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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-2713-15T1

M&T BANK,

Plaintiff-Respondent,

v.

MARY ANNE KOVAL, a/k/a
MARY ANNE CERE, a/k/a
MARY A. KOVAL,

Defendant-Appellant,

and

ABC BAIL BONDS INC. and
LEXINGTON NATIONAL
INSURANCE CORPORATION,

Defendants.

Submitted March 1, 2017 — Decided March 24, 2017

Before Judges Simonelli and Carroll.

On appeal from the Superior Court of New
Jersey, Chancery Division, Monmouth County,
Docket No. F-31584-13.

The Wolf Law Firm, LLC, attorneys for
appellant (Kelly Samuels Thomas, Andrew R.
Wolf and Henry P. Wolfe, on the briefs).

McCabe, Weisberg & Conway, P.C., attorneys for respondent (Stephany L. Gordon, of counsel and on the brief; Carol Rogers Cobb and Sheera G. Engrissei, on the brief).

PER CURIAM

In this foreclosure matter, defendant Mary Anne Koval appeals from the August 22, 2014 Chancery Division order, which denied her cross-motion for summary judgment; the September 8, 2014 order, which struck her answer, defenses, and counterclaim; and the February 4, 2016 order for final judgment. For the following reasons, we affirm.

We derive the following facts from evidence submitted by the parties in support of, and in opposition to, the summary judgment motion, viewed in the light most favorable to plaintiff. Anland v. Mountain Creek Resort, Inc., 213 N.J. 573, 577 (2013) (citing Brill v. Guardian Life Ins. Co., 142 N.J. 520, 523 (1995)).

Following her divorce in 2000, defendant became the sole owner of the former marital home. In 2002, she refinanced the mortgage on the property to obtain funds to pay back taxes. She ultimately defaulted, and the mortgage lender instituted foreclosure proceedings. Defendant filed for bankruptcy, which automatically stayed the matter. The bankruptcy court subsequently granted the lender's motion to vacate the automatic stay. Defendant's attorney, Paul N. Mirabelli, Esq., filed a

motion for an order permitting defendant to refinance the mortgage, which the bankruptcy court granted.

Defendant contacted a mortgage broker, Intercounty Mortgage Network, Inc. (Intercounty), and was assisted in completing an application to refinance her mortgage. On December 6, 2006, she executed an adjustable rate note to Security Atlantic Mortgage Co., Inc. (Security Atlantic) in the amount of \$120,000. To secure payment of the note, defendant executed a mortgage on her property.¹ Mirabelli represented defendant in connection with this transaction, and the closing occurred in his offices. Mirabelli prepared, and he and defendant signed, a HUD-1 Uniform Settlement Statement (the HUD-1).

The HUD-1 separately listed fees for "Items Payable In Connection With Loan," "Items Required By Lender To Be Paid In Advance," "Title Charges," and "Government Recording and Transfer Charges." "Items Payable In Connection With Loan" included a \$3000 loan discount fee and \$458 application fee paid to Intercounty; and a \$995 commitment fee and \$12 flood search fee paid to Security Atlantic. "Title Charges" included a \$300 title examination fee, \$350 document preparation fee, and \$400 attorney's fee paid to Mirabelli; a \$955.82 title insurance fee

¹ The note and mortgage were ultimately assigned to plaintiff.

paid to Camelot Title Agency, LLC (Camelot); and a \$90 notary fee. "Government Recording and Transfer Charges" included a \$350 mortgage recording fee, \$150 mortgage release recording fee, and \$75 notice of settlement recording fee.

Plaintiff filed a foreclosure complaint against defendant after she defaulted. Defendant filed an answer and defenses, and a counterclaim, alleging that the loan was a high-cost home loan in violation of the New Jersey Home Ownership Security Act (HOSA), N.J.S.A. 46:10B-22 to -35, entitling her to damages permitted by N.J.S.A. 46:10B-29. She asserted that her loan was a high-cost home loan because she was charged points and fees in the amount of \$5515, which exceeded the total points and fees threshold of 4.5% of the total loan amount of \$120,000, in violation of N.J.S.A. 46:10B-24;² and the loan originators did not provide her with notice and counseling, in violation of N.J.S.A. 46:10B-26(f) and (g).

Defendant included in her calculation of total points and fees the \$3000 loan discount fee and \$458 application fee paid to Intercounty; the \$995 commitment fee and \$12 flood search fee paid to Security Atlantic; the \$300 title examination fee and \$350 document preparation fee paid to Mirabelli; and the \$90 notary

² The 4.5% threshold on a \$120,000 loan is \$5400.

fee. She also included the \$150 mortgage release recording fee, which she claimed was never paid; a \$140 overcharge for the mortgage recording fee; and a \$20 overcharge for the notice of settlement recording fee. She excluded the \$955.82 title insurance fee paid to Camelot, and the \$400 attorney's fee paid to Mirabelli.

The court ultimately denied defendant's motion for summary judgment and struck her answer, defenses, and counterclaim, concluding that the loan was not a high-cost home loan under HOSA, and no notice and counseling was required. The court found that the \$300 title examination fee and \$350 document preparation fee were attorney's fees paid to Mirabelli, not the loan originator, and N.J.S.A. 46:10B-24 excludes attorney's fees and notary fees from the total points and fees calculation. The court determined that excluding these fees reduced the total points and fees to \$4775, which was less than the 4.5% threshold. This appeal followed.

On appeal, defendant contends that the court erred in excluding the fees paid to Mirabelli for title examination and document preparation from the total points and fees calculation; the payment of those fees to Mirabelli rather than the loan originator did not justify their exclusion; and the court's interpretation of HOSA is contrary to the Legislature's expressly-

stated purposes underlying the Act.³ Defendant also contends that she was entitled to summary judgment based on plaintiff's violation of HOSA.

We review a ruling on a motion for summary judgment de novo, applying the same standard governing the trial court. Templo Fuente De Vida Corp. v. National Union Fire Ins. Co., 224 N.J. 189, 199 (2016) (citation omitted). Thus, we consider, as the motion judge did, "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 406 (2014) (citation omitted). If there is no genuine issue of material fact, we must then "decide whether the trial court correctly interpreted the law." DepoLink Court Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (citation omitted). We review issues of law de novo and accord no deference to the trial judge's legal conclusions.

³ We decline to address defendant's additional contention that the court failed to determine whether the title examination and document preparation fees paid to Mirabelli were bona fide and reasonable. Defendant did not raise this issue before the trial judge and it is not jurisdictional in nature nor does it substantially implicate the public interest. Zaman v. Felton, 219 N.J. 199, 226-27 (2014) (citation omitted).

Nicholas v. Mynster, 213 N.J. 463, 478 (2013). "[F]or mixed questions of law and fact, [an appellate court] give[s] deference . . . to the supported factual findings of the trial court, but review[s] de novo the lower court's application of any legal rules to such factual findings." State v. Pierre, 223 N.J. 560, 576-77 (2015) (citations omitted). Applying the above standards, we discern no reason to disturb the court's ruling.

The Legislature enacted HOSA in 2002 for the purpose of combating abusive mortgage lending by "overreaching lenders who provide loans with unnecessarily high costs and terms that are unnecessary to secure repayment of the loan." N.J.S.A. 46:10B-23(a)-(b). To protect homeowners, the Legislature set thresholds on the amount of points and fees a lender could impose in connection with a residential mortgage loan. N.J.S.A. 46:10B-24. A loan exceeds the total points and fees threshold if "the total points and fees payable by the borrower . . . exceed . . . 4.5% of the total loan amount if the total loan amount is \$40,000 or more[.]" Ibid. The total loan amount is "the principal of the loan minus those points and fees . . . that are included in the principal amount of the loan." Ibid. A loan where the total points and fees exceed these thresholds is deemed a high-cost home loan, requiring notice to the borrower and counseling. N.J.S.A. 46:10B-24, -26(f) and (g).


N.J.S.A. 46:10B-24 includes in the total points and fees calculation "[a]ll items listed in 15 U.S.C.A. [§] 1605(a)(1) through (4)" and "[a]ll charges listed in 15 U.S.C.A. [§] 1605(e)" of the federal Homeowners Equity Protection Act. 15 U.S.C.A. § 1605(a) governs the computation of charges "imposed directly or indirectly by the creditor as an incident to the extension of credit." (Emphasis added). Excluded from that computation of charges imposed directly or indirectly by the creditor are "[f]ees or premiums for title examination, and for title insurance, or similar purposes[,]" 15 U.S.C.A. § 1605(e)(1), and "[f]ees for preparation of loan-related documents." 15 U.S.C.A. § 1605(e)(2). Thus, fees for title examination and preparation of loan documents imposed directly or indirectly by the creditor are included in the total points and fees calculation under N.J.S.A. 46:10B-24. However, N.J.S.A. 46:10B-24 specifically excludes attorney's fees and notary fees from the total points and fees calculation.

Here, the evidence established that the \$300 title examination fee and \$350 document preparation fee were not charges imposed directly or indirectly by, or paid directly or indirectly to, the lender or loan originator. These fees were attorney's fees imposed by and paid directly to an attorney. Attorney's fees, as well as notary fees, are specifically excluded from the total points and fees calculation under N.J.S.A. 46:10B-24.

Excluding these fees, the total points and fees of \$4775 imposed by the lender in this case fell below the 4.5% threshold. Accordingly, the loan was not a high-cost home loan, and defendant was not entitled to notice and counseling. Defendant's arguments to the contrary are without sufficient merit to warrant further discussion. 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