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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-0872-16T4

HSBC BANK USA, NA, AS
TRUSTEE FOR NOMURA ASSET
ACCEPTANCE CORPORATION
MORTGAGE PASS THROUGH
CERTIFICATES SERIES 2006-AR2,

Plaintiff-Respondent,

v.

LINDA VIERA,

Defendant-Appellant,

and

MR. VIERA, husband of LINDA
VIERA; DENIS VIERA; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC., AS NOMINEE FOR WORLDWIDE
FINANCIAL RESOURCES, INC., ITS
SUCCESSORS AND ASSIGNS; PRAMCO IV,
LLC; and NEW CENTURY FINANCIAL SERVICES,

Defendants.

Submitted November 13, 2017 – Decided January 31, 2018

Before Judges Ostrer and Whipple.

On appeal from Superior Court of New Jersey,
Chancery Division, Sussex County, Docket No.
F-004281-14.

Molina Law, PC, attorneys for appellant
(Orlando Molina, on the briefs).

Reed Smith, LLP, attorneys for respondent
(Henry F. Reichner, of counsel and on the
brief; David G. Murphy, on the brief).

PER CURIAM

Defendant Linda Viera appeals from the June 10, 2016 order of the Chancery Division granting summary judgment to plaintiff HSBC Bank USA, N.A., as Trustee for Nomura Asset Acceptance Corporation Mortgage Pass Through Certificates Series 2006-AR2, in a mortgage foreclosure case and entering default against Viera.

On January 13, 2006, in exchange for a loan of \$488,000, Denis Viera executed a promissory note in favor of World Financial Resources, Inc. (WFR). To secure the note, Denis and Linda¹ executed a mortgage, recorded on January 26, 2006, on their property located in Highland Lakes. This mortgage named Mortgage Electronic Registration Systems, Inc., (MERS) as the mortgagee. On June 1, 2009, the Vieras failed to make their monthly payment, and the loan went into default.

¹ We refer to the parties by their first names for ease of reference, and in doing so, mean no disrespect.

On October 17, 2011, MERS assigned the mortgage to plaintiff, which recorded it on October 20, 2011. Further, at the time of filing the complaint, plaintiff was in physical possession of the note, which had been endorsed in blank by WFR.

On August 13, 2013, Denis received a Notice of Intent to Foreclose (NOI) from America's Servicing Company, the mortgage servicer. This notice stated the mortgage was in default, the amount due, and "if you do not cure this default and bring your account current by 09/20/2013, then America's Servicing Company may take steps to terminate your ownership of the Property by starting a mortgage foreclosure action against you." It provided an address to which the payments should be sent, and informed Denis that plaintiff was the lender of the loan.

On February 4, 2014, plaintiff filed a foreclosure complaint.² Denis did not respond, and default was entered against him on March 27, 2015. Linda, however, filed an answer with counterclaims and affirmative defenses.

On May 6, 2016, plaintiff moved for summary judgment, and on June 10, 2016, the court granted this motion, striking Linda's

² On June 3, 2015, the trial court dismissed the complaint without prejudice for failure to comply with a case management order. After plaintiff moved for reconsideration, the trial court reinstated the complaint on January 7, 2016, but denied plaintiff's simultaneous motion for summary judgment.

answer and counterclaims and ordering that the matter proceed as uncontested. The trial judge reasoned that plaintiff had shown it was the holder of the note and the assignee of the mortgage, and therefore had standing to foreclose on the mortgage. Further, the Vieras defaulted, and thus plaintiff had the right to foreclose on the mortgage. He found the defenses and counterclaims asserted by Linda were without merit, and the NOI was in compliance with the Fair Foreclosure Act, N.J.S.A. 2A:50-53 to -73 (Act).

On September 28, 2016, the trial court entered final judgment against the Vieras. Linda now appeals from the trial court's order granting summary judgment for plaintiff.

When reviewing a grant of summary judgment, this court uses the same standard as that of the trial court. Globe Motor Co v. Igdaley, 225 N.J. 469, 479 (2016) (citations omitted). A court should grant summary judgment, "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." Ibid. (citing R. 4:46-2(c)). The evidence must be viewed in "the light most favorable to the non-moving party." Mem'l Props., LLC v. Zurich Am. Ins. Co., 210 N.J. 512, 524 (2012) (citation omitted). "Rule 4:46-2(c)'s 'genuine issue [of] material fact' standard mandates

that the opposing party do more than 'point[] to any fact in dispute' in order to defeat summary judgment." Globe Motor Co., 225 N.J. at 479 (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995)) (alteration in original).

To make out a prima facie case for foreclosure, plaintiff must establish the (1) execution, (2) recording, and (3) non-payment of the mortgage. Thorpe v. Floremoore Corp., 20 N.J. Super. 34, 37 (App. Div. 1952); Great Falls Bank v. Pardo, 263 N.J. Super. 388, 394 (Law Div. 1993) (citations omitted). Plaintiff has established these elements by substantial credible evidence, and Linda has asserted nothing sufficient to show a genuine issue of material fact.

Linda asserts, however, the NOI was insufficient and not in compliance with the requirements of N.J.S.A. 2A:50-56(c), which creates a genuine issue of material fact. Under the Act, a "residential mortgage debtor" is entitled to at least thirty days' notice, in writing, before a lender may commence a foreclosure action. N.J.S.A. 2A:50-56(a) & (b). The NOI must "clearly and conspicuously state in a manner calculated to make the debtor aware of the situation." N.J.S.A. 2A:50-56(c). A "residential mortgage debtor" is defined as "any person shown on the record of the residential mortgage lender as being obligated to pay the

obligation secured by the residential mortgage." N.J.S.A. 2A:50-55.

Here, the obligation secured by the residential mortgage was the promissory note, which was signed only by Denis, not Linda. Therefore, while Linda was a mortgagor, she was not a debtor exposed to any obligation under the note. See Banc of Am. Leasing & Capital, LLC v. Fletcher-Thompson Inc., ___ N.J. Super. ___, ___ (App. Div. 2018) (slip op at 5) (recognizing that a wife who did not guarantee a lease obligation was not a judgment debtor whose assets could be levied upon default). Therefore, plaintiff did not have a statutory obligation to send her a NOI, and she cannot challenge the sufficiency of the NOI sent to Denis.

As such, Linda has not shown any genuine issues of material facts, and the trial court's grant of summary judgment was appropriate.

Linda's additional arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION