UAN RIVAS and YRIS NUNEZ, Plaintiffs-Appellants,
v.
HOMECOMING FINANCIALS NETWORK, INC., OCWEN LOAN SERVICING, MERS (MIN#XXXXXXXXXXXXXXXXXX), RESIDENTIAL FUNDING MORTGAGE SECURITIES I, INC., RESIDENTIAL FUNDING MORTGAGE SECURITIES I 2006-S7 (RFMSI 2006-S&), US BANK, NA, Defendants-Respondents.

No. A-2400-14T4.

Superior Court of New Jersey, Appellate Division.

Submitted February 8, 2016.
Decided July 5, 2016.

On appeal from Superior Court of New Jersey, Chancery Division, Bergen County, Docket No. C-78-14.

Juan Rivas and Yris Nunez, appellants pro se.

Blank Rome, attorneys for respondents (Kyle Vellutato, on the brief).

Before Judges O'Connor and Suter.

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

PER CURIAM.

Plaintiffs Juan Rivas and Yris Nunez appeal from a July 30, 2014 order that dismissed their complaint without prejudice and a November 25, 2014 order that denied their motion for reconsideration of the July 30, 2014 order. We affirm.

On July 13, 2006, plaintiffs executed a $478,000 note to AFM Mortgage Corp. and a thirty-year mortgage in favor of Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for AFM Mortgage Corp to purchase their home in Lyndhurst.[1] They were current on both mortgages and not facing foreclosure when they filed a ten-count civil complaint on March 17, 2014 seeking to void these notes and mortgages and to recover damages from defendants.[2] Plaintiffs' complaint asserted a claim for negligence, alleging their mortgage payments were not being properly credited; for fraud, claiming they qualified for conventional

financing, but defendants approved only FHA financing; and for breach of contract and unjust enrichment arising out of "wrongful acts and omissions." Plaintiffs sought to void the notes and mortgages because they had become "separated," MERS had no authority to assign the mortgages, and defendants had securitized the notes in a trust. Their complaint included a quiet title action.

Defendants' motion to dismiss for failure to state a claim was granted without prejudice on July 30, 2014 by Judge Menelaos W. Toskos. He found the allegations were "conclusory [and] not factual." He dismissed the negligence, separation of notes and mortgages, contract and unjust enrichment claims because plaintiffs did not oppose their dismissal. The court dismissed the fraud claim because it was brought more than a year after the mortgage documents were executed and was not pled with the requisite specificity. The judge declined to invalidate the notes and mortgages because plaintiffs acknowledged they had executed them and were current on these outstanding obligations. Plaintiffs' reconsideration motion was denied because it was not timely and failed to raise any new arguments.

On appeal, plaintiffs raise the following points:

POINT I MBS TRUSTS ARE GOVERNED BY TRUST DOCUMENTS
POINT II POOLING AND SERVICING AGREEMENTS (PSAs)
POINT III ATTORNEY'S INITIAL COMPLAINT
POINT IV DUE PROCESS AND DISCOVERY
POINT V QUESTION OF OWNERSHIP
POINT VI VIOLATIONS
POINT VII FUTURE ISSUES THAT COULD ARISE AND AFFECT TITLE
POINT VIII TERMS OF THE TRUST
POINT IX MORTGAGE ELECTRONIC REGISTRATION SYSTEMS (MERS)
POINT X ATTORNEY VELLUTATO'S ARGUMENT
POINT XI THE GILBERT CASE
POINT XII JUDICIAL ERROR
POINT XIII QUIET TITLE
POINT XIV THE SUSER CASE

We review de novo the challenged order that dismissed plaintiffs' complaint for failure to state a cause of action, applying the same legal standard as the trial court. NL Industries, Inc. v. State, 442 N.J. Super. 403, 405 (App. Div. 2015). A motion for failure to state a claim must be denied if, giving plaintiffs the benefit of all their allegations and all favorable inferences, a cause of action has been alleged in the

complaint. Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989). Conclusory allegations do not provide an adequate basis to deny a motion to dismiss under Rule 4:6-2. Id. at 768.

Plaintiffs have abandoned their initial contention that there was a challengeable separation of the mortgage and note.[3] Because there are no recorded assignments of the mortgages or endorsements of the notes, they now acknowledge they do not know if there was a separation of the note from the mortgage. Their present concern is that, without any recorded assignments, they do not know if the entity to which they are paying the mortgage has a legal right to those payments or whether another entity will come forward in the future and demand payment. Plaintiffs seek discovery about the assignments of their mortgage, in preparation to void the notes and mortgages. They contend defendants cannot sue to collect on the notes or mortgages because these are alleged to be securitized within certain trusts.

We characterize plaintiffs' primary claim now as one to quiet title action because of their alleged uncertainty over which entity has standing to enforce the mortgage and note. We affirm the dismissal of their claims because they were merely conclusory and void of factual foundation. We said in Suser v. Wachovia Mortg., FSB, 433 N.J. Super. 317, 326 n.4 (App. Div. 2013), not "every perceived or imagined cloud on title is entitled to adjudication. Courts need not entertain doubts about title that are trifling or suggest only immaterial damage."

Suser was an action to quiet title. Id. at 320. Suser sought to remove of record two prior mortgages from a property he purchased in a sheriff's sale. Ibid. Deutsche Bank, which held one of the mortgages, claimed standing to enforce its mortgage based on an earlier assignment from Washington Mutual Bank, FA. Ibid. As here, in Suser, there was no challenge to the legitimacy of the underlying mortgage which was valid when executed. Id. at 319-26. As we said in Suser, if any subsequent assignments were subject to challenge, "[a] finding of a defect in the assignment would simply mean that the right to foreclose would reside with the assignor or some other entity." Id. at 324. We did not hold the mortgage could be voided on the basis that the assignment was defective. Id. at 324-26. We did permit discovery in Suser, but in that matter Deutsche Bank had already filed suit on the questioned mortgage and thus, discovery was permitted as a matter of course under the Rules of Court. Id. at 326. Suser's quiet title action was not based on some future claim, but instead was based on actual litigation. Id. at 320.

Plaintiffs in the present appeal are concerned there may be a problem in the future with their payments; however, they present no evidence to support this concern.

The judge correctly determined the appropriate remedy was to grant defendants' motion to dismiss plaintiffs' complaint without prejudice. Plaintiffs raised no issues regarding the validity of the notes or mortgages they signed; they were not in default; they were not being pursued by multiple creditors; no mortgage foreclosure action had been filed; and there was no indication their payments were not being credited or received by the wrong entity.

In affirming these orders, we do not express a view on the validity of any assignments. For enforcement, possession of the note or mortgage is required. Deutsche Bank Trust Co. Americas v. Angeles, 428 N.J. Super. 315, 318 (App. Div. 2012) (citing Deutsche Bank Nat'l Trust Co. v. Mitchell, 422 N.J. Super. 214, 216, 225 (App. Div. 2011)). **Finding no defects with the notes or mortgages, it follows plaintiffs were not entitled to discovery on assignments to which plaintiffs admit they are unaware or to an order extinguishing the notes and mortgages because of these alleged assignments.**

Plaintiffs' reference to MERS does not alter this result. **MERS is simply "a private corporation which administers a national electronic registry [that] tracks the transfer of ownership interests and servicing rights in mortgage loans."** Bank of New York v. Laks, 422 N.J. Super. 201, 203 n.1 (App. Div. 2011), overruled in part by US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 458 (2012) (quoting Bank of New York v. Raftogianis, 418 N.J. Super. 323, 332 (Ch. Div. 2010)). **Plaintiffs anticipated assignment of their mortgage because it expressly referenced MERS and its "successor and assigns." MERS' designation as nominee for AFM Mortgage Corp. was merely to facilitate subsequent transfers through MERS and not to separate the note from the mortgage**. See Raftogianis, supra, 418 N.J. Super. at 346.

Plaintiffs' discussion about securitization of their note does not create an issue that requires a judicial remedy. Enforcement depends on whether a party is a holder of the note or a non-holder in possession under the UCC. Angeles, supra, 428 N.J. Super. at 318. **Typically, mortgagors such as plaintiffs do not have standing "to challenge the [status of an assignee] ... based on purported noncompliance with certain provisions of [a pooling and servicing agreement]."** Wells Fargo Bank, N.A. v. Erobobo, 127 A.D.3d 1176, 1178 (N.Y. App. Div. 2015).

Jesinoski cited by plaintiffs is a federal Truth in Lending Act case that discusses the timely exercise of rescission under 15 U.S.C. § 1635(f). Jesinoski v. Countrywide Home Loans, Inc., ____ U.S. ____, 135 S. Ct. 790, 190 L. Ed. 2d 650 (2015). It is not controlling on the issues raised in this appeal.

We agree the judge did not abuse his discretion in denying plaintiffs' motion for reconsideration. "[A] trial court's reconsideration decision will be left undisturbed unless it represents a clear abuse of discretion." Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015) (citing Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994)). The judge's ruling found there was no new evidence presented by plaintiffs and, without such, there was no ground for reconsideration. See D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (App. Div. 1990).

We reject plaintiffs' remaining arguments as without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

[1] They also entered into a second note and mortgage in the amount of $58,307. The second note and mortgage are not included in the appendix.

[2] Defendants include Homecoming Financials Network, Inc.; Ocwen Loan Servicing; MERS; Residential Funding Company, LLC; Residential Funding Mortgage Securities 1, Inc.; Residential Funding Mortgage Securities 1 2006-S7; and U.S. Bank, N.A.

[3] See Gotlib v. Gotlib, 399 N.J. Super. 295, 312 (App. Div. 2008) (recognizing that "[a] mortgage secures a debt; `without an obligation to secure there can be no valid mortgage.'") (quoting Mardirossian v. Wilder, 76 N.J. Super. 37, 40 (Ch. Div. 1962)).