SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3575-14T4

WELLS FARGO BANK, N.A.,

Plaintiff-Respondent,

v.

KATHRYN ROLSTON,

Defendant-Appellant,

and

KYLE KIETRYS and FIRST HOPE BANK,

Defendants.

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Argued November 15, 2016 – Decided April 20, 2017

Before Judges Suter and Guadagno.

On appeal from the Superior Court of New Jersey, Chancery Division, Hunterdon County, Docket No. F-0525-10.

Nicholas A. Stratton argued the cause for appellant (Denbeaux & Denbeaux, attorneys; Mr. Stratton, on the briefs).

Henry F. Reichner argued the cause for respondent (Reed Smith, L.L.P., attorneys; Mr. Reichner, on the brief).

PER CURIAM

Defendant Kathryn Rolston (Rolston)[1] appeals a January 15, 2013 order granting summary judgment to plaintiff Wells Fargo Bank, N.A. (Wells Fargo), and a February 25, 2015 final judgment foreclosing her interest in certain residential real estate. We affirm both orders.

I.

The foreclosure complaint filed by Wells Fargo alleged that in June 2003, Rolston executed a $316,000 note to Gateway Funding Diversified Mortgage Services, L.P. (Gateway Funding). At the same time, Rolston executed a mortgage to Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for Gateway Funding, on a residential property in Tewksbury, Hunterdon County. The mortgage was recorded. Rolston acknowledged execution of these documents in her brief filed in this appeal.

Rolston's mortgage was assigned by MERS to Wells Fargo on December 17, 2009 "[together] with the [b]ond, [n]ote, or other [o]bligation therein described or referred to, and the money due and to become due thereon, with the interest." The assignment was recorded in March 2010.

[1] While Rolston and her husband, Kyle Kietrys, are both listed on the notice of appeal, only Rolston signed the document. Our opinion references Rolston, because she is the only party who has appealed.

Rolston defaulted on the note in July 2009 after negotiating with Wells Fargo to modify it. She explained at argument on the summary judgment motion that she "became aware of the fraudulent nature of the debt," and "stopped paying the pretend lender . . . in order to not be party to that fraud." Wells Fargo sent Rolston a number of Notices of Intent to Foreclose (NOI) beginning in February 2009, advising her of the default and her right to cure.

Wells Fargo filed a foreclosure complaint on December 21, 2009, which named as defendants Rolston, her husband and another bank that held a second mortgage on the property. Rolston filed an answer with counterclaims on February 25, 2010. She did not deny execution of the note or mortgage, averring instead that she "[did] not have enough knowledge or information to answer" the paragraphs that addressed the execution of those documents.[2] Rolston denied Wells Fargo was the owner or holder of the note and mortgage. Rolston's answer broadly alleged fraud, but without specific allegations or claims of forgery.

In July 2012, Wells Fargo filed a motion for summary judgment. Rolston alleged in opposition that she did not sign the note or

[2] Under Rule 4:64-1(c), "[a]n allegation in an answer that a party is without knowledge or information sufficient to form a belief as to the truth of an allegation in the complaint" will not suffice and "shall be deemed noncontesting to the allegation of the complaint to which it is responsive."

mortgage, and that the signatures were forged. Rolston requested, and was granted, permission to inspect the original note, allonges and endorsements. Wells Fargo produced the original note and mortgage on November 9, 2012. Rolston thereafter filed additional opposition to the summary judgment motion, contending that the note and mortgage were not originals, that "[e]very signature of Kathryn Rolston is different," and she would not admit the note or mortgage "is the actual one signed by [Rolston]."

Summary judgment was granted to Wells Fargo on January 15, 2013, which dismissed Rolston's answer and counterclaims. In the court's statement of reasons issued in February 2013, it found that Wells Fargo had standing to bring the foreclosure action because under the mortgage assignment, it "took possession of the mortgage and [n]ote." The court rejected the argument that the mortgage was assigned improperly because MERS was utilized in the process. The court found the NOI was compliant with the Fair Foreclosure Act, N.J.S.A. 2A:51-53 to -68. It determined that a valid assignment to Wells Fargo confirmed standing. The court found that Rolston's request to see the original note and mortgage signed by her "effectively admit[ted to] the execution of both the [n]ote and mortgage," and that because Rolston paid on the mortgage for six years until default, it was "difficult, if not impossible, for the defendant to now claim that the [n]ote and [m]ortgage were

not executed by her." The court also found there was no genuine issue of fact raised that challenged Wells Fargo's prima facie case of foreclosure. Thereafter, Rolston's motion for reconsideration of the summary judgment order was denied.

Wells Fargo requested entry of a final judgment of foreclosure in 2015. Following a hearing on Rolston's objection to the amount due, the trial court entered a final judgment of foreclosure on February 25, 2015 in favor of Wells Fargo.

Rolston appealed the summary judgment order and the final judgment of foreclosure.[3] She contends on appeal that the court erred in granting summary judgment because there were genuine issues of material fact. Rolston claims that Wells Fargo did not have standing to sue because it did not establish it could enforce the note, and failed to establish it was the mortgagee entitled to enforce the mortgage.

We review a summary judgment decision de novo, which means that we apply the same standards used by the trial judge. W.J.A. v. D.A., 210 N.J. 229, 237 (2012). The question is whether the

[3] Rolston did not appeal the denial of her motion for reconsideration. Because "the basis for the motion judge's ruling on the summary judgment and reconsideration motions" are the same, we do not consider this failure as precluding our review of the summary judgment order. Fusco v. Bd. of Educ., 349 N.J. Super. 455, 461 (App. Div.), certif. denied, 174 N.J. 544 (2002).

evidence, when viewed in a light most favorable to the non-moving party, raises genuinely disputed issues of fact sufficient to warrant resolution by the trier of fact, or whether the evidence is so one-sided that one party must prevail as a matter of law. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). Applying this standard, the record amply supports the summary judgment order.

In a foreclosure matter, a party seeking to establish its right to foreclose on the mortgage must generally "own or control the underlying debt." Deutsche Bank Nat'l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 222 (App. Div. 2011) (quoting Wells Fargo Bank, N.A. v. Ford, 418 N.J. Super. 592, 597 (App. Div. 2011)); Bank of N.Y. v. Raftogianis, 418 N.J. Super. 323, 327-28 (Ch. Div. 2010) (citations omitted). In Deutsche Bank Trust Co. Americas v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012), we held that "either possession of the note or an assignment of the mortgage that predated the original complaint confer[s] standing," thereby reaffirming our earlier holding in Mitchell, supra, 422 N.J. Super. at 216.

We agree with the trial court that Rolston failed to raise genuine issues of fact to overcome the presumption that the note and mortgage were validly signed. Under N.J.S.A. 12A:3-308(a), "each signature on the instrument is admitted unless specifically

denied in the pleadings." Rolston's answer did not deny her signature. There also were numerous examples where Rolston acknowledged the note and mortgage through her conduct, and through her brief before this court. Rolston paid on the mortgage loan for nearly six years; she tried to negotiate a modification of it with Wells Fargo. At best, Rolston only pointed out minor variations of her signature, which variations are equally as evident in the copies of pleadings she submitted in her appendix with this appeal. See Triffin v. Somerset Valley Bank, 343 N.J. Super. 73, 86-87 (App. Div. 2001) (finding "conclusory statements" with "no factual evidence tending to disprove the authenticity of the signature" to be insufficient to defeat summary judgment). Given the presumption of validity, we agree with the trial court that merely pointing out minor variations in the signatures was insufficient to raise an issue of fact.

Under N.J.S.A. 46:9-9, "[a]ll mortgages on real estate in this State . . . shall be assignable at law by writing . . . and any such assignment shall pass and convey the estate of the assignor in the mortgaged premises . . . ." Wells Fargo was assigned the mortgage on December 17, 2009 and filed its foreclosure complaint against Rolston on December 21, 2009.

"Given that the mortgage was properly recorded and appears facially valid, under New Jersey law there is a presumption as to

its validity, and the burden of proof as to any invalidity is on the party making such an argument." In re S.T.G. Enters., Inc., 24 B.R. 173, 176 (Bankr. D.N.J. 1982) (citations omitted). Rolston submitted nothing to the court to overcome this presumption aside from her unsupported allegations that the mortgage was fraudulent. The bank representative certified that the mortgage was assigned prior to the filing of the foreclosure complaint. By virtue of the assignment of the mortgage, which predated the filing of the foreclosure complaint, Wells Fargo clearly had standing to foreclose pursuant to Angeles.

The bank representative's supporting certification complied with N.J.R.E. 803(c)(6). See New Century Fin. Servs., Inc. v. Oughla, 437 N.J. Super. 299, 326 (App. Div.) ("There is no requirement that the foundation witness [certifying that a record is a business record] possess any personal knowledge of the act or event recorded." (citing State v. Martorelli, 136 N.J. Super. 449, 453 (App. Div. 1975), certif. denied, 69 N.J. 445 (1976))), certif. denied, 218 N.J. 531 (2014). The bank's representative certified the loan records were business records, that she had personal knowledge of how the records were kept and maintained, and that she had personally reviewed the account. She certified those records included "true and correct" copies of the note and mortgage.

Rolston contends that Angeles was wrongly decided. However, the present case does not provide a vehicle for reevaluation of that case because no genuine factual issues were raised about the note or the validity of the assignment. In any event, we decline to reevaluate Angeles on the merits.

"The only material issues in a foreclosure proceeding are the validity of the mortgage, the amount of the indebtedness, and the right of the mortgagee to resort to the mortgage premises." Great Falls Bank v. Pardo, 263 N.J. Super. 388, 394 (Ch. Div. 1993) (citations omitted). On appeal, Rolston has not disputed the amount owed in the final judgment of foreclosure,[4] and she conceded non-payment of the mortgage loan in the summary judgment proceeding. She did not raise genuine issues of fact about the validity of signatures on the note or mortgage. Rolston never contested the application of this mortgage to the residential property. Therefore, the court did not err in granting summary judgment to Wells Fargo.

After carefully reviewing the record and the applicable legal principles, we conclude that Rolston's further arguments are

[4] Rolston's notice of appeal included the February 25, 2015 final judgment of foreclosure, but her brief raised no issues about the trial court's ruling on her challenge to the amount due and owing.

without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.