally served in December 2010. That affidavit of service establishes a presumption that the facts recited in the affidavit are true. Resolution Trust Corp. v. Associated Gulf Contractors, Inc., 263 N.J. Super. 332, 343 (App. Div.), certif. denied, 134 N.J. 480 (1993). "While the presumption that these facts are true is a rebuttable one, 'it can be rebutted only by clear and convincing evidence that the return is false.'" Id. at 344 (quoting Garley v. Waddington, 177 N.J. Super. 173, 180-81 (App. Div. 1981)).

Here, defendant presents only her certification asserting that she was never served with the complaint. That certification is rebutted by the undisputed fact that in January 2011, an attorney on behalf of defendant sent plaintiff's counsel two letters concerning the foreclosure action. Given this record, we see no abuse of discretion by the Chancery Court in finding that defendant did not establish excusable neglect.

Defendant next contends that plaintiff failed to establish that it owned or controlled the Note on or before the filing of the foreclosure action in September 2010. Generally, to initiate a foreclosure proceeding, the party "must own or control the underlying debt." Wells Fargo Bank, N.A. v. Ford, 418 N.J. Super. 592, 597 (App. Div. 2011) (quoting Bank of N.Y. v. Raftogianis, 418 N.J. Super. 323, 327-328 (Ch. Div. 2010)). In foreclosure actions, standing is established by "either possession of the note or an assignment of the mortgage that predate[s] the original complaint." Deutsche Bank Trust Co. Ams. v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012) (citing Deutsche Bank Nat'l Trust Co. Ams. v. Mitchell, 422 N.J. Super. 214, 216 (App. Div. 2011)).

Here, plaintiff established standing to foreclose on the property based on the assignment of the mortgage from MERS to plaintiff. That assignment was executed on July 16, 2010, and

recorded on August 30, 2010. Thereafter, plaintiff filed the complaint on September 30, 2010.

The Chancery Court also correctly noted that such a standing defense is generally not allowed when the defense is first asserted after a final judgment. See Angeles, supra, 428 N.J. Super. at 320 (explaining that when a defendant raises the issue of standing as a "last-ditch effort to relitigate the case[,]" the judgment should not be vacated); see also Deutsche Bank Nat'l Trust Co. v. Russo, 429 N.J. Super. 91, 101 (App. Div. 2012) ("[I]n [the] post-judgment context, lack of standing would not constitute a meritorious defense to the foreclosure complaint.").

Affirmed.

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



CLERK OF THE APPELLATE DIVISION