SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1484-15T2

BANK OF AMERICA, N.A.,

Plaintiff-Respondent,

v.

ANTHONY GUGLIELMI,

Defendant-Appellant,

and

MRS. ANTHONY GUGLIELMI, wife of ANTHONY GUGLIELMI and BG MONMOUTH, LLC,

Defendants.

Submitted March 29, 2017 – Decided April 17, 2017

Before Judges Accurso and Manahan.

On appeal from Superior Court of New Jersey, Chancery Division, Monmouth County, Docket No. F-6800-14.

Anthony Guglielmi, appellant pro se.

Winston & Strawn, LLP, attorneys for respondent (Jason R. Lipkin, on the brief).

PER CURIAM

In this contested mortgage foreclosure action, defendant Anthony Guglielmi appeals from the entry of final judgment, summary judgment and the orders denying reconsideration of those judgments, contending plaintiff Bank of America, N.A. violated the Fair Foreclosure Act and the Court Rules by failing to include "the actual name of the obligee and mortgagee" in its notice of intent to foreclose and the complaint it filed in this matter. Because defendant does not dispute he borrowed the funds from and gave a mortgage to Bank of America, and nothing in the title records or this record suggests Bank of America relinquished control of the note and mortgage before or during the pendency of the case, we affirm.

Defendant Guglielmi borrowed $650,000 from Bank of America in January 2007, executing a forty-year note and a non-purchase money mortgage on his home. When Guglielmi failed to make the payment due October 1, 2012, the loan went into default. Bank of America sent Guglielmi a notice of intention to foreclose in February 2013 and another in June 2013. Both notices state that Bank of America, N.A. services the loan on behalf of the lender, Bank of America, N.A. Bank of America thereafter filed its foreclosure complaint in February 2014.

Guglielmi answered, through counsel, admitting he signed the note and mortgage to Bank of America and defaulted on the

loan. He denied that Bank of America had maintained possession of the note or had a right to foreclose the mortgage. He further claimed the bank had violated the Truth in Lending Act by "underdisclos[ing]" the finance charges and failing to properly notify him of his right to cancel, but made clear he was asserting only a right of set-off for statutory damages and not seeking to rescind the mortgage.

After discovery, the parties cross-moved for summary judgment. Following oral argument, the judge ruled from the bench granting plaintiff's motion and denying defendant's. The judge explained that when a mortgagee proved execution, recording and non-payment of the note and mortgage, as plaintiff had on the undisputed facts, it established a prima facie right to foreclose. Thorpe v. Floremoore Corp., 20 N.J. Super. 34, 37 (App. Div. 1952). A mortgagor opposing that prima facie case on summary judgment cannot simply rely on denials, accusations, or claims that additional discovery might reveal facts not yet known, but must instead present facts to controvert the mortgagee's prima facie case. See Spiotta v. William H. Wilson, Inc., 72 N.J. Super. 572, 581 (App. Div.), certif. denied, 37 N.J. 229 (1962); see also Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 530 (1995).

The judge rejected defendant's claim that although plaintiff was the original lender and had not relinquished possession of the note, the presence of an investor defeated plaintiff's claim of ownership and thus its standing. Having reviewed the certification from the bank's employee attesting to the bank's possession of the original note, the judge was satisfied it met the requirements of Wells Fargo Bank, N.A. v. Ford, 418 N.J. Super. 592, 597-600 (App. Div. 2011), and that it and the recorded mortgage readily established plaintiff's entitlement to foreclose. See Bank of N.Y. v. Raftogianis, 418 N.J. Super. 323, 327-28 (Ch. Div. 2010).

On appeal, Guglielmi, now representing himself, reprises his counsel's arguments. He maintains that the presence of an investor means that plaintiff has failed to properly identify the name of the obligee and mortgagee in its notice of intent to foreclose and notice of intent to enter final judgment, thus requiring reversal of the foreclosure judgment. We disagree.

Defendant admits that he borrowed $650,000 from Bank of America, executing both a note and a mortgage to that bank, and that he has not made a payment on the loan since September 2012. The bank has presented proof that it has never relinquished possession of the note, and that its mortgage, recorded on March 23, 2007, has never been assigned. Accordingly, we reject his

argument that Bank of America is not "the actual name of the obligee and mortgagee." Defendant's remaining arguments, to the extent not already addressed, are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

We affirm the summary judgment to plaintiff and the subsequent final judgment of foreclosure.[1]

Affirmed.

[1] We granted defendant's unopposed motion for a stay pending appeal on January 4, 2016. Having now affirmed the judgment on appeal, we vacate the stay.