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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-2510-15T2

INDYMAC FEDERAL
BANK, FSB,

Plaintiff-Respondent,

v.

MARISA L. BELL,

Defendant-Appellant.

Submitted March 28, 2017 – Decided May 8, 2017

Before Judges Espinosa and Grall.

On appeal from the Superior Court of New
Jersey, Chancery Division, Essex County,
Docket No. F-11696-09.

Marisa L. Bell, appellant pro se.

Greenberg Traurig, LLP, attorneys for
respondent (Jason H. Kislin and Lori G.
Singer, of counsel and on the brief).

PER CURIAM

Defendant executed a note to plaintiff in the amount of
\$304,000 in June 2006 and secured payment of the note by executing
a mortgage to plaintiff's nominee, the Mortgage Electronic

Registration Systems (MERS). She defaulted on the note in March 2008 and has not made any payments since that time. Plaintiff filed a foreclosure complaint in March 2009. The record shows the complaint was served upon defendant's sixteen-year-old daughter. Defendant did not file an answer in the foreclosure proceeding or respond to the entry of default in June 2009. Default judgment was entered in May 2010.

More than four years later, after defendant was sent notice of the scheduled sheriff's sale, defendant filed a motion to vacate judgment pursuant to Rule 4:50-1(b). She appeals from the denial of that motion,¹ arguing she was entitled to relief as a matter of law and that defendant lacks the right to force a sale of the property because no competent admissible evidence was presented to show its ownership interest in the note as a matter of law. Defendant's arguments lack sufficient merit to warrant discussion in a written opinion, Rule 2:11-3(e)(1)(E), beyond the following brief comments.

Defendant's motion for relief was governed by Rule 4:50-1. The trial court's determination is entitled to "substantial deference" and left undisturbed unless there is "a clear abuse of

¹ By order of the court, defendant's appeal is limited to the order entered on August 25, 2015, which denied her motion to vacate the default judgment and does not include an appeal from the subsequent order that denied her motion for reconsideration.


discretion." U.S. Bank Nat'l Assoc. v. Guillaume, 209 N.J. 449, 467 (2012).

In Deutsche Bank National Trust Co. v. Mitchell, 422 N.J. Super. 214, 216 (App. Div. 2011), we held either possession of the note or an assignment of the mortgage that predated the original complaint conferred standing. As noted in the foreclosure complaint, there was an assignment of mortgage from MERS to defendant, dated February 23, 2009, which was executed on March 6, 2009, the day after the foreclosure complaint was filed. Although the record shows plaintiff did not achieve standing through the assignment of the mortgage a day after the complaint was filed, there is no evidence that plaintiff lacked possession of the note at the time the complaint was filed. Therefore, defendant has not definitively demonstrated a lack of standing.

Because defendant's motion was based upon Rule 4:50-1(b), she was required to file the motion within one year after the judgment was entered. R. 4:50-2. Even if she relied upon other grounds for relief under the rule, defendant's motion was not made within a reasonable time following entry of the judgment challenged. See Deutsche Bank Tr. Co. Ams. v. Angeles, 428 N.J. Super. 315, 319 (App. Div. 2012). Accordingly, we discern no clear abuse of discretion that would warrant disturbing the trial judge's decision.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION