

**NOT FOR PUBLICATION WITHOUT THE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-1896-16T2

PNC BANK, N.A.,

Plaintiff-Respondent,

v.

KAREN NICHELSON,

Defendant-Appellant,

and

STATE OF NEW JERSEY,

Defendant.

Submitted April 9, 2018 – Decided April 26, 2018

Before Judges O'Connor and Vernoia.

On appeal from Superior Court of New Jersey,
Chancery Division, Gloucester County, Docket
No. F-025571-13.

Karen Nicholson, appellant pro se.

Frank J. Martone, PC, attorneys for respondent
(Dennis P. Uhlmann, Jr., on the brief).

PER CURIAM

Defendant Karen Nichelson appeals from a Chancery Division order denying her motion to vacate a final judgment of foreclosure and dismiss the complaint. We affirm.

I.

In August 2005, defendant borrowed \$147,831 from National City Mortgage and executed a note secured by a mortgage on property in Paulsboro. Plaintiff PNC Bank, National Association (PNC Bank), is the successor by merger to National City Mortgage. Since March 1, 2011, defendant has defaulted on the note and mortgage by failing to make the required payments.

In July 2013, PNC Bank filed a foreclosure complaint. Defendant subsequently filed a contesting answer.

PNC Bank assigned the mortgage and note to the Secretary of the United States Department of Housing and Urban Development (HUD) in January 2014. Three months later, on April 8, 2014, HUD assigned the mortgage and note to GCAT Depositor I, LLC (GCAT). That same day, GCAT assigned the mortgage and note to Wilmington Savings Fund Society as Trustee for Bronze Creek Title Trust (Wilmington Savings Fund).

On June 10, 2014, PNC Bank filed a motion for summary judgment. Defendant filed opposition and a cross-motion to dismiss the complaint. The court denied defendant's cross-motion, granted

PNC Bank's summary judgment motion and changed the plaintiff to Wilmington Savings Fund.

On May 22, 2015, Wilmington Savings Fund assigned the mortgage and note to PNC Bank, and on July 30, 2015, the court granted an unopposed motion to substitute PNC Bank as plaintiff. PNC Bank filed a motion for final judgment in September 2015. Defendant did not oppose the motion. On October 28, 2015, the court entered a final judgment of foreclosure.

Eleven months later, defendant filed a notice of motion to vacate the final judgment. Following oral argument, the court issued a written statement of reasons finding defendant offered no excuse for her failure to respond to the notice of motion, and that defendant claimed only that PNC Bank lacked standing to bring the foreclosure action. The court concluded that, as a matter of law, PNC Bank's alleged lack of standing did not constitute a meritorious defense to the entry of a final judgment of foreclosure. The court determined defendant did not establish entitlement to relief under Rule 4:50-1(a) because she did not demonstrate either excusable neglect for failing to respond to PNC Bank's request for entry of final judgment, or a meritorious defense. The court entered an order denying defendant's motion. This appeal followed.

Defendant presents the following arguments for our consideration:

POINT 1

Defendant Is Entitled to Relief Pursuant to R. 4:50-1(c) and (f).

POINT 2

The Assignment to plaintiff is invalid.

II.

Defendant sought to vacate the final judgment under Rule 4:50-1, which in pertinent part provides:

On motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; . . . (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; . . . or (f) any other reason justifying relief from the operation of the judgment or order.

[R. 4:50-1.]

Rule 4:50-1 "reconcile[s] the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." Mancini v. EDS, 132 N.J. 330, 334 (1993) (quoting Baumann v. Marinaro, 95 N.J. 380, 392 (1984)).

A "trial court's determination under [Rule 4:50-1] warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion." U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). A court abuses its discretion "when a decision is 'made without a rational explanation, inexplicably depart[s] from established policies, or rest[s] on an impermissible basis.'" Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007) (quoting Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002)).

On appeal, defendant does not argue the court erred in determining she failed to sustain her burden of demonstrating excusable neglect and a meritorious defense under Rule 4:50-1(a). See Guillaume, 209 N.J. at 468 (noting that relief under Rule 4:50-1(a) requires a showing of excusable neglect and a meritorious defense). An issue not briefed on appeal is deemed waived. Jefferson Loan Co. v. Session, 397 N.J. Super. 520, 525 n.4 (App. Div. 2008); Zavodnick v. Leven, 340 N.J. Super. 94, 103 (App. Div. 2001). Therefore, we discern no basis to reverse the court's denial of defendant's motion to vacate the final judgment under Rule 4:50-1(a).¹

¹ Although defendant's failure to challenge the court's determination under Rule 4:50-1(a) renders our consideration of the merits of that decision unnecessary, based on our independent

Defendant asserts the court erred because she was entitled to an order vacating the final judgment under subsections (c) and (f) of Rule 4:50-1.² Defendant argues she was entitled to an order vacating the final judgment under subsection (c) because PNC Bank committed a fraud by "misrepresent[ing] itself as the assignee of the mortgage to gain the final judgment," and defendant was not provided notice of Wilmington Savings Fund's assignment of the mortgage to PNC Bank as required under the Truth In Lending Act, 15 U.S.C. §§ 1601 to 1667f, and Regulation Z, 12 C.F.R. § 1026.39 (2015).

review of the record we are convinced the court correctly found, and did not abuse its discretion by concluding, defendant failed to establish both excusable neglect and a meritorious defense. Defendant's claim PNC Bank lacked standing to bring the foreclosure complaint is not a meritorious defense under Rule 4:50-1. See Deutsche Bank Nat'l Trust Co. v. Russo, 429 N.J. Super. 91, 101 (App. Div. 2012) (finding "lack of standing [does] not constitute a meritorious defense" supporting a motion to vacate a final judgment under Rule 4:50-1(a)).

² It is unclear from the record whether defendant moved before the court to vacate the final judgment under subsections (c) and (f) of Rule 4:50-1. The court's decision suggests defendant did not seek relief under those subsections. Although we generally decline to consider arguments that were not "properly presented to the trial court" and do not "go to the jurisdiction of the trial court or concern matters of great public interest," State v. Robinson, 200 N.J. 1, 20 (2009) (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)), we choose to address defendant's claims under subsections (c) and (f) and, for the reasons noted, are convinced they lack merit.

We reject defendant's argument because we find no competent evidence in the record showing PNC Bank misrepresented itself as the assignee of the mortgage. To the contrary, the record supports the court's determination the mortgage was properly assigned to PNC Bank. Moreover, defendant is not a party to the assignments and has no standing to challenge any purported fraud in the manner in which they were effectuated. See, e.g., Bank of N.Y. v. Raftogianis, 418 N.J. Super. 323, 350 (Ch. Div. 2010) ("[L]itigants generally have no standing to assert the rights of third parties."); Correia v. Deutsche Bank Nat'l Trust Co., 452 B.R. 319, 324 (B.A.P. 1st Cir. 2011) (rejecting mortgagor's claim that noncompliance with a pooling and servicing agreement [PSA] rendered the foreclosure invalid because the mortgagors were "not parties [to the PSA], nor [did] they demonstrate[] that they were third-party beneficiaries of the PSA's terms"). In addition, any purported fraud in the assignment of the mortgage pertains solely to PNC Bank's alleged lack of standing, and PNC Bank otherwise had standing to foreclose because it possessed the note, which had been endorsed to it by Wilmington Savings Fund. See Deutsche Bank Nat'l Trust Co. v. Mitchell, 422 N.J. Super. 214, 223-25 (App. Div. 2011) (explaining that possession of the note endorsed by the holder confers standing to foreclose).

Defendant contends that PNC Banks's purported failure to provide notice of the transfer of the mortgage assignment under the TILA, Regulation Z and other federal statutes or regulations constitutes an exceptional circumstance requiring vacation of the final judgment under Rule 4:50-1(f). The argument is without merit sufficient to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E)); see, e.g., Guillaume, 209 N.J. at 480-83 (finding an alleged failure to comply with the TILA does not constitute a meritorious defense to foreclosure, and the defendants made no showing of the right to rescission under Regulation Z [12 C.F.R. § 226.23] where they did not tender payment of the outstanding indebtedness).

Defendant also argues the court erred by failing to vacate the final judgment under subsection (f) of Rule 4:50-1. A final judgment is set aside under subsection (f) "sparingly, in exceptional situations" to prevent "a grave injustice," Realty Mgmt., Inc. v. Harris, 155 N.J. 212, 237 (1998) (citation omitted), and only upon a showing of exceptional circumstances, EDS, 132 N.J. at 336. Defendant makes no such showing here.

"[T]he only issues in a foreclosure action are the validity of the mortgage, the amount of the indebtedness, and the right of the mortgagee to resort to the mortgaged premises." U.S. Bank Nat'l Ass'n v. Curcio, 444 N.J. Super. 94, 112-13 (App. Div. 2016)

(quoting Sun NLF Ltd. P'ship v. Sasso, 313 N.J. Super. 546, 550 (App. Div. 1998)). Defendant does not dispute she granted the mortgage on her property, challenge the amount of indebtedness, or contest that her default grants the mortgagor the contractual right to foreclose. She fails to establish, and our review of the record does not reveal, either exceptional circumstances or that a grave injustice will result if the final judgment is not vacated.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION