SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3183-15T1

U.S. BANK, N.A. as Trustee under the Pooling and Servicing Agreement dated as of Feb. 1, 2007, GSAMP Trust 2007-HE1, Mortgage Pass-Through Certificates, Series 200 HE1,

Plaintiff-Respondent,

v.

JOEL POLTER and SANDRA POLTER,

Defendants-Appellants,

and

GREENBRIAR OCEANAIRE HOMEOWNER'S ASSOCIATION AND THE UNITED STATES OF AMERICA,

Defendants.

Argued December 12, 2017 – Decided February 27, 2018

Before Judges Fisher and Moynihan.

On appeal from Superior Court of New Jersey, Chancery Division, Ocean County, Docket No. F-028111-13.

Joel Polter and Sandra Polter, appellants, argued the cause pro se.

Dustin P. Mansoor argued the cause for respondent (Houser & Allison, APC, attorneys; Dustin P. Mansoor, on the brief).

PER CURIAM

On February 25, 2015, Judge Frank A. Buczynski, after taking testimony on plaintiff's motion to strike defendants' pleadings, granted that motion and returned the matter to the Foreclosure Unit to proceed as an uncontested case subject to plaintiff's application for final judgment. Judgment was entered on December 30, 2015. Defendants appeal from that order,[1] arguing in their pro se brief:

1. LACK OF STANDING BY PLAINTIFF

2. LACK OF A FAIR TRIAL — DENIED CONSTITUTIONAL RIGHTS

3. JUDICIAL BIAS

4. INEFFECTIVE REPRESENTATION

5. STATUTE OF LIMITATION ISSUES

[1] Defendants' initial notice of appeal and civil case information statement (CCIS) indicated they are appealing a "2/25///2015 Judgment for foreclosure"; we do not see a copy of any order or judgment attached to that CCIS. Defendants filed an amended notice appealing from the December 30, 2015 judgment. The "2/25///15" date on the concomitant CCIS was scratched out and a handwritten date of "12/30/2015" appears before "Judgment for foreclosure"; a copy of the December 30 judgment is attached to the amended CCIS. A CCIS filed ten days after the amended documents again indicates defendants are appealing from a "2/25/15 Judgment of Foreclosure"; no copy of a judgment or order was attached.

Notwithstanding the confusion created by the appeal filings, we determine defendants' arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Defendants did not advance their present arguments during the hearing before Judge Buczynski; as such, we will not consider them here. Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973). Instead, they contended plaintiff's foreclosure complaint should have been dismissed because, although plaintiff may have had standing, it was "not the holder of the [n]ote and ha[d] no rights . . . under N.J.S.A. 12A:3-204,"[2] as the note was not properly

[2] N.J.S.A. 12A:3-204 provides:

> a. "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of negotiating the instrument, restricting payment of the instrument, or incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.
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> b. "Indorser" means a person who makes an indorsement.

indorsed — the specific indorsement on the note was stamped "void" and there wasn't an indorsement in blank — and the allonge was not affixed; and that plaintiff did not serve a proper notice of intent (NOI) because the assignment of mortgage to plaintiff occurred on October 4, 2012, and the NOI was dated March 2012.

Judge Buczynski considered documents entered into evidence after he heard testimony from a senior loan analyst for Ocwen Financial Corporation — plaintiff's loan servicer. He found the November 10, 2006 note, payable to Mortgage Lenders Network U.S., Inc. (MLN), was executed and initialed by defendants. He ruled the "void" stamp was affixed in error, finding no evidence that Emax[3] Financial Group, LLC — to whom the void indorsement was made — "was an assignee or [that the note] was ever assigned to [it]."

> c. For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.
>
> d. If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

[3] The transcript refers to "Max Financial Group" but the note contained in the record clearly indicates the indorsee was Emax.

The judge also found that only two parties — Ocwen and a prior servicer, Litton Loan Servicing — possessed the note after the complaint was filed.[4] Although the allonge was not affixed to the note, the judge deduced it was an effective indorsement because the note and the allonge both had staple marks, the same loan number, the same amount, and the allonge was dated thirty-eight days after the date of the note. He also found the mortgage — executed by defendants and recorded — was a lien on the realty in question and that the assignment of mortgage between Mortgage Electronic Registration Systems, Inc. (MERS), as MLN's nominee, and plaintiff[5] — recorded August 19, 2009 — was proper. After finding accurate the amount due and owing by defendants, he struck their pleadings.

"The only material issues in a foreclosure proceeding are the validity of the mortgage, the amount of the indebtedness, and the right of the mortgagee to resort to the mortgaged premises." Great Falls Bank v. Pardo, 263 N.J. Super. 388, 394 (Ch. Div. 1993), aff'd o.b., 273 N.J. Super. 542 (App. Div. 1994). "[W]e [have] held that either possession of the note or an assignment of the

[4] The complaint was filed August 8, 2013. An amended complaint was filed August 19, 2014.

[5] Plaintiff was successor by merger to LaSalle Bank National Association, as trustee under a pool servicing agreement.

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 Deutsche Bank Tr. Co. Ams. v. Mitchell, 422 N.J. Super. 214, 216 (App. Div. 2011)).

The record supports Judge Buczynski's findings. Defendants' pleadings were properly struck and, there being no material issues otherwise raised, the entry of the foreclosure judgment is affirmed.[6]

[6] Plaintiff argues defendants failed to provide a basis to set aside the judgment. We do not see that defendants applied to the trial court for relief under Rule 4:50-1 and made no specific argument on appeal for relief under that rule. Hence we do not consider that argument. Nieder, 62 N.J. at 234.