SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2915-21

THE BANK OF NEW YORK MELLON, f/k/a THE BANK OF NEW YORK, AS TRUSTEE (CWMBS 2005-31),

Plaintiff-Respondent,

v.

SHAWN JOHNSON,

Defendant-Appellant,

and

MRS. JOHNSON, unknown spouse of Shawn Johnson, KIA SOLOMON, RESERVE AT SCOTCH PLAINS CONDOMINIUM ASSOCIATION, INC., RONALD S. GARZIO, GARY WILSON, ARLYN CEDARLANE ASSOCIATES LLC, PHANTASTIC PROPERTIES LP, COUNTY OF MONMOUTH, COUNTY OF CAMDEN, ABC BAIL BONDS INC., RANCOCAS ANESTHESIOLOGY PA, STATE OF NEW JERSEY, and UNITED STATES OF AMERICA,

Defendants.

Submitted April 25, 2023 – Decided July 19, 2023

Before Judges Sumners and Geiger.

On appeal from the Superior Court of New Jersey, Chancery Division, Union County, Docket No. F-004672-19.

Shawn Johnson, appellant pro se.

McCalla Raymer Leibert Pierce, LLC, attorneys for respondent (Djibril Carr, on the brief).

PER CURIAM

Defendant Shawn Johnson appeals the May 13, 2022 General Equity order denying his Rule 4:50-1 motion to vacate a final judgment of foreclosure by default. Because the record supports the trial court's determination that plaintiff Bank of New York Mellon (BNY) had standing to file for foreclosure and that Johnson did not provide sufficient evidence to support granting his motion, we affirm.

In 2005, Johnson and Kia Solomon executed a promissory note in favor of K. Hovnanian American Mortgage, LLC, and granted a purchase money mortgage to Mortgage Electronic Registration Systems, Inc., as nominee for the noteholder, both in the amount of $417,000.00, affecting residential property.

On August 2, 2016, the mortgage was assigned to BNY, as trustee for the Certificateholders of CWMBS, Inc., CHL Mortgage Pass-Through Trust 2005-31, Mortgage Pass-Through Certificates, Series 2005-31. Johnson and Solomon began defaulting on their mortgage payments in October 2018.[1]

On March 8, 2019, BNY filed a foreclosure complaint. After Johnson failed to respond, BNY requested entry of default and moved for final judgment. On July 15, the Office of Foreclosure entered final judgment in favor of BNY.

On November 6, Johnson filed a motion to stay the sheriff's sale, which was granted and adjourned the sale to January 8, 2020. On February 25, the parties entered a consent order vacating the January 8 sale and directing the Union County Sheriff to reschedule the sale. The record fails to disclose what happened thereafter.

On April 8, 2022, Johnson moved to vacate the final judgment of foreclosure. Johnson, citing Wells Fargo Bank, N.A. v. Ford, 418 N.J. Super. 592, 597-600 (App. Div. 2011), argued BNY did not have standing to foreclose on his property because it did not provide proof that it owned both the note and mortgage prior to its foreclosure action. As such, the property's sale was unlawful because BNY did not own the note, making the original judgment

[1] Johnson does not dispute that he and Solomon defaulted on the mortgage.

invalid and creating a grave injustice if the default judgment is not vacated under Rules 4:50-1(d) and (f).

The trial court denied the motion, finding Johnson's argument was without merit because BNY had standing based on the certified true copy of the mortgage's assignment, dated prior to its foreclosure action, it provided to the court. The court also noted Johnson did not dispute the default due to his failure to answer the foreclosure action and, consequently, failed to "demonstrate a meritorious defense to foreclosure."

On appeal, Johnson asserts the trial court abused its discretion because he made a meritorious defense by demonstrating that BNY failed to establish possession of the note, given a plaintiff must possess both the mortgage and note to have standing under Deutsche Bank Tr. Co. Ams. v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012). Johnson points out BNY did not plead that it possessed the original note or that it had the right to enforce the note because it was endorsed in blank under N.J.S.A. 12A:3-109(c), N.J.S.A. 12A:3-205(b), and N.J.S.A. 12A:1-201. Johnson also contends BNY's certification of the amount due and schedule were not based on its business records, and there was no evidence BNY "had personal knowledge that [it] had physical possession of the original note at the time of filing the foreclosure complaint." We are

unpersuaded and affirm substantially for the reasons set forth by the trial court in its written decision. We add the following brief comments.

Rule 4:50-1 states "the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: . . . (d) the judgment or order is void; . . . (f) any other reason justifying relief from the operation of the judgment or order." "The rule is '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.'" U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (citation and quotations omitted).

"The trial court's determination under [Rule 4:50-1] warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion." Ibid. "[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.'" Id. at 467-68 (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)). As for vacating a default judgment under this rule, the trial court must do so "'with great liberality,' and it should tolerate 'every reasonable ground for indulgence . . . to the end that a just result is reached.'" Mancini v. EDS ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132

N.J. 330, 334 (1993) (quoting Marder v. Realty Constr. Co., 84 N.J. Super. 313, 319 (App. Div. 1964)).

Johnson's arguments are misguided as they are not supported by the record, nor the law. We held in Angeles that "either possession of the note or an assignment of the mortgage that predated the original complaint confer[s] standing." 428 N.J. Super. at 318 (citing Deutsche Bank Nat'l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 216 (App. Div. 2011)); see also Ford, 418 N.J. Super. at 597 ("As a general proposition, a party seeking to foreclose a mortgage must own or control the underlying debt." (Bank of N.Y. v. Raftogianis, 418 N.J. Super. 323, 327-28 (Ch. Div. 2010))). BNY clearly had standing through its mortgage assignment dated prior to its foreclosure complaint's filing. Contrary to Johnson's argument, while BNY's possession of the note is not necessary because the mortgage assignment alone established standing, both its foreclosure action and mortgage loan servicer's certification indicated it possessed both the mortgage and note when the action was filed. See Angeles, 422 N.J. Super. at 318 (citing Mitchell, 422 N.J. Super. at 216). Moreover, the proof of amount due certification was properly based on the personal knowledge of the business records of BNY's authorized mortgage loan servicer, Bayview Loan Servicing, LLC. We thus conclude there is no reason to upset the trial

court's order since no unjust resulted in granting BNY a default foreclosure judgment.

Affirmed.