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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-3702-16T2

WELLS FARGO BANK, NA,

Plaintiff-Respondent,

v.

ODDIE WIGGINS, her heirs, devisees,  
and personal representatives, and  
her, their or any of their successors  
in right, title and interest, and  
MR. WIGGINS, husband of ODDIE WIGGINS,

Defendants,

and

LINDA WIGGINS, individually and  
as administratrix of the Estate of  
ODDIE WIGGINS, deceased,

Defendant-Appellant.

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Submitted February 26, 2018 – Decided March 19, 2018

Before Judges O'Connor and Vernoia.

On appeal from Superior Court of New Jersey,  
Chancery Division, Essex County, Docket No.  
F-017818-15.

Linda Wiggins, appellant pro se.

Reed Smith, LLP, attorneys for respondent (Henry F. Reichner, of counsel; Siobhan A. Nolan, on the brief).

PER CURIAM

In this mortgage foreclosure action, defendant Linda Wiggins,<sup>1</sup> individually and as administratrix of the estate of Oddie Wiggins (Wiggins), appeals from a June 3, 2016 order granting plaintiff Wells Fargo Bank, N.A.'s motion for summary judgment and denying defendant's motion to dismiss the complaint, and an April 4, 2017 final judgment of foreclosure. We affirm.

We discern the following facts from the record and view the facts and all reasonable inferences therefrom in the light most favorable to defendant, because she is the party against whom summary judgment was entered. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

On September 16, 2008, Wiggins signed a \$106,312 promissory note in favor of Advisors Mortgage Group, LLC (AMG). As security for the note's obligations, Wiggins executed a mortgage to Mortgage Electronic Registration Systems, Inc. (MERS), as AMG's nominee. The mortgage granted AMG a security interest in residential property located in Newark, and was recorded on September 26, 2008, in the Essex County Clerk's Office.

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<sup>1</sup> The record also includes references to Linda Wiggins as "Linda Wiggins-Andrews."

Wiggins died in January 2014, and the loan went into default on December 1, 2014. By Assignment of Mortgage dated January 8, 2015, and recorded on January 13, 2015, MERS assigned its rights under the mortgage to plaintiff. Plaintiff filed a complaint for foreclosure four months later. Defendant filed a contesting answer.

In May 2016, plaintiff filed a motion for summary judgment. In support of its motion, plaintiff relied on the certification of Billie Lucrita Simpson, plaintiff's Vice President of Loan Documentation. Simpson certified that based on her personal review of plaintiff's business records related to the mortgage and note, plaintiff was in possession of the note prior to and since the filing of the complaint. She also certified that plaintiff's business records showed the mortgage was assigned to plaintiff and recorded on January 13, 2015, four months before it filed the foreclosure complaint.

Defendant did not file opposition to plaintiff's summary judgment motion. On May 2, 2016, however, defendant filed a motion to strike the complaint based on plaintiff's purported lack of standing and alleged failure to provide discovery. On June 3, 2016, Judge Donald A. Kessler entered an order granting plaintiff's motion for summary judgment, deeming defendant's answer noncontesting, and denying defendant's dismissal motion.

In a written statement of reasons, Judge Kessler rejected defendant's claim that plaintiff lacked standing to bring the foreclosure action. Judge Kessler found the undisputed facts established plaintiff's standing for two separate but equally dispositive reasons: the mortgage was assigned to plaintiff prior to the filing of the complaint; and plaintiff was in possession of the note when the complaint was filed. Judge Kessler also determined defendant defaulted on the note on December 1, 2014, and made no payments thereafter. The judge rejected defendant's claim plaintiff failed to respond to her discovery demands. Judge Kessler later denied defendant's motion for reconsideration.<sup>2</sup>

On April 4, 2017, Judge Paul Innes entered a final judgment of foreclosure. This appeal followed.

Defendant presents the following arguments for our consideration:

[POINT I]

IN THE INTEREST OF JUSTICE THE APPELLATE DIVISION MUST DECIDE WHETHER A GENUINE ISSUE OF MATERIAL [FACT] WAS IN DISPUTE THAT SHOULD HAVE PRECLUDED SUMMARY JUDGMENT WHERE REVIEW WHERE WELLS FARGO BANK, N.A. IS SEEKING TO FORECLOSE A MORTGAGE THAT SECURES A [NEGOTIABLE] NOTE WITHOUT BRINGING FORTH ANY DIRECT EVIDENCE TO SHOW JUST HOW THAT RIGHT WAS OBTAINED AS REQUIRED BY ESTABLISH[ED] CASE LAW.

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<sup>2</sup> Defendant does not appeal from the January 6, 2017 order denying her motion for reconsideration of the June 3, 2016 order.

[POINT II]

THE APPELLATE DIVISION MUST [DECIDE WHETHER]  
THE TRIAL COURT ERRED WHEN THERE WAS A GENUINE  
ISSUE OF MATERIAL FACT WAS IN DISPUTE THAT  
SHOULD HAVE PRECLUDED SUMMARY JUDGMENT.

In our review of a grant of summary judgment, we apply the same legal standard as the motion judge. Townsend v. Pierre, 221 N.J. 36, 59 (2015). We must determine whether there is a "genuine issue as to any material fact" when the evidence is "viewed in the light most favorable to the non-moving party." Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 405-06 (2014) (first quoting R. 4:46-2(c); and then quoting Brill, 142 N.J. at 540). The "trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference" and are reviewed de novo. Estate of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 382-83 (2010).

In a mortgage foreclosure proceeding, the court must determine three issues: "the validity of the mortgage, the amount of the indebtedness" and default, and the right of the plaintiff to foreclose on the mortgaged property. Great Falls Bank v. Pardo, 263 N.J. Super. 388, 394 (Ch. Div. 1993), aff'd, 273 N.J. Super. 542 (App. Div. 1994). On appeal, defendant concedes the mortgage is valid, and she is in default under the note. She argues only that the motion court erred because Simpson's affidavit was not

based on personal knowledge and therefore could not support the court's determination that plaintiff had standing to bring the foreclosure action.

A party initiating a foreclosure proceeding "must own or control the underlying debt" obligation at the time an action is initiated to demonstrate standing to foreclose on a mortgage. Deutsche Bank Nat'l Trust Co. v. Mitchell, 422 N.J. Super. 214, 222 (App. Div. 2011) (quoting Wells Fargo Bank, N.A. v. Ford, 418 N.J. Super. 592, 597 (App. Div. 2011)). Absent a showing of ownership or control, a "plaintiff lacks standing to proceed with the foreclosure action and the complaint must be dismissed." Ibid. (quoting Ford, 418 N.J. Super. at 597). "[E]ither possession of the note or an assignment of the mortgage that predated the original complaint confer[s] standing." Deutsche Bank Trust Co. Ams. v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012) (citing Mitchell, 422 N.J. Super. at 216, 225).

Simpson's certification provided ample support for the court's determination that plaintiff had standing to bring the foreclosure action. It showed plaintiff possessed the note and the mortgage was assigned to plaintiff prior to the filing of the complaint. See ibid. Defendant did not oppose the summary judgment motion and thus offered no competent evidence to the contrary. See Alpert, Goldberg, Butler, Norton & Weiss, PC v.

Quinn, 410 N.J. Super. 510, 538 (App. Div. 2009) (noting that Rule 4:46-5(a) requires that a party opposing a summary judgment motion respond by affidavits "setting forth specific facts showing that there is a genuine issue for trial"); see also Housel for Housel v. Theodoridis, 314 N.J. Super. 597, 604 n.3 (App. Div. 1998) (first alteration in original) (citation omitted) ("[I]f the opposing party offers no affidavits or matter in opposition . . . he will not be heard to complain if the court grants summary judgement, taking as true the statement of uncontradicted facts in the papers.")

We are not persuaded by defendant's contention that Simpson's certification was not based upon personal knowledge as required by Rule 1:6-6. The certification expressly states Simpson's knowledge was obtained by her personal review of records made in the regular course of her employer's business, at or near the time of the events, and recorded by persons with knowledge of the activity and transactions memorialized in the records. The documents upon which Simpson's certification was based were admissible as business records under N.J.R.E. 803(c)(6). State v. Sweet, 195 N.J. 357, 370 (2008). There was no requirement that Simpson possess personal knowledge of the events reflected in the records. New Century Fin. Servs. v. Oughla, 437 N.J. Super. 299, 326 (App. Div. 2014) (citing State v. Martorelli, 136 N.J. Super.

449, 453 (App. Div. 1975)); cf. Ford, 418 N.J. Super. at 599-600 (finding a certification supporting a summary judgment motion was inadequate because it did not state it was based upon personal knowledge "of the material facts alleged therein," and did not reflect the source of knowledge of the facts stated).

We also reject defendant's claim plaintiff did not have standing because plaintiff was not a "holder" of the note under N.J.S.A. 12A:3-301. To establish it was the holder, plaintiff was required to demonstrate a negotiation took place because it was an entity other than the one to which the instrument was made payable. Mitchell, 422 N.J. Super. at 223. Where, as here, the note was payable to an identifiable entity (i.e., AMG), "negotiation requires two things: 'transfer of possession of the instrument and its [e]ndorsement by the holder.'" Ibid. (quoting N.J.S.A. 12A:3-201(b)). To show an endorsement, a plaintiff must establish that "the note [was] endorsed prior to or at the time of delivery, either in favor of plaintiff or in blank." Bank of N.Y. v. Raftogianis, 418 N.J. Super. 323, 331 (Ch. Div. 2010).

Plaintiff had standing as a holder of the note because Simpson's certification established plaintiff was in possession of the note prior to the filing of the complaint, and the note was endorsed in blank. Id. at 330-31. Thus, because there was a transfer and an endorsement constituting a negotiation, Mitchell,




422 N.J. Super. at 223, prior to the filing of the complaint, the court correctly found plaintiff had standing to foreclose.

Defendant's remaining contentions are without merit sufficient to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION