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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-3489-16T2

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR CITIGROUP MORTGAGE LOAN TRUST 2006-WFHE3, ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES 2006-WFHE3,

Plaintiff-Respondent,

v.

HARRIET WALKER, a/k/a HARRIET E. WALKER, f/k/a HARRIET MACK,

Defendant-Respondent,

and

MIDLAND FUNDING, LLC, and STATE OF NEW JERSEY,

Defendants.

Submitted April 9, 2018 – Decided May 14, 2018

Before Judges Accurso and O'Connor.

On appeal from Superior Court of New Jersey, Chancery Division, Essex County, Docket No. F-012130-16.

Harriet Walker, appellant pro se.

Reed Smith, LLP, attorneys for respondent (Henry F. Reichner, of counsel and on the brief).

PER CURIAM

In this contested mortgage foreclosure action, defendant Harriet Walker appeals from the entry of summary judgment striking her answer and the subsequent final judgment. She contends the trial court erred in finding plaintiff U.S. Bank National Association, as trustee for Citigroup Mortgage Loan Trust 2006-WFHE3, Asset-Backed Pass-Through Certificates, Series 2006-WFHE3 had standing to foreclose and that the complaint was not barred by the six-year statute of limitations in N.J.S.A. 12A:3-118(a). Our review of the record convinces us that neither of those arguments is of sufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(1)(E).

Defendant admits she executed and delivered on July 14, 2006, a $418,500 Note to plaintiff's predecessor, American Financial Resources, Inc., secured by a non-purchase money mortgage on her home in South Orange to Mortgage Electronic Registration Systems, Inc., as nominee for the lender. She further admits she defaulted on the loan in September 2009, has not made any payments since that time, and that plaintiff served her with a notice of intent to foreclose thirty days before filing its complaint.

Although defendant disputed plaintiff's assertion that it possessed the original Note prior to filing its complaint, Judge Koprowski found the certification submitted by an employee of plaintiff's servicer attesting to that fact fully complied with the personal knowledge requirement of R. 1:6-6 and Wells Fargo Bank, N.A. v. Ford, 418 N.J. Super. 592, 599-600 (App. Div. 2011), and defendant offered no proof of her own to put the fact in issue. Because plaintiff established its possession of the Note, endorsed in blank, prior to its filing of the foreclosure complaint, the judge concluded plaintiff established its standing to enforce the Note and foreclose the mortgage. See Bank of N.Y. v. Raftogianis, 418 N.J. Super. 323, 356 (Ch. Div. 2010). Having reviewed the certification, we agree and reject defendant's conclusory argument that the evidence was insufficient to establish plaintiff's physical possession of the original Note as of the date of the complaint.

We also reject defendant's argument that N.J.S.A. 12A:3-118(a) controls here. N.J.S.A. 12A:3-118(a) provides for a six-year statute of limitations in "an action to enforce the obligation of a party to pay a note." Plaintiff, however, has not sued defendant on the Note. Plaintiff's suit is one to foreclose the mortgage, and is thus controlled by N.J.S.A. 2A:50-56.1, which 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.
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> [N.J.S.A. 2A:50-56.1(a-c) (emphasis added).]

As the maturity date expressly "set forth" in defendant's Note is August 1, 2036, plaintiff's foreclosure is obviously timely.

We further reject, as inconsistent with the statute, defendant's alternative argument that plaintiff having declared the whole of the unpaid principal, interest and any advances due on defendant's default in 2009, that its complaint had to have been filed within six years of that new maturity date instead of by the original August 1, 2036 maturity date set forth in the Note. The plain language of N.J.S.A. 2A:50-56.1(a) permits calculation of a maturity date only "from information contained in the mortgage or note." As defendant's default and the lender's acceleration of all amounts due are not "information contained in the mortgage or note," the August 1, 2036 maturity date "set forth in the mortgage" clearly controls. Ibid.

Our review of the record, including defendant's opposition to the summary judgment motion, convinces us plaintiff established its entitlement to summary judgment striking defendant's answer and permitting the matter to proceed as uncontested. Defendant's claims that the matter was time-barred and plaintiff failed to establish its standing to foreclose are plainly without merit.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION