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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-0998-16T1

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Trustee for
MASTR Asset Backed Securities
Trust 2005-OPT1, Mortgage
Pass-Through Certificates,
Series 2005-OPT1,

Plaintiff-Respondent,

v.

TODD MARRAZZO,

Defendant-Appellant,

and

MRS. MARRAZZO, UNKNOWN SPOUSE
OF TODD MARRAZZO, SUMMA CAPITAL CORP.,
A NEW YORK CORPORATION, GEORGE MALIK,
a/k/a GEORGE MALEK, PAWNEE LEASING
CORPORATION, ALVIN DAVIS, STATE OF
NEW JERSEY, GREG & ARTIN SERVICE, INC.,
and MARINA DISTRICT DEVELOPMENT CO., INC.,

Defendants.

Argued March 12, 2018 – Decided April 19, 2018

Before Judges Accurso and Vernoia.

On appeal from Superior Court of New Jersey,
Chancery Division, Bergen County, Docket No.
F-000985-16.

Nicholas A. Stratton argued the cause for
appellant (Stratton Stepp, LLP, attorneys;
Nicholas A. Stratton and Louis J. Johnson,
Jr., on the briefs).

Stuart I. Seiden argued the cause for
respondent (Duane Morris, LLP, attorneys;
Stuart I. Seiden, Brett L. Messinger and Kelly
K. Huff, of counsel and on the brief).

PER CURIAM

In this mortgage foreclosure action, defendant Todd Marrazzo appeals from a June 24, 2016 Chancery Division order granting plaintiff Wells Fargo's¹ motion for summary judgment, striking defendant's answer and entering default against him, and an October 13, 2016 final judgment of foreclosure. Defendant argues the court erred by rejecting his contention the complaint was filed beyond the six-year limitations period set forth in N.J.S.A. 2A:50-56.1(a), and by finding plaintiff had standing to bring the foreclosure action. We disagree and affirm.

I.

On December 10, 2004, defendant signed a \$319,500 promissory note in favor of Option One Mortgage Corporation. The note

¹ Plaintiff's full name is Wells Fargo Bank, National Association, as Trustee for Mastr Asset Backed Securities Trust 2005-OPT1, Mortgage Pass-Through Certificates, Series 2005-OPT1.

included an expressly defined "Maturity Date" of January 1, 2035. Defendant executed a mortgage to Option One granting a security interest in residential property located in Hackensack. The mortgage included an acceleration clause granting plaintiff "the option" of declaring all sums and interest secured by the mortgage immediately due in the event of a default under the note or mortgage. The mortgage was recorded in the Bergen County Clerk's Office on January 13, 2005.

Defendant defaulted on September 1, 2008, and thereafter has failed to make any payments under the note. On December 10, 2008, plaintiff filed a foreclosure complaint, which included a declaration accelerating the total amount due under the note. On February 25, 2014, the complaint was dismissed by stipulation of the parties.

On January 8, 2016, plaintiff filed a second foreclosure complaint. Defendant's contesting answer included the affirmative defense that the action was time-barred, claiming it was filed beyond the six-year limitations period under N.J.S.A. 2A:50-56.1(a). Defendant also averred that plaintiff lacked standing because it was "neither a possessor of the note, a holder in due course, or a non-holder with a right to enforce."

On May 4, 2016, plaintiff filed a motion for summary judgment, which the court granted following oral argument. The court

rejected defendant's claims that plaintiff lacked standing and the complaint was filed beyond the limitations period in N.J.S.A. 2A:50-56.1(a). The court reasoned that N.J.S.A. 2A:50-56.1(a) required the filing of a foreclosure complaint within six years of the maturity date set forth in the mortgage and note, and found plaintiff's 2016 complaint was timely because the note's maturity date is January 1, 2035. The court further determined plaintiff had standing because plaintiff possessed the note and had a valid assignment of the mortgage prior to the filing of the complaint. Plaintiff moved for final judgment of foreclosure, which was entered on October 13, 2016. This appeal followed.

Defendant presents the following arguments for our consideration:

POINT I

THE COURT ERRED WHEN IT DETERMINED THAT THE MATURITY DATE OF THE MORTGAGE WAS NOT ACCELERATED AND N.J.S.A. 2A:50-56.1(a) DID NOT APPLY.

POINT II

THE COURT ERRED WHEN IT RELIED ON A VOID ASSIGNMENT OF MORTGAGE AND THE UNSUPPORTED ASSERTIONS OF A NON-PARTY TO AWARD PLAINTIFF STANDING TO FORECLOSE.

II.

We review a summary judgment order de novo, applying the same standard as the trial court. State v. Perini Corp., 221 N.J. 412,

425 (2015) (citing Town of Kearny v. Brandt, 214 N.J. 76, 91 (2013); Liberty Surplus Ins. Corp. v. Nowell Amoroso, PA, 189 N.J. 436, 445-46 (2007)). When considering a motion for summary judgment, "both trial and appellate courts must view the facts in the light most favorable to the non-moving party, which in this case is" defendant. Bauer v. Nesbitt, 198 N.J. 601, 604-05 n.1 (2009); see also R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

Summary judgment is appropriate where the record demonstrates "no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment . . . as a matter of law." Burnett v. Gloucester Cty. Bd. of Chosen Freeholders, 409 N.J. Super. 219, 228 (App. Div. 2009). The interpretation of a statute, such as a statute of limitations, is a question of law requiring de novo review. See Royster v. N.J. State Police, 227 N.J. 482, 493 (2017); see also Brandt, 214 N.J. at 91.

Defendant argues the court erred in finding the complaint was timely filed. He contends plaintiff's acceleration declaration in the December 10, 2008 complaint modified the maturity date of the note to the date of the complaint's filing. Defendant reasons that the acceleration date became the new maturity date under the note, and the 2016 foreclosure complaint was time-barred under

N.J.S.A. 2A:50-56.1(a) because it was filed more than six years later. We are not persuaded.

In interpreting N.J.S.A. 2A:50-56.1, our "overriding goal must be to determine the Legislature's intent." Cast Art Indus., LLC v. KMPG LLP, 209 N.J. 208, 221 (2012) (citation omitted). Our interpretation begins, as it must, with the plain language of the statute because that is the best indicator of legislative intent. DiProspero v. Penn, 183 N.J. 477, 492 (2005); accord State v. Gandhi, 201 N.J. 161, 176-77 (2010). We "ascribe to the statutory words their ordinary meaning and significance, and read them in context with related provisions so as to give sense to the legislation as a whole." Perrelli v. Pastorelle, 206 N.J. 193, 200 (2011) (quoting Hardy v. Abdul-Matin, 198 N.J. 95, 101 (2009)).

N.J.S.A. 2A:50-56.1 defines the limitations period for a residential mortgage foreclosure, and provides that a foreclosure action shall not be commenced beyond the earliest of three defined deadlines. N.J.S.A. 2A:50-56.1 provides:

An action to foreclose a residential mortgage shall not be commenced following the earliest of:

a. Six years from the date fixed for the making of the last payment or the maturity date set forth in the mortgage or the note, bond, or other obligation secured by the mortgage, whether the date is itself set forth or may be calculated from information contained in the mortgage or note, bond, or

other obligation, except that if the date fixed for the making of the last payment or the maturity date has been extended by a written instrument, the action to foreclose shall not be commenced after six years from the extended date under the terms of the written instrument;

b. Thirty-six years from the date of recording of the mortgage, or, if the mortgage is not recorded, 36 years from the date of execution, so long as the mortgage itself does not provide for a period of repayment in excess of 30 years; or

c. Twenty years from the date on which the debtor defaulted, which default has not been cured, as to any of the obligations or covenants contained in the mortgage or in the note, bond, or other obligation secured by the mortgage, except that if the date to perform any of the obligations or covenants has been extended by a written instrument or payment on account has been made, the action to foreclose shall not be commenced after 20 years from the date on which the default or payment on account thereof occurred under the terms of the written instrument.

[N.J.S.A. 2A:50-56.1 (Emphasis added).]

Here, defendant does not claim the complaint is barred under the limitation periods in subsections (b) or (c). Instead, he relies solely on the subsection (a) limitations period, arguing the complaint was not filed within six years of the filing of the December 10, 2008 complaint that included the acceleration declaration.

The plain language of subsection (a) does not support defendant's argument. Subsection (a) requires commencement of the foreclosure action within six years of "the date fixed for the making of the last payment or the maturity date set forth in the mortgage or the note, . . . whether the date is itself set forth or may be calculated from information contained in the mortgage or note." N.J.S.A. 2A:50-56.1(a). The maturity date expressly "set forth" in the note is January 1, 2035. Defendant does not contend otherwise. Thus, the 2016 complaint was filed well before the six-year period following the maturity date "set forth" in the note.

Defendant argues that although the maturity date set forth in the note is January 1, 2035, subsection (a) also provides for application of a maturity date that "may be calculated from information contained in the mortgage or note." N.J.S.A. 2A:50-56.1(a). Defendant reasons that the mortgage allows for acceleration of the sums due under the note, plaintiff's declaration of acceleration in the December 10, 2008 complaint modified the maturity date, and plaintiff failed to commence the foreclosure action until more than six years later, when it filed its 2016 complaint. Defendant contends that December 10, 2008 is the maturity date "that may be calculated from information contained in the mortgage or note" under N.J.S.A. 2A:50-56.1(a),

and plaintiff's complaint therefore was filed beyond the six-year limitations period.

Defendant's argument ignores N.J.S.A. 2A:50-56.1(a)'s plain language, which provides that the applicable maturity date is derived from the mortgage or note and not the lender's actions. The statute permits the calculation of the pertinent maturity date "from information contained in the mortgage or note." N.J.S.A. 2A:50-56.1(a). This language provides no refuge for plaintiff, however, because the December 10, 2008 accelerated maturity date upon which defendant relies is based on facts and circumstances existing outside of any "information contained in the mortgage or note." More particularly, defendant's contention that December 10, 2008 is the applicable maturity date under N.J.S.A. 2A:50-56.1(a) is wholly dependent on the filing of the 2008 complaint and the complaint's acceleration declaration. Neither the filing of the complaint nor the acceleration of the note is information "contained in the mortgage or note." See N.J.S.A. 2A:50-56.1(a).

Defendant's reliance on the 2008 complaint's acceleration declaration as the trigger for the running of the N.J.S.A. 2A:50-56.1(a) six-year limitations period is also not supported by the record. Even accepting defendant's erroneous contention that acceleration could define the maturity date applicable under

N.J.S.A. 2A:50-56.1(a), the acceleration was rescinded in 2014² when plaintiff dismissed the complaint. The mortgage provided that acceleration was at plaintiff's option, and plaintiff opted to rescind the acceleration in 2014. As a result, the accelerated maturity date on which defendant relies to define the applicable limitations period under N.J.S.A. 2A:50-56.1(a) did not exist following the dismissal of the 2008 complaint and could not, as a matter of fact, thereafter define the maturity date of the note even under defendant's interpretation of the statute.

In sum, we are convinced that neither N.J.S.A. 2A:50-56.1(a)'s plain language nor the facts support defendant's claim that the acceleration declaration contained in the 2008 complaint defined the maturity date for calculating the six-year limitations period. The January 1, 2035 maturity date set forth in the note constituted the sole maturity date pertinent to the determination of the limitations period under N.J.S.A. 2A:50:56.1(a)'s plain language. The court correctly determined plaintiff's 2016 foreclosure complaint was timely filed.


Defendant also claims that the court erred by finding plaintiff had standing to bring the foreclosure action.

² For the reasons we explained supra, we reject defendant's contention that the acceleration declaration contained in the 2008 complaint modified the maturity date of the note for purposes of determining the limitations period under N.J.S.A. 2A:50-56.1(a).

Defendant's arguments are without merit sufficient to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only that the competent evidence presented to the court shows an assignment of the mortgage to plaintiff and plaintiff's possession of the note prior to the filing of the complaint. The court therefore correctly determined plaintiff had standing. See Deutsche Bank Trust Co. Ams. v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012) (citing Deutsche Bank Nat'l Trust Co. v. Mitchell, 422 N.J. Super. 214, 216 (App. Div. 2011)) ("[E]ither possession of the note or an assignment of the mortgage that predated the original complaint confer[s] standing" to bring a foreclosure action).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION