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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0487-21

CITIMORTGAGE, INC.,

Plaintiff-Respondent,

v.

IAN P. MITCHELL, MIDLAND  
FUNDING LLC, ONEMAIN  
FINANCIAL, STATE OF NEW  
JERSEY, SUNSHINE ATKINS  
MINASSIAN TARUFI &  
D'AMATO PA, DECKER &  
FINCHLER, MIELE SANITATION  
CO., SMITH & DORAN PC, and  
NEW CENTURY FINANCIAL  
SERVICES,

Defendants,

and

DEBRA CIANFRONE, f/k/a  
DEBRA MITCHELL, f/k/a  
DEBRA MAJEWSKI,

Defendant-Appellant.

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Submitted November 10, 2022 – Decided December 16, 2022

Before Judges Firko and Natali.

On appeal from the Superior Court of New Jersey, Chancery Division, Bergen County, Docket No. F-000794-14.

Alsaidi Chang Hamdan, LLC, attorneys for appellant (Ahmad T. Aburas, of counsel and on the brief; Jeffrey Zajac, on the brief).

Powers Kirn, LLC, attorneys for respondent (Michael B. McNeil, of counsel and on the brief).

#### PER CURIAM

In this residential foreclosure action, defendant Debra Cianfrone appeals from the trial court's November 22, 2019 order granting plaintiff CitiMortgage, Inc.'s summary judgment motion. She also appeals from the September 22, 2021 final judgment of foreclosure entered in favor of plaintiff. We affirm.

#### I.

In 1998, defendant inherited the subject property located in Teaneck from her late mother. In 2000, defendant married co-defendant Ian P. Mitchell, who is not participating in this appeal, and made him a co-owner of the property. Thereafter, Mitchell executed a note in the amount of \$250,000 in favor of Real Estate Mortgage Network, Inc. (REMNI). Simultaneously, defendant and Mitchell granted a mortgage to Mortgage Electronic Registration Systems, Inc.,

as nominee for REMN, to secure the loan. The mortgage was recorded in the Bergen County Clerk's Office.

Several years later, defendant and Mitchell divorced. They entered into a property settlement and support agreement (the agreement),<sup>1</sup> which was incorporated into their final judgment of divorce. The agreement provides defendant shall retain the Teaneck property and be fully responsible for all mortgages, taxes, and insurance associated with the property. The property was deeded back to defendant as sole owner. Defendant and Mitchell defaulted on the note by failing to make the February 1, 2012 payment and each payment thereafter. REMN assigned the mortgage to plaintiff, which was recorded in the Bergen County Clerk's Office.

Plaintiff filed a notice of intent (NOI) to foreclose and thereafter filed a foreclosure complaint. Defendant and Mitchell did not contest the matter or file responsive pleadings. A final judgment of foreclosure in favor of plaintiff was entered.

Defendant moved to vacate the final judgment of foreclosure or alternatively, to dismiss the complaint because she contended plaintiff lacked

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<sup>1</sup> Defendant's appendix only includes two pages of the agreement. The other pages are missing.

standing. The trial court denied the motion on the grounds defendant failed to demonstrate she was entitled to relief under Rule 4:50-1(f) and Rule 4:50-3.

Thereafter, plaintiff moved to vacate the final judgment of foreclosure in order to amend the complaint and join an additional lienholder. The motion was granted, and plaintiff filed its first amended complaint. Defendant filed a contesting answer, affirmative defenses, and a counterclaim. She asserted plaintiff's actions violated the New Jersey Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -227, and she pled other affirmative defenses. Mitchell also filed a contesting answer, affirmative defenses, and a cross-claim.

Plaintiff moved for summary judgment. The trial court granted plaintiff's motion. The court found no defect with the NOI; the notice was properly sent in compliance with the Fair Foreclosure Act (FFA), N.J.S.A. 2A:50-53 to -68; and plaintiff had standing to foreclose. A final judgment of foreclosure in favor of plaintiff was entered.

On appeal, defendant raises two issues for our consideration: (1) the trial court erred by dismissing the counterclaims and affirmative defenses under the CFA; and (2) the court erred by holding plaintiff proved it possessed defendant's note and mortgage.

## II.

In an action to foreclose a mortgage, the only material issues are "the validity of the mortgage, the amount of the indebtedness, and the right of the mortgagee to resort to the mortgaged premises." U.S. Bank Nat'l Ass'n v. Curcio, 444 N.J. Super. 94, 112-13 (App. Div. 2016) (quoting Sun NLF Ltd. P'ship v. Sasso, 313 N.J. Super. 546, 550 (App. Div. 1998)). A foreclosure action will be deemed uncontested if "none of the pleadings responsive to the complaint either contest the validity or priority of the mortgage or lien being foreclosed or create an issue with respect to plaintiff's right to foreclose it." R. 4:64-1(c)(2).

A trial court's determination on a motion to vacate final judgment "warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion." U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012); accord United States v. Scurry, 193 N.J. 492, 502 (2008) ("[A]n application to open, vacate or otherwise set aside a foreclosure judgment or proceedings subsequent thereto is subject to an abuse of discretion standard."). An abuse of discretion arises when a "decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an

impermissible basis." Guillaume, 209 N.J. at 467-68 (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

In her counterclaim, defendant alleges plaintiff violated the CFA by: "repeatedly 'baiting' defendant to submit loan modification applications;"<sup>2</sup> taking three years to make a decision;" requiring multiple submissions of identical forms and documents; and insisting upon the involvement of defendant's ex-husband—Mitchell—when his participation was unnecessary.

In her fourth affirmative defense, defendant claims plaintiff violated the CFA because it cannot be considered a "holder in due course" as defined by New Jersey law and the Uniform Commercial Code. The record contains no facts whatsoever to support these contentions. Instead, defendant made general allegations about plaintiff "taunting" her through "more than [thirty-five] loan modification applications," but she fails to submit any competent evidence that the process was the result of any sort of fraud. Indeed, defendant has not even pled specific facts to support a claim under the CFA.

"In all allegations of misrepresentation [or] fraud . . . particulars of the wrong, with dates and items if necessary, shall be stated insofar as [is]

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<sup>2</sup> The record lacks evidence of defendant's loan modification efforts from 2015 to 2017. Defendant's brief merely cites to the loan payment history.

practicable." R. 4:5-8(a). Defendant's reference to the CFA in her pleading does not provide an exception to this heightened pleading standard. See Hoffman v. Hampshire Labs, Inc., 405 N.J. Super. 105, 112 (App. Div. 2009) (noting "[b]ecause a claim under the CFA is essentially a fraud claim, the rule requires that such claims be pled with specificity to the extent practicable"). Moreover, "to state a claim under the CFA, a [litigant] must allege each of three elements: (1) unlawful conduct by the [adverse party]; (2) an ascertainable loss on the part of the [aggrieved party]; and (3) a causal relationship between the adverse party's unlawful conduct and the [aggrieved party's] ascertainable loss." N.J. Citizen Action v. Schering-Plough Corp., 367 N.J. Super. 8, 12-13 (App. Div. 2003).

Defendant's general reference to plaintiff's loan modification process is insufficient to show she was the victim of an illegal, unfair, or deceptive business practice. As the trial court pointed out, defendant failed to submit any evidence, such as loan modification applications, income for each borrower, or any correspondence with plaintiff to support a CFA violation. The court highlighted the "boilerplate fashion" the affirmative defenses were presented, many consisting of less than one sentence with "zero indication of their applicability to the instant matter." Moreover, there were no cure-and-

reinstatement agreements entered under the FFA here to permit defendant to cure the default at any time. See Gonzalez v. Wilshire Credit Corp., 207 N.J. 557, 570 (2011). The legal conclusions stated by defendant, without specific supporting facts in the record, do not constitute a valid affirmative defense or counterclaim under the CFA. See Pressler & Verniero, Current N.J. Court Rules, cmt. 1.1 on R. 4:5-4 (2023).

We also note a prior court in 2018 correctly concluded defendant could not modify the subject loan because Mitchell was the sole obligor on the note and therefore was required to be a party to any refinancing process, regardless of the parties' divorce settlement agreement. And, the prior court noted that nothing precluded defendant from refinancing with another lender.

### III.

Defendant also contends the trial court erred by granting summary judgment, asserting that plaintiff lacked standing to proceed with its foreclosure action because it failed to prove it possessed the note and mortgage. Defendant argues the Certification of Molly Kelly, the Vice President of Document Execution for Cenlar FSB, plaintiff's servicer for the subject loan, submitted in support of its motion for summary judgment, is not based on sufficient



personal knowledge. It is defendant's contention that Kelly did not authenticate the note and mortgage, warranting reversal.

In our review of a grant of summary judgment, we apply the same legal standard as the motion judge. Townsend v. Pierre, 221 N.J. 36, 59 (2015). We must determine whether there is a "genuine issue as to any material fact" when the evidence is "viewed in the light most favorable to the non-moving party." Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 405-06 (2014) (first quoting R. 4:46-2(c); and then quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). The "trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference" and are reviewed de novo. Est. of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 382-83 (2010).

In Mitchell, we held that a plaintiff may establish standing either through possession of the note or as an assignee under N.J.S.A. 46:9-9 "if it . . . presented an authenticated assignment indicating that it was assigned the note before it filed the original complaint." Deutsche Bank Nat'l Trust Co. v. Mitchell, 422 N.J. Super. 214, 224 (App. Div. 2011). Thus, a plaintiff need not actually

possess the original note at the time of filing in order to have standing to file a foreclosure complaint. Mitchell, 422 N.J. Super. at 225.<sup>3</sup>

In its written decision, the trial court found Kelly "lays a sufficient foundation for the admission of the [n]ote, [m]ortgage, assignment, and [NOI]." Citing Rule 902(d), the court stated the note is "authenticated" as "a document authorized by law to be recorded or filed and actually recorded or filed in a public office." Indeed, the note is self-authenticating as commercial paper under Rule 902(i). Defendant does not dispute she signed the mortgage document or that the loan is in default. Kelly certified the mortgage was assigned to plaintiff on May 10, 2012, and recorded on May 30, 2012. The original foreclosure complaint was filed on January 9, 2014. Therefore, the assignment of the mortgage predated the original complaint. Consequently, plaintiff had standing to bring the foreclosure action.

We are not persuaded by defendant's arguments regarding standing. The trial court properly determined plaintiff provided a copy of the original note in

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<sup>3</sup> Effective February 18, 2016, three years after the commencement of this foreclosure action, a new statute required that "[o]nly the established holder of a mortgage shall take action to foreclose a mortgage." N.J.S.A. 46:18-13(1)(a). Thus, to have standing to foreclose, as of the effective date of this statute, a plaintiff must have an original mortgage or recorded assignment, or be found to be the record mortgage holder in a civil action. N.J.S.A. 46:18-13(1)(b).

its moving papers, and Kelly established the requisite authentication of the documents by laying a foundation for each of the business records attached as exhibits to her certification based upon her personal review of each record. We are satisfied Kelly established the records she reviewed constitute business records under Rule 803(c)(6) based upon her personal knowledge as to how the records are kept and maintained. Plaintiff proved the foundational requirements to prevail in a foreclosure action.

After carefully reviewing the record and the arguments of the parties presented in their briefs, we affirm substantially for the reasons expressed by the trial court. To the extent we have not specifically addressed any remaining contentions raised by defendant, they lack sufficient merit to warrant discussion in this 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