

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROSE M. JACQUES,	§
	§
Defendant Below-	§ No. 429, 2011
Appellant,	§
	§
v.	§
	§
FDIC, as conservator for IndyMac	§ Court Below—Superior Court
Federal Bank, FSB, successor to	§ of the State of Delaware,
IndyMac Bank FSB , assignee of	§ in and for New Castle County
Mortgage Electronic Registration	§ C.A. No. 08L-12-131
Systems, Inc., as nominee for	§
Dollar Mortgage Corporation,	§
	§
Plaintiffs Below-	§
Appellees.	§

Submitted: December 16, 2011
Decided: February 8, 2012

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 8th day of February 2012, upon consideration of the appellant’s opening brief, the appellees’ motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Rose Jacques, filed this appeal from an order of the Superior Court, dated August 5, 2011, affirming a summary judgment ruling in favor of the appellees (collectively “FDIC”). FDIC has filed a motion to affirm the

judgment below on the ground that it is manifest on the face of Jacques' opening brief that her appeal is without merit. We agree and affirm.

(2) The record reflects that FDIC filed a complaint against Jacques on December 8, 2008, seeking a judgment of over \$350,000 on a note secured by a mortgage on Jacques' investment property located in New Castle, Delaware. FDIC alleged that Jacques had defaulted on the note by failing to make required payments and sought to foreclose on the property. Following a hearing held on May 12, 2011, a Superior Court Commissioner recommended that summary judgment be granted to FDIC on the ground that Jacques had signed the mortgage and had clearly defaulted on the mortgage by failing to make the required payments. On May 17, 2011, summary judgment was entered in favor of FDIC.

(3) Jacques appealed to a judge from the Commissioner's order.¹ Jacques failed to have a copy of transcript of the hearing before the Commissioner prepared in a timely fashion,² as required by Superior Court Civil Rule 132(a)(4)(iii). The Superior Court, therefore, dismissed her appeal for failure to comply with the court's rules. Alternatively, after reviewing the untimely prepared transcript, the Superior Court affirmed the Commissioner's grant of summary judgment. That order was entered on August 5, 2011. Thereafter, the property was sold on August

¹ See Del. Super. Ct. Civ. R. 132(a)(4)(ii).

² The Superior Court directed Jacques to order and pay for the transcript by June 16, 2011. Although Jacques ordered the transcript on June 13, she failed to pay for the transcript in full until August 5.

9, 2011. The sale was duly confirmed and title to the property was transferred to FDIC on November 1, 2011.

(4) While difficult to understand, Jacques' argument in her opening brief on appeal appears to be that the Superior Court deprived her of the opportunity to present a defense when it failed to order FDIC to provide her with the original, signed note and mortgage documents so that she could determine whether she would admit or deny that her signature was on the documents. She alleges that she is a victim of predatory lending practices and fraud.

(5) Having carefully considered the parties' respective positions on appeal, we find it manifest that the judgment of the Superior Court should be affirmed. The record reflects that Jacques was given ample opportunity to present her arguments at the hearing but simply failed to present a valid defense to the foreclosure action.³

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

³ See *Gordy v. Preform Building Components, Inc.*, (310 A.2d 893 (Del. Super. 1973) (holding that valid defenses to a mortgage foreclosure action are payment, satisfaction, or a plea in avoidance of the debt).