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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-3179-16T1

BAYVIEW LOAN SERVICING, LLC,
a Delaware Limited Liability
Company,

Plaintiff-Respondent,

v.

MARGIE GARCIA,

Defendant-Appellant,

and

ALEXANDRA BOARDLEY, MR. or MRS.
BOARDLEY, Spouse or Civil Partner
of Alexandra Boardley, and MR. or
MRS. GARCIA, Spouse or Civil
Partner of Margie Garcia,

Defendants.

Submitted April 26, 2018 – Decided May 4, 2018

Before Judges Simonelli and Haas.

On appeal from Superior Court of New Jersey,
Chancery Division, Bergen County, Docket No.
F-036574-15.

Margie Garcia, appellant pro se.

KML Law Group, PC, attorneys for respondent (Jaime R. Ackerman, of counsel and on the brief).

PER CURIAM

Defendant Margie Garcia appeals from the November 28, 2016 Chancery Division order, which granted summary judgment to plaintiff Bayview Loan Servicing, LLC, struck defendant's answer and affirmative defenses, and transferred the matter to the Office of Foreclosure to proceed as an uncontested foreclosure. Defendant also appeals from the February 16, 2017 final judgment for foreclosure. On appeal, defendant contends the trial court erred in granting summary judgment because plaintiff lacked standing to foreclose and failed to comply with the Rules of Court. We reject these contentions and affirm.

We derive the following facts from evidence submitted by the parties in support of, and in opposition to, the summary judgment motion, viewed in the light most favorable to defendant. Angrand v. Mountain Creek Resort, Inc., 213 N.J. 573, 577 (2013) (citing Brill v. Guardian Life Ins. Co., 142 N.J. 520, 523 (1995)).

On April 11, 2008, defendant executed a note to Continental Home Loans, Inc. (Continental) in the amount of \$366,650. The note was endorsed in blank. To secure payment of the note, defendant executed a mortgage to Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for Continental and its successors

and assigns, on her property located in Bergenfield. The mortgage was recorded with the Bergen County Clerk on September 12, 2008. Defendant defaulted on January 1, 2009, and had made no payment since then.

On November 17, 2009, MERS, as nominee for Continental, assigned the mortgage to BAC Home Loans Servicing, LP (BAC), formerly known as Countrywide Home Loans Servicing, LP, "[t]ogether with the . . . [n]ote . . . and the money due and to become due thereon, with the interest." The assignment was recorded with the Bergen County Clerk on January 20, 2010.

On July 23, 2013, Bank of America, N.A., the successor by merger to BAC, assigned the mortgage to the Secretary of Housing and Urban Development (HUD), "[t]ogether with the [n]ote . . . therein described or referred to [and] the money due and to become due thereon with interest." The assignment was recorded with the Bergen County Clerk on August 28, 2013.

On July 24, 2013, HUD assigned the mortgage to plaintiff, "[t]ogether with the [n]ote . . . therein described or referred to [and] the money due and to become due thereon with interest." The assignment was recorded with the Bergen County Clerk on August 20, 2013.

By letter, dated August 9, 2013, plaintiff notified defendant that her mortgage loan was transferred to plaintiff on July 12,

2013. The letter also notified defendant of a change in creditor, and identified the new creditor as "U.S. Bank National Association, as trustee, in trust for the benefit of the Holders of Bayview Opportunity Master Fund IIIa REMIC Trust 2013-11NPL2 Beneficial Interest Certificates, Series 2013-11NPL2[.]" The letter did not state the new creditor owned the note and mortgage or that plaintiff transferred the note or assigned the note or mortgage to the new creditor.

On December 1, 2014, plaintiff mailed a notice of intention to foreclose to defendant, identifying plaintiff as "the [c]reditor to whom the debt is owed" (the NOI). After defendant failed to cure, on November 9, 2015, plaintiff filed a foreclosure complaint. On December 22, 2015, defendant filed an answer, asserting ten affirmative defenses, including plaintiff's lack of standing to foreclose and failure to comply with pre-action notice requirements.

By letter, dated October 10, 2016, plaintiff notified defendant that on September 28, 2016, ownership of the mortgage loan was transferred to "U.S. Bank National Association, as Trustee for Bayview Opportunity Master Fund IIIa REMIC Trust 2016-RN3" (USBNA). Plaintiff also advised it would continue to service the loan.

On October 14, 2016, plaintiff filed a motion for summary judgment. Plaintiff's authorized representative submitted a certification, confirming that prior to the filing of the complaint, "[t]he [n]ote and mortgage were sold and transferred to [p]laintiff" and "[t]he mortgage was [a]ssigned to plaintiff." Attached to the certification were copies of the note, mortgage, and all assignments.

Defendant did not challenge the validity of the note and mortgage or deny she defaulted. Rather, she challenged plaintiff's standing and validity of the assignment and NOI. She argued that plaintiff failed to establish it was in possession of the note at the time the complaint was filed or currently, and failed to establish it was assigned the mortgage. She also argued the two letters from plaintiff confirmed that USBNA owned the loan as of August 28, 2013, and plaintiff failed to comply with Rule 4:64 with respect to the NOI.

In a November 28, 2016 written opinion, Judge Edward A. Jerejian held that plaintiff had standing to foreclose. The judge found plaintiff was the holder of the note at the time the complaint was filed, and even if not the holder, plaintiff had a valid assignment of the mortgage and note that pre-dated the complaint. Citing Rule 4:34-3, the judge determined that even if

the note was transferred to another entity after the complaint was filed, plaintiff, as the original party, could continue the action.

Judge Jerejian also found the assignment was presumed valid, as defendant never asserted anyone other than plaintiff made a demand for payment following the assignment. Lastly, the judge determined the NOI was not defective. The judge found the NOI correctly identified plaintiff as the creditor because plaintiff had the assignment of the mortgage and note at that time of the NOI and the mortgage loan was not transferred to USBNA until September 28, 2016. Accordingly, the judge granted summary judgment to plaintiff, struck defendant's answer and affirmative defenses, and transferred the matter to the Office of Foreclosure to proceed as an uncontested foreclosure.

This appeal followed. On appeal, defendant reiterates the arguments made to Judge Jerejian.

Our review of a ruling on summary judgment is de novo, applying the same legal standard as the trial court. Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co., 224 N.J. 189, 199 (2016) (citation omitted). Thus, we consider, as the trial judge did, "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Liberty Surplus Ins. Corp. v. Nowell Amoroso, PA, 189 N.J. 436, 445-46 (2007) (quoting

Brill, 142 N.J. at 536). "[S]ummary judgment [must] be granted '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.'" Templo Fuente, 224 N.J. at 199 (quoting R. 4:46-2(c)). If there is no genuine issue of material fact, we must then "decide whether the trial court correctly interpreted the law." Massachi v. AHL Servs., Inc., 396 N.J. Super. 486, 494 (App. Div. 2007). We review issues of law de novo and accord no deference to the trial judge's conclusions on issues of law. Nicholas v. Mynster, 213 N.J. 463, 478 (2013).

We have considered defendant's arguments in light of the record and applicable legal principles and conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the reasons expressed by Judge Jerejian in his well-reasoned written opinion. However, we make the following brief comments.

"[S]tanding is not a jurisdictional issue in our State court system and, therefore, a foreclosure judgment obtained by a party that lacked standing is not 'void' within the meaning of Rule 4:50-1(d)." Deutsche Bank Nat'l Tr. Co. v. Russo, 429 N.J. Super. 91, 101 (App. Div. 2012). The judgment is "voidable" unless the

plaintiff has standing from either possession of the note or an assignment of the mortgage that predated the original complaint. Deutsche Bank Tr. Co. Ams. v. Angeles, 428 N.J. Super. 315, 319-20 (App. Div. 2012).

Here, plaintiff had both possession of the note and a valid assignment of the mortgage and note prior to filing the complaint. Thus, plaintiff had standing to foreclose and could continue the litigation in its name even if it had transferred the mortgage and note to USBNA during the pendency of the action. See Tr. Co. of N.J. v. McGuinness, 104 N.J. Eq. 1, 2-6 (1928).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION