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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-4481-15T1

WELLS FARGO BANK, N.A., AS TRUSTEE FOR ABFC 2006-OPT2 TRUST, ASSET BACKED FUNDING CORPORATION ASSET BACKED CERTIFICATES, SERIES 2006-OPT2,

Plaintiff-Respondent,

v.

FRANCIS W. TWARDY, a/k/a FRANCIS TWARDY,

Defendant-Appellant,

and

MRS. FRANCIS W. TWARDY, his wife; MR 19, INC., and LISA FINNEGAN,

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-005469-12.

Francis W. Twardy, appellant pro se.

Hinshaw & Culbertson, LLP, attorneys for respondent (Jason Joseph Oliveri, on the brief).

PER CURIAM

In this residential foreclosure action, defendant Francis W. Twardy appeals from a May 10, 2016 final judgment of foreclosure, and an earlier November 21, 2014 order granting summary judgment in favor of plaintiff Wells Fargo Bank, N.A., as Trustee for ABFC 2006-OPT2 Trust, Asset Backed Funding Corporation Asset Backed Certificates, Series 2006-OPT, and denying his cross-motion for summary judgment.[1] Defendant does not dispute that he accepted a loan, secured it with a mortgage on property in Southampton, and then lived there without making any loan payments for nearly six years. Defendant asserts various claims of trial court error, all lacking substantive merit. We therefore affirm the trial court.

On July 27, 2006, defendant borrowed $646,000 from Northern States Funding Group, Inc. On the same date, he signed a mortgage and an adjustable rate note evidencing the debt. Shortly after

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[1] Defendant's amended notice of appeal indicates he also appeals from an August 31, 2014 order denying his motion to dismiss the complaint, and two misdated orders denying his motions for reconsideration. His merits brief, however, does not address the court's August 31, 2014 decision, and merely references, without briefing, the court's denial of a motion for reconsideration. Because defendant did not brief these issues, his arguments are 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).

the loan was originated, it was "pooled" with other loans in the ABFC 2006 OPT2 Trust, pursuant to a Pooling and Servicing Agreement ("PSA"). Wells Fargo Bank, N.A. served as trustee for the PSA. The note and mortgage were subsequently assigned to plaintiff, and the assignment was recorded in the county clerk's office on January 29, 2009. Defendant's loan was modified by agreement executed by the parties on April 1, 2011, reducing his monthly payments and interest rate.

Despite the negotiated modification, defendant defaulted on the loan as of September 1, 2011. Plaintiff served defendant with a notice of intent to foreclose on December 22, 2011. Plaintiff filed a foreclosure complaint on March 27, 2012, and an amended complaint on December 14, 2012, which referenced the loan modification agreement. Defendant filed a contesting answer asserting seventy-nine affirmative defenses and nineteen counterclaims.

In September 2014, plaintiff moved for summary judgment. Defendant opposed the motion and filed a motion to dismiss the complaint for discovery failures and a cross-motion for summary judgment. On November 21, 2014, following oral argument, the trial judge granted plaintiff's motion, thereby striking defendants answer, affirmative defenses and counterclaims, and

denied defendant's motions. Final judgment of foreclosure was entered on May 10, 2016. This appeal followed.

Defendant's argument, distilled to its essence, is that plaintiff lacked standing to foreclose. He claims summary judgment was entered in error because material factual disputes exist pertaining to, among other things, the authenticity and assignment of the loan documents. Defendant contends the court erroneously credited the affidavit of a loan officer who attested to the assignment of the loan documents, although she was not employed by plaintiff. Defendant claims the affidavit of his proposed expert "cast[s] doubt as to [plaintiff]'s ownership and possession of the 'mortgage loan' in dispute, and [plaintiff's] right to foreclose" and, as such, was improperly disregarded by the trial court.

A trial court must grant a summary judgment motion when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). "An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all

legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." Ibid. We apply the same standard but do not defer to the trial court's conclusion granting or denying summary judgment. Townsend v. Pierre, 221 N.J. 36, 59 (2015).

"The only material issues in a foreclosure proceeding are the validity of the mortgage, the amount of the indebtedness, and the right of the mortgagee to resort to the mortgaged premises." Great Falls Bank v. Pardo, 263 N.J. Super. 388, 394 (Ch. Div. 1993), aff'd, 273 N.J. Super. 542 (App. Div. 1994) (citations omitted); see also Thorpe v. Floremoore Corp., 20 N.J. Super. 34, 37 (App. Div. 1952). A mortgagor opposing summary judgment has a duty to present facts controverting the mortgagee's prima facie case. Spiotta v. William H. Wilson, Inc., 72 N.J. Super. 572, 581 (App. Div. 1962). Unexplained conclusions and "[b]ald assertions are not capable of . . . defeating summary judgment." Ridge at Back Brook, LLC v. Klenert, 437 N.J. Super. 90, 97-98 (App. Div. 2014).

Thus, when a defendant's answer fails to challenge the essential elements of a 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); see also R. 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").

N.J.S.A. 2A:50-56 requires a mortgagee to mail a thirty-day notice to a residential mortgage debtor prior to accelerating the maturity of any residential mortgage obligation and commencing any foreclosure or related proceedings. A mortgagee has standing to foreclose a mortgage when it has "either possession of the note or an assignment of the mortgage." Deutsche Bank Tr. Co. Ams. v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012). The mortgagee's "right to foreclose is an equitable right inherent in the mortgage." Chase Manhattan Mortg. Corp. v. Spina, 325 N.J. Super. 42, 50 (Ch. Div. 1998) (citation omitted). The mortgagee has the right to insist upon strict observance of the obligations contractually owed to it, including timely payment. See Kaminski v. London Pub, Inc., 123 N.J. Super. 112, 116 (App. Div. 1973). When a mortgagee provides proof of execution, recording, and non-payment of the note and mortgage, it has established a prima facie right to foreclose. Thorpe, 20 N.J. Super. at 37.

Here, Judge Karen L. Suter issued a comprehensive eighteen-page statement of reasons fully supporting her decision. In doing

so, she recognized defendant does not contest that he executed the note and mortgage, and has not paid the loan since September 1, 2011. The record indicates plaintiff recorded the assignment of the note and mortgage, and possessed both loan documents before filing the foreclosure complaint. Pardo, 263 N.J. Super. at 394. Plaintiff also sent defendant a notice of its intention to foreclose. Angeles, 428 N.J. Super. at 318. The record, thus, fully supports Judge Suter's determination that plaintiff clearly had standing to foreclose on defendant's Southampton property, and unquestionably established a prima facie right to foreclose on it. See Thorpe, 20 N.J. Super. at 37.

While defendant's brief addresses assorted overlapping bases for seeking reversal of plaintiff's final judgment, his claims and arguments find no support in the record. Ridge at Back Brook, LLC, 437 N.J. Super. at 97-98. For example, defendant contends, through his purported expert's affidavit, that plaintiff lacks standing to foreclose because the assignment and corrective assignment were potentially fraudulent. However, defendant lacks standing to challenge the securitization process, based on an alleged violation of the trust, because he was neither a party to the trust, nor a third-party beneficiary of the trust's terms. Typically, a litigant "does not have standing to assert the rights of third parties." Abbott v. Burke, 206 N.J. 332, 371 (2011); see

also Jersey Shore Med. Ctr.-Fitkin Hosp. v. Estate of Baum, 84 N.J. 137, 144 (1980); Bank of N.Y. v. Raftogianis, 418 N.J. Super. 323, 350 (Ch. Div. 2010). In sum, defendant has not satisfied his burden to present evidence controverting plaintiff's prima facie case. See Spiotta, 72 N.J. Super. at 581. We are, therefore, persuaded summary judgment was properly entered in favor of plaintiff.

Accordingly, after reviewing defendant's arguments in light of the record and applicable legal principles, we affirm substantially for the reasons set forth in Judge Suter's thoughtful and 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