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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-5064-15T1

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR
SOUNDVIEW HOME LOAN TRUST
2006-OPT2, ASSET-BACKED
CERTIFICATES, SERIES 2006-OPT2,

Plaintiff-Respondent,

v.

RICA ENTERPRISES, INC.; 531-535
JEFFERSON AVENUE CONDOMINIUM
ASSOCIATION, INC.; NATIVIDAD
CORREIA; WELLS FARGO BANK, N.A.;
CONTINENTAL TRADING & HARDWARE;
TD BANK, N.A.; NEW MILLENNIUM
BANK; AFCO ELECTRIC CO., INC.;
GERALD A. YEAGER; JEFFERY W.
YEAGER; STATE OF NEW JERSEY,

Defendants,

and

SOPHIA COSTA,

Defendant-Appellant.

Submitted September 20, 2017 — Decided December 21, 2017

Before Judges Koblitiz and Suter.

On appeal from Superior Court of New Jersey,
Chancery Division, Union County, Docket No.
F-045308-14.

Sophia Costa, appellant pro se.

Greenberg Traurig, LLP, attorneys for
respondent (Brian Pantaleo and Yangho Charles
Shin, of counsel and on the brief).

PER CURIAM

Defendant Sophia Costa (Costa) appeals the May 27, 2016 order denying her objection to the entry of a final judgment of foreclosure on certain residential real estate. We affirm.

In 2006, Costa and Natividad Correia¹ executed a \$543,750 note and a mortgage with Option One Mortgage Corporation (Option One), regarding a residential property in Elizabeth. In September 2010, Costa's mortgage was assigned by Option One to plaintiff Deutsche Bank National Trust Company, As Trustee For Soundview Home Loan Trust 2006-OPT2, Asset-Backed Certificates, Series 2006-OPT2 (plaintiff) and recorded on September 29, 2010.

Costa defaulted on the note in February 2010. Plaintiff sent Costa a notice of intention (NOI) to foreclose on September 3, 2013. Costa did not cure the default.

¹ Because defendant Natividad Correia has not appealed, our opinion only makes reference to facts related to Costa.

In October 2014, plaintiff filed a foreclosure complaint, which named Costa as a defendant. Costa filed a contesting answer in which she denied plaintiff had standing to enforce the mortgage loan.

In September 2015, when Costa failed to appear on the trial date, her answer was stricken and a default was entered. Costa subsequently filed a motion to vacate the default, alleging that plaintiff lacked standing.²

In ruling on the motion, the trial court found that Costa "did not provide an excusable reason" for being absent from the trial. Also, Costa was "legally and factually incorrect" that plaintiff lacked authority to foreclose. The court found the Option One note was indorsed in blank and plaintiff was the "bearer" of the note. Also, "the assignment of mortgage was recorded on September 29, 2010 to [p]laintiff with [the] [c]omplaint being filed well after, on October 29, 2014."

² Costa also asked to dismiss the complaint because she claimed plaintiff did not conform with the Business Corporation Act, N.J.S.A. 14A:1-1 to -17-18. Costa has not pursued that argument on appeal and as such it is deemed to be waived. Gormley v. Wood-El, 218 N.J. 72, 95 n.8 (2014); Drinker Biddle & Reath LLP v. N.J. Dep't of Law & Pub. Safety, Div. of Law, 421 N.J. Super. 489, 496 n.5 (App. Div. 2011).

In April 2016, plaintiff applied under Rule 4:64-9 for entry of a final judgment of foreclosure. Costa opposed the application, asserting again "plaintiff's lack of standing, failure to prove transfer of the assignment of mortgage and the blank endorsement on the note." The court denied Costa's objection on May 27, 2016. Costa "assert[ed] the same arguments that were included in her previous motions," and because the court had "sufficiently addressed [them] in detail," it found "the same analysis stills stands." Also, Costa failed to object to the amount that plaintiff alleged was due under the mortgage. A final judgment of foreclosure was entered on June 21, 2016.

On appeal, Costa challenges the May 27, 2016 order that denied her objection to entry of the final judgment. She contends the court erred in finding plaintiff had standing because there was no proof the note was transferred or the mortgage was assigned to plaintiff.

A party seeking to establish its right to foreclose on a mortgage must generally "own or control the underlying debt." Deutsche Bank Nat'l Tr. 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)). See Bank of N.Y. v. Raftoqianis, 418 N.J. Super. 323, 327-28 (Ch. Div. 2010). In


Deutsche Bank Tr. Co. Ams. 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, 422 N.J. Super. at 216.

Costa appeals only the May 27, 2016 order. See W.H. Indus., Inc. v. Fundicao Balancins, Ltda, 397 N.J. Super. 455, 458 (App. Div. 2008) ("It is clear that it is only the orders designated in the notice of appeal that are subject to the appeal process and review."). She did not appeal the November 30, 2015 order where the court rejected her contention that plaintiff lacked standing to foreclose. It was there the court found "the assignment of mortgage was recorded on September 29, 2010 to [p]laintiff with [the] [c]omplaint being filed well after, on October 29, 2014." "Given that the mortgage was properly recorded and appears facially valid, under New Jersey law there is a presumption as to its validity, and the burden of proof as to any invalidity is on the party making such an argument." In re S.T.G. Enters., Inc., 24 B.R. 173, 176 (Bankr. D.N.J. 1982) (citations omitted). Costa submitted nothing to the court to overcome this presumption. As such, the recorded mortgage provided a basis for plaintiff's standing to enforce the mortgage loan.

After carefully reviewing the record and the applicable legal principles, we conclude that Costa's further arguments are without sufficient merit to warrant 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