

**NOT FOR PUBLICATION WITHOUT THE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-4088-16T3

U.S. BANK NATIONAL ASSOCIATION,
as legal title trustee for Truman
2016 SC6 Title Trust,

Plaintiff-Respondent,

v.

SIMON ZAROOUR,

Defendant-Appellant,

and

LYNX ASSET and FRANKS GMC TRUCK CENTER,

Defendants.

Submitted May 7, 2018 – Decided May 22, 2018

Before Judges Accurso and Vernoia.

On appeal from Superior Court of New Jersey,
Chancery Division, Bergen County, Docket No.
F-031750-15.

Simon Zarour, appellant pro se.

Romano Garubo & Argentieri, LLC, attorneys for
respondent (Emmanuel Joseph Argentieri, of
counsel and on the brief).

PER CURIAM

In this commercial mortgage foreclosure action, defendant Simon Zarour appeals from a November 7, 2016 order granting summary judgment to then-plaintiff Christiana Trust, a Division of Wilmington Savings Fund Society, FSB, not in its individual capacity but as Trustee of ARLP Trust 3 (Christiana Trust),¹ and denying defendant's motion to dismiss the complaint. Defendant also appeals from the April 6, 2017 final judgment of foreclosure.

Defendant argues the court erred by rejecting his contention that the complaint was filed beyond the six-year limitations period set forth in N.J.S.A. 2A:14-1 and N.J.S.A. 2A:50-56.1(a), and by finding Christiana Trust had standing to bring the foreclosure action. We disagree and affirm.

I.

On July 13, 2007, defendant executed a \$360,000 promissory note in favor of Countrywide Bank, FSB (Countrywide). As security for payment of the note, defendant executed a mortgage to Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Countrywide on commercial property located in Fair Lawn. Defendant defaulted on August 1, 2008, and thereafter has failed to make any payments under the note.

¹ On November 16, 2016, nine days after entry of the summary judgment order, the court entered an order substituting U.S. Bank, National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust (U.S. Bank) as plaintiff.

By Assignment of Mortgage dated November 25, 2008, MERS, as nominee for Countrywide, assigned the mortgage to Countrywide Bank, FSB, c/o Countrywide Home Loans Servicing, L.P. The Assignment was recorded on March 18, 2009, in the Bergen County Clerk's office. Five years later, the mortgage was assigned to Christiana Trust by Bank of America, N.A. successor by merger to BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P. A January 24, 2014 Assignment of Mortgage was recorded in the Bergen County Clerk's office on March 4, 2014.

On September 17, 2015, Christiana Trust filed a foreclosure complaint. Defendant failed to file a timely answer, default was entered, and the court subsequently entered an order granting defendant's motion to vacate the default. Defendant then filed a contesting answer.

In August 2016, Christiana Trust moved for summary judgment, and defendant cross-moved for dismissal of the complaint. In a detailed written statement of reasons issued following oral argument, the court first rejected defendant's contention that the certifications of Natalie Owens, a Supervisor and Document Signing Officer at Christiana Trust's loan servicer, and Kevin Elliott, Senior Vice President of U.S. Bank, which were submitted in support of the summary judgment motion, constituted inadmissible hearsay. The court determined the certifications constituted competent

evidence under N.J.R.E. 803(c)(6) because they contained statements based on the witnesses' personal knowledge of Christiana Trust's business records, and that Elliot's certification also contained admissible evidence under N.J.R.E. 803(c)(14), because it detailed records affecting interests in property.

The court also found the certifications established Christiana Trust had standing to bring the foreclosure action because they showed Christiana Trust was in possession of the note and had been assigned the mortgage prior to the filing of the complaint.

The court rejected defendant's assertion that the complaint was time-barred by the statute of limitations. The court found the statute of limitations for a foreclosure action is twenty years from the date of default, that default occurred on August 1, 2008, and the complaint therefore was timely filed in 2016. The court entered a November 7, 2016 order granting Christiana Trust's summary judgment motion and denying defendant's cross-motion for dismissal of the complaint and, as noted, nine days later entered an order substituting U.S. Bank for Christiana Trust

as plaintiff.² On April 6, 2017, the court entered a final judgment of foreclosure.

Defendant appealed and presents the following arguments for our consideration:

Point 1

The Trial Court erred in its conclusion that the Statutes of Limitations had not run against Plaintiff's enforcement claims on the Note and Mortgage.

Point 2

The Trial Court erred in its conclusion that Plaintiff is the Holder and Assignee.

Point 3

The Trial Court erred in its conclusion that the certification supports Plaintiff's Summary Judgment.

Point 4

The Trial Court erred in its conclusion that execution of the Assignment of Mortgage by the Attorney-In-Fact on behalf of a defunct entity is valid.

II.

We review a summary judgment order de novo, applying the same standard as the trial court. State v. Perini Corp., 221 N.J. 412, 425 (2015) (citing Town of Kearny v. Brandt, 214 N.J. 76, 91

² In a September 7, 2016 Assignment of Mortgage, Christiana Trust assigned the mortgage to U.S. Bank. The assignment was recorded in the Bergen County Clerk's office on November 30, 2016.

(2013); Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007)). When considering a motion for summary judgment, "both trial and appellate courts must view the facts in the light most favorable to the non-moving party, which in this case is" defendant. Bauer v. Nesbitt, 198 N.J. 601, 604-05 n.1 (2009); see also R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

Summary judgment is appropriate where the record demonstrates "no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment . . . as a matter of law." Burnett v. Gloucester Cty. Bd. of Chosen Freeholders, 409 N.J. Super. 219, 228 (App. Div. 2009) (quoting R. 4:46-2(c)). The interpretation of a statute, such as a statute of limitations, is a question of law requiring de novo review. See Royster v. N.J. State Police, 227 N.J. 482, 493 (2017); see also Brandt, 214 N.J. at 92.

Defendant first argues the court erred in finding the complaint was timely filed. He contends the complaint constitutes an action to enforce obligations under a note payable, and is therefore governed by the six-year limitations period in N.J.S.A. 12A:3-118(a). We disagree. In Security Nat. Partners Ltd. v. Mahler, 336 N.J. Super. 101 (App. Div. 2000), we addressed the question of whether a six-year or twenty-year statute of

limitations applied to mortgage foreclosure actions. 336 N.J. Super. 101, 103 (App. Div. 2000). We held that "[t]here is a twenty year limitation period governing institution of a mortgage foreclosure suit." Id. at 108. Thus, the motion court correctly determined the complaint was timely filed.³

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 does not contest the validity of the mortgage or that he is in default under the note. He argues the assignment of mortgage to Christiana Trust was defective, and the motion court erred by finding Christiana Trust had standing.

³ It is unnecessary to address defendant's contention that a six-year statute of limitations would otherwise apply here under the Fair Foreclosure Act, N.J.S.A. 2A:50-56.1. We agree N.J.S.A. 2A:50-56.1 is not applicable because it provides the limitations period for residential mortgage foreclosures. We observe, however, that under N.J.S.A. 2A:50-56.1, the statute of limitations for a residential foreclosure action is the earliest of six years from the date fixed for the last payment or the maturity date, thirty-six years from the mortgage's recording date, or if not recorded, the date of execution, and twenty years from the date of default. Therefore, even if the statute was applicable here, the complaint would be timely.

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).

The certifications supporting Christiana Trust's summary judgment motion did not establish it had possession of the note prior to the filing of the foreclosure complaint. Neither certification states Christiana Trust had possession of the note prior to the commencement of the action. See Mitchell, 422 N.J. Super. at 223-24 (finding mortgagee did not have standing where it did not establish either possession of the note or an assignment of the mortgage when the foreclosure complaint was filed).

The motion court, however, correctly determined Christiana Trust had standing because the certifications established the

mortgage had been assigned to Christiana Trust in 2014, two years prior to the filing of the complaint. The assignment of the mortgage prior to the filing of the complaint conferred Christiana Trust with standing to bring the action. Angeles, 428 N.J. Super. at 318.


We also reject defendant's contention Christiana Trust did not have standing because the assignor of the mortgage, Bank of America, N.A., lacked the authority to make the assignment. The Assignment of Mortgage states that Bank of America, N.A. is a successor by merger to Countrywide. By operation of law, the merger resulted in the transfer of Countrywide's rights and interest in the mortgage to Bank of America, N.A. See 12 U.S.C. § 215 (a), (e). In addition, as the motion court correctly determined, defendant is not a party to the assignment and has no standing to challenge the manner in which it was effectuated. See, e.g., Bank of N.Y. v. Raftogianis, 418 N.J. Super. 323, 350 (Ch. Div. 2010) ("[L]itigants generally have no standing to assert the rights of third parties."); Correia v. Deutsche Bank Nat'l Trust Co., 452 B.R. 319, 324 (B.A.P. 1st Cir. 2011) (rejecting mortgagor's claim that noncompliance with a pooling and service agreement [PSA] rendered the foreclosure invalid because the mortgagors were "not parties [to the PSA], nor [did] they

demonstrate[] that they were third-party beneficiaries of the PSA's terms").

Defendant's remaining arguments are without sufficient merit 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