IN THE SUPREME COURT OF THE STATE OF DELAWARE

VICTORIA KOPUNEK,	§
	§ No. 326, 2012
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
V.	§ of the State of Delaware
	§ in and for Sussex County
PNC BANK N.A.,	§ C.A. No. S10C-03-038
	§
Plaintiff Below-	§
Appellee.	§
THOMAS KOPUNEK,	§
THOMAS KOPUNEK,	§ § No. 327, 2012
THOMAS KOPUNEK, Defendant Below-	§ No. 327, 2012
Defendant Below-	§ No. 327, 2012 §
	§ No. 327, 2012§
Defendant Below-	§ No. 327, 2012 §
Defendant Below-Appellant,	 § No. 327, 2012 § § Court BelowSuperior Court § of the State of Delaware
Defendant Below-Appellant,	 § No. 327, 2012 § § Court BelowSuperior Court § of the State of Delaware
Defendant Below-Appellant, v.	 § No. 327, 2012 § § Court BelowSuperior Court § of the State of Delaware § in and for Sussex County § C.A. No. S10C-03-037
Defendant Below-Appellant, v.	 § No. 327, 2012 § § Court BelowSuperior Court § of the State of Delaware § in and for Sussex County

Submitted: August 16, 2012 Decided: September 24, 2012

Before HOLLAND, BERGER and JACOBS, Justices

ORDER

This 24th day of September 2012, upon consideration of the appellants' opening briefs and the appellee's motions to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

- (1) The defendants-appellants, Victoria and Thomas Kopunek (the "Kopuneks"), appealed from the Superior Court's May 18, 2012 order granting the motion of the plaintiff-appellee, PNC Bank N.A. ("PNC"), to liquidate two default judgments obtained by PNC against the Kopuneks. The Bank has moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of the Kopuneks' opening briefs that their appeals are without merit. We agree and affirm.
- (2) The record before us reflects that the Kopuneks are the owners and president and vice-president of Amercis International, Inc. ("Amercis").³ They also are guarantors of that entity's debt. Beginning in 1999, Amercis entered into commercial loan transactions with Baltimore Trust Company ("Baltimore") and Mercantile Peninsula Bank ("Mercantile"). PNC subsequently became the successor-in-interest to Baltimore and Mercantile by virtue of a merger. As such, it became the holder of the notes, mortgages and commercial documents related to the loan transactions with Amercis.
- (3) When Amercis defaulted on the loans, PNC moved for the entry of default judgments against Amercis and the Kopuneks in the Superior

¹ The Kopuneks originally filed two separate appeals, which the Court subsequently consolidated. *Kopunek v. PNC Bank*, Del. Supr., Nos. 326 and 327, 2012, Berger, J. (Aug. 20, 2012).

² Supr. Ct. R. 25(a).

³ That portion of the Superior Court's May 18, 2012 order granting PNC's motion to liquidate three additional default judgments against Amercis was not appealed to this Court.

Court. Subsequently, the parties entered into several court-approved stipulations conceding Amercis's, and the Kopuneks', liability, but stipulating that the amounts owed to PNC would be determined at an evidentiary hearing if agreement could not be reached on that issue. On October 25, 2011, counsel for PNC notified the Superior Court that the parties were unable to agree on the amounts owed to PNC and requested an evidentiary hearing.

- (4) The hearing took place in the Superior Court on November 21, 2011. PNC presented the testimony of Walter Kulaga, Vice President of PNC. Kulaga authenticated the relevant loan documents, testified regarding the amounts owed to PNC and explained the details of the merger involving PNC, Baltimore and Mercantile. Documents supporting Kulaga's testimony were introduced and admitted into evidence without objection by the Kopuneks' counsel.
- (5) Mr. Kopunek testified on behalf of himself, Mrs. Kopunek and Amercis. He offered no testimony regarding the amounts due and owing to PNC, but, rather, presented a new argument---that PNC was not authorized to institute the foreclosure actions in the first instance because there had been no formal assignment of the mortgages and notes to PNC.

- (6) Following the filing of post-hearing briefs, the Superior Court issued its decision on May 18, 2012. The Superior Court took judicial notice of the fact that PNC was not required to file assignments of the mortgages and notes PNC had acquired as a result of its merger with Baltimore and Mercantile and that PNC was the proper party to bring the foreclosure actions against Amercis and the Kopuneks.⁴ The Superior Court further determined that the Kopuneks were estopped from denying liability by virtue of their signed stipulations, and that their arguments regarding PNC's authority to institute the foreclosure action had been waived. On May 31, 2012, the Superior Court entered orders liquidating the default judgments against the Kopuneks in the total amount of \$526,373.04, plus interest.
- (7) In this appeal from the Superior Court's May 18, 2012 decision, the Kopuneks claim that a) PNC failed to properly record the assignments; b) PNC failed to file the stipulations in a timely manner; c) PNC failed to comply with a federal consent order regarding mortgage foreclosures; d) the Superior Court judge who previously was involved in confession of judgment cases involving the parties should have recused himself.
- (8) We have reviewed the entire record in this case, including the transcript of the November 21, 2011 hearing. We conclude that the Superior

⁴ Del. Code Ann. tit. 8, §259(b).

Court correctly determined that the Kopuneks' attempt to re-argue the issue of liability was improper and beyond the scope of the matters before the court at the hearing, since the sole purpose of the hearing was to ascertain the amount of money owed by Amercis and the Kopuneks to PNC. Moreover, in the absence of any testimony by the Kopuneks disputing PNC's calculation of the amount owed, the Superior Court properly accepted PNC's calculation. The Kopuneks' final claim is that the Superior Court judge previously involved in confession of judgment cases involving the parties should have recused himself. Because that issue was not raised below, we decline to address it in this proceeding.⁵

(9) 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.

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

BY THE COURT:

/s/ Carolyn Berger Justice

⁵ Supr. Ct. R. 8.