IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN T. LISMORE,	§	
	§	No. 175, 2013
Defendant Below,	§	
Appellant,	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
FEDERAL NATIONAL	§	C.A. No. 11L-09-128
MORTGAGE ASSOCIATION,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: July 16, 2013
Decided: August 23, 2013

Before **BERGER**, **JACOBS** and **RIDGELY**, Justices.

O R D E R

This 23rd day of August 2013, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Kevin T. Lismore, appeals from the Superior Court's March 14, 2013 order granting a writ of possession to the plaintiff-appellee, Federal National Mortgage Association ("Federal"). Federal moves to affirm the Superior Court's judgment on the ground that it

is manifest on the face of the opening brief that this appeal is without merit.[1] We agree and affirm.

(2) The record before us reflects that, on November 21, 2011, an *in rem* default judgment was obtained by Federal against Lismore in the Superior Court. Thereafter, the property located at 435 Nilsen Road, Bear, Delaware, 19701 (the "Property") was sold at a properly-noticed sheriff's sale on November 13, 2012. In the absence of any objection by Lismore, the sale of the Property was confirmed by the Superior Court and title thereto was transferred to Federal on December 21, 2012. Federal filed a petition for a writ of possession on January 29, 2013. The Superior Court issued an order on February 13, 2013 directing Lismore to show cause why a writ of possession should not issue. In the absence of any objection, the Superior Court granted the petition on March 14, 2013. This appeal followed.

(3) In his appeal, Lismore claims that Federal acted in bad faith, was negligent, and is liable for breach of contract and breach of the duty of implied good faith and fair dealing in connection with the sheriff's sale of the Property. Lismore further claims that he should not be evicted from the Property for those same reasons.

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[1] SUPR. CT. R. 25(a).

(4) Pursuant to Superior Court Civil Rule 69(d):

> [R]eturn of sheriff's sales of real estate shall be made on the third Monday of the month [following the sale.] [A]pplications to set aside such sales shall be made on or before the first Thursday [following such] date, and all such sales not objected to on or before the first Thursday, shall on the first Friday, be confirmed as a matter of course.

Delaware law provides that confirmation of a foreclosure sale generally bars a collateral attack on the sale.[2] The only allowable objection to the sale after the confirmation period is a lack of proper notice of the sale.[3]

(5) Because Lismore failed to object to the sheriff's sale, he is now barred from making a collateral attack on the sale. In the absence of any evidence of a lack of notice to Lismore or any procedural defect in obtaining title and possession of the Property on the part of Federal, we conclude that the judgment of the Superior Court must be affirmed.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

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[2] *Deibler v. Atlantic Properties Group, Inc.*, 652 A.2d 553, 556 (Del. 1995) (citing Victor B. Woolley, 2 *Practice in Civil Actions in Delaware* 768 (1906)).

[3] *Id.*

NOW, THEREFORE, IT IS ORDERED that Federal's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice