

**NOT FOR PUBLICATION WITHOUT THE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-1411-16T3

U.S. BANK, NATIONAL
ASSOCIATION, AS TRUSTEE FOR
CITIGROUP MORTGAGE LOAN
TRUST INC., ASSET-BACKED
PASS-THROUGH CERTIFICATES,
SERIES 2006-AMC-1,

Plaintiff-Respondent,

v.

SIMON ZAROOUR,

Defendant-Appellant.

Submitted February 7, 2018 – Decided March 13, 2018

Before Judges Currier and Geiger.

On appeal from Superior Court of New Jersey,
Chancery Division, Bergen County, Docket No.
F-016824-14.

Simon Zarour, appellant pro se.

Duane Morris LLP, attorneys for respondent
(Brett L. Messinger and Stuart I. Seiden, of
counsel and on the brief).

PER CURIAM

In this residential mortgage foreclosure action, defendant Simon Zarour appeals from a November 21, 2014 order, striking his answer and affirmative defenses, deeming the dispute an uncontested foreclosure, and returning the matter to the Office of Foreclosure for entry of final judgment; a November 21, 2014 order, denying his motion to dismiss the complaint filed by plaintiff U.S. Bank, National Association, as Trustee for Citigroup Mortgage Loan Trust Inc., Asset-Backed Pass-Through Certificates, Series 2006-AMC-1; and an October 19, 2016 final judgment of foreclosure. For the following reasons, we affirm.

We glean the facts from the record. On May 16, 2006, defendant executed and delivered an adjustable rate promissory note for \$378,000 (the note) to Argent Mortgage Company, LLC (Argent). On the same day, defendant executed a mortgage, securing payment of the note in favor of Argent (the mortgage) affecting defendant's property in Lyndhurst Township, New Jersey (the property). The mortgage was recorded in the Bergen County Clerk's Office on June 1, 2006. On February 20, 2014, the mortgage was assigned by Argent to plaintiff by an assignment of mortgage recorded in the Bergen County Clerk's Office on March 24, 2014 (the assignment).

Defendant defaulted on the mortgage payment due on August 1, 2008, and all payments thereafter. On September 30, 2013, notice

of intent to foreclose was sent to defendant by regular and certified mail. On April 29, 2014, plaintiff filed its complaint. Plaintiff specifically pled it was entitled to enforce the note and mortgage by virtue of the assignment. On May 15, 2014, defendant filed an answer and affirmative defenses. The affirmative defenses included lack of standing, improper notice of breach, unjust enrichment, equitable estoppel, failure to join an indispensable party, lack of privity, unclean hands, and failure of consideration.

On October 17, 2014, plaintiff filed a motion to strike defendant's answer and affirmative defenses and declare the action uncontested. Defendant did not contest the execution of the loan documents or the subsequent default. Nor did he contest standing based on the assignment of the mortgage to plaintiff. Rather, defendant opposed the motion and filed a cross-motion to dismiss plaintiff's complaint, challenging the securitization of the loan, and asserting the trust never existed. Defendant also argued plaintiff failed to provide answers to interrogatories but did not identify any specific interrogatory answers or additional documents that were vital. Instead, defendant merely asserted additional discovery would assist in raising additional unspecified defenses.

The record demonstrates defendant was afforded substantial discovery by plaintiff, including over 600 pages of documents to defendant. In a letter dated September 16, 2014, the trial court advised defendant he had propounded excessive discovery demands for irrelevant material. Notably, defendant did not move to compel further discovery.

Following oral argument, the trial court ruled defendant was not a party to the trust, was not a beneficiary of the trust, and did not have standing to assert the rights of third parties to challenge a violation of the trust prospectus. The trial court further determined adequate discovery had been provided by plaintiff, the interrogatories propounded by defendant were irrelevant, and requiring plaintiff to provide further documentation would not lead to germane discovery. The trial court granted plaintiff's motion to strike defendant's answer, returned the matter to the Office of Foreclosure as an uncontested case, and denied defendant's cross-motion to dismiss plaintiff's complaint.

On August 30, 2016, plaintiff applied for entry of final judgment. The application was initially denied because a certification of inquiry for publication on defendant was not submitted. On October 19, 2016, the trial court vacated the denial of plaintiff's motion for entry of final judgment and entered

final judgment against defendant in the amount of \$725,662.43 together with lawful interest from July 8, 2016. This appeal followed.

On appeal, defendant argues the trial court erred by: (1) concluding plaintiff had standing to foreclose the mortgage; (2) by striking defendant's answer and affirmative defenses; and (3) returning the matter to the Office of Foreclosure as an uncontested case for entry of final judgment. Based on our review of the record and applicable law, we are unpersuaded by these arguments.

Plaintiff moved to strike defendant's answer and affirmative defenses pursuant to Rule 4:64-1(c)(2), which provides an action to foreclose a mortgage shall be deemed uncontested if the answer does not "either contest the validity or priority of the mortgage or lien being foreclosed or create an issue with respect to plaintiff's right to foreclose it[.]" "An allegation by a defendant that he is without knowledge or sufficient information to form a belief as to an allegation of the complaint is also expressly deemed to be non-contesting." Pressler & Verniero, Current N.J. Court Rules, cmt. 3.1 on R. 4:64-1(c) (2018). Consequently, "a plaintiff may move to strike such an answer . . . on the ground that it presents 'no question of fact or law which should be heard by a plenary trial.'" Old Republic Ins. Co. v. Currie, 284 N.J. Super. 571, 574-75 (Ch. Div. 1995) (quoting

30 N.J. Practice, Law of Mortgages § 312, at 233 (Roger A. Cunningham & Saul Tischler) (1975)). At the conclusion of a successful motion for summary judgment or to strike a defendant's answer, the matter is referred to the Office of Foreclosure to proceed as uncontested. See R. 4:64-1(d) (dictating the procedure for entry of judgment). Similar to a motion for summary judgment, we review a grant of a motion to strike an answer and affirmative defenses de novo, applying the same standard as the trial court.

On appeal, defendant argues plaintiff lacks standing to foreclose because the corrective assignment of the mortgage to plaintiff post-dated the filing of the complaint. This defense was not raised before the trial court in opposition to plaintiff's motion.

It is a well-settled principle that our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available "unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest."

[Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (quoting Reynolds Offset Co., Inc. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959)).]

The standing challenge based on the assignment of the mortgage now raised by defendant on appeal does not affect the trial court's jurisdiction. Deutsche Bank Nat'l Trust Co. v. Russo, 429 N.J.

Super. 91, 101 (App. Div. 2012) (stating "standing is not a jurisdictional issue in our State court system"). Nor is it a matter of great public concern. We, therefore, decline to address this defense not raised below.

In his opposition to plaintiff's motion, defendant argued plaintiff lacked standing to foreclose due to purported defects in the securitization process by which plaintiff came to hold the mortgage. Defendant did not identify or brief this issue in this appeal.

Our rules require an appellant to identify and fully brief any issue raised on appeal. R. 2:6-2(a). Parties to an appeal are required to make a proper legal argument, supporting their legal argument with appropriate record references and providing the law. State v. Hild, 148 N.J. Super. 294, 296 (App. Div. 1977); see also Sackman v. N.J. Mfrs. Ins. Co., 445 N.J. Super. 278, 297-98 (App. Div. 2016). A party's failure to properly brief an issue will be deemed a waiver. See, e.g., Gormley v. Wood-El, 218 N.J. 72, 95 n.8 (2014). An appellant may escape that waiver only in the interests of justice. Otto v. Prudential Prop. & Cas. Ins. Co., 278 N.J. Super. 176, 181 (App. Div. 1994). For the following reasons, the interests of justice do not require us to consider this issue as we find it to have no merit.

The trial court ruled plaintiff lacked standing to challenge the securitization process based on an alleged violation of the trust because defendant was not a party to the trust and was not a beneficiary of the trust. "[L]itigants generally have no standing to assert the rights of third parties." Bank of N.Y. v. Raftogianis, 418 N.J. Super. 323, 350 (Ch. Div. 2010); see also Jersey Shore Med. Ctr.-Fitkin Hosp. v. Estate of Baum, 84 N.J. 137, 144 (1980). The trial court properly held defendant lacked standing to raise issues regarding the securitization process because he was neither a party to the trust, nor a third-party beneficiary of the trust's terms. See Correia v. Deutsche Bank Nat'l Trust Co. (In re Correia), 452 B.R. 319, 324 (1st Cir. B.A.P. 2011).

Because defendant did not identify or address this issue in his brief, we consider the claim waived and abandoned. See Drinker Biddle & Reath LLP v. N.J. Dep't of Law & Pub. Safety, 421 N.J. Super. 489, 496 n.5 (App. Div. 2011).

Defendant further argues plaintiff's motion should have been denied because he was entitled to additional discovery to assist in raising additional unspecified defenses. We disagree.

We review a trial court's discovery order under an abuse of discretion standard. State in the Interest of A.B., 219 N.J. 542, 554 (2014) (citing In re Subpoena Duces Tecum on Custodian of

Records, 214 N.J. 147, 162 (2013)). We "defer to a trial court's resolution of a discovery matter, provided its determination is not so wide of the mark or is not 'based on a mistaken understanding of the applicable law.'" Ibid. (quoting Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371 (2011)); see generally Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002) (holding that an abuse of discretion "arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis" (citations omitted))).


We discern no abuse of discretion in rejecting defendant's argument that failure to provide additional discovery precluded granting plaintiff's motion to strike defendant's answer and affirmative defenses. Defendant has not established that additional discovery would have revealed facts material to plaintiff's ownership and possession of the note, the assignment of the mortgage, or plaintiff's right to foreclose. Moreover, additional discovery regarding the securitization process would not have been relevant since plaintiff lacked standing to assert that issue.

In sum, the trial court properly denied defendant's motion to dismiss the complaint, struck defendant's answer and

affirmative defenses, and referred the matter to the Office of Foreclosure as an uncontested matter for entry of judgment.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION