NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

NATIONSTAR MORTGAGE, LLC	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
JEFFREY F. KRATZ	:	
Appellant	:	No. 412 EDA 2018

Appeal from the Order Entered December 27, 2017
In the Court of Common Pleas of Bucks County Civil Division at No(s): 2009-08837

BEFORE: DUBOW, J., MURRAY, J., and PLATT*, J.

MEMORANDUM BY MURRAY, J.: **FILED SEPTEMBER 06, 2018**

Jeffrey F. Kratz (Appellant) appeals from the order dismissing his counterclaims against Nationstar Mortgage, LLC (Nationstar).[1] We affirm.

Because we write for the benefit of the trial court and the parties, who are familiar with this case, we set forth an abbreviated summary of the facts and procedural history. On January 19, 2007, Appellant executed a promissory note in favor of First Magnus Financial Corporation (First Magnus) in the amount of $240,000. Appellant also executed a mortgage, which named the mortgagee as Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for First Magnus. Appellant defaulted on the note by

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* Retired Senior Judge assigned to the Superior Court.

[1] As we discuss ***infra***, the trial court also granted summary judgment in favor of Nationstar.

failing to make payments after April of 2009.

On August 17, 2009, Aurora Loan Services, LLC (Aurora) filed a mortgage foreclosure complaint against Appellant, averring, *inter alia*, that it was the legal owner of the mortgage and it was "in the process of formalizing an assignment." Aurora's Complaint, 8/31/09, at ¶ 3. Two weeks later, on August 31, 2009, MERS recorded a corporate assignment of the mortgage to Aurora. Aurora then filed an amended complaint, attaching a copy of the recorded assignment of mortgage.

On January 29, 2010, Appellant filed a counseled answer, new matter, and counterclaims. He admitted "that on January 19, 2007 [he] made, executed and delivered a Mortgage upon the premises . . . to [MERS] as nominee for [First Magnus]." Appellant's Answer, New Matter & Counterclaim, 1/29/10, at ¶ 3. With respect to Aurora's claim that the mortgage was in default, Appellant further "[a]dmitted . . . that monthly payments of principal and interest may not have been timely paid."[2] ***Id.*** at ¶ 5. Appellant also

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[2] Furthermore, in response to Aurora's claim that $248,815.56 was now due on the mortgage, Appellant stated: "After reasonable investigation [he] is unable to form a belief as to the truth of the averments contained in this paragraph and strict proof thereof is demanded at trial." Appellant's Answer, New Matter & Counterclaim, 1/29/10, at ¶ 6. The trial court found that this general denial constituted an admission, which together with his admissions that he executed the mortgage and failed to make required payments, presented no genuine issue as to any material fact. ***See*** Trial Court Opinion, 3/19/18, at 11, ***citing Wisconson Tr. Co. v. Strausser***, 653 A.2d 688, 692 (Pa. Super. 1995) ("[I]n mortgage foreclosure actions, general denials by mortgagors that they are without information sufficient to form a belief as to

averred that because the corporate assignment of the mortgage to Aurora was not recorded until after Aurora filed the complaint, Aurora lacked standing to bring the suit. Finally, Appellant raised counterclaims that: (1) First Magnus failed to disclose "that there would be a Pricing Premium . . . because this was a 'no doc' Mortgage;"[3] (2) First Magnus engaged in predatory lending "by knowingly putting [him] into an unaffordable Mortgage Loan;" and (3) "[a]fter the Loan became delinquent, [First Magnus] engaged in Bad Faith Business Practices [by] leading [him] to believe that [it] would work with [him] in order to resolve [his] delinquency." ***Id.*** at ¶¶ 20, 24, 26.

In February of 2013, Aurora assigned the mortgage to Nationstar. Nationstar was substituted as the plaintiff in this matter. On March 23, 2017, Nationstar filed a motion for summary judgment, averring that Appellant either admitted or was deemed to have admitted the essential elements of its mortgage foreclosure action, and thus there were no material issues of fact in dispute. Appellant filed a response, attaching "an alleged 'expert report' purporting to identify . . . deficiencies with the Mortgage's assignments." Trial Court Opinion, 3/19/18, at 3. The trial court heard oral argument on October 24, 2017, and on October 26th, granted Nationstar's motion for summary

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the truth of averments as to the principal and interest owing must be considered an admission of those facts.").

[3] "A 'no doc' mortgage is a mortgage loan where the borrower is not required to provide documentation with respect to income and other financial assets." Trial Court Opinion, 3/19/18, at 2 n.2.

judgment.

Appellant appealed, but this Court stated that it was unclear whether his counter-claims were outstanding and thus issued a rule to show cause why the appeal should be not quashed as taken from a non-final order. On December 27, 2017, the trial court issued the underlying order formally dismissing Appellant's counterclaims. Nevertheless, this Court quashed the appeal on January 12, 2018, without prejudice to Appellant to file a notice of appeal from the December 27th order. ***See Nationstar Mortgage, LLC v. Kratz***, 3893 EDA 2017 (Pa. Super. Jan. 26, 2018) (order denying Appellant's motion for reconsideration of this Court's quashal order). Appellant then filed a notice of appeal on January 29, 2018. Both the trial court and Appellant have complied with Pa.R.A.P. 1925.[4]

Appellant presents the following issues for our review:

> [1.] Are there genuine issues of material fact as to [Nationstar's] standing to bring a mortgage foreclosure action against Appellant?
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> [2.] Has [Nationstar] failed to satisfy its burden of proof for summary judgment by submitting only an affidavit regarding the chain of ownership of the mortgage and note from the original mortgagor and original note holder *via* an affidavit?
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> [3.] Did [the trial court] err by dismissing Appellant's

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[4] Appellant's Rule 1925(b) statement was 3 pages long and raised at least 10 issues. We remind Appellant's counsel that a Rule 1925(b) statement "shall concisely identify each ruling or error" and "should not be redundant or provide lengthy explanations as to any error." ***See*** Pa.R.A.P. 1925(b)(4)(ii), (iv).

counterclaims?

Appellant's Brief at 8.[5]

In his first issue, Appellant avers that Nationstar was not entitled to summary judgment because there was a genuine issue of material fact as to whether Aurora (Nationstar's predecessor in interest) had standing to sue him. Appellant contends that Aurora did not own the mortgage at the time that it filed the complaint, and instead, the mortgage was titled in the name of MERS as a nominee for First Magnus. Next, Appellant asserts that MERS merely tracks the transfers of mortgages through an electronic registry, never owned the mortgage in this case, and thus could not have assigned the mortgage to Aurora. In support, Appellant cites ***Montgomery Co. v. MERS Corp., Inc.***, 904 F. Supp. 2d 436 (E.D. Pa. 2012), which he summarizes as a class action by Pennsylvania counties to recover recording fees. Finally, Appellant, citing his expert report, contends that because First Magnus filed for bankruptcy in 2007, it could not have legally assigned the mortgage to Aurora in 2009, and thus he should be permitted to present his expert witness before a jury.

This Court has stated:

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[5] Although Appellant's statement of questions involved raises three issues, the argument section of his brief sets forth only one issue, with five subheadings. We remind counsel: "The argument shall be divided into as many parts as there are questions to be argued [and shall include] discussion and citation of authorities as are deemed pertinent." ***See*** Pa.R.A.P. 2119(a). Nevertheless, because Appellant presents some argument in support of the three issues initially raised, we address them.

> In reviewing an order granting summary judgment, our scope of review is plenary, and our standard of review is the same as that applied by the trial court. . . . [A]n appellate court may reverse the entry of a summary judgment only where it finds that the lower court erred in concluding that the matter presented no genuine issue as to any material fact and that it is clear that the moving party was entitled to a judgment as a matter of law. In making this assessment, we view the record in the light most favorable to the nonmoving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. As our inquiry involves solely questions of law, our review is *de novo*.
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> . . . If there is evidence that would allow a fact-finder to render a verdict in favor of the non-moving party, then summary judgment should be denied.

Gerber v. Piergrossi, 142 A.3d 854, 858 (Pa. Super. 2016) (citation omitted).

In rejecting Appellant's claim that Aurora lacked standing to sue him, the trial court relied on ***U.S. Bank v. Mallory***, 982 A.3d 986 (Pa. Super. 2009) (***Mallory***). In that case, the defendant executed a mortgage in favor of MERS as nominee for Mortgage Lenders Network USA, Inc. ***Id.*** at 989. Subsequently, US Bank N.A. (US Bank) filed a complaint in mortgage foreclosure against the defendant, in which it "averred that it was the legal owner of the mortgage and was in the process of formalizing the assignment thereof." ***Id.*** The defendant failed to respond, and default judgment was entered against him. ***Id.*** It appears that the mortgage assignment to US Bank was not executed until after the complaint was filed and not recorded until after default judgment was entered. ***See id.*** The defendant filed a petition to strike and/or open the default judgment, claiming, *inter alia*, that:

(1) the complaint did not set forth any assignment of the mortgage, as required by Pa.R.Civ.P. 1147(a)(1);[6] and (2) it was improper under Pa.R.Civ.P. 1019(i) for US Bank "to merely assert it was the owner of the mortgage and was 'in the process of formalizing assignment of same."[7] ***Id.*** The trial court denied relief. ***Id.*** at 991.

On appeal to this Court, the defendant presented the same arguments, as well as a claim that US Bank "did not have standing to file a complaint in mortgage foreclosure [because it] was required to have executed and recorded a written assignment from MERS." ***Id.*** at 993. This Court disagreed, holding that: US Bank's complaint sufficiently put the defendant on notice of its claim of interest with regard to the mortgage; US Bank's "averment that it was in the process of formalizing the assignment sufficiently explained why, under Pa.R.C.P. 1019, a copy of the written assignment was not attached to the complaint;" and "that Pa.R.C.P. 1147(a)(1) does not require that a party have a recorded assignment as a prerequisite to filing a complaint in mortgage foreclosure." ***Id.*** at 993.

In finding Nationstar had standing to initiate the instant foreclosure

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[6] ***See*** Pa.R.Civ.P. 1147(a)(1) ("The plaintiff shall set forth in the complaint . . . the parties to and the date of the mortgage, and of any assignments, and a statement of the place of record of the mortgage and assignments[.]").

[7] ***See*** Pa.R.Civ.P. 1019(i) ("When any claim . . . is based upon a writing, the pleader shall attach a copy of the writing . . . , but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing.").

proceedings, the trial court cited ***Mallory***'s holding that the recording of a mortgage assignment is not required for a mortgage assignee to file a complaint, nor does the lack of a mortgage assignment preclude an assignee from seeking enforcement of the mortgage through foreclosure. Trial Court Opinion, 3/19/18, at 13. On appeal, Appellant wholly fails to address this analysis by the trial court; instead, he merely reiterates the claims already presented and rejected below. Upon review, we find that the trial court's reliance on ***Mallory*** was proper, and no relief is due on Appellant's standing claim.

Furthermore, Appellant has not presented any persuasive argument as to why, under ***Montgomery Co.***, the trial court should have found that MERS could not assign the mortgage to Aurora. Appellant's full discussion of ***Montgomery Co.*** is:

> In 2011, the legality of MERS was directly challenged by the Montgomery County Recorder of Deeds who filed a Class Action Suit on behalf of all Pennsylvania Counties seeking to recover the recording fees that would have been paid had each of the mortgage transfers supposedly lodged in the MERS system been filed in the official county registries. ***Montgomery County v. MERS Corp., Inc.***, 904 F. Supp. 2d 436 (E.D. Pa. 2012).

Appellant's Brief at 18. Appellant does not explain the federal court's conclusion nor, significantly, any relevance that a lawsuit concerning recording fees would have to this case. In any event, this Court has upheld MERS' authority to complete a sheriff's sale where the mortgage provided that MERS "is the mortgagee and is acting 'as a nominee for Lender and Lender's

successors and assigns,'" and that:

> Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

Mortgage Electronic Registration Systems, Inc. v. Ralich, 982 A.2d 77, 81 (Pa. Super. 2009) (emphasis removed). Here, the mortgage includes verbatim clauses. Thus, Appellant's claim that MERS lacked authority to exercise any of the interests vested in First Magnus is meritless. ***See id.***; Mortgage, 1/19/07, at 3, Exhibit A to Aurora's Complaint, 10/13/09.

Finally, we consider Appellant's claim that First Magnus could not have assigned the mortgage to Aurora while First Magnus was in bankruptcy. We note that Appellant does not dispute the trial court's finding that he lacked standing to challenge the assignments of the mortgage — the court reasoned that Appellant was neither a party to nor a third-party beneficiary of the assignment contracts. ***See*** Trial Court Opinion, 3/19/18, at 12. ***See also JP Morgan Chase Bank, N.A. v. Murray***, 63 A.3d 1258, 1263 (Pa. Super. 2013) ("***JP Morgan***") (in a contract action, "the complainant, to establish standing, must plead and prove its right to sue under that instrument," and "[w]hen suit is brought against the defendant by a stranger to his contract, [the defendant] is entitled to proof that the plaintiff is the owner of the claim against him."). In the absence of any argument that he in fact did have standing to challenge

the assignments, no relief is due on Appellant's claim. ***See Coward v. Owens-Corning Fiberglas Corp.***, 729 A.2d 614, 626 (Pa. Super. 1999) ("[F]ailure to posit a properly developed argument on this point effectively waives the issue for purposes of appellate review.").

In Appellant's second issue, he reiterates that he may challenge Nationstar's standing to bring this action in foreclosure. Appellant's Brief at 19. His discussion then focuses on Nationstar's alleged failure to provide proof that it possessed the mortgage. Appellant claims that the original note has not been entered into evidence nor examined by him, the copy of the note attached to the complaint "is not conclusive evidence," and the "only evidence which [Nationstar] has presented regarding the ownership of the note is a bald allegation in [an affidavit by a Nationstar employee] that 'Nationstar is currently in Possession of the Note.'" Appellant's Brief at 20-21, ***citing JP Morgan***, 63 A.3d 1258 (reversing summary judgment "upon finding the parties disagreed as to whether [the mortgagee] produced for [the mortgagor's] inspection the Original Note and whether the [document which purported to endorse the original note in blank] was itself an original").

Here, in granting summary judgment in favor of Nationstar, the trial court reasoned: "Appellant, through his responses in his Answer and elsewhere in the record, admits that he executed a Mortgage on the Property." Trial Court Opinion, 3/19/18, at 15. This finding is confirmed by the record. ***See*** Appellant's Answer, New Matter & Counterclaim, 1/29/10, at ¶ 3.

Appellant disregards that he admitted to executing, as well as defaulting on, the original note. Thus, any present challenge to the authenticity of the note is waived. ***See*** Pa.R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal."). With respect to the alleged invalidity of the various assignments of the mortgage, we reiterate that Appellant does not dispute the trial court's finding that he lacked standing to challenge the assignments. Accordingly, no relief is due.

In Appellant's final issue, he avers that his counterclaims should not have been dismissed. First, he reiterates that First Magnus did not disclose to him that the mortgage was a "no doc" mortgage and had a pricing premium. He disputes the trial court's finding that the "Notice of Loan Approval" document demonstrated that he was required to provide income and asset information — Appellant argues, in sum: "A close inspection, however, of the 'notice of Loan Approval' indicates that there was no verification of [his] income or assets nor were they ever requested. This is conclusive evidence that the mortgage from First Magnus was a 'no doc' mortgage which is not allowed." Appellant's Brief at 24. Next, Appellant asserts that the trial court did not indicate what parts of the record it relied on in finding there was no evidence that Nationstar or its predecessors in interest engaged in predatory lending or any wrongful behavior. Appellant maintains that he was unaware that the mortgage was unaffordable. Finally, Appellant alleges that his counterclaim against Aurora for bad faith business practices was proper

because it stemmed from the creation of the mortgage.

Aside from a reference to the trial court's statement, "that 'Counterclaims in a Mortgage Foreclosure Action are only permissible if they arise from the same transaction from which the Plaintiff's cause of action arose," Appellant has not provided citation to or discussion of legal authority to support any of his claims, each of which involve multiple issues of law. ***See*** Appellant's Brief at 25. Accordingly, he has waived his challenge to the dismissal of his counterclaims. ***See Harris v. Toys "R" Us-Penn, Inc.***, 880 A.2d 1270, 1279 (Pa. Super. 2005) ("[F]ailure to develop an argument with citation to, and analysis of, relevant authority waives that issue on review.").

Furthermore, we note that even if the issues were not waived, Appellant would be not be entitled to relief. The trial court rejected Appellant's claim that the mortgage was a "no doc" mortgage, citing the "Notice of Loan Approval," which made "clear that Appellant provided to First Magnus numerous financial documents evidencing [his] financial circumstances prior to settlement of the Mortgage." Trial Court Opinion, 3/19/18, at 6-7. This document would support the trial court's finding that First Magnus was satisfied that Appellant had provided, *inter alia*, "all pages of most recent 2 mo bk stmts [sic]" and "a satisfactory payment history from PNC [for another loan]." Notice of Loan Approval, 1/17/07, at 1-2.

In addition, the trial court correctly observed that in Pennsylvania, there is no common law cause of action for "predatory lending" — a statement which

Appellant does not dispute on appeal. ***See Schnell v. Bank of New York Mellon***, 828 F.Supp.2d 798, 803 n.3 (E.D. Pa. 2011) (Pennsylvania does not recognize predatory lending as independent cause of action, and instead, any claim for relief for predatory lending practices must be supported by some statutory basis). Nevertheless, the trial court noted that a private cause of action may be brought under the Unfair Trade Practices and Consumer Protection Law (UTPCPL), by showing that the plaintiff "justifiably relied on the defendant's wrongful conduct or representation and that he suffered harm as a result of that reliance." Trial Court Opinion, 3/19/18, at 8, ***citing Yocca v. Pittsburgh Steelers Sports, Inc.***, 854 A.2d 425 (Pa. 2004). The court found that here: "The record makes clear that incident to the creation of the Mortgage, First Magnus provided Appellant with all the requisite information [he] needed to fully comprehend the terms of the agreement," "Appellant does not allege he was an unsophisticated first time mortgagor," "Appellant had ample opportunity to read, review, and contemplate the terms of the loan," and "Appellant voluntarily agreed to [the terms] by virtue of his signature on the Mortgage." Trial Court Opinion, 3/19/18, at 8.

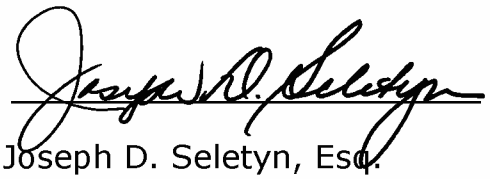
Finally, with respect to Appellant's counterclaim that Aurora engaged in bad faith business practices by misleading him after he defaulted on the mortgage, the trial court reasoned, "if a defendant raises counterclaims that arose once the mortgage was in default, and said counterclaims do not relate to part of, or incident to, the creation of the mortgage, said counterclaims

may be struck." ***Id.*** at 9, ***quoting Mellon Bank, N.A. v. Joseph***, 406 A.2d 1055, 1060 (Pa. Super. 1979). Again, Appellant does not address the court's reasoning, which is supported by both the record and case law. His general claim that Aurora's post-default conduct pertained to the creation of the mortgage – in the absence of waiver – would be meritless.

For the foregoing reasons, no relief is due. We therefore affirm the trial court's order dismissing Appellant's counterclaims.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 9/6/18