
WELLS FARGO BANK, N.A.,	:	SUPERIOR COURT OF NEW JERSEY
AS TRUSTEE	:	APPELLATE DIVISION
	:	
Plaintiff/Respondent	:	DOCKET NO. A-3627-06T1
	:	
	:	ON APPEAL FROM:
	:	
	:	Superior Court of New Jersey
	:	Chancery Div., Bergen County
	:	
	:	
v.	:	SAT BELOW:
	:	
SANDRA FORD, et al	:	Hon. Robert P. Contillo, JSC
	:	
Defendant/Appellant	:	
	:	

RESPONDENT'S BRIEF

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PROCEDURAL HISTORY

A Complaint in mortgage foreclosure was filed by the Plaintiff against the Defendant, Sandra Ford ("Ford") and various others, on July 8, 2006. Ja 152-159 On July 26, 2006, an Amended Complaint was filed. Ja 145-151 Ford filed an Answer, Counterclaim & Defenses on August 25, 2006. Ja 131-142 Plaintiff filed an Answer to Counterclaim on September 29, 2006. Ja 128-130 Also on September 29, 2006 the Plaintiff filed a Motion for Summary Judgment. Ja 90-127 Ford filed opposition to that Motion on October 30, 2006. Ja 63-89 Plaintiff filed a reply on November 2, 2006. Ja 61-62 Plaintiff's Motion for Summary Judgment was returnable on December 1, 2006, but was adjourned by the Court at the request of Ford. Ja 54-56 Ford filed a sur-reply on or about January 11, 2007. Ja 45-53 Plaintiff's Motion was heard and granted on January 26, 2007. Ja 43-44 and Transcript of Motion Hearing. It is from this Order that Ford appeals.

COUNTER-STATEMENT OF FACTS

On or about March 6, 2005, Ford obtained a loan from, and gave a mortgage to, Argent Mortgage Company, LLC. Ja 7-28 On or about March 11, 2005, the subject mortgage was assigned to Wells Fargo Bank, NA, as Trustee. Ja 29-30 On or about April 1, 2006, after having tendered payments on the loan for approximately one year, Ford began to experience financial problems. As a result of those financial problems, Ford defaulted upon her obligation to maintain regular monthly payments pursuant to the note and mortgage. Ja 105 A Complaint and Amended Complaint were filed, followed shortly thereafter by an Answer and Counterclaim. Ja 145-159 and Ja 131-142, respectively. The Answer and Counterclaim complained of conduct on the part of parties other than the Plaintiff, and lists alleged violations and transgressions about which Ford remained silent until after her default. The Plaintiff filed a Motion for Summary Judgment which was, after the filing of various pleadings and several adjournments of the oral argument, granted by Order dated January 26, 2007. This is the Order from which Ford appeals.

ARGUMENT

POINT I: THE DEFENDANT'S BRIEF EXCEEDS THE SCOPE OF THIS APPEAL

New Jersey Court Rule 2:5-1(f)(3)(A) provides that a notice of appeal "shall designate the judgment, decision, action or rule, or part thereof appealed from." The comments to this rule note, "[w]hile the rule does not in terms so provide, it is clear that it is only the judgments or orders or parts thereof designated in the notice of appeal which are subject to the appeal process and review." Pressler, Current N.J. Court Rules, comment 6.1 on N.J.Ct.R. 2:5-1(f) (2010). The Courts of New Jersey have generally enforced this Rule. See, Sikes v. Township of Rockaway, 269 N.J. Super. 463 (App. Div.), aff'd o.b., 138 N.J. 41 (1994) (Plaintiff's appeal limited to credit to be received under Tort Claims Act as that was the only item mentioned in the Notice of Appeal); see also, Campagna v. American Cyanamid Co., 337 N.J. Super. 530 (App. Div.), certif. denied, 168 N.J. 294 (2001), Fusco v. Board of Education of Newark, 349 N.J. Super. 455 (App. Div.), certif. denied, 174 N.J. 544 (2002), and 1266 Apartment Corp. v. New Horizon Deli, Inc., 368 N.J. Super. 456 (App. Div. 2004).

In this matter, the notice of appeal asserts that the appeal is taken from the Order entered on January 26, 2007. As a

result, the only issue on appeal is the providence of the trial court in entering summary judgment in Plaintiff's favor. Most of the issues raised in the Defendant's brief address issues other than the propriety of the trial court's ruling on Plaintiff's summary judgment motion. All issues regarding the entry of final ~~judgment, standing, etc., are not cognizable in this appeal, and~~ the ruling of the trial court should be affirmed.

POINT II: THE ENTRY OF SUMMARY JUDGMENT WAS PROPER

A. The Borrower Had A Full And Fair Hearing

It is obvious from the record that this Borrower is a sophisticated pro se pleader, asserting and articulating both technical and equitable arguments, citing authorities and employing Latin expressions (e.g. "ipse dixit") that reveal an uncommon familiarity with the legal process. Clearly, the Borrower was not acting at a material disadvantage below. Indeed, the Chancery Division Judge, afforded her ample opportunities to develop a record, observing, "I carried the matter several times at the request of Ms. Ford in order that she be given every opportunity to secure counsel, if she wishes, or could, and every opportunity to present whatever arguments that she might have to the Court." See Transcript of Hearing, p. 10, 15-19.

Wells Fargo respectfully submits that the Borrower should not now be heard to complain that she lacked ample opportunity to, e.g., take Discovery or otherwise develop a record in support of her putative defenses and affirmative claims.

Accordingly, Wells Fargo respectfully submits that Summary Judgment was appropriately granted on the record before the Chancery Division Judge, who afforded the Borrower every opportunity to develop her record.

B. The trial court acted properly

A review of the transcript and record in this matter reveals

that the trial court did indeed make adequate findings of fact based upon the record presented by the parties. The trial court's reasoning in granting the motion for summary judgment can be found at pages 9-11 of the transcript. The trial court reviews the allegations made by the defendant and finds that none of the allegations/defenses are directed against the Plaintiff. Indeed, all the allegations raised by the defendant were directed against the originator of the loan, and no complaint was made by Ford until after she had defaulted on the terms of the Note and Mortgage. The trial court found that the Plaintiff had satisfied the requirements of the holder-in-due-course doctrine, and such determination is implicit in His Honor's statements from the bench when delivering the ruling. At page ten, the Judge states "there's no indication that the deficiencies that she [Ford] cites to were ever brought forward prior to the time that the Plaintiff acquired the documentation." The Court also points out that the hearing on the Summary Judgment Motion was carried several times to allow Ford to present her arguments to the Court. It is clear from a reading of the transcript that the Court below never received any indication from Ford that her allegations were other than against the originating lender, and the Court found that the holder-in-due-course doctrine applied.

**POINT III: THE BORROWER IS ESTOPPED TO CONTEST WELLS FARGO'S
STANDING**

The Borrower ratified the subject mortgage loan transaction by maintaining regular monthly mortgage payments for an entire year after the loan closing, i.e., from March, 2005 to April, 2006. See Amended Complaint, Ja 148. Significantly, the Borrower voluntarily opted into the Superior Court's Foreclosure Mediation Program as recently as late 2009, thereby further evidencing her recognition of Wells Fargo as her lender. The Borrower's knowing, voluntary conduct is therefore inconsistent with her assertion that Wells Fargo is not her lender and lacks standing to foreclose.

The Borrower is similarly precluded from contesting Wells Fargo's standing by the doctrine of Judicial Estoppel. In her Counterclaim at paragraph 6, the Borrower alleges, "I have attempted to amicably payoff [sic] the arrears. I am ready, willing and able to satisfy a legitimate and clearly defined [sic]; but, the charges keep going up and up." See Counterclaim, Ja142. The Borrower's Pleadings and participation in the Court's Mediation Program reaffirm her relationship with Wells Fargo as Borrower and Lender and preclude her from asserting the directly contradictory position that Wells Fargo lacks standing to foreclose the mortgage upon which she concedes her default, complains (as to Wells Fargo) only about the calculation of arrears and seeks to renegotiate via

the Court's Mediation Program.

Accordingly, it would be manifestly unfair and contrary to settled equitable principles to allow the Borrower to change positions and deny Wells Fargo's status as her lender simply because it has become expedient.

POINT IV: THE BORROWER'S ARGUMENTS ARE COUNTERINTUITIVE

The uncontroverted facts reveal that the Borrower's arguments are, as a practical matter, not viable.

The Borrower seeks to make much of the allegation that her signature on certain documents were forged. However, the exact same information was contained in other documents also submitted during the loan origination process. For example, the letter asserting that the Borrower's monthly income of \$9,500, which the Borrower claims was forged (Ja 78), duplicates exactly the income information (\$9,500/month) contained in the Residential Loan Application (Ja 72), which signature is uncontested. Accordingly, it would be impossible for the Borrower to prove that reliance was placed exclusively upon the allegedly forged letter when the identical monthly income information was also contained in a genuine contemporaneous document.

Clearly, Wells Fargo is a holder in due course and the Motion Judge's reliance upon Carnegie Bank v. Shalleck, 256 N.J. Super. 23 (App. Div. 1992) was consistent with universally recognized procedures in the mortgage lending industry. The Borrower's loan was assigned to Wells Fargo within five (5) days from the loan closing, a common occurrence. Nothing in the record suggests that Wells Fargo was apprized of any alleged improprieties in the loan origination process before taking their Assignment. The loan was not in default upon Wells Fargo's acquisition. Finally, this is not

a case wherein a portfolio of defaulted mortgages was bought at a deep discount by some fly-by-night debt-buyer. To the contrary, Wells Fargo (one of the largest institutional mortgage lender/servicers in the country) acquired this loan in the ordinary course within days from origination and presumptively paid "value" within the meaning of applicable authorities. The learned Motion Judge, the Chancery Judge of the Vicinage, having many years' experience in such matters, found that Wells Fargo was a holder in due course predicated upon the uncontested record and universally recognized commercial realities in the mortgage lending industry, amenable to the taking of judicial notice. In any event, the effect, if any, of the Borrowers allegations against Wells Fargo regarding the origination and/or assignment processes were vitiated by the Borrower's ratification of the transaction and maintenance of payments to Wells Fargo for an entire year after the closing.

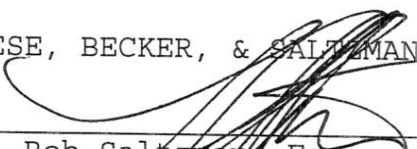
By reason of the foregoing, it is virtually inconceivable that the Borrower could prove Wells Fargo is responsible for the alleged improprieties in the loan origination process.

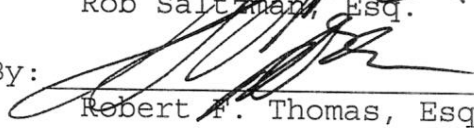
CONCLUSION

By reason of the foregoing, it is respectfully requested that the ruling of the trial court be affirmed.

Respectfully Submitted,

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