NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION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-2609-16T2

THE BANK OF NEW YORK MELLON,
f/k/a THE BANK OF NEW YORK,
as trustee (CWALT 2004-24CB),

Plaintiff-Respondent,

v.

GEORGE ELGHOSSAIN and MONA
ELGHOSSAIN, his wife,

Defendants-Appellants.

Submitted March 22, 2018 – Decided April 9, 2018

Before Judges Haas and Rothstadt.

On appeal from Superior Court of New Jersey, Chancery Division, Middlesex County, Docket No. F-004895-16.

George Elghossain, appellant pro se.

Frank J. Martone, attorney for respondent (Dennis P. Uhlmann, Jr., on the brief).

PER CURIAM

In this residential mortgage foreclosure matter, defendants appeal from the trial court's September 26, 2016 order granting plaintiff's motion for summary judgment, striking defendants'

answer, defenses, and counterclaim with prejudice, and entering default against them.[1] We affirm substantially for the reasons expressed by Judge Ann McCormick in her thorough oral decision rendered on September 16, 2016.

As Judge McCormick found, the relevant facts of this case are set forth in the May 23, 2016 certification and September 21, 2016 supplemental certification prepared by Keli Smith, plaintiff's document coordinator. On August 2, 2004, defendants executed a $260,000 note and mortgage to the original lender, New Millennium Bank. On that same date, defendants obtained a loan in that amount from the same bank. Through a series of subsequent assignments documented in Smith's certifications, plaintiff acquired both the note and the mortgage.

On November 1, 2009, defendants stopped making their mortgage payments. On February 18, 2016, plaintiff filed its foreclosure complaint, and defendants filed an answer and counterclaim, raising a number of defenses, including a challenge to plaintiff's standing to bring the foreclosure action. Plaintiff thereafter moved for summary judgment.

[1] On January 25, 2017, the court entered a final judgment of foreclosure, which defendants do not contest in this appeal.

Following oral argument, Judge McCormick granted plaintiff's motion and struck defendants' answer, defenses, and counterclaim. The judge found that plaintiff clearly had standing because it had possession of the note prior to filing its foreclosure complaint. See Deutsche Bank Trust Co. Ams. v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012) (holding that standing is conferred by "either possession of the note or an assignment of the mortgage that predated the original complaint").

The judge also rejected defendants' argument that plaintiff's complaint should be dismissed under the applicable statute of limitations. Because the February 18, 2016, complaint was filed within twenty years of November 1, 2009, the date defendants stopped paying the mortgage, the judge concluded that plaintiff's complaint was obviously timely. See N.J.S.A. 2A:50-56.1(c) (stating that a foreclosure complaint must be filed within "[t]wenty years from the date on which the debtor defaulted[.]" Finally, Judge McCormick found that defendants' remaining contentions likewise lacked merit. This appeal followed.

On appeal, defendants raise the following contentions:

1. THE LOWER COURT MISCONSTRUED THE STATUTE OF LIMITATIONS (N.J.S.A. 2A:50-56.1).

2. THE LOWER COURT FAILED TO CONSIDER CONFLICTING CLAIMS OF OWNERSHIP OF THE NOTE, AND IMPROPERLY HELD THAT THE NOI IS "APPROPRIATE."

3. THE LOWER COURT IMPROPERLY HELD THAT NEW MILLENNIUM BANK'S MORTGAGE AND ASSIGNMENTS OF MORTGAGE (AOM) WERE VALID.

4. R. 4:64-1(B)(10) REQUIRES THE COMPLAINT TO RECITE ALL ASSIGNMENTS IN THE CHAIN OF TITLE.

5. THE LOWER COURT IMPROPERLY HELD THAT RESPONDENT IS A HOLDER IN DUE COURSE.

6. THE CERTIFICATIONS SUBMITTED BY RESPONDENT WERE NOT BASED ON PERSONAL KNOWLEDGE.

7. [THE TRIAL] JUDGE ERRED BY NOT CONSIDERING CLAIMS STATING THAT THE LOAN IS OWNED BY AN ENTITY NOT NAMED IN THE COMPLAINT.

8. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO RESPONDENT BECAUSE RESPONDENT FAILED TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED.

9. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT WHEN THEIR COMPLAINT RELIED UPON FRAUDULENT MORTGAGE DOCUMENTS.

10. THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT TO RESPONDENT BECAUSE IT WAS NOT ENTITLED TO RELIEF UNDER THE DOCTRINE OF UNCLEAN HANDS.

11. THE TRIAL COURT ERRED WHEN IT IGNORED A VALID RESCISSION.

Our review of a ruling on summary judgment is de novo, applying the same legal standard as the trial court. Townsend v. Pierre, 221 N.J. 36, 59 (2015). "Summary judgment must be granted if 'the pleadings, depositions, answers to interrogatories and

admissions on file, together with the affidavits, if any, show . . . there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment . . . as a matter of law.'" Town of Kearny v. Brandt, 214 N.J. 76, 91 (2013) (quoting R. 4:46-2(c)).

Thus, we consider, as the trial judge did, whether "the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Ibid. (quoting Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995)). We accord no deference to the trial judge's conclusions on issues of law and review issues of law de novo. Nicholas v. Mynster, 213 N.J. 463, 478 (2013).

We have considered defendants' contentions in light of the record and applicable legal principles and conclude that they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We are satisfied that Judge McCormick properly granted summary judgment to plaintiff for the reasons set forth in her oral opinion.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION