

**NOT FOR PUBLICATION WITHOUT THE  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-4611-15T3

WELLS FARGO BANK, N.A.,

Plaintiff-Respondent,

v.

TABITHA HASSAN, MR. HASSAN,  
husband of TABITHA HASSAN,

Defendants-Appellants.

---

Submitted August 1, 2017 – Decided August 8, 2017

Before Judges Hoffman and Currier.

On appeal from Superior Court of New Jersey,  
Chancery Division, Essex County, Docket No.  
F-6136-15.

Tabitha Hassan, appellant pro se.

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

PER CURIAM

Defendant Tabitha Hassan appeals from a June 13, 2016 Chancery Division order denying her motion to vacate the default judgment entered in favor of plaintiff Wells Fargo Bank, N.A. Defendant argues plaintiff (1) failed to provide personal service and (2)

lacked standing to foreclose because it did not possess the mortgage when it filed its complaint. After reviewing the record and applicable law, we reject defendant's arguments and affirm.

I.

On May 2, 2011, American Bank loaned defendant \$289,143. To secure the loan, defendant mortgaged her Newark property. The mortgage named Mortgage Electronic Registration Systems, Inc., (MERS) as the nominee for American Bank. Defendant stopped paying the loan on September 1, 2014. On November 12, 2014, MERS assigned the mortgage to plaintiff, and the Essex County Register's Office recorded the assignment on November 20, 2014. American Bank also assigned the note to plaintiff.

On February 20, 2015, plaintiff filed a foreclosure complaint. Plaintiff tried to effect personal service on defendant but was ultimately unsuccessful. Someone living at the mortgaged property informed a process server that defendant no longer lived there. The tax collector for Newark said it still mailed defendant's real estate tax bills to the Newark property. The post office said defendant had not provided a forwarding address. The telephone directory lacked a listing for defendant. A surrogate's search did not reveal defendant had a pending estate. When plaintiff found another possible address for defendant, its process server spoke to the current tenant, who said defendant no

longer lived there; defendant now contends she lives at this second address. Plaintiff then published notice in six different newspapers, and sent a summons via regular mail to the Newark property. The record shows plaintiff mailed the proper notices to the Newark property.

On June 11, 2015, the Clerk entered default against defendant after she failed to file an answer to plaintiff's complaint. On November 13, 2015, the Chancery Division ordered the sale of defendant's property and determined \$296,927.43 as the amount owed to plaintiff on the mortgage loan.

On March 29, 2016, defendant filed a motion to vacate final judgment. Defendant did not explain how she learned of the final judgment. On June 13, 2016, the court denied defendant's motion. This appeal followed.

## II.

In cases involving default judgments, "[t]he trial court's determination . . . warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion." US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). Under Rule 4:4-5(a), a defendant who "cannot, after diligent inquiry as required by this rule, be served within the State," can be served by publication "once in a newspaper published or of general circulation in the county in which the venue is laid." R. 4:4-

5(a)(3). "Service by publication is hardly favored and is the method of service that is least likely to give notice." M & D Assocs. v. Mandara, 366 N.J. Super. 341, 353 (App. Div.), certif. denied, 180 N.J. 151 (2004). As "an alternative method of service of process, . . . it must be consistent with due process." Ibid. "[T]he rule requires an affidavit that a diligent inquiry has been made and that the defendant is not available for service within the State." Ibid. The affidavit of "diligent inquiry must be carefully scrutinized." Ibid. Here, plaintiff inquired with many entities to locate defendant, and attempted to make service upon defendant many times at multiple addresses where its inquiry showed she might reside. The trial court properly concluded plaintiff diligently but unsuccessfully tried to serve defendant, who does not challenge the substantive sufficiency of the six notices.

Defendant does challenge plaintiff's standing to foreclose on the Newark property. "[E]ither possession of the note or an assignment of the mortgage that predate[s] the original complaint confer[s] standing." Deutsch Bank Trust Co. Ams. v. Angeles, 428 N.J. Super. 315, 320 (App. Div. 2012). On November 20, 2014, the Essex County Register's Office recorded the assignment of the mortgage. Plaintiff filed its foreclosure complaint on February 20, 2015. We also note plaintiff produced a copy of the allonge

endorsing the note to plaintiff. Plaintiff clearly had standing to initiate the foreclosure proceedings under review.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION