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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-0504-15T2

PENNYMAC HOLDINGS, LLC,

Plaintiff-Respondent,

v.

PETER STRANSKY,

Defendant-Appellant.

Submitted October 18, 2017 – Decided March 29, 2018

Before Judges Nugent and Currier.

On appeal from Superior Court of New Jersey,
Chancery Division, Monmouth County, Docket No.
F-009316-14.

Peter Stransky, appellant pro se.

Blank Rome, LLP, attorneys for respondent
(Donna M. Bates and Lauren E. O'Donnell, on
the brief).

PER CURIAM

This is a residential mortgage foreclosure action. Defendant Peter Stransky appeals from a September 5, 2014 order entering

summary judgment and an August 14, 2015 final judgment.¹ On appeal, in fifteen arguments, he challenges various aspects of the foreclosure proceedings, the final judgment, and the writ of execution scheduling a sheriff's sale of the foreclosed property. In one argument, he challenges the final judgment and writ of execution because the lot and block numbers designating the foreclosed property in those documents are different from the lot and block numbers identifying the property in the mortgage. We remand this matter for clarification and if necessary corrections to those documents. We find defendant's remaining arguments devoid of merit.

These are the facts. In June 2011, defendant defaulted on a \$320,000 loan evidenced by a note and secured by a mortgage on residential property located in Howell Township. Three years later, in March 2014, plaintiff commenced a foreclosure action. During the foreclosure proceedings, a Chancery Division judge entered a September 5, 2014 order granting plaintiff's summary judgment motion, striking defendant's answer and counterclaim, and referring the matter to the Office of Foreclosure for the entry

¹ Defendant asserts his first name is spelled "Petr." His illegible signature on the note and mortgage appear above the typewritten name, "Peter" Stransky. The complaint, order of summary judgment, and final judgment name "Peter" Stransky. We thus use the name "Peter" in his opinion.

of a final judgment. The court entered final judgment on August 14, 2015.

Defendant signed the note over a signature line bearing the typewritten name of the borrower, "Peter Stransky," and signed the mortgage over a signature line bearing the typewritten name of the borrower, "Peter Stransky." His handwritten signature on the documents is illegible, but he has never denied signing them.

The Note contained an allonge² and endorsement in blank. Defendant executed the mortgage in favor of Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for the lender, Accredited Home Lenders. The Howell Township property subject to the mortgage was identified in the mortgage by a metes and bounds description with this concluding paragraph: "The above premises is also known as Lot 29 in Block 156 on the official tax map of the Township of Howell. (Reported for information only)." The Mortgage was recorded on March 16, 2006.

The mortgage was assigned twice. On October 19, 2011, MERS, as nominee of Accredited Home Lenders, assigned the Mortgage to JPMC Specialty Mortgage, LLC f/k/a WM Specialty Mortgage, LLC (JPMC). The Monmouth County Clerk's Office recorded this

² An allonge is "[a] slip of paper sometimes attached to a negotiable instrument for the purpose of receiving . . . indorsements." Black's Law Dictionary 92 (10th ed. 2014).

assignment on November 9, 2011. As previously explained, defendant defaulted on June 1, 2011. Two years later, on June 17, 2013, before JPMC assigned the mortgage to plaintiff, JPMC served defendant with a Notice of Intent to Foreclose.

The second assignment took place on January 10, 2014, seven months after JPMC served defendant with the Notice of Intent. JPMC assigned the Mortgage to plaintiff, PennyMac Holdings, LLC. This assignment was recorded in the Monmouth County Clerk's Office on February 5, 2014. Thus, the mortgage assignment to plaintiff was recorded a month before plaintiff filed the foreclosure complaint on March 12, 2014.

Defendant filed an answer, which he later amended. The amended answer included affirmative defenses and counterclaims. Thereafter, plaintiff filed a motion for summary judgment. Plaintiff argued defendant's "answer and counterclaim[s] . . . set[] forth no genuine issue as to any material fact challenged and that [it was] entitled to a judgment as a matter of law."

Several days before the motion's return date, defendant filed a "Motion to Produce an Original 'Wet-Ink' Note, Proof of Alleged Debt and Proof of Ownership of Alleged Debt." On the day of the hearing, the court noted defendant was not present, despite the matter having been previously adjourned at his request. Before the court rendered its decision, it questioned plaintiff's

attorney as to defendant's contention that his name was spelled incorrectly. Counsel replied it could be corrected by adding an "a/k/a" to the order since defendant, having entered an appearance, clearly was not disputing whether he had been served with the complaint, nor was he disputing he had taken out the loan.

The court granted the motion. In its confirming order the court mistakenly marked the motion "unopposed," even though it had discussed defendant's opposition during the delivery of its opinion from the bench. Two weeks later, the court denied defendant's motion to compel discovery. The court entered the final foreclosure judgment on August 14, 2015.

The same day, plaintiff obtained a writ of execution scheduling the mortgage property for a sheriff's sale. The final judgment and writ of execution contained the same metes and bounds description as that contained in the mortgage, but identified the property as "Block 156 Lot 28 and 29 Tax map of the Township of Howell."³ The mortgage had identified the property as "Lot 29 in Block 156 on the official tax map of the Township of Howell. (Reported for information only)." The Howell tax map shows Lots

³ It is not entirely clear from the collation of defendant's appellate appendix that the identical metes and bounds description was the same in the final judgment and writ of execution. Such appears to be the case, however, and plaintiff does not dispute it.

28 and 29 as contiguous parcels. Lot 28 appears to have more area than Lot 29.

Following the entry of final judgment, plaintiff filed this appeal. We granted his motion to stay the sheriff's sale. On appeal, defendant makes numerous arguments challenging nearly every aspect of the foreclosure proceedings and writ of execution. Defendant argues the court did not have personal jurisdiction over him because he was not properly named in the pleadings and his legal identity was abused. He also argues plaintiff failed to comply with the Fair Foreclosure Act, did not demonstrate a proper chain of assignments of the mortgage, and did not have standing to file the foreclosure complaint. He asserts the trial court disregarded the Uniform Commercial Code in finding plaintiff had standing. Defendant contends the trial court erred by striking his counterclaim, denying his motion to compel discovery, and granting plaintiff's summary judgment motion before discovery was complete and without adequately considering his opposition. Defendant claims all these decisions are unsupported by adequate facts and reasons.

Defendant challenges the final foreclosure judgment and writ based on these documents' inclusion of a lot number not contained in the mortgage. He contends the trial court did not set forth the specific description of the property to be sold at the

sheriff's sale, thus enabling plaintiff to fraudulently modify the property description and include property not described in the mortgage.

With one exception, we find defendant's arguments devoid of sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). The exception is the variance in the lot numbers between the mortgage and the final foreclosure judgment. The mortgage refers only to Lot 29; the final judgment refers to Lots 28 and 29. Although the legal description is consistent in the mortgage and final judgment, we cannot determine from the appellate record whether the legal description is that of Lot 28 or both Lots 28 and 29.

To avoid confusion about the mortgaged property, and to avoid possible confusion at the sheriff's sale, we vacate the final foreclosure judgment and remand this matter to the trial court to resolve the discrepancy. If plaintiff concedes the mortgage includes only Lot 29, then it would seem a proper final judgment can be entered without much difficulty. On the other hand, if there is a dispute about whether the legal description encompasses both lots, then the trial court will have to conduct a hearing and resolve the matter.

The final judgment is vacated and the matter remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION