

**NOT FOR PUBLICATION WITHOUT THE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-4289-16T1

U.S. BANK NATIONAL
ASSOCIATION AS TRUSTEE FOR
RESIDENTIAL FUNDING MORTGAGE
SECURITIES I, INC., MORTGAGE
PASS-THROUGH CERTIFICATES,
SERIES 2005-S1,

Plaintiff-Respondent,

v.

FRANCESCO J. ROSARIO, a/k/a
FRANK ROSARIO and MRS. FRANCESCO
J. ROSARIO, his wife; LORI ROSARIO
and MR. ROSARIO, husband of LORI
ROSARIO,

Defendants-Appellants,

and

WACHOVIA BANK, NATIONAL ASSOCIATIONS,

Defendant.

Submitted March 13, 2018 – Decided April 18, 2018

Before Judges Reisner and Gilson.

On appeal from Superior Court of New Jersey,
Chancery Division, Morris County, Docket No.
F-017412-09.

Francesco J. Rosario and Lori Rosario,
appellants pro se.

Knuckles, Komosinski & Manfro LLP, attorneys
for respondent (John E. Brigandi, on the
brief).

PER CURIAM

This is the second appeal in this mortgage foreclosure action. Defendants, Francesco and Lori Rosario, previously appealed from two March 10, 2015 orders that (1) substituted a new plaintiff on the final judgment of foreclosure, and (2) denied defendants' cross-motion to vacate default. We affirmed both orders. U.S. Bank Nat'l Ass'n v. Rosario, No. A-3934-14 (App. Div. July 5, 2016).

Defendants now appeal from April 20, 2017 orders substituting a new plaintiff on the final judgment, and denying defendants' cross-motions to vacate final judgment and quiet title. We now affirm those orders because defendants' claims are barred by the doctrine of collateral estoppel and are otherwise without merit.

I.

In 2004, defendants borrowed \$445,000 from Wachovia Mortgage Corporation (Wachovia) and signed a promissory note. The loan was secured by a mortgage on their home located in Randolph, New Jersey. In January 2009, defendants defaulted on the loan and note and stopped making payments.

On March 26, 2009, Wachovia assigned the note and mortgage to U.S. Bank National Association, as Trustee, by Residential Funding Company, LLC f/k/a Residential Funding Corporation Attorney in Fact (U.S. Bank I). Shortly thereafter, U.S. Bank I filed a complaint to foreclose on the mortgage. When defendants failed to answer or otherwise respond to U.S. Bank I's complaint, a final judgment of foreclosure was entered in favor of U.S. Bank I on July 27, 2010.

On October 27, 2014, U.S. Bank I assigned the final judgment to U.S. Bank National Association, as Trustee, for Residential Funding Mortgage Security I, Inc., Mortgage Pass-Through Certificate, Series 2005-S1 (U.S. Bank II). In December 2014, U.S. Bank II was substituted as plaintiff on the final judgment. On March 22, 2016, U.S. Bank II assigned the note and mortgage to U.S. Bank National Association, as Trustee, of the NRZ Pass-Through Trust V (U.S. Bank III). Finally, on February 3, 2017, U.S. Bank III assigned the mortgage to Wilmington Savings Fund Society F.S.B., d/b/a Christina Trust, not individually, but as Trustee for Pretium Mortgage Acquisition Trust (Wilmington Savings).

Thereafter, U.S. Bank III filed motions to vacate the final judgment due to procedural errors, and to substitute Wilmington Savings as plaintiff on the final judgment. Defendants opposed those motions and filed a cross-motion seeking to quiet title.

The Office of Foreclosure initially granted U.S. Bank III's request to vacate final judgment, but later vacated that order as improvidently entered because defendants had filed opposition to the motion. Accordingly, the matter was transferred back to the Chancery Division. Before the Chancery Division could address the motion to vacate final judgment, however, the motion was withdrawn by U.S. Bank III. Thus, the final judgment entered in 2010 remained in full force and effect.

On April 20, 2017, the Chancery Division issued orders and written statements of reasons granting U.S. Bank III's motion to substitute Wilmington Savings as plaintiff, and denying defendants' cross-motions to vacate final judgment and quiet title. Defendants filed a late notice of appeal. We allowed the appeal, but limited it to the April 20, 2017 orders.

II.

On this appeal, defendants contend (1) Wilmington Savings was not permitted to initiate litigation in the State of New Jersey, and (2) they were entitled to an order quieting title to their home. Effectively, defendants challenge Wilmington Savings' standing to obtain the final judgment of foreclosure.

When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, that determination is conclusive in

a subsequent action between the parties, whether on the same or a different claim. Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 522 (2006). Thus, relitigation of an issue is precluded when (1) the issue to be precluded is identical to the issue decided in the prior proceeding, (2) the issue was actually litigated in the prior proceeding, and (3) there was a final judgment of the issue on the merits. Brookshire Equities, LLC v. Montaquiza, 346 N.J. Super. 310, 319-20 (App. Div. 2002).

Applying these well-settled principles to the present case, we conclude that the arguments raised by defendants are barred under the doctrine of collateral estoppel. Defendants challenged U.S. Bank II's standing to foreclose in their January 2015 motion to vacate default. The trial court denied defendants' motion as time-barred, and also held that U.S. Bank II had standing to prosecute the foreclosure action. We affirmed the March 10, 2015 orders substantially for the reasons expressed in the trial court's written statement of reasons. Rosario, slip op. at 4. After our decision, defendants did not file a petition for certification with the Supreme Court. Accordingly, the standing argument now raised by defendants has been litigated and determined in a final judgment.

Our decision in defendants' prior appeal addressed U.S. Bank II's standing to obtain the final judgment of foreclosure.

Defendants now contend that Wilmington Savings lacks standing to hold the same final judgment at issue in the prior appeal. Since we previously held that the final judgment of foreclosure was properly entered, that issue cannot be relitigated. See Washington Commons, LLC v. City of Jersey City, 416 N.J. Super. 555, 564 (App. Div. 2010) (stating that once an issue has been determined in a prior appeal, it cannot be relitigated in a later appeal of the same case).

Even if we considered defendants' arguments on the merits, U.S. Bank I had a valid assignment of the mortgage before it initiated the foreclosure action in 2009. Accordingly, standing has long been established. Deutsche Bank Nat'l Trust Co. v. Mitchell, 422 N.J. Super. 214, 216 (App. Div. 2011). The series of valid, properly recorded assignments that occurred after our prior decision did not impact Wilmington Savings' standing to hold the final judgment. See R. 4:34-3 ("In case of any transfer of interest, the action may be continued by . . . the person to whom the interest is transferred[.]").

Affirmed.

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


CLERK OF THE APPELLATE DIVISION