

2017 WL 372150

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UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of New Jersey, Appellate Division.

JPMORGAN CHASE BANK,
N.A., Plaintiff–Respondent,

v.

[KWEC PROPERTIES, LLC](#), Defendant–Appellant.

DOCKET NO. A–5665–14T2

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Submitted December 5, 2016

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Decided January 26, 2017

On appeal from the Superior Court of New Jersey,
Chancery Division, Essex County, Docket No. F–30922–
14.

Attorneys and Law Firms

The Dasaro Law Firm, attorneys for appellant ([Julia S. Dasaro–Drescher](#) on the brief).

Maselli Warren, P.C., attorneys for respondent ([David Fornal](#), of counsel and on the brief; [James Kilduff](#), on the brief).

Before Judges [Nugent](#) and [Currier](#).

Opinion

PER CURIAM

*1 In this foreclosure action, defendant KWEC Properties, LLC appeals the July 24, 2015 order denying its motion to vacate a previously entered default. Defendant alleges that the trial court erred in denying its motion to vacate default, as plaintiff JPMorgan Chase Bank, N.A. lacks standing to bring a foreclosure action. After a review of this argument in light of the applicable principles of law, we affirm.

In 2006, defendant executed and delivered a promissory note secured by a mortgage to Washington Mutual Bank for a loan in the amount of \$975,000. In 2008, plaintiff became the owner of Washington Mutual's loans

and other assets by entering into a purchase agreement with the Federal Deposit Insurance Corporation (FDIC), which was acting as a receiver for Washington Mutual. Specifically, plaintiff became the owner and holder of the note and mortgage pursuant to an allonge from the FDIC affixed to the promissory note, and an assignment agreement. The assignment of mortgage was recorded in January 2013.

Defendant defaulted on the loan on April 1, 2014. Pursuant to the terms of the note, plaintiff accelerated the debt and notified defendant that the full balance of the principal, interest and other charges was immediately due.

Plaintiff commenced foreclosure proceedings against defendant in July 2014. After defendant failed to answer the complaint, the trial court entered default in November 2014, and appointed a commercial rent receiver in January 2015. Subsequently, defendant filed a motion to vacate default. On July 24, 2015, Judge Donald Kessler denied defendant's motion to vacate default. In a comprehensive written decision, Judge Kessler rejected defendant's argument regarding standing and other issues and found defendant had not shown good cause under *Rule 4:43–3* to warrant vacating default. Final judgment was entered in August 2015.

In specifically addressing defendant's argument that plaintiff lacked standing to pursue the complaint, Judge Kessler wrote: “The facts establishing the Plaintiff's standing are properly supported by the certification of Dennis Short, a Special Credits Asset Manager for [plaintiff].” “[The] certification is based on the affiant's personal knowledge and the affiant has described how such personal knowledge was obtained As such, Mr. Short's certification is sufficient to provide the Court with competent evidence regarding Plaintiff's standing.”

Short certified that plaintiff was in possession of the original note and allonge prior to the filing of the complaint. Moreover, the mortgage was assigned by the FDIC to plaintiff prior to the filing of this action. The supporting documents were attached to his certification. The judge concluded that “Defendant does not provide any sufficient legal or factual evidence to contravene Plaintiff's certification. [Therefore], Plaintiff has demonstrated it has standing to foreclose.”

Without citing to supporting proof in the record, defendant asserts on appeal that plaintiff did not have possession of the note or mortgage and therefore cannot have standing to prosecute this claim. We find no merit in this argument and affirm substantially for the reasons given in Judge Kessler's thoughtful decision. Plaintiff produced a certification attesting to facts based on the affiant's personal knowledge and his familiarity with defendant's loan records. Plaintiff presented proof it is in possession of the original note and allonge, both executed prior to the filing of the complaint. Lastly, plaintiff provided the mortgage assignment it received from the FDIC, also recorded prior to the filing of this action.

Defendant has presented no evidence to counter plaintiff's proofs of standing.

*2 We are satisfied that the judge's findings were supported by the facts in the record and that the judge soundly applied the relevant law.

Affirmed.

All Citations

Not Reported in Atl. Rptr., 2017 WL 372150

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