NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION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-0296-21

DEUTSCHE BANK TRUST COMPANY AMERICAS, f/k/a BANKERS TRUST COMPANY AS TRUSTEE FOR SALOMON BROTHERS MORTGAGE SECURITIES VII, INC., ASSET-BACKED FLOATING RATE CERTIFICATES, SERIES 1996-5,

Plaintiff-Respondent,

v.

HATTIE V. HAWKINS, a/k/a HATTIE HAWKINS, MR. HAWKINS, spouse of HATTIE V. HAWKINS, a/k/a HATTIE HAWKINS,

Defendant-Appellant,

and

ALEXIAN BROTHERS HOSPITAL,

Defendant.

_____

Submitted May 18, 2022 – Decided June 15, 2022

Before Judges Gilson and Gooden Brown.

On appeal from the Superior Court of New Jersey, Chancery Division, Union County, Docket No. F-008977-20.

Hattie V. Hawkins, appellant pro se.

Stradley, Ronon, Stevens & Young, LLP, attorneys for respondent (Adam Weiss, on the brief).

PER CURIAM

In this residential foreclosure action, defendant Hattie Hawkins appeals from a July 9, 2021 order denying her motion to vacate a June 8, 2021 final judgment of foreclosure entered in favor of plaintiff, Deutsche Bank Trust Company Americas formerly known as Bankers Trust Company as Trustee for Salomon Brothers Mortgage Securities VII, Inc., Asset-Backed Floating Rate Certificates, Series 1996-5. We affirm.[1]

[1] Defendant also appeals from an August 27, 2021 order denying reconsideration. However, because defendant did not brief the issue on appeal, we deem the issue waived. See Woodlands Cmty. Ass'n v. Mitchell, 450 N.J. Super. 310, 319 (App. Div. 2017) ("An issue not briefed on appeal is deemed waived." (quoting Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011))).

We glean these facts from the motion record. On May 27, 1995, defendant executed an $80,000 promissory note to First National Mortgage Exchange, Inc. d/b/a First Colony Financial Group (First National). The note was secured by a non-purchase money mortgage for the same amount on residential property located in Elizabeth. The mortgage was recorded in the Union County Clerk's Office on June 6, 1995.

On February 1, 1996, First National assigned the mortgage to Berkeley Federal Bank & Trust FSB, which assignment was recorded in the Union County Clerk's Office on February 20, 1996. On April 1, 2010, the note and mortgage were modified by a loan modification agreement, which, among other things, capitalized the arrears then due on the mortgage. On July 29, 2016, Ocwen Federal Bank FSB, formerly known as Berkeley Federal Bank & Trust FSB, assigned the mortgage to plaintiff, which assignment was recorded in the Union County Clerk's Office on August 9, 2016.

Approximately three years later, in April and December 2019, the note and mortgage were again modified by loan agreements which, among other things, capitalized the arrears then due on the mortgage. On May 21, 2020, when defendant failed to make her April 1, 2020 payment as required by the modification agreement, plaintiff mailed to defendant at the property address via

regular and certified mail a Notice of Intention to Foreclose (NOI). After defendant's continued default and failure to cure, on October 26, 2020, plaintiff filed a foreclosure complaint. Two days later, on October 28, plaintiff served a copy of the summons and complaint, via private process server, on defendant's daughter-in-law at the property address.[2]

In the complaint, plaintiff alleged it was the holder of the note and demanded full payment of all amounts due plus interest. Plaintiff further alleged it fully complied with the Fair Foreclosure Act (FFA), N.J.S.A. 2A:50-53 to -68, by serving defendant with a NOI at least thirty days before filing the complaint. After defendant failed to respond to the complaint, plaintiff moved for default, which was entered on December 8, 2020. To support its application for default, plaintiff provided an affidavit of service prepared by the private process server certifying that defendant was served with the summons, complaint, and pertinent mediation documents at the property address on October 28, 2020.

On May 17, 2021, plaintiff moved for final judgment. In support, plaintiff's counsel attested she mailed defendant by certified and regular mail

[2] Alexian Brothers Hospital was also served on October 28, 2020, but is not a party to this appeal.

the: 1) notice of motion; 2) certification of amounts due prepared by Claribel Lopez, a Contract Management Coordinator at PHH Mortgage Corporation, plaintiff's mortgage loan servicer; and 3) certification of diligent inquiry. In her certification, Lopez averred that defendant's default remained "uncured," and she owed an unpaid balance of $161,144.53. Lopez also certified that plaintiff "[wa]s the holder of the . . . note and mortgage."

On June 8, 2021, the motion judge granted plaintiff final judgment, finding plaintiff was entitled to $161,144.53 plus interest, as well as counsel fees of $1,7641.44. One week later, defendant filed a motion to vacate the final judgment under Rule 4:50-1(a), (d), and (f). In support of her application, defendant challenged the service of process, certifying "she was not served at her dwelling or usual place of abode as required by Rule 4:4-4(a)." Specifically, defendant averred that "service of process on [her] daughter-in-law . . . who [wa]s not a member of the household at the place of abode and who . . . does not reside at the premises did not constitute valid service."

Defendant also disputed the "amount of the debt," and plaintiff's "standing to foreclose," asserting plaintiff was "not the original lender [and] failed to meet its legal burden" of establishing it was "the holder of the note" or "in possession of the note endorsed in blank." Defendant attached a proposed contesting

answer with affirmative defenses and urged the court to permit filing to enable her to defend against the foreclosure action. Plaintiff opposed the motion.

The judge denied defendant's motion in an order entered on July 9, 2021. In an accompanying written statement of reasons, the judge determined defendant "ha[d] not shown the presence of a meritorious defense pursuant to R[ule] 4:43" nor met the requirements to obtain relief under Rule 4:50-1(a), (d), or (f). In specifically rejecting defendant's argument regarding defective service, the judge stated, "the mailing of the NOI was sufficient to meet service/notice standards and comply with the FFA" because "[t]he regular mailing was not returned and the certified mailing was signed for by someone, allegedly [d]efendant's daughter-in-law."

Furthermore, according to the judge, "[d]efendant ha[d] not provided an affidavit from her daughter-in-law attesting that she was not a member of the household or resided elsewhere," and the fact that "[d]efendant received notice of [p]laintiff's motions for default and final judgment" demonstrated that defendant "had notice of the pending [foreclosure case] . . . but failed to take action until after judgment had already been entered." Subsequently, on August 27, 2021, the judge denied defendant's motion for reconsideration, and this appeal followed.

On appeal, defendant argues the judge erred in denying her application under Rule 4:50-1(d) and (f) because: 1) she was not properly served with the NOI or the summons and complaint; and 2) plaintiff failed to establish standing to foreclose. We disagree.[3]

We review a trial court's decision to deny a Rule 4:50-1 motion with substantial deference and will not reverse the decision "unless it results in a clear abuse of discretion." US Bank Nat. Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). "[A]n abuse of discretion occurs when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Deutsche Bank Tr. Co. Americas v. Angeles, 428 N.J. Super. 315, 319 (App. Div. 2012) (alteration in original) (quoting Guillaume, 209 N.J. at 467).

Rule 4:50-1 provides various avenues for relief from a final judgment. Pertinent to this appeal, Rule 4:50-1(d) authorizes a court to "relieve a party . . . from a final judgment" where "the judgment . . . is void." Rule 4:50-1(f) is a catch-all provision that authorizes a court to relieve a party for "any other reason justifying relief from the operation of the judgment." "The rule is

[3] Defendant has not addressed on appeal her original argument based on Rule 4:50-1(a). The argument is therefore deemed waived. Soc'y Hill Condo. Ass'n, Inc. v. Soc'y Hill Assocs., 347 N.J. Super. 163, 176 (App. Div. 2002).

'designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case.'" Guillaume, 209 N.J. at 467 (quoting Mancini v. EDS ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993)).

A motion to vacate a default judgment for lack of service is governed by Rule 4:50-1(d). "A default judgment will be considered void when a substantial deviation from service of process rules has occurred, casting reasonable doubt on proper notice." Jameson v. Great Atl. & Pac. Tea Co., 363 N.J. Super. 419, 425 (App. Div. 2003). Even if there is actual notice of the suit comporting with due process, the default judgment should be set aside if there is a substantial deviation from rules. Sobel v. Long Island Ent. Prods., Inc., 329 N.J. Super. 285, 292-94 (App. Div. 2000).

Rule 4:4-4(a)(1) permits service of process "by delivering a copy of the summons and complaint to the individual personally, or by leaving a copy thereof at the individual's dwelling place or usual place of abode with a competent member of the household of the age of [fourteen] or over then residing therein." Whether a party has been served in accordance with the rules is a question of proof. The submission of competent evidence in the form of

affidavits of service showing "compliance with the pertinent service rule" is "prima facie evidence that service was proper." Jameson, 363 N.J. Super. at 426 (citing Garley v. Waddington, 177 N.J. Super. 173, 180 (App. Div. 1981)).

"While the presumption that these facts are true is a rebuttable one, 'it can be rebutted only by clear and convincing evidence that the return is false.'" Resol. Tr. Corp. v. Associated Gulf Contractors, Inc., 263 N.J. Super. 332, 344 (App. Div. 1993) (quoting Garley, 177 N.J. Super at 180-81). Rule 4:4-3 was amended in 2000 to permit service by private process servers who do not have an interest in the litigation. See Pressler & Verniero, Current N.J. Court Rules, cmt. on R. 4:4-3 (2022). Consistent with this policy decision to entrust disinterested persons with the responsibility to serve process, we find the presumption of correctness extends to their affidavits of service as well.

Defendant argues the final judgment is void and must be set aside because she was not properly served with the NOI or the summons and complaint. However, the affidavit of service submitted by plaintiff established that defendant's daughter-in-law was personally served with the summons and complaint on October 28, 2020, and defendant provided no competent evidence to challenge this "prima facie evidence" of proper service. Jameson, 363 N.J. Super. at 426. Indeed, defendant did not provide an affidavit from her daughter-

in-law stating that she was not a member of the household and did not reside at the property when service was effectuated. Instead, defendant provided only a certification containing uncorroborated testimony disputing the claim. However, defendant's certification is insufficient to rebut the presumption of proper service and insufficient to contradict the filed affidavit confirming service. Resol. Tr. Corp., 263 N.J. Super. at 344; see also Goldfarb v. Roeger, 54 N.J. Super. 85, 90 (App. Div. 1959) ("[U]ncorroborated testimony of the defendant alone is not sufficient to impeach the return.").

We also reject defendant's challenge to proper service of the NOI. Before a party can initiate foreclosure on a "residential mortgage," it is obligated under the FFA to "give a notice of intention, which shall include a notice of the right to cure the default." N.J.S.A. 2A:50-56(a). The remedy for violations of the notice requirement have been "case-specific" and rest in equity, ranging from dismissal without prejudice to a right to correct during the pendency of a foreclosure action. Guillaume, 209 N.J. at 477-78. However, violations of the FFA do not establish "a 'meritorious defense' . . . within the meaning of Rule 4:50-1(a)." Id. at 480.

Here, plaintiff's attorney provided multiple certifications attesting that an FFA-compliant notice to cure was sent to defendant at the property address by

regular and certified mail. It is well settled that there is "a presumption that mail properly addressed, stamped, and posted was received by the party to whom it was addressed." SSI Med. Servs., Inc. v. Dep't of Human Servs., 146 N.J. 614, 621 (1996). Certification of these steps is sufficient to invoke this presumption, but any sworn statement should be made by "someone with personal knowledge of the mailing policies" as occurred here. Calabrese v. Selective Ins. Co. of Am., 297 N.J. Super. 423, 437 (App. Div. 1997), overruled on other grounds by Magnifico v. Rutgers Cas. Ins. Co., 153 N.J. 406, 417 (1998); see also State v. Eatontown Borough, 366 N.J. Super. 626, 639-40 (App. Div. 2004).

We are satisfied that defendant's assertions are insufficient to contradict the filed certifications confirming service of the NOI. As the judge pointed out, the mailing of the NOI complied with the FFA because the regular mail was not returned and the certified mail was signed for by someone residing at the property address, presumably defendant's daughter-in-law. See N.J.S.A. 2A:50-56 (b) (stating an NOI "shall be in writing . . . sent to the debtor by registered or certified mail, return receipt requested, at the debtor's last known address, and, if different, to the address of the property which is the subject of the residential mortgage," and "is deemed to have been effectuated on the date the notice is delivered in person or mailed to the party"). Moreover, the fact that defendant

received mail at the property address was confirmed by her receipt of the notice of plaintiff's motions for default and final judgment.

Relying on Rule 4:50-1(d), defendant also challenges plaintiff's standing to foreclose. As we explained in Deutsche Bank National Trust Co. v. Russo, 429 N.J. Super. 91, 101 (App. Div. 2012), "standing is not a jurisdictional issue in our State court system and, therefore, a foreclosure judgment obtained by a party that lacked standing is not 'void' within the meaning of Rule 4:50-1(d)." In any event, to establish standing, "'a party seeking to foreclose a mortgage must own or control the underlying debt'" at the time the foreclosure complaint is filed. Wells Fargo Bank, N.A. v. Ford, 418 N.J. Super. 592, 597 (App. Div. 2011) (quoting Bank of N.Y. v. Raftogianis, 418 N.J. Super. 323, 327-28 (Ch. Div. 2010)). We have held that "either possession of the note or an assignment of the mortgage that predated the original complaint confer[s] standing." Angeles, 428 N.J. Super at 318.

Here, plaintiff clearly possessed a valid assignment of the mortgage well before it filed the foreclosure complaint, establishing plaintiff's standing to pursue the foreclosure action. Further, defendant's protestations to the contrary ignore the attestations in Lopez's certification, defendant's payments on the note for years after the 2016 assignment, and the loan modification agreements she

executed in 2019 under which she made monthly mortgage payments until her default in 2020.

Defendant contends further that the judge erred in denying her relief under Rule 4:50-1(f). "Because of the importance that we attach to the finality of judgments, relief under Rule 4:50-1(f) is available only when 'truly exceptional circumstances are present.'" Hous. Auth. of Morristown v. Little, 135 N.J. 274, 286 (1994) (quoting Baumann v. Marinaro, 95 N.J. 380, 395 (1984)). "The rule is limited to 'situations in which, were it not applied, a grave injustice would occur.'" Guillaume, 209 N.J. at 484 (quoting Little, 135 N.J. at 289).

We are satisfied that a grave injustice would not occur in this case. Plaintiff established the validity of the mortgage, defendant's default, the amount of the debt owed, and its right to foreclose. See Great Falls Bank v. Pardo, 263 N.J. Super. 388, 394 (Ch. Div. 1993) ("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.").

To the extent any argument raised by defendant has not been explicitly addressed in this opinion, it is because the argument lacks 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