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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-0695-23**

**WILMINGTON SAVINGS FUND
SOCIETY, FSB, not in its individual
capacity, but solely as owner trustee
for CSMC 2018-RPL6 TRUST,**

Plaintiff-Respondent,

v.

**LUIS F. TABARES, 419 PARK,
LLC, and MIDLAND FUNDING,
LLC,**

Defendants,

and

FRANCISCO TABARES,

Defendant-Appellant.

Submitted November 18, 2024 – Decided January 3, 2025

Before Judges Gummer and Berdote Byrne.

On appeal from the Superior Court of New Jersey,
Chancery Division, Middlesex County, Docket No.
F-001502-21.

Francisco Tabares, appellant pro se.

Hladik, Onorato, & Federman, LLP, attorneys for
respondent (Robert W. Williams, on the brief).

PER CURIAM

Defendant/intervenor Francisco Tabares appeals from the final judgment in a foreclosure action allowing plaintiff Wilmington Savings Fund Society, ("Wilmington") to recover from the proceeds of the ordered sale of residential property ("the Property") that was the subject of the mortgage of defendant Luis F. Tabares.¹ Francisco also appeals the trial court's orders granting Wilmington's motions for summary judgment and an order denying Francisco's motion to vacate the order granting Wilmington's first motion for summary judgment.

We conclude Francisco lacks standing to contest the foreclosure action as he was named a party by Wilmington only as a nominal defendant to subordinate any interest he may have had in the Property to that possessed by Wilmington. As a purported tenant, Francisco did not have standing to contest the foreclosure

¹ Because defendant Luis Tabares and defendant/intervenor Francisco Tabares have the same last name, we refer to the parties by their first names to avoid confusion. In doing so, we intend no disrespect. The relationship between Luis and Francisco is not clear from the record before this court. Luis is not participating in this appeal.

action. We affirm the trial court's final judgment, orders granting summary judgment, and order denying Francisco's motion to vacate.

The record demonstrates Luis executed a promissory note in the amount of \$260,000, plus interest, on November 30, 2007, in exchange for a loan from Bank of America, N.A. The promissory note was endorsed in blank by Luis. To secure repayment of the loan, Luis executed a mortgage to Bank of America, N.A. on the Property, which was recorded on December 7, 2007.

On September 10, 2013, Bank of America, N.A. assigned the mortgage to Nationstar Mortgage, LLC, ("Nationstar"), which was recorded on October 1, 2013. On June 15, 2016, Luis and Nationstar entered into a loan modification agreement that included a new principal balance of \$438,113.68. The modification agreement was duly recorded on September 16, 2016.

On December 13, 2018, Nationstar assigned the mortgage to Wilmington, and the assignment was recorded on December 17, 2018. On November 16, 2020, a second mortgage assignment between Nationstar and Wilmington was executed. This mortgage assignment was recorded on November 25, 2020.

On July 1, 2020, Luis defaulted on the note and the mortgage when he failed to pay the required monthly principal and interest payments. Wilmington's loan servicer, Shellpoint Mortgage Servicing, sent Luis written

notice of his default on December 18, 2020, informing him he had the right to cure his default if he paid the full amount by January 22, 2021. Luis failed to cure his default or make any monthly payments. The total amount owed was \$482,893.68.

On March 23, 2021, Wilmington filed a complaint commencing the residential mortgage foreclosure action. Francisco filed a motion to intervene on June 28, 2021. The trial court granted Francisco's motion to intervene on August 10, 2021, because it found he was a "purported tenant in the property." In response, on August 23, 2021, Francisco filed a contesting answer. Wilmington's loan servicer certified Wilmington "through agency[] is in possession of the original promissory note," is currently "the holder of the note and mortgage, and was the holder of the note and mortgage at the time this foreclosure action was commenced."

On January 12, 2022, Wilmington filed a motion for summary judgment seeking to strike Francisco's contesting answer. No opposition was filed in response to the motion. On February 18, 2022, the trial court granted Wilmington's unopposed motion for summary judgment. In this order, the trial court held "the contesting [a]nswer filed by . . . Francisco . . . an alleged [t]enant

of the property that is the subject of this foreclosure action, be, and hereby is [stricken] for lack of standing on the part of said person to contest the same."

On April 18, 2022, Francisco moved to vacate the February 18, 2022 Order. Wilmington opposed the motion. On May 13, 2022, the trial court denied Francisco's motion to vacate the February 18, 2022 Order.

Wilmington filed an amended complaint on April 10, 2023, to include a loan modification omitted from the original complaint and named Francisco as a nominal party for subordination purposes only. Francisco filed a contesting answer on May 1, 2023. On June 21, 2023, Wilmington filed a motion to strike Francisco's May 1, 2023 answer, affirmative defenses, and counterclaims and enter default as to him. No opposition was filed. On July 7, 2023, the trial court granted Wilmington's motion to strike Francisco's contesting answer, affirmative defenses, and counterclaims; entered default against Francisco; and granted summary judgment to Wilmington.

On September 7, 2023, Wilmington filed a motion for final judgment. No opposition was filed. On October 10, 2023, the trial court granted Wilmington's motion for final judgment and held Wilmington was "entitled to have the sum of \$4[7]9,293.89 together with lawful interest from August 1, 2023," and "a counsel fee [of] \$4,942.93." The final judgment also ordered the Property sold.

Francisco filed this appeal, claiming the trial court erred in 1) awarding summary judgment when discovery was incomplete; 2) failing to make findings of fact and conclusions of law with respect to his motions; and 3) failing to apply Rule 4:50-1 correctly when it denied Francisco's motion to vacate final judgment. Finding no merit to any of these arguments, we conclude Francisco did not have standing to contest the foreclosure, and the trial court properly denied all of his subsequent motions.

"Whether a party has standing to pursue a claim is a question of law subject to de novo review." Cherokee LCP Land, LLC v. City of Linden Plan. Bd., 234 N.J. 403, 414 (2018). We "accord no 'special deference' to the 'trial court's interpretation of the law and the legal consequences that flow from established facts.'" Id. at 414-15 (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

The New Jersey Supreme Court has "appropriately confined litigation to those situations where the litigant's concern with the subject matter evidenced a sufficient stake and real adverseness." Crescent Park Tenants Ass'n v. Realty Equities Corp. of N.Y., 58 N.J. 98, 107 (1971); see In re Establishment of Cong. Dists. by N.J. Redistricting Comm'n, 249 N.J. 561, 570 (2022).

As a tenant of the foreclosed residential property, Francisco did not have standing to challenge the foreclosure action. In the August 10, 2021 order granting Francisco's motion to intervene, the trial court provided the following reason for granting the motion: "intervenor is purported tenant in the property." In his submissions to the trial court, Francisco identified himself as a tenant,² and both Wilmington and the trial court refer to Francisco as a tenant. As a tenant of the Property, Francisco does not have standing to challenge the foreclosure action because he does not have a "sufficient stake" or "real adverseness," Crescent Park, 58 N.J. at 107, nor did he suffer an "injury in fact," In re D'Aconti, 316 N.J. Super. 1, 12 (App. Div. 1998).

To obtain relief in a mortgage foreclosure action, the mortgagee must establish: (1) the validity of the documents; (2) the default itself; and (3) the right to foreclose. See N.Y. Mortg. Trust 2005-3 Mortg.-Backed Notes, U.S. Bank Nat. Ass'n as Trustee v. Deely, 466 N.J. Super. 387, 397 (App. Div. 2021); Great Falls Bank v. Pardo, 63 N.J. Super. 388, 394 (Ch. Div. 1993), aff'd, 273 N.J. Super. 542 (App. Div. 1994).

Wilmington included Francisco as a defendant for the limited purpose of subordinating any unknown interest he may have had in the property to that of

² Francisco has not produced any lease as part of his appellate appendix.

Wilmington. He is not responsible for repayment of any funds, interest, or costs in the final order of judgment.

Francisco was not adversely affected by the foreclosure action because pursuant to N.J.S.A. 2A:50-70, foreclosure is insufficient grounds for eviction. Pursuant to the New Jersey Foreclosure Fairness Act, N.J.S.A. 2A:50-69 to -73, a tenant has the right to remain in the rented property after a foreclosure action and, apart from certain exceptions, cannot be evicted from the property solely due to the foreclosure.³ See N.J.S.A. 2A:50-70a (requiring residential tenants be given notice after the transfer of title and informing tenants they cannot be evicted solely due to the foreclosure).

Francisco cites N.J.S.A. 2A:50-30 as the basis for his right to answer and respond to Wilmington's complaint. However, N.J.S.A. 2A:50-30 does not give tenants the right to challenge foreclosure actions. The statute states:

In any action for the foreclosure of a mortgage upon real or personal property in this state, all persons claiming an interest in or an encumbrance or lien upon such property, by or through any conveyance, mortgage, assignment, lien[,] or any instrument which, by any provision of law, could be recorded, registered, entered[,] or filed in any public office in this state, and which shall not be so recorded, registered, entered[,] or filed at the time of the filing of the complaint in such

³ The limited exceptions are found in the New Jersey Anti-Eviction Act, N.J.S.A. 2A:18-61.1 to -61.1h.

action shall be bound by the proceedings in the action so far as such property is concerned, in the same manner as if he had been made a party to and appeared in such action, and the judgment therein had been made against him as one of the defendants therein; but such person, upon causing such conveyance, mortgage, assignment, lien, claim[,] or other instrument to be recorded, registered, entered[,] or filed as provided by law, may apply to be made a party to such action.

[N.J.S.A. 2A:50-30.]

Francisco failed to claim any interest or present any evidence to the trial court or to this court that he has an "interest in or an encumbrance or lien upon" the Property. See *ibid.* There is also no evidence before us that Francisco "recorded, registered, entered[,] or filed" a "conveyance, mortgage, assignment, lien, claim[,] or other instrument" regarding the Property. See *ibid.* Therefore, Francisco does not have standing to challenge the foreclosure action pursuant to N.J.S.A. 2A:50-30.


Because he lacked standing before the trial court and was not adversely impacted by the trial court's final judgment or orders, Francisco does not have standing before us on appeal. R. 2:2-3(a)(1); see also Pressler & Verniero, Current N.J. Court Rules, cmt. 2.1 on R. 2:2-3(a)(1) (2024) ("[A]n appeal may only be taken by a party aggrieved by the judgment, that is, one whose property or personal interest was adversely affected by the judgment."). Francisco failed

to provide any evidence that the trial court's final judgment, orders granting summary judgment, or order dismissing his motion to vacate adversely affected his property or personal interests.

To the extent we have not addressed one of Francisco's remaining arguments, we are satisfied 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