Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-371

JUNE TERM, 2020

Robert Grundstein* v. PennyMac Bank/Successor in Interest	}	APPEALED FROM:
	}	
	}	Superior Court, Lamoille Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 82-4-19 Lecv
		Trial Judge: Megan J. Shafritz

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals the dismissal of his action for declaratory relief, arguing that the court should have reached the merits of his case. We affirm.

Plaintiff filed suit for declaratory relief against defendant bank, seeking a declaration that his mortgage loan balance be decreased by $36,930.63. Bank moved to dismiss for failure to state a claim. The court granted bank's motion to dismiss, concluding that the complaint did not present an actual, justiciable controversy because plaintiff had resolved the status of his mortgage balance by entering into an agreement with bank. Plaintiff moved to reconsider, and the court denied the motion. Plaintiff then filed this appeal.

On appeal, plaintiff argues that the trial court erred in dismissing his case because he claims that bank is barred from collecting for arrearages that accrued during the pendency of the foreclosure proceeding under Cenlar FSB v. Malenfant, 2016 VT 93, 203 Vt. 23. "In reviewing a court's grant of a motion to dismiss, this Court accepts all factual allegations pleaded in the complaint as true and all reasonable inferences from those facts." Gilman v. Me. Mut. Fire Ins. Co., 2003 VT 55, ¶ 14, 175 Vt. 554 (mem.). This Court will dismiss a case only when "it appears beyond doubt that there exist no circumstances or facts which the plaintiff could prove about the claim made in his complaint which would entitle him to relief." Id. (quotation omitted).

For purposes of reviewing the dismissal in this case, we accept the facts as presented in plaintiff's complaint. Id. We also take judicial notice of court decisions and records referenced in the pleadings. See In re Russo, 2013 VT 35, ¶ 16 n.4, 193 Vt. 594 (explaining that "a court may take judicial notice of court decisions or documents referenced in the complaint" when assessing failure to state claim). Plaintiff's complaint alleged the following. JPMorgan Chase Bank, the predecessor to defendant bank in this action, filed a foreclosure complaint against

plaintiff in 2009, Docket No. 228-8-09 Lecv. The court records in that case indicate that in July 2005 plaintiff had executed a note in favor of Chase Bank with a principal of $155,000. At the time, the balance of the loan secured by the mortgage was $148,589.33. The docket entries for Docket No. 228-8-09 Lecv indicate that in 2012 the parties executed a loan modification agreement and the case was consequently dismissed with prejudice. Court records also indicate that in 2014 Chase Bank, later succeeded by PennyMac, filed a lawsuit arising out of the default of the 2012 loan modification agreement, Docket No. 234-12-14 Lecv. In that case, plaintiff asserted counterclaims, challenging the calculation of arrearages. In July 2019, the parties filed a stipulation of dismissal, indicating that they had agreed to a loan modification agreement. The court dismissed that action under Vermont Rule of Civil Procedure 41(a)(2), which allows dismissal based on the stipulation of the parties.

In April 2019, plaintiff filed this action for declaratory relief. Plaintiff's complaint alleged that the 2009 foreclosure action was caused by bank's mistake and that he was not in default on the loan. Plaintiff alleged that there was no basis for bank to increase the amount he owed, and that under Cenlar FSB, 2016 VT 93, bank was precluded from collecting for arrearages accrued during the foreclosure proceeding.

In response to bank's motion to dismiss, the trial court concluded that declaratory relief was not available to plaintiff because there was no actual controversy. The court explained that by entering into loan modification agreements with bank, plaintiff assented to the terms of the loan and rendered moot any legal claim regarding the proper calculation of the remaining mortgage balance. Because there was no actual, justiciable controversy, the court concluded it had no jurisdiction and dismissed the case.

On appeal, plaintiff fails to demonstrate that the court erred in dismissing his case.[1] A declaratory judgment action is designed to establish "a declaration of rights, status, and other legal relations of parties to an actual or justiciable controversy." Doria v. Univ. of Vt., 156 Vt. 114, 117 (1991) (quotation omitted). "Unless an actual or justiciable controversy is present, a declaratory judgment is merely an advisory opinion which we lack the constitutional authority to render." Id. Plaintiff seeks a declaration that his mortgage loan balance should be decreased by $36,930.63; however, plaintiff entered an agreement with bank agreeing to the current loan balance. There is no existing question regarding bank's entitlement to this money. This was already established by the parties' mutual agreement.[2] Therefore, the trial court correctly determined that there was no justiciable controversy.

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[1] During the pendency of this appeal, bank moved to dismiss, arguing that plaintiff failed to articulate a justiciable controversy. This Court indicated that the motion would be considered with the merits. The motion to dismiss is denied. However, as explained in this decision, this Court agrees that there was no justiciable controversy and therefore affirms the superior court's order.

[2] Plaintiff asserts that the issue of the proper loan balance is not moot because he filed this declaratory judgment action before Docket No. 234-12-14 was fully resolved. The

Plaintiff also argues on appeal that the trial court erred in denying his motion for relief from judgment. "The trial court has discretion when ruling on a motion for relief from judgment under Rule 60(b)." Sandgate Sch. Dist. v. Cate, 2005 VT 88, ¶ 6, 178 Vt. 625 (mem.). Here, the court did not abuse its discretion in denying plaintiff relief because it had properly concluded that dismissal was appropriate.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

William D. Cohen, Associate Justice

mootness doctrine requires that an actual controversy exist "at all stages of review, not merely at the time the plaintiff originally filed the complaint." Doria, 156 Vt. at 117. Having entered into an agreement with bank, plaintiff agreed to the terms and the calculation of the loan balance. There no longer exists a justiciable controversy and therefore declaratory relief is not an appropriate remedy.