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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-5461-15T3

THE HUNTINGTON NATIONAL
BANK,

Plaintiff-Respondent,

v.

THOMAS CULLEN, MRS. THOMAS
CULLEN, HIS WIFE, FELICE
CULLEN, MR. CULLEN HUSBAND
OF FELICE CULLEN,

Defendants-Appellants.

Submitted August 8, 2017 – Decided December 8, 2017

Before Judges O'Connor and Whipple.

On appeal from Superior Court of New Jersey,
Chancery Division, Ocean County, Docket No.
F-006521-12.

Thomas Cullen and Felice Cullen, appellants
pro se.

Barry M. Kazan (Thompson Hine) attorney for
respondent.

PER CURIAM

In this contested mortgage foreclosure action, defendants Thomas Cullen and Felice Cullen appeal from the July 5, 2016 final judgment of foreclosure entered in favor of plaintiff Huntington National Bank. Defendants also appeal from five pendente lite orders, entered February 6, 2015, May 22, 2015, June 10, 2016, and June 24, 2016. We affirm.

In 2001, defendants executed a note in favor of Metropolitan Bank and Trust Company (Metropolitan) in the amount of \$191,000. To secure such note, defendants executed a mortgage to Metropolitan encumbering their residential property. In 2003, Metropolitan was acquired by Sky Bank through a merger and in 2007, plaintiff acquired Sky Bank, also through a merger.

When plaintiff acquired Sky Bank, it obtained possession of defendants' note and mortgage. In 2011, defendants defaulted on the mortgage. Plaintiff served defendants with a notice of intention to foreclose and, in 2012, filed a foreclosure complaint and amended foreclosure complaint.

The matter went to trial on the merits. At the conclusion of the trial, among other things, the Chancery Court determined plaintiff was the holder of the note and mortgage when it filed its complaint and amended complaint and thus possessed the requisite standing to bring this action. The court also found defendants defaulted on the mortgage and were properly served

with a notice of intention to foreclose. On May 22, 2015, the court entered an order striking defendants' answer and referred this matter to the Office of Foreclosure for further proceedings, see Rule 4:64-1(c).

In June 2016, defendants filed a motion to dismiss the amended complaint, contending they learned from the Federal Home Loan Mortgage Corporation's website it owned defendants' mortgage and note. Defendants argued such information demonstrated the evidence plaintiff introduced at trial to establish it was the holder of the note and mortgage at the time it filed the complaint was false. On June 24, 2016, the court entered an order denying defendants' motion. In its oral decision, the court noted a party can foreclose upon a mortgage even if it is not the owner but merely the holder of a mortgage and, here, plaintiff proved it was the holder of defendants' note and mortgage when it filed the within matter. The final judgment was entered on July 5, 2016.

On appeal, defendants assert the following arguments for our consideration:

POINT I – PLAINTIFF GAVE FALSE TESTIMONY ABOUT NOT SELLING THE SUBJECT LOAN AND IDENTIFYING ITSELF AS THE LENDER IN THE NOTICE OF INTENTION TO FORECLOSE.

POINT II – PLAINTIFF GAVE FALSE TESTIMONY ABOUT POSSESSING THE ORIGINAL NOTE.

POINT III – PLAINTIFF DID NOT HAVE STANDING TO FILE THE COMPLAINT.

POINT IV – PLAINTIFF'S OPPOSITION PAPERS DID NOT DISPUTE THE WITNESS GAVE FALSE TESTIMONY ABOUT PLAINTIFF NOT SELLING THE SUBJECT LOAN AND MISSTATING ITSELF AS THE LENDER IN THE NOTICE OF INTENTION TO FORECLOSE, AND PLAINTIFF POSSESSING THE ORIGINAL NOTE.

POINT V – THE TRIAL SHOULD HAVE DISMISSED THE COMPLAINT UNDER THE UNCLEAN HANDS DOCTRINE.

Having reviewed the record and applicable legal authority, we are satisfied none of defendants' arguments possesses sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We merely note that as holder of the mortgage, plaintiff had standing to file a complaint in foreclosure and enforce the mortgage in this foreclosure proceeding. See Deutsche Bank Nat'l Trust Co. v. Mitchell, 422 N.J. Super. 214, 222 (App. Div. 2011).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION