SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5403-15T2

WELLS FARGO BANK, N.A.,

Plaintiff-Respondent,

v.

ROBERT MANTOVANI, his heirs, devisees, and personal representatives and his/her, their, or any of their successors in right, title and interest, CAPITOL ONE BANK, MIDLAND FUNDING, LLC, and GARDEN STATE VETERINARY SPECIALISTS,

Defendants,

and

TRACY A. MANTOVANI, his wife, her heirs, devisees, and personal representatives and his/her, their, or any of their successors in right, title and interest,

Defendant-Appellant.

Submitted May 9, 2018 – Decided May 18, 2018

Before Judges Koblitz and Suter.

On appeal from Superior Court of New Jersey, Chancery Division, Ocean County, Docket No. F-016347-15.

Tracy A. Mantovani, pro se.

Reed Smith, LLP, attorneys for respondent (Henry F. Reichner, on the brief).

PER CURIAM

Defendant Traci A. Mantovani (defendant) appeals from the June 29, 2016 final judgment, foreclosing her interest in certain residential real estate.[1] We affirm.

On July 15, 2005, defendant and her husband Robert Mantovani (husband) signed a note in the principal amount of $354,000 to World Savings Bank, FSB, (World Savings) to purchase a residential property in Toms River. On the same day they executed a purchase money mortgage in favor of World Savings. The mortgage was recorded. It was modified in 2007 to temporarily provide for a fixed interest rate. Defendant defaulted on the note on October 1, 2014. No further mortgage payments have been made since then. A notice of intention to foreclose was sent to defendants in December 2014.

On December 31, 2007, World Savings merged with and became Wachovia Mortgage, FSB. Wachovia converted to a national bank and then merged with and became Wells Fargo Bank, N.A. (Wells Fargo) on January 1, 2009.

[1] Defendant Robert Mantovani failed to file a brief. We issued an order of suppression on December 8, 2017.

Wells Fargo filed a foreclosure complaint in May 2015 and defendants answered. In December 2015, Wells Fargo filed a motion for summary judgment to strike defendants' answer. The motion included a certification from Gloria Areli Ortega, vice president of loan documentation for Wells Fargo, who certified that Wells Fargo had possession of the note prior to filing the foreclosure complaint, that defendants defaulted on the payments, and that they remained in default on the mortgage.[2] The motion was granted on January 8, 2016, dismissing defendants' answer. An amended order, entered the same date, indicated the motion had been opposed.

After Wells Fargo applied for a final judgment of foreclosure, defendants filed a motion in April 2016 to vacate the January 8, 2016 order. They claimed that their attorney failed to notify them of, or to oppose, the summary judgment motion. Defendants submitted a "Property Securitization Analysis Report" from a forensic auditing firm and, based on the report, claimed that Wells Fargo lacked standing to foreclose. The report stated that

[2] The certification complied with N.J.R.E. 803(c)(6). See New Century Fin. Servs., Inc. v. Oughla, 437 N.J. Super. 299, 326 (App. Div. 2014). The bank's representative certified the loan records were business records, that she had personal knowledge of how the records were kept and maintained, that she had personally reviewed the account, and that Wells Fargo remained in possession of the note and mortgage.

defendants' mortgage "may have been sold, transferred or assigned" to the "REMIC 20 TRUST" because it found a trust on a website that "matches the characteristics for the possibility of securitizing this loan." Defendant told the court at oral argument before the trial court that she and her husband were the "true owners" of the note. Defendant did not dispute the representation by Wells Fargo's counsel that she signed a certification in opposition to the underlying summary judgment motion.

The trial court denied defendants' motion to vacate the summary judgment order on May 27, 2016, finding that plaintiff had standing and that defendants failed to contest "two essential elements," including, "that they executed the note and were not in payment." On June 29, 2016, a final judgment of foreclosure was entered for $314,141.28.

On appeal, defendant contends that the trial court abused its discretion when it denied her motion to vacate the January 8, 2016 summary judgment order because her attorney did not file opposition and because Wells Fargo lacked standing to foreclose. She claimed the note was compromised during the securitization process according to the forensic audit report, which created issues of fact about whether Wells Fargo possessed the actual note when the complaint was filed. She added that she was the victim of predatory lending.

"[I]t has long been the law of New Jersey that an application to open, vacate, or otherwise set aside a foreclosure judgment or proceeding subsequent thereto is subject to an abuse of discretion standard." United States v. Scurry, 193 N.J. 492, 502 (2008). There was no mistaken exercise of discretion here.

A party seeking to establish its right to foreclose on a mortgage must generally "own or control the underlying debt." Deutsche Bank Nat'l Tr. 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)); see Bank of N.Y. v. Raftogianis, 418 N.J. Super. 323, 327-28 (Ch. Div. 2010). In Deutsche Bank Tr. Co. Ams. v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012), we held that "either possession of the note or an assignment of the mortgage that predated the original complaint confer[s] standing," thereby reaffirming our earlier holding in Mitchell, 422 N.J. Super. at 216.

The evidence supported that Wells Fargo had standing because its representative certified that Wells Fargo had possession of the note prior to instituting the foreclosure complaint. The audit report did not create any factual issues about Wells Fargo's possession. It did not contest that Wells Fargo lacked possession of the note when it foreclosed. It merely speculated about

possibilities. This was not enough to create a genuine issue of fact.

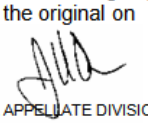
Wells Fargo did not need evidence of an assignment to foreclose. "Wells Fargo's right to enforce the mortgage arises by operation of its ownership of the asset through mergers or acquisitions, not assignment. Suser v. Wachovia Mortg. FSB, 433 N.J. Super. 317, 321 (App. Div. 2013). The undisputed proofs were that World Bank merged into and became Wachovia that then merged into and became Wells Fargo. Wells Fargo thus stands in the shoes of World Savings Bank to enforce the note without the need for an assignment of the mortgage.

The record established a prima facie case of foreclosure. "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 mortgage premises." Great Falls Bank v. Pardo, 263 N.J. Super. 388, 394 (Ch. Div. 1993). Defendant did not dispute the trial judge's fact finding that defendant and her husband signed the note and mortgage, defaulted on payment and have not paid the mortgage since October 1, 2014.

After carefully reviewing the record and the applicable legal principles, defendant's further 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