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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-3068-15T3

CITI MORTGAGE, INC.,

Plaintiff-Respondent,

v.

ELVIRA L. PENG a/k/a ELVIRA
PENG,

Defendant-Appellant,

and

MR. PENG, her husband;
DANIEL L. CHIONG a/k/a DANIEL
CHIONG and MRS. DANIEL CHIONG,
his wife,

Defendants.

Submitted September 14, 2017 – Decided January 24, 2018

Before Judges Simonelli and Gooden Brown.

On appeal from Superior Court of New Jersey,
Chancery Division, Cumberland County, Docket
No. F-007427-14.

Elvira L. Peng, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

In this residential foreclosure matter, defendant Elvira Peng appeals from a February 16, 2016 Chancery Division order dismissing with prejudice her objection to plaintiff CitiMortgage, Inc.'s motion for final judgment, and a February 29, 2016 final judgment of foreclosure in favor of CitiMortgage. We affirm.

The record discloses defendants Elvira Peng and her son, Daniel Chiong, purchased the subject property in Vineland in 2004. On March 16, 2006, they refinanced by executing a thirty-year fixed rate note to CitiMortgage in the amount of \$233,024. To secure payment of the note, on the same date, defendants executed a non-purchase money mortgage on the property to Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for CitiMortgage. The mortgage was recorded with the Cumberland County Clerk on April 5, 2006.

Defendants defaulted on March 1, 2012, and have not made any mortgage payments since that date. On May 16, 2012, MERS assigned the mortgage to CitiMortgage and CitiMortgage recorded the assignment with the Cumberland County Clerk on May 18, 2012. CitiMortgage sent defendants a notice of intention to foreclose. Over thirty-one days later, after defendants failed to cure, CitiMortgage filed a foreclosure complaint on February 27, 2014. At that time, CitiMortgage was in possession of the note and had been assigned the mortgage.

Defendant Elvira Peng filed an answer, essentially alleging fraud by the developer.¹ Defendant's² answer did not respond to the allegations in the complaint nor contest the default or the validity of the note and assignment. On October 24, 2014, the motion judge heard oral argument on CitiMortgage's motion to strike defendant's answer and enter summary judgment. Thereafter, the judge entered summary judgment in favor of CitiMortgage, struck defendant's answer, and referred the matter to the Office of Foreclosure as an uncontested matter for further proceedings, see Rule 4:64-1(c).

¹ Defendant Elvira Peng has a longstanding dispute with the developer, Landmark Development, dating back to 2004 in which she claims she was defrauded by the construction of a larger house than she agreed to purchase. According to Peng, she agreed to purchase "2515 square feet of dwelling" but "an area of 3,219.00 square feet of dwelling[]" was "substituted" instead. As a result of these misrepresentations and deceptive business practices, Peng asserts there was an unlawful increase in price, property taxes and hazard insurance that constitute "ground[s] to void and nullify" the mortgage contract and promissory note executed in connection with the purchase of the property in 2004 as well as the "refinance contract" entered in 2006. Peng claimed she was fraudulently induced to enter into the 2006 "refinance contract" with CitiMortgage based on misrepresentations of "negative escrow[.]"

² Although there are other named defendants, none have appealed the final judgment. For simplicity, our reference to "defendant" in this opinion refers only to Elvira Peng.

On February 16, 2016, the same judge denied defendant's motion objecting to the entry of final judgment. The judge noted:

[P]ursuant to [Rule 4:64-1(d)(3)], only objections that dispute the . . . correctness of the Certification of Amount Due, and do so with specificity, are appropriately reviewed at this level.

As indicated, Ms. Peng has a dispute with the builder of longstanding. It does appear from the papers filed that she has filed a claim or an action in Superior Court against the builder.

And that that matter was disposed of by Judge Geiger and may be the subject of . . . an appeal. I'm satisfied that it is not related to the foreclosure action.

That it's a money damages matter that stands on its own and I would dismiss the objection with prejudice and return the matter to the Office of Foreclosure for entry of Judgment.

On February 29, 2016, final judgment was entered and this appeal follows.

On appeal, defendant renews the arguments presented to the motion judge. We have reviewed the record and considered defendant's arguments and conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We offer the following brief comments.

To establish a prima facie right to foreclose on a mortgage, there must have been execution, recording and non-payment of the

mortgage. Thorpe v. Floremoore Corp., 20 N.J. Super. 34, 37-38 (App. Div. 1952). Additionally, "[a]s a general proposition, a party seeking to foreclose a mortgage must own or control the underlying debt" to have standing to foreclose. Deutsche Bank Nat'l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 222 (App. Div. 2011) (quoting Wells Fargo, N.A. v. Ford, 418 N.J. Super. 592, 597 (App. Div. 2011)). "[E]ither possession of the note or an assignment of the mortgage that predated the original complaint confer[s] standing." Deutsche Bank Tr. Co. Ams. v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012) (citing Mitchell, 422 N.J. Super. at 216, 225).

Here, the competent evidence in the record confirms that plaintiff established a prima facie right to foreclose on the mortgage. Additionally, plaintiff had standing to foreclose by virtue of the fact that it had both possession of the note and assignment of the mortgage that pre-dated the filing of the complaint. Accordingly, the final judgment was properly entered and defendant's motion objecting to its entry was properly denied.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION