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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-5564-15T4

WELLS FARGO BANK, N.A.,

Plaintiff-Respondent,

v.

KHADIJA AWADALLAH, his/her
heirs, devisees and personal
representatives, and his, her
their or any of their successors
in right, title and interest,

Defendant-Appellant,

and

MR. AWADALLAH, HUSBAND OF
KHADIJA AWADALLAH; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS
INC., AS NOMINEE FOR RBS CITIZENS,
NA; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS AS NOMINEE FOR
GREEN TREE SERVICING, LLC,

Defendants.

Submitted October 18, 2017 – Decided February 23, 2018

Before Judges Koblitz and Suter.

On appeal from Superior Court of New Jersey,
Chancery Division, Passaic County, Docket No.
F-024397-13.

Friend & Wenzel, attorneys for appellant (Gerald G. Friend, of counsel and on the brief).

Reed Smith, LLP, attorneys for respondent (Henry F. Reichner, of counsel and on the brief; Charles D. Whelan, III, on the brief).

PER CURIAM

Defendant Khadija Awadallah appeals the March 10, 2015 orders that granted partial summary judgment to plaintiff Wells Fargo Bank, N.A. (plaintiff), dismissed defendant's counterclaim, and denied her cross-motion to dismiss the foreclosure complaint. We affirm both orders.

In September 2006, Hani Y. Awadallah¹ executed a \$416,000 note to Wachovia Mortgage Corporation (Wachovia) on a residential property in Clifton, using the proceeds from the note to satisfy two outstanding mortgages on the property. Plaintiff contends that on the same day, Hani and defendant signed a mortgage on the property to Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Wachovia (the 2006 mortgage), and it was recorded subsequently. Defendant's signature on the 2006 mortgage was notarized by Maratib Kazmi, a notary public.

In 2008, Hani and defendant executed a loan modification agreement with Wachovia, which also was notarized. Plaintiff

¹ We refer to Hani Awadallah by his first name to distinguish him from defendant, his wife.

alleges that in 2010, Hani and defendant signed a financial worksheet relating to the property. The mortgage was assigned to plaintiff by corporate assignment.

After Hani Awadallah passed away in January 2012, the loan went into default. Defendant paid \$14,900 to plaintiff to reinstate the loan, believing that it was the "original [m]ortgage that was signed in 2003 at the time we purchased the house." Further payments were not made, and the loan defaulted in June 2012.

Plaintiff filed a foreclosure complaint, and because defendant's answer included a counterclaim where she denied signing the note or mortgage, plaintiff amended the complaint to add a claim to declare the property subject to an equitable mortgage.

Plaintiff filed a motion for partial summary judgment to dismiss defendant's counterclaim, contending she had not overcome the presumption the signature on the mortgage was valid. It also claimed the court should declare the property subject to an equitable mortgage to avoid unjust enrichment. Defendant filed a cross-motion to dismiss the foreclosure complaint, claiming her signature on the documents was a forgery.

On March 10, 2015, the trial court granted plaintiff's motion and denied defendant's. The court found that defendant's motion,

filed under Rule 4:6-2(e), was procedurally improper because she had filed an answer. The court then found that defendant "knew it was there," referring to the mortgage. After Hani's death, she had an "obligation to marshal the . . . assets of the estate" and although she tried to do that, she did not continue to make payments. The court found that plaintiff had "sent all the appropriate notices." The court found that there was no "material doubt . . . that [defendant] signed this . . . mortgage, [and] that she participated in a modification process She was very aware of her obligations to satisfy the mortgage." A final judgment of foreclosure was entered on July 26, 2016.

On appeal, defendant contends that the court erred in granting summary judgment because there were material issues of fact in dispute about her signature on the documents. She denied signing the 2006 mortgage, the 2008 modification agreement or the 2010 financial statement. Defendant argues that the court erred by declaring the property subject to an equitable mortgage because she did not attend the closing or execute the documents. We are not persuaded by these claims.

We review a trial court's orders granting or denying summary judgment under the same standard employed by the motion judge. Globe Motor Co. v. Iqdaley, 225 N.J. 469, 479 (2016). The question is whether the evidence, when viewed in a light most favorable to

the non-moving party, raises genuinely disputed issues of fact sufficient to warrant resolution by the trier of fact, or whether "the evidence is so one-sided that one party must prevail as a matter of law." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995); see also Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016). Our review is plenary. Bhagat v. Bhagat, 217 N.J. 22, 38 (2014) (providing that an appellate court reviews a summary judgment order applying the same standard as the motion judge).

When a signature is notarized, we presume it to be valid. N.J.S.A. 2A:82-17; see Dencer v. Erb, 142 N.J. Eq. 422, 426 (Ch. 1948) (providing that "[a] certificate of acknowledgment made by a duly authorized officer is regarded as prima facie evidence that the person therein named executed the instrument to which it is attached as his voluntary act and deed."). This presumption can only be overcome by proof that is "clear, satisfactory and convincing." Potter v. Steer, 95 N.J. Eq. 102, 104 (Ch. 1923). Here, even giving defendant the benefit of inferences in her favor, she did not overcome the presumption of the signature's validity.

"Competent opposition requires competent evidential material beyond mere speculation and fanciful arguments." Cortez v. Gindhart, 435 N.J. Super. 589, 605 (App. Div. 2014) (quoting Hoffman v. Asseenontv.Com, Inc., 404 N.J. Super. 415, 425-26 (App.

Div. 2009), certif. denied, 220 N.J. 269 (2015). "[C]onclusory and self-serving assertions by one of the parties are insufficient to overcome the motion[.]" Puder v. Buechel, 183 N.J. 428, 440-41 (2005); see also Martin v. Rutgers Cas. Ins. Co., 346 N.J. Super. 320, 323 (App. Div. 2002) (finding the plaintiff's "self-serving assertion [was] . . . clearly insufficient to create a question of material fact for purposes of a summary judgment motion.").

The signature on the mortgage was notarized. The notary provided a certification where he stated that at the time he notarized defendant's signature, not only was she present, but he had her passport in front of him. His certification does not say that this was a copy of the passport.

Defendant's self-serving denial was not supported by any evidence in the record. Defendant contended that she may have been out of the country at the time, but never submitted anything to support this claim aside from her own certification. Defendant apparently was aware the property was mortgaged prior to 2006 because she claimed her \$14,900 payment was paid toward that mortgage.


Also, the 2006 mortgage was recorded. "Given that the mortgage was properly recorded and appears facially valid, under New Jersey law there is a presumption as to its validity, and the

burden of proof as to any invalidity is on the party making such an argument." In re S.T.G. Enters., Inc., 24 B.R. 173, 176 (Bankr. D.N.J. 1982). Her self-serving claims also did not overcome this presumption.

We are satisfied upon our de novo review that the court's factual findings were based on sufficient credible evidence in the record and its legal conclusions were proper. Therefore, we have no need to determine whether the property was subject to an equitable mortgage.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION