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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-5503-15T3

LSF8 MASTER PARTICIPATION
TRUST,

Plaintiff-Respondent,

v.

TONYA SIMS,

Defendant-Appellant,

and

MR. SIMS, husband of TONYA
SIMS and STATE OF NEW JERSEY,

Defendants.

Submitted September 27, 2017 — Decided December 21, 2017

Before Judges Manahan and Suter.

On appeal from Superior Court of New Jersey,
Chancery Division, Monmouth County, Docket No.
F-027783-14.

Tonya Sims, appellant pro se.

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

PER CURIAM

Defendant Tonya Sims (Sims) appeals a July 8, 2016 final judgment foreclosing her interest in certain residential real estate. We affirm.

In 2007, Sims executed a \$285,264.87 note and a mortgage with Household Finance Corp. III (Household) regarding a residential property in Neptune. Sims defaulted on the note in August 2010. Household sent Sims a notice of intention (NOI) to foreclose. Sims did not cure the default. In March 2014, Sim's mortgage was assigned by Household to LSF8 Master Participation Trust (plaintiff) and recorded.

In July 2014, plaintiff filed a foreclosure complaint, which named Sims as a defendant. Sims filed a contesting answer. In January 2015, shortly before the scheduled trial date, plaintiff filed for summary judgment to strike Sim's answer and Sims filed to dismiss the foreclosure complaint. Trial was adjourned to hear the motions.

In ruling on the motions, the trial court found that plaintiff had standing to enforce the mortgage loan because prior to filing for foreclosure, it had possession of the original note, which was endorsed in blank,¹ and also had been assigned the mortgage. The

¹ A note that is indorsed in blank "becomes payable to bearer and may be negotiated by transfer of possession alone" N.J.S.A. 12A:3-205(b).

court found Sims received an NOI that was compliant with the Fair Foreclosure Act (Act), N.J.S.A. 2A:50-53 to -68. The NOI identified Household as the lender because it was sent before the mortgage was assigned to plaintiff. Finding no issues of fact about the prima facie requirements to foreclose, the court granted plaintiff's motion for summary judgment on February 20, 2015, striking Sim's answer. A final judgment of foreclosure was entered on July 8, 2016 after Sim's motion to fix the amount due was denied. Defendant appeals the final foreclosure judgment.

On appeal, Sims contends that plaintiff lacked standing to foreclose, the NOI was defective because plaintiff was not identified as the lender, and there was no proof she defaulted. She argues that plaintiff's motion for summary judgment was untimely and lacked a material statement of facts. We find no merit in any of these claims.

We review a trial court's orders granting or denying summary judgment under the same standard employed by the motion judge. Globe Motor Co. v. Igdaley, 225 N.J. 469, 479 (2016). The question is whether the evidence, when viewed in a light most favorable to the non-moving party, raises genuinely disputed issues of fact sufficient to warrant resolution by the trier of fact, or whether the evidence is so one-sided that one party must prevail as a matter of law. Templo Fuente De Vida Corp. v. Nat'l Union Fire

Ins. Co., 224 N.J. 189, 199 (2016); see also Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

The trial court's factual findings were based on a certification from the bank's representative. The certification complied with N.J.R.E. 803(c)(6). See New Century Fin. Servs., Inc. v. Oughla, 437 N.J. Super. 299, 326 (App. Div. 2014) (citing State v. Martorelli, 136 N.J. Super. 449, 553 (App. Div. 1975)) ("There is no requirement that the foundation witness [certifying that a record is a business record] possess any personal knowledge of the act or event recorded."). The bank's representative certified the loan records were business records, had knowledge of how the records were kept and maintained, personally reviewed the records, and stated that plaintiff remained in possession of the note.

Sims contends plaintiff lacked standing to enforce the note and mortgage. 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. Raftogianis, 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.

There was ample support for the court's finding that plaintiff was in possession of the note and was assigned the mortgage before it filed the foreclosure complaint. "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). Sims submitted nothing to the court to overcome this presumption or to show lack of possession.

We find no error with the judge's decision that the NOI complied with the Act. The NOI "is a central component of the [Fair Foreclosure Act], serving the important legislative objective of providing timely and clear notice to homeowners that immediate action is necessary to forestall foreclosure." U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 470 (2012). Household, not the plaintiff, was the lender in 2010 when the NOI was mailed. Plaintiff was not required to send a new NOI when the note transferred or the mortgage was assigned.


Sims contends there was a discrepancy regarding the date in August 2010 when she defaulted. Even if there were, she does not

claim she has been making payments or raise any factual issue about the fact that she defaulted on the note.

After carefully reviewing the record and the applicable legal principles, we conclude that Sim'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