NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION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-2130-15T2

CITIMORTGAGE, INC.,

Plaintiff-Respondent,

v.

JYLL S. JAKES,

Defendant-Appellant,

and

MR. JAKES, husband of JYLL JAKES, and NATIONAL CITY BANK n/k/a PNC BANK,

Defendants.

Submitted April 25, 2017 – Decided May 3, 2017

Before Judges Fisher and Leone.

On appeal from the Superior Court of New Jersey, Chancery Division, Monmouth County, Docket No. F-17294-14.

Kenneth Rosellini, attorney for appellant.

McElroy, Deutsch, Mulvaney & Carpenter, LLP, attorneys for respondent (William N. Aumenta and Peter Saad, of counsel and on the brief).

PER CURIAM

In July 2005, defendant Jyll Jakes borrowed $300,000 from the predecessor of plaintiff CitiMortgage, Inc.,[1] and executed a note for the loan's repayment by way of monthly payments over a thirty-year period; to secure the loan's repayment, defendant executed a mortgage on real property in Sea Bright. In 2010, plaintiff and defendant entered into an agreement, which modified the repayment terms and maturity date; a few months later, defendant defaulted on the terms of that modification agreement.

In 2014, plaintiff commenced this action to foreclose on the Sea Bright property. Defendant promptly filed an answer and counterclaim. Plaintiff successfully moved for a dismissal of the counterclaim and soon thereafter successfully moved for an order granting summary judgment and striking defendant's answer and affirmative defenses. Final judgment of foreclosure was later entered.

Defendant appeals – seeking our review of the orders entered on October 2, 2014, and March 20, 2015, which dismissed the counterclaims and struck defendant's answer and affirmative

[1] The lender was ABN AMRO Mortgage Group, Inc., which merged with plaintiff CitiMortgage, Inc. on August 31, 2007.

defenses, respectively, as well as the final judgment entered on November 10, 2015 – arguing[2]:

> I. THE APPELLATE DIVISION HAS PLENARY REVIEW AUTHORITY TO REVERSE THE TRIAL COURT'S DECISION TO DISMISS THE DEFENDANT'S COUNTERCLAIM WITH PREJUDICE AFTER OPINING THE COUNTERCLAIM WAS NOT GERMANE TO THE FORECLOSURE AND SHOULD VACATE THE ORDER OF DISMISS[AL] AND REINSTATE THE COUNTERCLAIMS [BECAUSE DEFENDANT] HAS ALLEGED FACTS SUFFICIENT FOR A QUIET TITLE CLAIM[,] . . . A BAD FAITH CLAIM[,] . . . [A] BREACH OF FIDUCIARY DUTY[,] . . . A CLAIM OF UNJUST ENRICHMENT[,] [AND] BREACH OF CONTRACT.
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> II. THE APPELLATE DIVISION MUST DECIDE WHETHER A GENUINE ISSUE OF MATERIAL FACT WAS IN DISPUTE THAT SHOULD HAVE PRECLUDED SUMMARY JUDG[]MENT, AND IF NOT, WHETHER THE TRIAL COURT RULED CORRECTLY ON THE LAW.
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> III. THE APPELLATE DIVISION MUST DECIDE WHETHER PLAINTIFF'S PROOFS WERE SUFFICIENT TO SUPPORT ENTRY OF FINAL JUDGMENT.
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> IV. CITIMORTGAGE'S OWN PROOFS AND ADMISSION ESTABLISH THAT IT IS NOT THE HOLDER OF THE NOTE AND THEREFORE LACKS STANDING TO FORECLOSE AS A MATTER OF LAW [BECAUSE] IN ORDER TO HAVE STANDING PLAINTIFF MUST SHOW (1) DEFENDANT OWED A DEBT TO PLAINTIFF AND (2) THAT PLAINTIFF HAS A SECURITY INTEREST IN THE PROPERTY.
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> V. CITIMORTGAGE, INC.'S UNCLEAN HANDS REQUIRED DENIAL OF SUMMARY JUDGMENT.

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[2] We have renumbered and rearranged defendant's arguments without omitting any of the substance of her point headings.

We find insufficient merit in these arguments to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following brief comments.

Defendant's claim that plaintiff lacked standing to foreclose has no merit for many reasons but none more persuasive than the fact that defendant entered into a modification agreement with plaintiff – the successor to the original lender. If plaintiff was not the true party in interest or the holder of the note, then defendant would have had no reason to seek or obtain plaintiff's agreement for a modification of the original loan's terms, or to perform her part of that bargain, albeit for only a few months.

We lastly mention one particular aspect of the counterclaim – that claim which sought to quiet title to the Sea Bright property. After close examination of the record, we conclude that this allegation was merely defendant's standing argument garbed in different attire. Moreover, this claim bears no similarity to our decision in Suser v. Wachovia Mortg., FSB, 433 N.J. Super. 317, 324-25 (App. Div. 2013), which recognized the right of a junior mortgagee, who obtained title by way of a sheriff's deed, to commence a quiet title action against another party when there was a genuine dispute about whether that other party was the proper holder of a lien on the property.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION