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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-2282-16T3

NATIONSTAR MORTGAGE, LLC,

Plaintiff-Respondent,

v.

VINNETTE WILLIAMS,

Defendant-Appellant,

and

PAUL WILLIAMS; STATE OF NEW JERSEY;
COUNTY OF MONMOUTH; JAMES PIROLI;
STEPHANIE JAMES, as Guardian Ad Litem
for CHARLES PERRY; LAW OFFICES OF
FREDERICK COLES III; PNC BANK, N.A.;
and APRIL KUKA,

Defendants.

Submitted January 30, 2018 – Decided March 27, 2018

Before Judges Yannotti and Leone.

On appeal from Superior Court of New Jersey,
Chancery Division, Essex County, Docket No.
F-041328-13.

Vinnette Williams, appellant pro se.

Mccalla Raymer Leibert Pierce, LLC, attorneys
for respondent (Evan M. Sampson, on the
brief).

PER CURIAM

Defendant Vinnette Williams appeals from a final judgment of foreclosure entered in this matter on April 29, 2016. We affirm.

We briefly summarize the relevant facts and procedural history. On August 28, 2006, defendant executed a note in favor of Countrywide Home Loans, Inc. (Countrywide) in the amount of \$356,185, with an initial annual interest rate of 6.625 percent, payable by 2036 in monthly installment payments of \$2280.69. To secure payment of the note, defendant and her husband Paul Williams executed a mortgage in favor of Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Countrywide, dated August 28, 2006, in the amount of \$356,185, with regard to certain real property on Shepard Avenue in East Orange.

On April 19, 2012, MERS assigned the mortgage to Bank of America, N.A. (BA), the successor by merger to BAC Home Loans Servicing LP, and the assignment was recorded in the Essex County Register's Office (ECRO). BA assigned the mortgage to plaintiff on June 20, 2013, and that assignment was recorded in the ECRO on July 10, 2013.

On November 8, 2013, plaintiff filed a complaint for foreclosure. In the complaint, plaintiff alleged defendant failed

to make the payment due on November 1, 2012, and all payments that became due thereafter. Plaintiff further alleged defendant had not cured the default, and it had complied with the Fair Foreclosure Act (FFA), N.J.S.A. 2A:50-53 to -73, by providing defendant with a Notice of Intent to Foreclose (NOIF) at least thirty days before filing the complaint. On December 5, 2013, defendant filed an answer.

In March 2014, plaintiff filed a motion for summary judgment. In support of its motion, plaintiff submitted a certification from Rachel Yoo, who is one of its employees. Defendant opposed the motion. On May 7, 2014, the trial court entered an order granting summary judgment in favor of plaintiff.

In the accompanying statement of reasons, the court determined that plaintiff had established that defendant was in default under the note, and that it had standing to foreclose. The court noted that plaintiff had presented competent evidence showing it had possession of the note and the mortgage prior to the date on which it filed its complaint. The court added that the NOIF identified BA as the lender because BA issued the notice, but plaintiff had filed the foreclosure complaint. The court found that plaintiff was entitled to summary judgment, however, it ordered plaintiff to serve another NOIF upon defendant, identifying itself as the lender.

On July 7, 2014, defendant filed a motion for reconsideration of the May 7, 2014 order. Plaintiff opposed the motion. On August 21, 2014, the court entered an order denying defendant's motion. In its statement of reasons, the court noted that plaintiff had served defendant with a new NOIF, as required by the previous order. The court rejected defendant's contention that plaintiff did not properly identify itself in the NOIF as the lender and found that plaintiff had presented sufficient evidence to establish that it satisfied the FFA requirements.

On June 14, 2015, defendant filed a motion, which she identified as a motion to "take judicial notice." Plaintiff opposed the motion and filed a cross-motion to preclude defendant from filing further documents. The court entered an order dated September 10, 2015, denying both motions. In its statement of reasons, the court noted that defendant's motion to "take judicial notice" was, in effect, a motion for reconsideration. The court found reconsideration was not warranted.

On December 9, 2015, defendant filed a motion to vacate the order granting summary judgment to plaintiff and to dismiss the complaint. Plaintiff opposed the motion and filed a cross-motion to bar defendant from filing any additional motions. The court entered an order dated December 24, 2015, denying the motions. In its statement of reasons, the court noted that defendant's motion

was yet another motion for reconsideration. The court also rejected defendant's contention that plaintiff was not properly licensed to do business in New Jersey.

On February 4, 2016, plaintiff filed a motion for entry of a final judgment. Defendant opposed the motion and filed a motion for involuntary dismissal of plaintiff's complaint. On March 18, 2016, the court denied defendant's motion. In its statement of reasons, the court stated that defendant had challenged the amount due, but did not provide sufficient facts to support her argument.

The court also noted that defendant continued to dispute plaintiff's standing to foreclose. The court stated that defendant could not re-litigate the issue of standing, particularly since defendant had not presented any new evidence warranting reconsideration of the court's prior decisions on this issue.

The court entered a final judgment dated April 29, 2016. Thereafter, defendant filed a motion to vacate the judgment. The court entered an order dated September 26, 2016, denying the motion. The court noted that in her motion, defendant had again raised the issue of standing, but it was not proper in the post-judgment context. The court pointed out that defendant's standing argument had been raised and rejected numerous times, and defendant had not shown that the court's decisions on this issue were erroneous.

Defendant filed a notice of appeal on January 18, 2017, which indicated she was appealing from the final judgment dated April 29, 2016. The subject property was sold at a sheriff's sale on February 21, 2017, and plaintiff was the successful bidder. Defendant then filed a motion to set aside the sale, which plaintiff opposed. The court entered an order dated May 19, 2017, denying the motion.

On appeal, defendant argues: (1) she was entitled to relief from the judgment under Rule 4:50-1; and (2) plaintiff did not have the right to force the sale of the subject property because it did not present competent admissible evidence to show it was the owner of the note.

A trial court's determination under Rule 4:50-1 is entitled to substantial deference and will not be set aside in the absence of a clear abuse of discretion. U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). To warrant reversal of the court's order, the defendant must show that the decision was "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Ibid. (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

Here, defendant argues the trial court should have set aside the final judgment because plaintiff did not prove it owns or controls the underlying debt. She contends plaintiff failed to

establish it had standing to enforce the note. She argues plaintiff did not present facts based on "personal knowledge" to show that the note was endorsed before it was presented to the court, or that the note was transferred to plaintiff before the complaint was filed. These arguments are without sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E). However, we add the following.

Standing to foreclose on a mortgage is established by "either possession of the note or an assignment of the mortgage that predate[s] the original complaint." Deutsche Bank Tr. Co. Ams. v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012). As stated previously, plaintiff presented the trial court with the Yoo certification, in which Yoo stated that plaintiff was in possession of the original note and had a valid assignment of the mortgage before it filed the foreclosure complaint.

Defendant argues, however, that the trial court erred by relying upon the Yoo certification in finding that plaintiff had standing to foreclose. We disagree. Rule 1:6-6 provides that facts may be established "on affidavits made on personal knowledge, setting forth only facts which are admissible in evidence to which the affiant is competent to testify."

As noted, Yoo is one of plaintiff's employees, and she indicated that she had personal knowledge of plaintiff's records. Moreover, the records upon which Yoo relied for the facts in her

certification are admissible as business records under N.J.R.E. 803(c)(6). New Century Fin. Servs., Inc. v. Oughla, 437 N.J. Super. 299, 323 (App. Div. 2014) (holding that if proponent can satisfactorily attest to the circumstances under which it acquired documents, the documents are admissible under N.J.R.E. 803(c)(6)).

We therefore conclude that the trial court correctly found that plaintiff was entitled to summary judgment. There were no genuine issues of material fact, and plaintiff was entitled to judgment as a matter of law. R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

Furthermore, plaintiff established with competent evidence that it had standing to foreclose on the note and mortgage. Thus, the trial court correctly determined that defendant had not established any basis under Rule 4:50-1 to set aside the final judgment.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION