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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-3581-16T3

WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR OPTION ONE MORTGAGE LOAN TRUST 2003-5 ASSET-BACKED CERTIFICATES, SERIES 2003-5,

Plaintiff-Respondent,

v.

RICHARD S. MARINO,

Defendant-Appellant,

and

MRS. RICHARD S. MARINO, his wife; DEBORAH A. MARINO, MR. MARINO, husband of DEBORAH A. MARINO; STEPHEN MAURO, UNPARALLELED PARALEGALS LLC, PATRICIA RONAYNE, STATE OF NEW JERSEY, KIMBERLY HERING, ROBERT HERING and MANSFIELD HOLDINGS LLC,

Defendants.

Submitted March 12, 2018 – Decided April 4, 2018

Before Judges Ostrer and Rose.

On appeal from Superior Court of New Jersey, Chancery Division, Burlington County, Docket No. F-003454-15.

Richard S. Marino, appellant pro se.

Blank Rome, LLP, attorneys for respondent (Michael P. Trainor, on the brief).

PER CURIAM

Defendant Richard S. Marino appeals from a March 13, 2017 final judgment of foreclosure,[1] and a March 23, 2016 order granting summary judgment in favor of plaintiff and denying defendant's motion to dismiss the complaint.[2] We affirm.

Briefly summarized, defendant borrowed $357,000 from Option One Mortgage Corporation on June 27, 2003. To secure payment on the note, on the same date, defendant executed a mortgage on residential property located in Springfield Township. The note and mortgage were eventually assigned to plaintiff Wells Fargo Bank, National Association, as Trustee for Option One Mortgage Loan Trust 2003-5 Asset-Backed Certificates, Series 2003-5.

[1] Although the judgment contained in the record is undated, the parties do not dispute its date of entry.

[2] Defendant's notice of appeal states that he also is appealing a September 30, 2015 order denying his motion to compel depositions. Because defendant did not brief this issue it is deemed waived. See Gormley v. Wood-El, 218 N.J. 72, 95 n.8 (2014); Pressler & Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2018).

Defendant does not dispute that he defaulted on the loan as of August 1, 2007. On December 1, 2014, plaintiff's authorized agent sent defendant a notice of intent to foreclose ("NOI"). Defendant failed to cure the default. Plaintiff filed a foreclosure complaint on January 25, 2015. Defendant filed a contesting answer on March 3, 2015, asserting eleven affirmative defenses, including statute of limitations, lack of standing, and improper notice of the breach. Plaintiff filed a motion to strike defendant's defenses; defendant opposed the motion by filing a motion to dismiss the complaint; plaintiff opposed the dismissal motion and filed a motion for relief from technical admissions, i.e., its failure to timely respond to defendant's request for admissions. The trial court denied all motions, except plaintiff's motion for relief from technical admissions. The parties then cross-moved for summary judgment, and on March 23, 2016, the court granted plaintiff's motion, struck defendant's answer and defenses, and transferred the matter to the Foreclosure Unit. Final judgment of foreclosure was entered on March 13, 2017.

In this appeal, defendant argues primarily that the statute of limitations bars plaintiff's foreclosure action. He also claims plaintiff failed to present competent evidence that it had an ownership interest in the note and mortgage to establish standing to foreclose, and that plaintiff failed to serve him with an NOI.

Judge Paula Dow issued a comprehensive ten-page statement of reasons supporting her decision. Citing Great Falls Bank v. Pardo, 263 N.J. Super. 388, 394 (Ch. Div. 1993), the judge recognized the material issues necessary in a foreclosure proceeding are the validity of the mortgage, the amount of indebtedness, and the right of the mortgagee to foreclose on the mortgaged property. Where, as here, a defendant's answer fails to challenge the essential elements of plaintiff's foreclosure action, the answer is subject to being stricken as "non-contesting." See Old Republic Ins. Co. v. Currie, 284 N.J. Super. 571, 574 (Ch. Div. 1995); Somerset Tr. Co. v. Sternberg, 238 N.J. Super. 279, 283 (Ch. Div. 1989). Further, the judge addressed and deemed each of defendant's separate defenses as non-contesting pursuant to Rule 4:64-1(c)(2) (providing that answers and separate defenses are non-contesting unless they "either contest the validity or priority of the mortgage or the lien being foreclosed or create an issue with respect to plaintiff's right to foreclose it").

The judge noted that, in Deutsche Bank Tr. Co. Ams. v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012), we held "either possession of the note or an assignment of the mortgage that predate[s] the original complaint confer[s] standing" to foreclose. (Emphasis added). Utilizing that standard, the judge concluded plaintiff established standing "as an assignee by

assignment [of the mortgage] made prior to the filing of the complaint, and [by its] possession of the note prior to the filing of the complaint." The judge also found that the certification submitted in support of plaintiff's claim complied with Rule 1:6-6, and comported with the criteria for authentication we established in Wells Fargo Bank, N.A. v. Ford, 418 N.J. Super. 592, 600 (App. Div. 2011).

Further, Judge Dow appropriately dismissed summarily defendant's argument that, because plaintiff accelerated the maturity date of the loan, the action was barred pursuant to the six-year statute of limitations set forth in N.J.S.A. 2A:50-56.1(a).[3] Specifically, defendant claims the maturity date was the date of default, i.e., August 1, 2007 and, as such, the foreclosure action was barred when the complaint was filed on January 25, 2015. However, plaintiff accelerated the maturity date as of the filing of the complaint. Thus, even assuming subparagraph (a) applied here, the present action would not be barred until six years after plaintiff filed the complaint, i.e., January 25, 2021.

[3] On appeal, defendant's contention that the six-year statute of limitations set forth in N.J.S.A. 2A:14-1 applies here is also misplaced because that statute does not apply to mortgage foreclosure actions.

Applying the plain language limitation periods set forth in N.J.S.A. 2A:50-56.1, plaintiff's foreclosure action was instituted well within the time constraints of the statute. As the trial court observed, subparagraph (c) of the statute governs the foreclosure action here, providing for a twenty-year limitations period "from the date on which the debtor defaulted, which default has not been cured." We agree with the court's determination that "as the August 1, 2007 default has not been cured . . . [p]laintiff ha[d] until August 1, 2027 to commence the foreclosure action." We also reject defendant's contention that N.J.S.A. 12A:3-118(a) bars the foreclosure action. Security Nat'l Partners Ltd. P'ship v. Mahler, 336 N.J. Super. 101, 105-06 (App. Div. 2000).

Moreover, the trial court properly rejected defendant's contention that plaintiff failed to comply with the notice requirements of the Fair Foreclosure Act, N.J.S.A. 2A:50-56. Finding the NOI was sent from plaintiff's authorized agent to defendant on December 1, 2014, via certified mail, the court determined "the notice include[d] all of the pertinent information including the name and address of [the agent], a relevant telephone number; the amount due; and finally information [concerning d]efendant's right to cure the default." The record, therefore, supports the trial court's determination that defendant was

properly noticed of plaintiff's intention to foreclose on his property.

After reviewing defendant's arguments in light of the record and applicable legal principles, we affirm substantially for the reasons set forth in Judge Dow's well-reasoned written decision. To the extent not discussed here, defendant's remaining objections to the trial judge's rulings are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION