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DEUTSCHE BANK NATIONAL TRUST COMPANY Plaintiff, v. ADAM DEANGELIS, et al, Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: BERGEN COUNTY DOCKET No. F-12793-18 **OPINION** Argued: March 13, 2020 Decided: March 26, 2020

Appearances: David Rubin (Phelan Hallinan Diamond & Jones, attorneys) for Plaintiff

Javier L. Merino (Dannlaw, attorneys) for Defendants

HON. EDWARD A. JEREJIAN, P.J.Ch.

This matter is before the Court by way of Motion to Vacate Default and Permit Answer to be Filed Out of Time, filed on February 14, 2020 by Defendants Adam Deangelis and Christina A. Deangelis ("Defendants"), by and through counsel Dannlaw, Javier L. Merino, Esq. appearing. On March 4, 2020, Plaintiff Deutsch Bank National Trust Company, as trustee for Argent Securities, Inc., asset backed passthrough certificates, series 2006-W5 ("Plaintiff"), by and through counsel Phelan Hallinan Diamond & Jones, David Rubin, Esq. appearing, filed opposition to Defendants' Motion. On March 9, 2020, Defendants filed a reply to Plaintiff's opposition. The Court heard oral argument on March 13, 2020.

LEGAL STANDARD

A default may be set aside upon the movant's showing of good cause. R. 4:43-3. The required good-cause showing for setting aside an entry of default is less stringent than the standard imposed by R.4:50-1 for setting aside a default judgment. See e.g., U.S. Bank v. Guillaume, 209 N.J. 449, 466-467 (2012). The Court is required to view an application to vacate a default with great liberality. See, e.g., DYFS v. P.W.R., 410 N.J. Super. 501, 508 (App. Div. 2009), rev'd on other grounds 205 N.J. 17 (2011).

A finding of good cause under R. 4:43 requires the Court to exercise sound discretion in light of the facts and circumstances of the particular case. See O'Connor v. Abraham Altus, 67 N.J. 106, 129 (1975). Before entry of default is set aside, the defendant must, at the very least, show the presence of a meritorious defense worthy of judicial consideration. Local 478 v. Baron Holding Corp., 224 N.J. Super. 485, 489 (App. Div. 1988). When the defendant takes no action to respond to the foreclosure complaint, and where the record reflects no excuse for the defendant's inaction, the Court will not grant relief from an entry of default. Guillaume, 209 N.J. at 469. Additionally, a party's motion to vacate a default must be accompanied by either an answer to the complaint and Case Information Statement or a dispositive motion pursuant to R. 4:6-2.
R. 4:43-3.

In order to find good cause, New Jersey Courts look to whether the defendants' responsive pleadings were not filed due to "an honest mistake that is compatible with due diligence or reasonable prudence." Mancini v. EDS, 132 N.J. 330 (App. Div. 1993) (citing Bauman v. Marinaro, 95 N.J. 380, 394 (1984).

ANALYSIS

In the present case, Plaintiff filed the foreclosure Complaint on June 19, 2018. Plaintiff provides evidence that Defendants were served with the Complaint on June 25, 2018, thus warranting the entry of default against Defendants which was entered on September 10, 2018.

However, Defendants claim that they have good cause for setting the default aside because they have made approximately $50,513.70 in mortgage payments to Ocwen Loan Servicing, LLC ("Ocwen"), who Defendants entered into two Temporary Repayment Agreements with on September 24, 2018 (the "2018 Repayment Agreement") and March 25, 2019 (the "2019 Repayment Agreement).

Accordingly, Defendants argue that these payments demonstrate their good faith attempts to resolve the foreclosure action and the reasons for the delay in filing an answer was because of their dependence on negotiating and acquiring the above loan modifications with affordable terms. In addition, Defendants claim meritorious defenses.

Defendants argue that Plaintiff failed to serve them with a Notice of Intention to Foreclose ("NOI") that satisfies the requirements of the New Jersey Fair Foreclosure Act ("FFA") N.J.S.A. 2A:50-53 to 68 and that Plaintiff lacked standing. More specifically, Defendants contend that they never received a NOI and did not refuse any certified mail. With regard to the NOI, Plaintiff argues that on November 6, 2017, the NOI was mailed to Defendants at the mortgaged property via certified mail, return receipt requested, and regular mail. Moreover, Plaintiff alleges that the NOI was sent to Defendants before the commencement of this foreclosure action, and thus, Plaintiff was in compliance with the FFA.

In addition, Defendants also allege that Plaintiff lacked standing because it did not have physical possession of the note when it filed the Complaint and Plaintiff has been unable to

demonstrate that the mortgage was validly assigned. As to the issue of possession of the note, Defendants argue that Plaintiff has not alleged in the Complaint that it currently has, or had at the time the Complaint was filed, physical possession of the note. In addition, Defendants contend that Plaintiff has been inconsistent throughout each foreclosure complaint it has filed as to which assignments were effectuated and which assignments were proper over the course of this litigation.

Moreover, in support of Defendants' claim that Plaintiff does not have standing due to deficiencies in the possession of the note and assignment of the mortgage, Defendants cite to Capital One, N.A. v. Peck, which states that "[t]o preclude the possibility of one entity foreclosing on the home while the other enforces the note, we now hold that when the note is separated from the mortgage, the plaintiff in a foreclosure action must demonstrate both possession of the note and a valid mortgage assignment prior to filing the complaint." Capital One, N.A. v. Peck, 455 N.J. Super. 254, 259 (App. Div. 2018). Thus, here, Defendants argue that Plaintiff must demonstrate it has both possession of the note and a valid assignment of mortgage.

Here, Plaintiff has shown that the mortgage was originally recorded on December 2, 2005 in the Office of the Clerk of BERGEN County. Plaintiff certifies it was in possession of the original Note before filing the Complaint; moreover, Plaintiff has provided a copy of the Note in question, which is indorsed in Blank. Notwithstanding Plaintiff's certification, Plaintiff provides a valid assignment of mortgage dated December 29, 2010, and recorded on March 16, 2011. Plaintiff filed the Complaint commencing this action on June 19, 2018. Therefore, based on the assignment alone, Plaintiff had the right to bring this foreclosure action at the time it filed the Complaint and has satisfied the requirement that "either possession of the note or an assignment of the mortgage

that predated the original complaint confers standing." Deutsche Bank Trust Co. Ams. v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012).

Furthermore, assignments are presumed valid, a presumption that may be rebutted if two or more entities are claiming ownership of the Note and Mortgage. Here, Defendants have never asserted that any entity other than Plaintiff has made demand upon them for payment following the assignment.

As to Defendants' claim that Peck should apply, and that Plaintiff must show both possession of the note and a valid assignment of mortgage, the Court finds that Peck does not apply to the case at hand. In Peck, the plaintiff Capital One, N.A. ("CONA") returned the original note to Freddie Mac but had a valid assignment.[1] However here, Plaintiff never returned the Note to any other entity, and no other entity is claiming to have, or has been found to have, possession of the Note. Unlike Peck, it is clear that Plaintiff had possession of the Note prior to filing the Complaint and asserts possession of the Note.

Nonetheless, even if the holding in Peck were to apply, as mentioned above Plaintiff has sufficiently demonstrated both requirements of possession of the note and a valid assignment.

Thus, given that the NOI was sufficient under the requirements set forth in the FFA and that Plaintiff had sufficient standing in this action, the Court finds Defendants have not alleged any meritorious defenses that would warrant judicial consideration under the facts of this case.

As to the issue of whether good cause exists to vacate default, Plaintiff alleges that good cause cannot be established by Defendants because for eighteen months after default was entered

[1] It should nevertheless be noted that despite Defendants' reliance on Peck, the Appellate Division ultimately found in favor of the plaintiff due to the fact that (1) the defendant was provided with sufficient notice that CONA was the servicer for Freddie Mac; (2) Freddie Mac publicly declared its policy to foreclose through its servicers; and (3) CONA possessed the note at an earlier foreclosure proceeding as well as an assignment from MERS.

Defendants did not dispute their obligation, the validity of the note and mortgage, nor their subsequent default. As such, Plaintiff contends that Defendants were fully aware of the foreclosure action, and thus they not only were unable to file an answer but also were unable to diligently respond to the entry of default.

Moreover, Plaintiff argues that because Defendants were served and had actual knowledge of the foreclosure action, Defendants are unable to sufficiently prove that they acted with due diligence or reasonable care as required in Guillaume for vacating default.

Here, the Court finds that good cause does not exist to vacate the entry of default in this matter. Although Defendants have paid $50,513.70 in funds to Ocwen in order to satisfy their mortgage and settle the matter, they do not offer a plausible excuse for failing to answer the Complaint. More specifically, engaging in a series of loan modifications is not an excuse for failing to submit an answer; loan modification negotiations can last for months, or even years, and it would be improper for a court to allow a complaint to go unanswered solely because the parties are engaging in loan modifications. Defendants excuse for failing to file an answer does not amount to an honest mistake pertaining to due diligence or reasonable prudence and are insufficient to constitute good cause under R. 4:43-3. Thus, in light of the facts and circumstances surrounding this case, good cause does not exist to vacate the entry of default.

Although Defendants raise defenses that in certain contexts would constitute meritorious defenses, here, the facts simply do not support judicial consideration of these defenses, nor do the facts support a finding of good cause. As such, vacating default is not warranted in this matter.

For the foregoing reasons, Defendants' motion to vacate default is hereby denied. An Order accompanies this decision.