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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-2993-15T1

NATIONSTAR MORTGAGE, LLC,

Plaintiff-Respondent,

v.

IRINA IUDINA,

Defendant-Appellant,

and

VASLILY VYPRYATHKIN, and
BANK OF AMERICA, N.A.,

Defendants.

Submitted May 2, 2017 – Decided August 4, 2017

Before Judges Yannotti and Sapp-Peterson.

On appeal from Superior Court of New Jersey,
Chancery Division, Middlesex County, Docket
No. F-4401-14.

Irina Iudina, appellant pro se.

Sandelands Eyet, LLP, attorneys for respondent
(Raymond Kim, on the brief).

PER CURIAM

Defendant, Irina Iudina, appeals from various orders entered by the trial court arising out of a foreclosure action. Those orders: (1) denied defendant's motion to dismiss the foreclosure complaint (December 19, 2014); (2) denied defendant's motion seeking discovery regarding her loan payment history (February 20, 2015); (3) granted plaintiff's motion to strike defendant's answer (February 25, 2015); (4) entered final judgment of foreclosure in favor of plaintiff (July 14, 2015); (5) vacated a November 20, 2015 order granting defendant's motion to vacate the July 14, 2015 order and dismissing plaintiff's complaint with prejudice and, in turn, restored the motion to the motion calendar (January 8, 2016); and, (6) denied defendant's motion to set aside the July 14, 2015 judgment of foreclosure (February 18, 2016). We vacate the January 22, 2016 order and remand to the trial court for the entry of an amended order reflecting that the order denying defendant's motion to vacate the July 14, 2015 judgment of foreclosure was entered on February 18, 2016, rather than January 22, 2016. We otherwise affirm all of the orders under review.

By way of background, plaintiff executed a note in favor of Bank of America in 2007, secured by property located in East Brunswick. Through subsequent assignments, the mortgage was ultimately assigned to Nationstar on May 22, 2013, and recorded

in the Middlesex County Register's Office on June 21, 2013. Defendant ceased making mortgage payments in 2011. As a result of defendant's default, plaintiff sent defendant a Notice of Intent to Foreclose on August 22, 2013, and thereafter filed its foreclosure (NOI) complaint on February 6, 2014. Defendant filed an answer, eighteen affirmative defenses, and five counterclaims. Plaintiff moved for summary judgment and defendant cross-moved to dismiss the complaint. Both motions were denied and the matter proceeded to trial.

At trial, the court found that the only disputed issue before the court was "who is the holder entitled to file this [foreclosure] action." Based upon the evidence plaintiff presented, which the court credited, the court found that the Federal Home Loan Mortgage Corporation (Freddie Mac) executed a valid assignment to Nationstar and that Nationstar came into possession of the original note on October 24, 2013. The court noted that this date "certainly predates the filing of the complaint," and concluded that "Nationstar is deemed to be the holder of the note." The court granted judgment in favor of Nationstar, struck defendant's answer, affirmative defenses and further noted that defendant submitted no proofs in support of her counterclaims. The court returned the matter to the Foreclosure Unit as an uncontested matter.

The Foreclosure Unit entered a Final Judgment and Writ of Execution July 14, 2015. By order dated November 20, 2015, the court granted defendant's motion to vacate the final judgment and dismiss the complaint. One month later, however, plaintiff filed a motion to vacate the November 20, 2015 order. Plaintiff contended that due to a change in law firms, newly assigned counsel was unaware of the motion and therefore had not had the opportunity to respond to defendant's motion. On January 8, 2016, the court vacated the November 20, 2015 order and scheduled the matter for a hearing on January 22, 2016. The court adjourned that hearing date and thereafter conducted oral argument on the motion February 18, 2016. On that same date the court denied defendant's motion, finding that there had been a trial in the matter and that defendant's only recourse was an appeal. The court also determined that the purported new evidence defendant submitted in support of her motion was irrelevant to the foreclosure proceeding. The present appeal followed.

On appeal, defendant contends: (1) the trial court improperly enlarged the time period for reconsideration of the November 20, 2015 order; (2) improperly denied her motion to vacate the July 14, 2015 Judgment of Foreclosure, prior to conducting oral argument on her motion; (3) the court failed to address her contention that plaintiff had submitted misleading evidence during the trial,

which the motion court acknowledged had in fact occurred when it granted defendant relief from the judgment and dismissed the complaint with prejudice on November 20, 2015; (4) the procedural history of the matter subsequent to the entry of the November 20, 2015 order raises serious concerns about the predisposition of the court and "may be considered a violation of fundamental due process"; (5) the assignment of the note to Nationstar was invalid; and (6) the NOI was defective because it failed to identify the actual lender.

We have considered the arguments advanced by plaintiff in light of the record and governing legal principles. Other than remanding to the trial court for the entry of a corrected order reflecting that defendant's motion to vacate the entry of final judgment was denied on February 18, 2016, rather than on January 22, 2016, we reject all of the arguments advanced by defendant.

At the outset, contrary to defendant's contention, plaintiff did not seek reconsideration of the order entered on November 20, 2015. Rather, as the January 8, 2016 order reflects, plaintiff's motion sought to "Vacate the Order Entered November 20, 2015." Thus, defendant's contention that the court improperly enlarged the time within which plaintiff could seek relief from the November 20, 2015 order, and that plaintiff's application was untimely, is entirely without merit.

Turning to the January 22, 2016 order entered prior to the return date of oral argument on February 18, 2016, once the trial court vacated the November 20, 2015 order, it rescheduled oral argument on defendant's motion for January 22, 2016. In accordance with Rule 1:6-2(a), defendant's motion was "accompanied by a proposed form of order," which the court utilized as the order denying defendant's motion. The order is stamped, "Filed January 22, 2016[,] Frank M. Ciuffani, J.S.C." and is also marked "opposed." Further, in addition to the judge's handwritten signature affixed to the order, the date "22" and month "January" are also handwritten on the document.

It is, however, undisputed that as of January 22, 2016, the court had yet to receive plaintiff's opposition to defendant's motion, which plaintiff subsequently filed on January 27, 2016. It is equally undisputed that the court conducted oral argument on the motion on February 18, 2016. In her Amended Notice of Appeal, dated March 18, 2016, defendant certified that on January 22, 2016, there were "[n]o recordings, no oral argument and no knowledge this motion was decided. Hearing was on February 18, 2016." At the time of the hearing, defendant advised the court that "with regard to all of the arguments, I will rely on my papers."

Consequently, it is clear that the January 22, 2016 date on the order denying defendant's motion is incorrect. The order should have been dated February 18, 2016. We therefore remand the matter to the trial court for the entry of a corrected order. See R. 1:13-1 (authorizing a court on its own initiative to correct clerical errors appearing on the face of an order).

Assuming, however, the court signed the order on January 22, 2016, because it concluded at that time, even without the benefit of opposition from plaintiff, defendant was not entitled to relief, it nonetheless afforded defendant the opportunity for oral argument the following month. At that time, plaintiff advised the court that she would rely upon the papers she submitted and advanced no further arguments, notwithstanding having received plaintiff's opposing papers in advance of the hearing. Plaintiff offered nothing that altered the court's initial findings with regard to her motion.

Next, in addressing the merits of defendant's motion to vacate the entry of final judgment, based upon her contention plaintiff lacked standing to foreclose, the trial court agreed with plaintiff that the newly discovered evidence defendant presented, Freddie Mac's Form 1036, Request for Physical or Constructive Possession of Documents, was "not relevant and has no bearing on this case whatsoever." We agree.

In a foreclosure matter, a party seeking to establish its right to foreclose on the mortgage must generally "own or control the underlying debt." Deutsche Bank Nat'l Trust Co. v. Mitchell, 422 N.J. Super. 214, 222 (App. Div. 2011) (quoting Wells Fargo Bank, N.A. v. Ford, 418 N.J. Super. 592, 597 (App. Div. 2011)); Bank of N.Y. v. Raftogianis, 418 N.J. Super. 323, 327-28, (Ch. Div. 2010) (citations omitted). In Deutsche Bank Trust Co. Americas v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012), we held that "either possession of the note or an assignment of the mortgage that predated the original complaint confer[s] standing," thereby reaffirming our earlier holding in Mitchell, supra, 422 N.J. Super. at 216. At the foreclosure trial, the trial court credited proofs plaintiff presented establishing that it had a valid assignment, as well as presentation of the original note and mortgage.

Defendant did not challenge the authenticity of these documents nor their admissibility. As Form 1036 makes clear, this is a document which a seller or servicer submits to Freddie Mac when seeking the release of loan documents and is not part of the proofs establishing standing to foreclose.


At the time of the trial, plaintiff had possession of the original note, Angeles, supra, 428 N.J. Super. at 413, and defendant presented no evidence that plaintiff obtained possession

of the original note illegally. In addition, plaintiff presented evidence that it had a valid assignment at the time the complaint was filed in 2014. Ibid. Thus, the judgment of foreclosure in favor of plaintiff was properly entered.

The remaining arguments advanced by defendant are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

The January 22, 2016 order is vacated and the matter remanded for the entry of an amended order reflecting February 18, 2016, as the date on which the court denied defendant's motion to vacate the July 14, 2015 judgment of foreclosure. The orders on appeal are otherwise affirmed in their entirety.

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


CLERK OF THE APPELLATE DIVISION