

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-4947-14T2

U.S. BANK NATIONAL
ASSOCIATION, not in
its Individual Capacity,
but Solely as Trustee
for the RMAC Pass-Through
Trust, Series 2013-B,

Plaintiff-Respondent,

v.

GLEN PALIFRONE and
MICHELE L. SCHETTINO,

Defendants-Appellants.

Submitted December 20, 2016 – Decided February 15, 2017

Before Judges Reisner and Rothstadt.

On appeal from the Superior Court of New
Jersey, Chancery Division, Bergen County,
Docket No. F-17322-12.

Glen Palifrone and Michele Schettino,
appellants pro se.

Pluese, Becker, & Saltzman, LLC, attorneys for
respondent (Stuart H. West, on the brief).

PER CURIAM

In this residential mortgage foreclosure action, defendants, Glen Palifrone and Michele L. Schettino, appeal from the Chancery Division's July 31, 2015 final judgment of foreclosure and earlier orders, granting summary judgment to plaintiff, U.S. Bank, N.A., not in its Individual Capacity, but Solely as Trustee of the RMAC Pass-Through Trust, Series 2013-B, and denying defendants' motion to dismiss the complaint and their subsequent motions for reconsideration. Their primary argument throughout the litigation and now on appeal is that the placement of Palifrone's loan into a trust after he had defaulted violated various regulations, rendering his note and the lender's rights under the mortgage unenforceable. We disagree and affirm.

We glean the following facts from the motions' records. On July 17, 1998, Palifrone borrowed \$80,000 from Diversified Financial Group (DFG) and executed a note evidencing the indebtedness. The same day, Palifrone executed a mortgage in favor of DFG as security for the loan, encumbering the title to his home in Garfield. Between July 1998 and December 2012, the note was transferred and the mortgage assigned to various entities.

In 2009, Palifrone gave Schettino a note, promising to pay her \$75,000. The note was secured by a mortgage dated January 2, 2009, that was recorded on May 5, 2009.

According to plaintiff's complaint, Palifrone defaulted on DFG's loan when he failed to make the installment due on February 1, 2009, and all payments due thereafter. As a result, plaintiff's predecessor, Arch Bay Holding, LLC – Series 2010B (ABH), filed the foreclosure complaint on August 23, 2012. In addition to reciting the history of the loan to Palifrone and his default, the complaint described the various assignments of the mortgage and the allonges with endorsements to the note. When ABH filed the complaint, it held the mortgage by an assignment that was recorded in May 2012 and the note pursuant to an allonge making it payable to ABH.

The original assignment from DFG to its assignee was lost and, along with the second assignment, was never recorded. As a result, ABH filed a motion for permission for the foreclosure action to proceed. In response to the unopposed motion, the court entered an order on October 12, 2012, granting ABH's motion, permitting the action to proceed "based on the unrecorded Assignment of Mortgage from . . . [DFG] into Direct Mortgage Partners . . . [(DMP)] and the unrecorded Assignment of Mortgage from . . . [DMP] into TMS Mortgage, Inc."¹

¹ The order indicated the motion seeking this relief was unopposed. Palifrone argues to us that it was opposed, however, there are no documents included in either party's appendix to support his contention.

Palifrone filed an answer and counterclaim in November 2012 contesting ABH's right to foreclose. Schettino filed a contesting answer in January 2013.

After the complaint was filed, ABH assigned the mortgage to plaintiff. In June 2013, ABH filed motions for orders permitting plaintiff to substitute for ABH as the party-plaintiff and for summary judgment, striking Palifrone's and Schettino's answers. Palifrone opposed plaintiff's motion for summary judgment and filed a cross-motion seeking an order dismissing the complaint. He did not file any opposition to the motion for substitution.

Judge Menelaos W. Toskos granted plaintiff's motions and denied Palifrone's motion after considering oral argument on July 12, 2013, and placing his reasons on the record. In his decision, the judge recited the history of the loan, the assignments of the indebtedness, and Palifrone's default after his delivery of a note to Schettino. He then addressed and rejected Palifrone's argument that plaintiff lacked standing. The judge found the argument had no merit because plaintiff possessed the note and assignment of the mortgage, which satisfied the requirement for standing set forth in Deutsche Bank National Trust Co. v. Mitchell, 422 N.J. Super. 214 (App. Div. 2011). Judge Toskos granted plaintiff's motions for summary judgment because there was no question as to Palifrone's execution and delivery of the note and mortgage, his

default in payment, and that plaintiff's mortgage had priority over Schettino's. In conclusion, the judge noted, "With respect to any payment issues and the amount owed, that's reserved for the Office of Foreclosure."

After Palifrone unsuccessfully sought leave to appeal Judge Toskos's orders and to have the matter removed to federal court, Palifrone and Schettino filed a motion to "vacate the default judgment and allow Defendants to file an answer as within time." In his supporting certification, Palifrone argued that the assignment of his mortgage and note violated "trust regulations" that prohibited the "place[ment of] a 'defaulted' loan in a trust." Judge Toskos treated Palifrone's and Schettino's motion as one for reconsideration and as an opposition to the entry of final judgment, because defendants had already filed contesting answers that had been stricken and the final judgment had not yet been entered.

After considering Palifrone's and plaintiff's oral arguments on April 15, 2015, Judge Toskos entered an order six days later, denying Palifrone's and Schettino's motion. In a rider attached to the court's order, the judge explained his reasons for denying the motion. The judge identified Palifrone's contention that the assignments of his mortgage were fraudulent because the mortgage, which was held by a trust for which plaintiff was a nominee, was

placed in trust when it was already in default. Judge Toskos understood that, "Defendant is now attempting to challenge standing by alleging that Plaintiff did not comply with the regulations of the Trust." He then reviewed the law applicable to motions for reconsideration and, concluded that defendants did not have standing to challenge the provisions of a trust, and any challenge to the assignment was belied by the undisputed fact that no other person or entity sought payment from defendant pursuant to his note. Judge Toskos also observed that the arguments being raised by defendant could have been raised years ago in response to plaintiff's summary judgment motions. Finally, the judge concluded that to the extent defendants' motion was to be considered an objection to the amount due, the issues they raised did not articulate "an objection stating with specificity the basis of the dispute and asking the court to fix the amount due."

Palifrone filed a motion for reconsideration of the court's April 21, 2015 order, which the court denied on June 15, 2015. Judge Toskos entered that order after considering Palifrone's and plaintiff's counsel's oral arguments on June 12, 2015. In a rider to the June 15 order, Judge Toskos reviewed Palifrone's arguments and found the court already considered them in the earlier motion as they raised the same claims about plaintiff's standing. Citing Deutsche Bank Trust Company Americas v. Angeles, 428 N.J. Super.

315, 318 (App. Div. 2012), the judge again found plaintiff had standing to pursue foreclosure. The judge concluded that by filing the motion for reconsideration, Palifrone was seeking a "further bite[] of the apple."

Palifrone and Schettino filed their appeal before the final judgment of foreclosure was entered. After its entry, they amended their appeal to include the final "judgment [dated] July 31, 2015, and all interlocutory orders."

On appeal, Palifrone and Schettino raise numerous arguments challenging the various orders entered by the Chancery Division. Many of the issues were raised to that court while others were not. Their arguments include claims again relating to a trust taking possession of a loan in default, "questionable and fraudulent assignments . . . [and] allonges," violation of court rules relating to vacating judgments and reconsideration of orders, as well as claims arising under the Fair Foreclosure Act, N.J.S.A. 2A:50-53 to -68, and the Fair Debt Collections Practices Act, 15 U.S.C.A. §§ 1692 to 1692p.

We have considered Palifrone's and Schettino's arguments in light of our review of the record and the applicable legal principles. We find their arguments to be without sufficient merit to warrant discussion in a written opinion, R. 2:11-3(e)(1)(E), and we affirm substantially for the reasons expressed

by Judge Toskos in his cogent oral and written decisions. We only reiterate that Palifrone and Schettino did not establish any defense to the validity of the mortgage, the amount owed, or plaintiff's right to seek and obtain foreclosure. See Great Falls Bank v. Pardo, 263 N.J. Super. 388, 394 (Ch. Div. 1993), aff'd, 273 N.J. Super. 542 (App. Div. 1994).

To the extent Judge Toskos's decisions did not address some of Palifrone's and Schettino's specific arguments because they were not argued during his consideration of the various motions, but are now being raised to us, we chose not to address them. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (explaining that issues not raised in the trial court will not be considered "unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest").

Affirmed.

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


CLERK OF THE APPELLATE DIVISION