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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-2354-22**

LOANCARE, LLC,

Plaintiff-Respondent,

v.

LOEDITH KINGWOOD, her
heirs, devisees and
personal representatives
and his, hers, their or
any of their successors
in right, title and
interest, WILLIAM
KINGWOOD, ERVIN KING,
MRS. KING, spouse of
TODD KING, a/k/a TODD K.
KING, MYRA KING; HARRIET
HOCUTT, MR. HOCUTT,
spouse of HARRIET HOCUTT,
FORD MOTOR CREDIT
COMPANY, LLC, WELLS FARGO
BANK, NATIONAL ASSOCIATION,
STATE OF NEW JERSEY, and
UNITED STATES OF AMERICA,

Defendants,

and

TODD KING, a/k/a TODD
K. KING,

Defendant-Appellant.

Submitted May 20, 2024 – Decided May 31, 2024

Before Judges Mawla and Vinci.

On appeal from the Superior Court of New Jersey,
Chancery Division, Passaic County, Docket No.
F-001101-22.

Todd King, appellant pro se.

Robertson, Anschutz, Schneid, Crane & Partners,
PLLC, attorneys for respondent (Charles H. Jeanfreau,
on the brief).

PER CURIAM

In this residential foreclosure action, appellant Todd King appeals from the: November 18, 2022 order granting summary judgment; February 3, 2023 order denying reconsideration; and March 15, 2023 final judgment of foreclosure. We affirm.

On January 14, 2003, Loedith Kingwood ("mortgagor") executed and delivered a promissory note in the amount of \$135,000 to GMAC Bank, secured by a mortgage on a property located at 141 Crosby Avenue, Paterson, NJ 07502 (the "mortgaged property"). On March 4, 2003, the mortgage was recorded.

On April 13, 2019, the mortgagor died. The monthly installment payments due beginning May 1, 2019, were not made. On January 6, 2020, the mortgage was assigned to respondent LOANCARE, LLC ("LOANCARE"). On January 30, 2020, the assignment was recorded.

On February 11, 2022, LOANCARE filed this foreclosure action against the mortgagor and her heirs, including appellant. On March 29, 2022, appellant filed a contesting answer in which he denied receiving the notice of intent to foreclose ("NOI").

LOANCARE moved for summary judgment. In its supporting statement of material facts, LOANCARE asserted it mailed the NOI by certified mail, return receipt requested, and regular mail to the mortgagor at the mortgaged property address. LOANCARE attached a copy of the NOI to a certification accompanying its submission.

Appellant did not file substantive opposition to the motion, nor did he serve a responding statement of facts. Instead, appellant requested an adjournment contending discovery was not complete. Appellant's adjournment request was denied.

On November 18, 2022, the court entered an order granting LOANCARE's motion for summary judgment, supported by a written opinion. The court found

it was undisputed that LOANCARE served the NOI by "certified mail, return receipt requested[,] and regular mail" to the mortgaged property. The court also found appellant "failed to contest any prima facie elements of the instant foreclosure action" and his answer contained nothing more than general denials and "boilerplate defenses which [were] unsupported by legal merit and [were] adequately addressed by [LOANCARE]."

The court noted appellant "failed to adequately oppose the motion, except to rely on a claim that discovery [was] incomplete," which the court rejected. Because appellant's answer "fail[ed] to successfully challenge the essential elements of a foreclosure action and solely denie[d] the allegations in the complaint," the court deemed the answer non-contesting and returned the matter to the Office of Foreclosure.

Appellant moved for reconsideration arguing the United State Postal Service ("USPS") tracking receipt relating to the NOI indicated it was delivered to "an individual at the address in ZIP Code 07500," whereas his ZIP Code is 07502. On February 3, 2023, the court entered an order denying the motion supported by a written opinion. The court noted appellant failed to oppose the motion for summary judgment and was attempting to use a motion for reconsideration to raise arguments that could have been, but were not, raised

previously. The court also found appellant's argument "that a single incorrect number in the delivery [ZIP Code] is truly indicative of the [NOI] not being delivered [was] simply meritless." On March 15, 2023, final judgment of foreclosure was entered.¹

On appeal, appellant argues LOANCARE failed to establish it served a NOI as required by the terms of the mortgage and the Fair Foreclosure Act, N.J.S.A. 2A:50-53 to -68 ("FFA"). More particularly, appellant contends the USPS tracking receipt indicates the NOI was delivered to a person located in ZIP Code 07500 and the mortgaged property is located in ZIP Code 07502.

We review a grant of summary judgment de novo. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021), "under the same standard that govern[ed] the court's determination," Goldhagen v. Pasmowitz, 247 N.J. 580, 593 (2021). We "must 'consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the

¹ Appellant also filed a motion to fix the amount due, which was denied by an order entered February 3, 2023. Appellant does not address that order in his briefs. Likewise, appellant does not address the March 15, 2023 final judgment. Those arguments are, therefore, waived. Miller v. Reis, 189 N.J. Super. 437, 441 (App. Div. 1983) (holding an issue not briefed beyond conclusory statements need not be addressed).

non-moving party.'" Meade v. Twp. of Livingston, 249 N.J. 310, 327 (2021) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). We review a trial court's decision on a motion for rehearing or reconsideration under Rule 4:49-2 for an abuse of discretion. Branch, 244 N.J. at 582.

Pursuant to Rule 4:46-2(a), a party moving for summary judgment must file a "statement of material facts . . . as to which the movant contends there is no genuine issue together with a citation to the portion of the motion record establishing the fact or demonstrating that it is uncontroverted." Pursuant to Rule 4:46-2(b), "a party opposing the motion shall file a responding statement either admitting or disputing each of the facts in the movant's statement" and "all material facts in the movant's statement which are sufficiently supported will be deemed admitted for purposes of the motion only, unless specifically disputed by citation [to the portion of the motion record] demonstrating the existence of a genuine issue as to the fact."

A party seeking to foreclose on a mortgage must have standing, or "own or control the underlying debt." 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)). An assignment of the mortgage, which predates the complaint, or possession of the note confers standing.

Deutsche Bank Tr. v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012) (citing Deutsche Bank Nat'l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 216 (App. Div. 2011)).

A residential mortgage lender must also establish it served a NOI as required by the FFA. In U.S. Bank National Ass'n v. Guillaume, 209 N.J. 449, 470 (2012), our Supreme Court explained that "[t]he [NOI] is a central component of the FFA, serving the important legislative objective of providing timely and clear notice to homeowners that immediate action is necessary to forestall foreclosure." The FFA provides that the NOI must be served "by registered or certified mail, return receipt requested" N.J.S.A. 2A:50-56(b).

We affirm substantially for the reasons set forth in the court's November 18, 2022, and February 3, 2023 written opinions. We add the following comments.

Because appellant failed to file a responding statement of facts in opposition to LOANCARE's motion for summary judgment, the facts set forth in LOANCARE's statement of material facts were properly deemed admitted by the court pursuant to Rule 4:46-2(b). This included LOANCARE's statement, supported by a certification and exhibits, showing the NOI was served at the mortgaged property in accordance with the FFA.

Appellant's contention that the USPS tracking history receipt indicates the NOI was not delivered to the mortgaged property is not convincing. The NOI was addressed to the mortgaged property using the correct address and ZIP Code (07502-1635), and the USPS tracking number, ending in 3600 51, was printed on the NOI. The USPS tracking history receipt indicates the "item [designated with that tracking number] was delivered to an individual at the address at 3:44 p.m. on January 3, 2022 in ZIP Code 07500." (Emphasis added). The address on the NOI and associated with that USPS tracking number was that of the mortgaged property.

The court determined correctly appellant failed to raise a genuine issue of material fact relating to the delivery of the NOI. We are satisfied the court properly granted summary judgment and did not abuse its discretion by denying appellant's motion for reconsideration.

To the extent we have not addressed any of appellant's remaining arguments, it is because they lack 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