

**NOT FOR PUBLICATION WITHOUT THE  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-2558-16T2

THE BANK OF NEW YORK  
MELLON, f/k/a THE BANK OF  
NEW YORK AS TRUSTEE FOR THE  
CERTIFICATE HOLDERS OF THE  
CWABS, INC., ASSET-BACKED  
CERTIFICATES SERIES 2006-14,

Plaintiff-Respondent,

v.

MARGARET NOEL and MICHAEL  
NOEL,

Defendants-Appellants.

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Submitted January 31, 2018 – Decided March 19, 2018

Before Judges Koblitiz and Manahan.

On appeal from Superior Court of New Jersey,  
Chancery Division, Ocean County, Docket No.  
F-002766-15.

Margaret Noel, appellant pro se.

Pluese, Becker & Saltzman, LLC, attorneys for  
respondent (Stuart H. West, on the brief).

PER CURIAM

In this mortgage foreclosure matter, defendants Margaret and Michael Noel (collectively, the Noels) appeal from an order entered by the Chancery Division denying a motion to transfer the foreclosure action to the Law Division. The Noels argued before the Chancery Division that despite filing what was deemed to be a "non-contesting" answer by the Office of Foreclosure, and despite a denial of their motion to dismiss the complaint based upon lack of standing, they never had their defenses and counterclaims adjudicated. We disagree and affirm.

As we write for the parties who are familiar with the factual and procedural history, we briefly recite the following. On July 25, 2006, the Noels executed a 6.875% adjustable rate note in the amount of \$405,000 in favor of Countrywide Home Loans, Inc. (Countrywide). To secure payment, the Noels delivered to MERS, as nominee for Countrywide, a mortgage encumbering real property located in Point Pleasant, New Jersey. The mortgage was duly recorded on August 10, 2006, in the Ocean County Clerk's Office.

In September 2008, MERS executed an Assignment of Mortgage (AOM) into The Bank of New York (BNY), as trustee for the certificate holders of CWABS, Inc., Asset-Backed Certificates (CWABS). The AOM was thereafter recorded on September 18, 2008. On November 6, 2014, a corrective AOM was executed from MERS to The Bank of New York Mellon f/k/a the BNY, as trustee for the

certificate holders of CWABS. The corrective AOM added the words in italics and was recorded on November 24, 2014. As of that date, BNY was the mortgagee of record.

After two years of payments, the Noels applied for and received a loan modification. Commencing on December 1, 2009, the Noels failed to make the contractually due payment pursuant to the note, mortgage and modification, or any payments thereafter.

On June 3, 2013, notices of intent to foreclose were sent to the Noels. BNY elected to exercise its contractual right to accelerate the balance due under the note and mortgage by instituting the underlying foreclosure on January 23, 2015.

The Noels filed an answer on March 6, 2015 that was deemed "non-contesting" by the Office of Foreclosure.<sup>1</sup> On June 26, 2015, the Noels filed a motion to dismiss the complaint based upon BNY's alleged lack of standing. That motion was denied on August 14, 2015.

On the date of the sheriff's sale, the Noels used their statutory adjournment and filed a motion to "[g]rant[] an

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<sup>1</sup> An answer in foreclosure is deemed non-contesting if "none of the pleadings responsive to the complaint 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[.]" R. 4:64-1(c)(2).

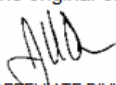
exception to the Entire Controversy Doctrine and permit[] the [d]efendant [Margaret Noel] to pursue her claims in the Law Division[.]" The BNY opposed the motion. On February 17, 2017, the Chancery judge denied the motion by order of the same date. On appeal, the Noels argue that it was error to deny them the relief sought by their motion.

Having considered the record on appeal in light of the arguments raised by defendants, we find the arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only that the Noels were provided with the opportunity to challenge the foreclosure action. They filed a non-contesting answer and challenged BNY's standing, which relief, as noted, was denied.

Finally, as we recently held, the failure to raise a germane claim in a foreclosure action bars that claim. Adelman v. BSI Fin. Servs., \_\_\_ N.J. Super. \_\_\_, \_\_\_ (App. Div. 2018)(slip op. at 1).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION