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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-3258-15T2

WELLS FARGO BANK, N.A.

Plaintiff-Respondent,

v.

MARY ELLEN UGACTZ-GONZALEZ,

Defendant-Appellant,

and

JUAN A. GONZALEZ, KEVIN HAGER
and CRESCENT RECOVERY, LLC,

Defendants.

Submitted June 6, 2017 – Decided August 8, 2017

Before Judges Fasciale and Sapp-Peterson.

On appeal from Superior Court of New Jersey,
Chancery Division, Essex County, Docket No.
F-031505-14.

Mary Ellen Ugactz-Gonzalez, appellant pro se.

Reed Smith, LLP, attorneys for respondent
(Henry F. Reichner, of counsel and on the
brief).

PER CURIAM

In this mortgage foreclosure case, pro se defendant Mary Ellen Ugactz-Gonzalez, appeals from a June 12, 2015 order, granting plaintiff, Wells Fargo Bank, N.A. (Wells Fargo) summary judgment. This order also struck the answer and counterclaim filed by defendant and her spouse, Juan A. Gonzalez,¹ directed the Clerk of the Court to enter default as though no answering pleading had been filed, and referred the matter to the Office of Foreclosure for further proceedings and the entry of final judgment as an uncontested matter. Defendant also appeals the December 14, 2015 entry of Final Judgment by the Office of Foreclosure, and the April 25, 2016 order, denying her motion to vacate the entry of final judgment.² We affirm.

The facts are undisputed. On August 31, 2007, defendant and her husband borrowed \$512,000 from World Savings Bank, FSB (World Savings). To secure the note, they executed a note and purchase

¹ Although defendant's spouse has not appealed the order under review, for ease of reference, we refer to defendant and her spouse, collectively as "defendants."

² Defendant's notice of appeal references the December 14, 2015 order as being appealed. However, defendant's Civil Case Information Statement references the summary judgment motion and her brief addresses the denial of her motion to vacate the entry of final judgment.

money mortgage on their residence in Verona Township. The mortgage was duly recorded on September 17, 2007, in the Office of the Clerk of Essex County.

Three months after recording the mortgage, World Savings amended its charter and bylaws to change its name to Wachovia Mortgage, FSB (Wachovia). In 2009, Wachovia converted into a national bank and merged with and became Wells Fargo.

Wells Fargo indorsed the note defendants executed to the Bank of New York as Trustee. Wells Fargo, as legal successor to World Savings, served as the document custodian for the Bank of New York as Trustee and maintained possession of the note continuously thereafter. It subsequently cancelled the indorsement on the note from World Savings to Bank of New York as Trustee and did so prior to filing the underlying foreclosure complaint against defendants.

Defendants defaulted under the terms of the note and mortgage by failing to make the December 23, 2013 monthly payment. On August 1, 2014, Wells Fargo filed a foreclosure complaint against defendants, who thereafter filed an answer and counterclaim. Following motion practice, plaintiff filed a motion for summary judgment. Defendants cross-moved for summary judgment and production of documents. As part of her request for the production of documents, defendant sought leave to inspect the original note.

She was afforded that opportunity on May 6, 2015, during a status conference with the court.

On June 12, 2015, the court conducted oral argument on the motions and on that same date rendered an oral decision granting plaintiff's motion and denying defendant's motion. The court found defendant's denial in her answer that she executed and delivered a note to World Savings securing borrowed funds, was not supported by any competent evidence and that her mere denial would not defeat summary judgment. The court next found that plaintiff was in possession of the original note. Finally, the court was satisfied plaintiff demonstrated its standing to foreclose. The matter was transferred to the Foreclosure Unit, where the Office of Foreclosure entered final judgment on December 14, 2015.

On January 25, 2016, defendant filed a motion seeking to vacate the December 14, 2015 entry of final judgment. Defendant argued that she was entitled to relief based upon "extrinsic intrinsic fraud, lack of standing, inadvertence, misrepresentations, negligence and judgment is void." By order dated April 25, 2016, the court denied the motion. In a statement of reasons appended to the order, the court first found that defendants "were unaware of Plaintiff's motion to enter final judgment" and that their failure to contest the amount due was not "attributable to any fault on their part but instead resulted from

their lack of notice of the proceeding." Thus, the court found that defendants satisfied the first prong for relief from judgment pursuant to Rule 4:50-1 (the Rule), excusable neglect. Nonetheless, the court denied the motion because defendant failed to satisfy the second prong for relief under the Rule, namely, a meritorious defense. Citing Deutsche Bank National Trust Company v. Mitchell, 422 N.J. Super. 214, 222 (App. Div. 2011), the court observed that the record established plaintiff's right to foreclose based upon plaintiff's "possession of the Note and Mortgage predate the filing of the Complaint on August 1, 2014." The present appeal followed.

On appeal, defendant urges that there were genuinely disputed issues of material fact, which precluded the grant of summary judgment, and plaintiff's proofs established that it lacked standing to foreclose. Defendant also contends plaintiff presented flawed, contradictory certifications, and erroneous due diligence. She further argues the court erred when it ruled that a photocopied note was the original note and failed to acknowledge that plaintiff was required to possess the original note, "not just a copy," in order to enforce the note, and improperly shifted the burden of proof. Defendant additionally contends the court failed to acknowledge the existence of defendants' defenses and counterclaims. Finally, defendant alleges the court failed to

afford defendants "proper access to the courts and displayed judicial bias/abuse of judicial discretion which violated defendants' NJ constitutional rights."

Based on our review of the record and applicable law, we are not persuaded by any of these arguments.

Under the Rule, the grounds for relief from judgment include excusable neglect, which the motion judge found defendant established. However, as the motion judge observed, a party seeking relief must do more than establish excusable neglect. U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 466-69 (2012) (holding a party seeking relief under the Rule must also demonstrate the existence of a meritorious defense, either to the underlying cause of action, or, if liability is undisputed, to the amount of damages determined).

The Rule is "designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." Id. at 467 (quoting Mancini v. EDS, 132 N.J. 330, 334 (1993)). Furthermore, this Rule "provides for extraordinary relief and may be invoked only upon a showing of exceptional circumstances." Baumann v. Marinaro, 95 N.J. 380, 393 (1984).

We review the trial court's denial of defendants' motion to vacate the final judgment of foreclosure under an abuse of discretion standard. Guillaume, supra, 209 N.J. at 467; United States v. Scurry, 193 N.J. 492, 502-03 (2008). In Guillaume, supra, our Supreme Court recently reiterated the standard of review of a trial court's determinations on a motion to vacate a default judgment under the Rule 4:50-1 as follows:

The trial court's determination under the rule warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion. See DEG, LLC v. Twp. of Fairfield, 198 N.J. 242, 261 (2009); Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994). The Court finds an abuse of discretion when a decision is "'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571(2002)).

[209 N.J. at 467-68.]

On this record, we find no abuse of discretion in the motion court's decision.

The crux of defendant's arguments attacks the finding by the summary judgment motion judge that plaintiff was entitled to foreclosure, as a matter of law, because defendant failed to raise any genuinely disputed issue of fact sufficient to defeat plaintiff's summary judgment motion. Although we owe no deference

to the motion judge's conclusion, Manalapan Realty, L.P. v. Twp. Comm fof Manalapan, 140 N.J. 366, 378 (1995), we are in agreement with the decision.

A trial court must grant a summary judgment motion if "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). "An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." Ibid.; see also Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). On appeal, we follow that same summary judgment standard. Townsend v. Pierre, 221 N.J. 36, 59 (2015).

Defendant contested her execution of the loan documents. However, she offered nothing more than her bare allegations. See Miller v. Bank of Am. Home Loan Servicing, L.P., 439 N.J. Super. 540, 551 (App. Div.) certif. denied, 221 N.J. 567 (2015); see also Brae Asset Fund, L.P. v. Newman, 327 N.J. Super. 129, 134 (App. Div. 1999) (that bare conclusions unsupported by competent evidence will not defeat a summary judgment motion).

"[A] party seeking to foreclose a mortgage must own or control the underlying debt" at the time the foreclosure complaint is filed. Wells Fargo Bank, N.A. v. Ford, 418 N.J. Super. 592, 597 (App. Div. 2011) (quoting Bank of N.Y. v. Raftogianis, 418 N.J. Super. 323, 327-28 (Ch. Div. 2010)). If a plaintiff cannot establish ownership or control, it "lacks standing to proceed with the foreclosure action and the complaint must be dismissed." Ford, supra, 418 N.J. Super. at 597. "If a debt is evidenced by a negotiable instrument, such as the note executed by [a] defendant," whether a plaintiff has established ownership or control over the note "is governed by Article III of the Uniform Commercial Code (UCC), N.J.S.A. 12A:3-101 to -605, in particular N.J.S.A. 12A:3-301." Ibid.

Here, Wells Fargo had to show it fell within one of the "three categories of persons entitled to enforce negotiable instruments" as described in N.J.S.A. 12A:3-301. Deutsche Bank Nat'l Trust Co. v. Mitchell, 422 N.J. Super. 214, 222-23 (App. Div. 2011).

N.J.S.A. 12A:3-301 provides:

"Person entitled to enforce" an instrument means the holder of the instrument, a nonholder in possession of the instrument who has the rights of the holder, or a person not in possession of the instrument who is entitled to enforce the instrument pursuant to [N.J.S.A.] 12A:3-309 or subsection d. of [N.J.S.A.] 12A:3-418. A person may be a person entitled to enforce the instrument even though

the person is not the owner of the instrument or is in wrongful possession of the instrument.

Additionally, under the Banking Act of 1948, N.J.S.A. 17:9A-1 to -467, when two or more banks merge, "the corporate existence of each merging bank shall be merged into that of the receiving bank, and the property and rights of each merging bank shall thereupon vest in the receiving bank without further act or deed[.]" N.J.S.A. 17:9A-139(1) (emphasis added).

Here, the motion judge credited the evidence presented by Wells Fargo regarding its merger history and concluded Wells Fargo had standing and properly held the note without any endorsement. We see no error in the judge's determination, particularly given the undisputed merger and acquisition history of World Savings, Wachovia Mortgage, and Wells Fargo.

Consistent with N.J.S.A. 17:9A-139(1) and the requirements set forth in N.J.S.A. 12A:3-301, Wells Fargo was the "holder of the instrument." Having presented undisputed evidence before the motion judge that it was the holder of the note and the mortgage at the time of the complaint, it had standing to commence the foreclosure action against defendants. Mitchell, supra, 422 N.J. Super. at 224-25 (citation omitted).

The remaining arguments advanced by defendant are without sufficient merit to warrant further discussion in a written opinion. 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