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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-0951-15T2

US BANK NATIONAL
ASSOCIATION, as Trustee
successor in interest to
Bank of America, National
Association as Trustee,
successor by merger to
LaSalle Bank National
Association, as Trustee
for Structured Asset
Investment Loan Trust
Mortgage Pass-Through
Certificates, Series
2004-10,

Plaintiff-Respondent,

v.

PATRICIA MARTINEZ,

Defendant-Appellant,

and

MR. MARTINEZ, husband of
PATRICIA MARTINEZ, LAKE
LEASING GROUP INC.,
RICHARD N. ROTHENBERG,
MD, REGION OIL, BIG M
INC., t/a MANDEE KARIN
MORGAN, STATE OF NEW JERSEY,
and UNITED STATES OF AMERICA,

Defendants.

Argued January 18, 2017 — Decided February 21, 2017

Before Judges Rothstadt and Sumners.

On appeal from the Superior Court of New Jersey, Chancery Division, General Equity Part, Morris County, Docket No. F-1468-14.

Joshua W. Denbeaux argued the cause for appellant (Denbeaux & Denbeaux, attorneys; Nicholas A. Stratton, on the brief).

Richard P. Haber argued the cause for respondent (Buckley Madole, P.C., attorneys; Mr. Haber, on the brief).

PER CURIAM

In this residential mortgage foreclosure action, defendant, Patricia Martinez, appeals from the Chancery Division's order denying her motion to vacate the default entered when she failed to respond to plaintiff, U.S. Bank, N.A.'s, complaint. The court denied the motion because defendant did not satisfy the liberal standard necessary to set aside a default under Rule 4:43-3. The court found defendant did not establish good cause for failing to file an answer or the existence of a meritorious defense. We affirm.

We glean the following facts from the motion record. On August 6, 2004, defendant borrowed \$275,405 from BNC Mortgage, Inc. (BNC) and executed a note evidencing the indebtedness. The same day, defendant executed a mortgage in favor of Mortgage Electronic Registration Systems, Inc. (MERS), "as [a] nominee for

[BNC] and [BNC's] successors and assigns," encumbering the title to her home in Rockaway. The mortgage was duly recorded on October 14, 2004, in the Office of the Clerk of Morris County.

Plaintiff filed its residential mortgage foreclosure complaint on January 14, 2014, and served defendant personally on January 29, 2014. Plaintiff also served defendant with an amended complaint on July 16, 2014. The complaint recited that the subject mortgage was assigned to plaintiff on August 13, 2013. The assignment was duly recorded on August 27, 2013. Plaintiff alleged that defendant defaulted on the loan by failing to make the installment payment due on October 1, 2012, and all payments due thereafter.

When plaintiff failed to file an answer, the court entered a default on December 18, 2014. On June 29, 2015, plaintiff requested the entry of a default judgment against defendant. Plaintiff's application included certified copies of the note, mortgage, and assignment.

On July 9, 2015, before judgment was entered, defendant moved to vacate the default. In her supporting certification, defendant stated that beginning in October 2012 her "income decreased and [she] became unable to make [her] monthly mortgage payment." She explained that she "diligently communicated with the loan servicer in order to modify [her] loan so that [she] could avoid

foreclosure." She also hired a company "to assist [her] in negotiating a loan modification." Defendant confirmed that she received the foreclosure complaint, the amended complaint, and the notice of default, but stated she was "surprised" to receive each of them "because [she] had been working diligently for months to modify [her] loan." According to defendant, she finally sought out counsel in March 2015 after being notified about the entry of the default.

In addition to filing her own certification, defendant submitted one from her attorney that explained the delay in seeking relief from March to July was due to a "clerical error" in her office. Counsel also submitted a proposed answer to the complaint.

Judge Stephan C. Hansbury denied defendant's motion on August 31, 2015. In his written statement of reasons, Judge Hansbury recognized that, pursuant to Rule 4:43, the court could "set aside an entry of default for 'good cause' shown." He acknowledged that the "good cause standard is less stringent than [Rule 4:50-1's] standard for setting aside a final judgment of default." Quoting Local 478 v. Baron Holding Corp., 224 N.J. Super. 485, 489 (App. Div. 1998), and citing O'Connor v. Altus, 67 N.J. 106, 129 (1975), the judge noted "before a default is set aside, defendant must at the very least show the presence of a meritorious defense worthy of a judicial determination." Judge Hansbury turned to defendant's

claim that she had been engaged with the bank seeking a loan modification and observed that defendant did not attach any documents to her certification "in support of this assertion, nor does she state [p]laintiff was considering granting a loan modification."

Judge Hansbury addressed the defenses to the complaint argued by defendant. Citing Great Falls Bank v. Pardo, 263 N.J. Super. 388, 394 (Ch. Div. 1993), aff'd, 273 N.J. Super. 542 (App. Div. 1994), he first noted "[t]he defenses in foreclosure actions are narrow and limited. The only material issues . . . are the validity of the mortgage, the amount of the indebtedness, and the right of the mortgagee to foreclose."

Turning to defendant's specific arguments that plaintiff lacked standing and the assignment of the mortgage to it lacked validity, Judge Hansbury reviewed the applicable legal principles and the record and determined that plaintiff had standing to file the complaint because it held defendant's note and, by valid assignment, the mortgage. The judge also found that defendant failed to establish "good cause" for failing to respond to the complaint.

On October 14, 2015, the court entered a final judgment of foreclosure. This appeal followed.

Our standard of review warrants substantial deference to a trial court's determination on a motion to vacate a default or a default judgment, which "should not be reversed unless it results in a clear abuse of discretion." U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012).

On appeal, defendant argues Judge Hansbury abused his discretion by denying defendant's motion because he relied upon defendant's failure to provide any factual support for her defenses. Defendant essentially argues that she fulfilled her obligation to establish good cause by submitting a proposed answer that contained thirteen separate defenses and there was no showing that her failure to file a timely answer was "contumacious." In addition, defendant argues that the court erred by relying upon the amended complaint's allegations or upon counsel's certification submitting copies of the underlying loan documents. Defendant also challenges the judge's legal conclusion that an assignee of a mortgage has standing to enforce the debt.

We have considered defendant's arguments in light of the record and applicable legal principles and conclude that they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We discern no abuse of discretion in this case, and affirm substantially for the reasons expressed by Judge Hansbury. We add only the following comments.

Pursuant to Rule 4:43-3, a court may vacate entry of default upon "good cause shown." As Judge Hansbury correctly acknowledged, "the requirements for setting aside a default under Rule 4:43-3 are less stringent than [] those for setting aside an entry of default judgment under Rule 4:50-1." N.J. Mfrs. Ins. Co. v. Prestige Health Grp., LLC, 406 N.J. Super. 354, 360 (App. Div.), certif. denied, 199 N.J. 543 (2009). Trial courts should view motions to vacate "with great liberality, and every reasonable ground for indulgence is tolerated to the end that a just result is reached." Marder v. Realty Constr. Co., 84 N.J. Super. 313, 319 (App. Div.)(addressing motion to vacate default judgment), aff'd, 43 N.J. 508 (1964); see also Prof'l Stone, Stucco & Siding Applicators, Inc. v. Carter, 409 N.J. Super. 64, 68 (App. Div. 2009).

"A mere showing of good cause is required for setting aside an entry of default." N.J. Mfrs. Ins. Co., supra, 406 N.J. Super. at 360. "[T]he showing of a meritorious defense is a traditional element necessary for setting aside both a default and a default judgment" Pressler & Verniero, Current N.J. Court Rules, comment on R. 4:43-3 (2017). There is no point in setting aside an entry of default if the defendant has no meritorious defense. "The time of the courts, counsel and litigants should not be taken up by such a futile proceeding." Guillaume, supra, 209 N.J. at

469 (quoting Schulwitz v. Shuster, 27 N.J. Super. 554, 561 (App. Div. 1953)). We have noted that

[t]his is especially so in a foreclosure case where the mere denominating of the matter as a contested case moves it from the expeditious disposition by the Office of Foreclosure in the Administrative Office of the Courts, R. 1:34-6 and R. 4:64-1(a), to a more protracted treatment by the Chancery Division providing discovery and raising other problems associated with trial calendars. If there is no bona fide contest, a secured creditor should have prompt recourse to its collateral.

[Trs. of Local 478 Trucking and Allied Indus. Pension Fund v. Baron Holding Corp., 224 N.J. Super. 485, 489 (App. Div. 1988).]

Applying these guiding principles here, defendant did not deny in her certification that she signed the loan documents or defaulted on the payments due under the mortgage loan. Where a defendant does not challenge the execution, recording, and nonpayment of the mortgage, a prima facie right to foreclose is established. See Thorpe v. Floremoore Corp., 20 N.J. Super. 34, 37 (App. Div. 1952). See also Great Falls Bank, supra, 263 N.J. Super. at 394; Cent. Penn Nat'l Bank v. Stonebridge Ltd., 185 N.J. Super. 289, 302 (Ch. Div. 1982).

Even if defendant is deemed to have demonstrated a valid reason for failing to timely answer the foreclosure complaint, we discern no merit to her standing argument. Plaintiff presented evidence of the assignment of the mortgage along with its recording

before the foreclosure complaint was filed, satisfying the requirement that "either possession of the note or an assignment of the 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). Although defendant vaguely challenges the validity of the mortgage assignment, the assignment on record clearly references plaintiff as assignee. Notably, defendant did not certify that any entity other than plaintiff sought repayment of the mortgage loan during the period that the loan was allegedly in default.


Finally, there is no legal support for defendant's contention that she established "good cause" for her failure to file an answer by relying upon her unsupported allegation that she was seeking a loan modification. See U.S. Bank Nat. Ass'n v. Curcio, 444 N.J. Super. 94, 113 (App. Div. 2016) (rejecting a defendant's argument "that plaintiff initiated the foreclosure action with unclean hands when it engaged in the practice of 'dual tracking' [-] the practice of a mortgagor initiating foreclosure proceedings while also negotiating a mortgage modification[- because o]ur Supreme Court has held that practice is lawful in New Jersey") (citing Guillaume, supra, 209 N.J. at 468-69)). Moreover, defendant offered no evidence "that plaintiff told defendant[] that [she] did not need to file an answer to the complaint or that the

foreclosure would be held in abeyance." Deutsche Bank Nat'l Tr. Co. v. Russo, 429 N.J. Super. 91, 99 (App. Div. 2012) (citing Guillaume, supra, 209 N.J. at 468-69).

In summary, we conclude that defendant failed to establish good cause or advance a meritorious defense sufficient to negate plaintiff's prima facie right to foreclose. Accordingly, Judge Hansbury properly exercised his discretion in denying defendant relief.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION