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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-3448-16T3

BANK OF AMERICA, N.A.,

Plaintiff-Respondent,

v.

ENRIQUE ENCARNACION and MR.
RAMIREZ, husband of MARYLYN
RAMIREZ,

Defendants,

and

MARLYN RAMIREZ,

Defendant-Appellant.

Submitted May 8, 2018 – Decided May 23, 2018

Before Judges Reisner and Gilson.

On appeal from Superior Court of New Jersey,
Chancery Division, Hudson County, Docket No.
F-039826-15.

Marlyn Ramirez, appellant pro se.

Parker McCay, PA, attorneys for respondent
(Gene Mariano, of counsel; Stacy L. Moore,
Jr., on the brief).

PER CURIAM

In this foreclosure case, defendant Marlyn Ramirez¹ appeals from the January 11, 2017 final judgment of foreclosure in favor of plaintiff Bank of America, N.A. (BANA). Defendant also appeals from the following interlocutory orders: April 15, 2016, dismissing defendant's counterclaims; July 26, 2016, granting summary judgment and striking defendant's contesting answer and affirmative defenses; August 9, 2016, denying defendant's cross-motion to dismiss the complaint as untimely; February 23, 2017, remanding the case to the Office of Foreclosure to consider plaintiff's motion for final judgment; March 31, 2017, denying defendant's motion to transfer the case to mediation. We affirm.

I

In support of its summary judgment motion, plaintiff filed a certification of an assistant bank vice president, based on her personal knowledge. Copies of all documents referenced in the certification were attached as exhibits. According to the certification, on August 19, 2010, defendant and Enrique Encarnacion (collectively, borrowers) borrowed \$256,545 from the First National Bank of Chester County, secured by a note and a mortgage on their house in Kearny. The mortgage was assigned to

¹ Marlyn Ramirez is the only appellant. We will refer to her as "defendant."

plaintiff BANA on April 10, 2015. BANA had the note in its possession when it later filed the foreclosure complaint. The borrowers defaulted on the mortgage on February 1, 2015. Plaintiff sent the borrowers a Notice of Intent to Foreclose (NOI), dated July 16, 2015, setting forth a detailed list of the arrears. Plaintiff filed a foreclosure complaint on December 10, 2015.

Defendant filed an answer to the complaint. She also filed a counterclaim, setting forth claims under the Truth in Lending Act, the Fair Foreclosure Act, the National Housing Act, the Federal Fair Credit Reporting Act, and the Federal Fair Debt Collection Practices Act, as well as general allegations of fraud and breach of contract with no specific factual support. The entire counterclaim appeared to be boilerplate. In response, plaintiff filed a motion to dismiss the counterclaims. Plaintiff's motion was supported by a brief setting forth in detail the reasons why the counterclaims were barred by the statute of limitations, based on a statute that did not give rise to a private cause of action, or otherwise without merit. On April 15, 2016, the trial court granted the motion to dismiss, noting that the order was entered for the reasons stated in plaintiff's motion brief.

On July 26, 2016, the trial court granted plaintiff's unopposed summary judgment motion, and struck defendant's answer. In a written statement of reasons, the court explained that

plaintiff's proofs established that it was in possession of the note and mortgage, and that defendant was in default and had not interposed any viable defenses to the foreclosure.

On August 9, 2016, the trial court denied defendant's cross-motion to dismiss the complaint, noting that the cross-motion and defendant's opposition to plaintiff's summary judgment motion were filed out of time, and that summary judgment had been granted on July 22, 2016.

On February 23, 2017, the trial court denied defendant's motion to fix the amount due and for other relief, and returned the case to the Office of Foreclosure to consider plaintiff's motion for final judgment. In a written statement of reasons, the court explained that defendant's motion was based on her mistaken belief that plaintiff was seeking reimbursement for \$42,198.88 for tax payments made by plaintiff. As the judge indicated, plaintiff was only seeking reimbursement for \$11,023.27 for tax payments, which was actually less than the amount defendant claimed was due.

The final judgment of foreclosure was entered on January 11, 2017. Defendant filed a motion for court-ordered mediation on January 30, 2017. On March 31, 2017, the trial court denied the motion as untimely. The court noted that the motion should have been filed within sixty days after the service of the foreclosure

complaint, and defendant had not cited any exceptional circumstances for the late filing.

II

On this appeal, defendant raises these arguments: (1) the trial court failed to make findings of fact supporting the dismissal of the counterclaim; (2) summary judgment should not have been granted because plaintiff lacked standing to file the foreclosure complaint; (3) summary judgment should not have been granted because there was insufficient evidence that plaintiff served defendant with the NOI; (4) summary judgment should not have been granted because there was insufficient evidence that the borrowers defaulted on the loan; (5) the trial court should have considered defendant's cross-motion; and (6) plaintiff submitted insufficient evidence in support of its motion for final judgment.

We review the grant of summary judgment de novo. Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 405 (2014). Arguably, defendant waived her arguments concerning the summary judgment motion when she failed to file timely opposition. However, we have considered her arguments. Based on our de novo review of the record, her contentions are without merit, and we affirm for the reasons cogently stated by the trial court in its statement of reasons. Defendant's arguments are without sufficient merit to warrant further discussion. R. 2:11-3(e)(1)(E).

We affirm the order remanding the case to the Office of Foreclosure, for the reasons stated by the trial court. We find no abuse of the trial court's discretion in declining to consider defendant's untimely cross-motion.

Ordinarily, a trial court should issue a statement of reasons rather than incorporating by reference arguments made in a litigant's brief. See G.M. v. C.V., 453 N.J. Super. 1, 17 (App. Div. 2018). However, in this case, there was no doubt or ambiguity about the reasons, which were clearly stated in plaintiff's brief, and thus we have no difficulty in engaging in appellate review of the trial court's decision. Defendant's counterclaim was a litany of boilerplate, untethered to the facts of the case, and her claims were clearly without merit. R. 2:11-3(e)(1)(E).

In summary, the borrowers have not paid the mortgage since February 2015, and they have no valid defenses to the foreclosure action. Plaintiff submitted legally competent evidence to establish its standing to file the foreclosure complaint, the borrowers' default, the amount due, and plaintiff's entitlement to a judgment of foreclosure.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION