COURT OF CHANCERY
OF THE
STATE OF DELAWARE

ABIGAIL M. LEGROW
MASTER IN CHANCERY

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 11400
WILMINGTON, DE 19801-3734

Submitted: October 8, 2015
Final Report: December 8, 2015

Sirena Renee Permenter
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Middletown, DE 19709

Kimberly E. C. Lawson
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1201 Market Street, Suite 1500
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Re: *Sirena R. Permenter v. JP Morgan Chase Bank National Association*
C. A. No. 10442-ML

Dear Ms. Permenter and Counsel:

Sirena R. Permenter ("Ms. Permenter") filed this action as a "Writ of Error," seeking (vaguely) relief from a Superior Court order – later affirmed by the Supreme Court – that resulted in a foreclosure and sheriff's sale of a house previously owned by Ms. Permenter and her husband. For the reasons that follow, I recommend that the Court grant the motion for judgment on the pleadings filed by JP Morgan Chase Bank, N.A. ("JP Morgan"), and dismiss this action in its entirety because Ms. Permenter's claims are barred by principles of *res judicata*. This is my final report.

BACKGROUND

Except as otherwise noted, the following facts are drawn from Ms. Permenter's complaint, styled as a "Writ of Error," along with the documents it incorporates by reference, as well as judicially noticed facts arising from the foreclosure action filed in the Superior Court and the appeal Ms. Permenter took from that action.[1]

Ms. Permenter's claims, along with the precise relief she seeks, are difficult to recount because the pleadings she filed largely consist of quotations of various state and federal laws, without any effort to tie those laws to the (bare) factual allegations in the complaint. Aside from quoting various laws, the only facts Ms. Permenter alleges in the complaint are: (1) counsel for "Chase"[2] filed an action in the Superior Court, case number N10L-05-167 JAP, and (2) the Superior Court erred in that action "by violating the rights [sic] through misrepresentation, denying proof of claim, due process, color of law, unjust enrichment, and not

[1] This Court may take judicial notice of certain adjudicative facts without converting a motion for judgment on the pleadings into a motion for summary judgment. Delaware R. Evid. ("DRE") 201; *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 318 & n. 28 (Del. 2004). The pleadings filed in the Superior Court and the Supreme Court, including the orders issued by both courts, are adjudicative facts of which I take judicial notice for purposes of this motion. DRE 201(b)(2). *See also Jepsco, Ltd. v. B.F. Rich Co., Inc.*, 2013 WL 593664, at *1 (Del. Ch. Feb. 14, 2013); *West Coast Mgmt. & Capital, LLC v. Carrier Access Corp.*, 914 A.2d 636, 641 (Del. Ch. 2006).

[2] Ms. Permenter named as respondents three different entities that contain "Chase" in their names: Chase Home Finance, LLC, JP Morgan Chase National Bank, and Chase Manhattan Bank. She does not appear to differentiate between the three in her allegations regarding "Chase." According to Superior Court docket in the foreclosure action, Chase Home Finance, LLC filed the foreclosure complaint.

performing his [sic] fiduciary duty as public administrator/trustee."[3] The relief Ms. Permenter seeks is not stated in the complaint. In a proposed "Order for Declaratory Judgment" that Ms. Permenter filed in response to JP Morgan's Motion for Judgment on the Pleadings (the "Motion"), Ms. Permenter seeks a "[d]eclaratory [j]udgment rendering[:] 1) proper status, 2) absolute fiduciary power, 3) absent public easement of the assets associated to the mention agency/blind trust above[,] [and] 4) [h]ereafter having [p]lenary power as sole [p]roprietor of said agency/blind trust."[4]

Ms. Permenter's letter dated September 29, 2015, in which she responded to the Motion, contains perhaps her best articulation of the facts and claims she seeks to bring in this action. Namely, Ms. Permenter contends that JP Morgan or its related entities engaged in fraud and deception both in obtaining the mortgage on her property and in pursuing the foreclosure action in the Superior Court. She contends – confusingly – that she "never received a loan," that she "gave valuable consideration [for] 'the note, at [which] point the transaction was settled in full,'" and that the mortgage – which Ms. Permenter describes as an investment contract – was "unconscionable, malice intent, bad faith, racketeering, impediment of trust,

[3] Complaint (Writ of Error) at 2.
[4] Proposed Order for Declaratory Judgment at 6.

misrepresentation, deceptive practices, [and] fraud on its face."[5] In other words, Ms. Permenter challenges the validity of the mortgage and, by extension, the resulting foreclosure and sheriff's sale of her home.

A clearer picture of the background facts emerges from a review of the Superior Court's docket and key pleadings in *Chase Home Finance, LLC v. Permenter*, Case No. N10L-05-167 JAP (the "Foreclosure Action").[6] In May 2010, Chase Home Finance, LLC ("Chase") filed a foreclosure complaint against Ms. Permenter and her husband, John Permenter, alleging that: (i) in 2006, Ms. Permenter executed and delivered to Mortgage Electronic Registration Systems, Inc. ("MERS") a mortgage on her property, (ii) Mr. Permenter later became an owner in the property subject to the mortgage, (iii) the Permenters defaulted on their mortgage payments, and (iv) the mortgage was assigned to Chase in April 2010.[7] The Permenters did not respond to the complaint and Chase therefore obtained a default judgment on July 21, 2010. In 2013, with a sheriff's sale apparently imminent, Ms. Permenter appeared in the Foreclosure Action for the first time and filed a motion to compel and a motion to stay the sale. After holding a hearing, the Superior Court denied both motions.

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[5] Letter to the Court from Ms. Permenter dated Sept. 19, 2015 at 2 ¶¶ 6-8.
[6] A copy of the Superior Court's docket appears at Exhibit A to JP Morgan's opening brief in support of the Motion.
[7] *Chase Home Finance, LLC v. Permenter*, No. N10L-05-167 JAP, Foreclosure Complaint ¶¶1-4.

The Permenter's property was sold at sheriff's sale on August 13, 2013, the sale was confirmed on September 20, 2013, and title to the property transferred to Freddie Mac on November 18, 2013.[8] When Ms. Permenter refused to leave the property, Freddie Mac filed a writ of possession on November 18, 2013. After holding a hearing, the Superior Court made Freddie Mac's writ of possession absolute, but gave the Permenters ninety days to vacate the property.[9] On April 4, 2014, Ms. Permenter filed a motion to stay the lock-out, which the Superior Court denied. Ms. Permenter then filed an appeal to the Delaware Supreme Court.

On July 16, 2014, the Delaware Supreme Court issued an order affirming the Superior Court's denial of Ms. Permenter's motion to stay the writ of possession or reopen the judgment. The Supreme Court reasoned that Ms. Permenter failed to articulate any error in the Superior Court's denial of her motions.[10]

Ms. Permenter filed this action on December 10, 2014. After answering the complaint, JP Morgan filed the pending Motion on September 10, 2015.

ANALYSIS

This Court may enter judgment under Court of Chancery Rule 12(c) if the pleadings reveal that there are no material facts in dispute and the moving party is

[8] *Permenter v. Chase Home Finance, LLC*, No. 184, 2014 (Del. July 16, 2014) (Order) (hereinafter cited as "Supreme Court Order") ¶¶ 2-3.
[9] *Id*. ¶ 3.
[10] *Id*. ¶¶ 5-6.

entitled to judgment as a matter of law.[11] The standard governing a motion for judgment on the pleadings largely is the same as that governing a motion to dismiss under Court of Chancery Rule 12(b)(6): the Court must accept all well-pleaded factual allegations as true and draw reasonable inferences in favor of the non-moving party.[12] The Court need not, however, accept conclusory allegations or draw unreasonable inferences from the pleadings.[13]

As a preliminary matter, it is debatable whether this Court has subject matter jurisdiction over Ms. Permenter's claims. As a court of limited jurisdiction, the Court of Chancery may retain jurisdiction over an action only when it falls into one of three categories: (1) the plaintiff asserts an equitable claim; (2) the plaintiff requests equitable relief for which there is no adequate remedy at law; or (3) subject matter jurisdiction is conferred by statute.[14] When it appears that the Court lacks jurisdiction over the subject matter of an action, the action must be dismissed.[15] Given the difficulty in parsing Ms. Permenter's complaint, I cannot say with confidence whether she is making an equitable claim or seeking an

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[11] *Desert Equities, Inc. v. Morgan Stanley Lev. Equity Fund, II, L.P.*, 624 A.2d 1199, 1205 (Del. 1993).
[12] *Aveta, Inc. v. Bengoa*, 2008 WL 5255818, at *2 (Del. Ch. Dec. 11, 2008); *Rag Am. Coal Co. v. AEI Res., Inc.*, 1999 WL 1261376, at *1 (Del. Ch. Dec. 7, 1999).
[13] *Aveta, Inc. v. Bengoa*, 2008 WL 5255818, at *2; *McMillan v. Intercargo Corp.*, 768 A.2d 492, 499-500 (Del. Ch. 2000).
[14] *See* 10 *Del. C.* §§ 341, 342; *Candlewood Timber Gp., LLC v. Pan Am Energy, LLC*, 859 A.2d 989, 997 (Del. 2004).
[15] Ct. Ch. R. 12(h)(3).

equitable remedy. Arguably, she is making a claim to quiet title to the property. Although the Court's subject matter jurisdiction is a matter of dispute, I believe it is better for all parties to resolve the Motion on its merits, particularly where, as here, the doctrine of *res judicata* plainly bars Ms. Permenter's claims.

JP Morgan next argues that Ms. Permenter's action is barred by *res judicata* because her claims, and the question of title to the property, were resolved by a final judgment of the Superior Court, which was affirmed by the Delaware Supreme Court. Ms. Permenter does not directly confront this argument, except to argue that "[t]here never was a trial. There were no real parties of interest at the 'hearing' except for [Ms. Permenter]."[16] It is not clear to me what Ms. Permenter means by this statement.

The doctrine of *res judicata* is well established and long preceded the development of the law in this country.[17] The doctrine exists to "provide a definite end to litigation, prevent vexatious litigation, and promote judicial economy."[18] *Res judicata* bars a claim in a second action when (1) the court in the first action had jurisdiction over the subject matter and the parties, (2) the parties in the first action were the same as, or in privity with, the parties in the second action, (3) the first cause of action or the issues decided therein were the same as the issues raised

[16] Letter to the Court from Ms. Permenter dated Sept. 19, 2015 at 1.
[17] *LaPoint v. AmerisourceBergen Corp.*, 970 A.2d 185, 191 (Del. 2009).
[18] *Id*.

in the second action, (4) the issues in the first action were decided adversely to the petitioner in the second action, and (5) the decree in the first action was a final decree.[19]

Each of those elements is met in this case. The first action, *i.e.* the Foreclosure Action, was one over which the Superior Court had jurisdiction.[20] The Superior Court also had the authority to issue the writ of possession.[21] The parties in the Foreclosure Action were the same as the parties in this action, with the exception of additional respondents that Ms. Permenter added to this action, all of which are affiliates or agents of JP Morgan, along with Freddie Mac, who now holds title to the property. The additional parties are in privity with the original plaintiff in the Foreclosure Action, and their inclusion in this action does not bar application of the *res judicata* doctrine.

Additionally, the issues Ms. Permenter raises in this action are the same as the issues she raised, or could have raised, in the Foreclosure Action. The principles of *res judicata* extend not just to claims or issues that were raised and decided in the first suit, but also to all issues that *might* have been raised and

[19] *Dover Historical Society, Inc. v. City of Dover Planning Comm'n*, 902 A.2d 1084, 1092 (Del. 2006).
[20] *See* 10 *Del. C.* § 5061(a); 10 *Del. C.* § 542(b).
[21] 10 *Del. C.* § 562.

decided in the first suit.[22] Ms. Permenter raised a host of arguments and defenses in the Foreclosure Action, including that she was the victim of fraud,[23] that the loan at issue was not valid and could not be enforced against the "trust,"[24] and that Chase did not have standing to enforce the mortgage.[25] In this action, she appears to raise some additional arguments, including bad faith, racketeering, and misrepresentation.[26] Ms. Permenter has not explained why she was unable to raise those arguments in the Foreclosure Action. In any event, the real issue before both courts was and is the validity of the mortgage on which JP Morgan sought foreclosure. That issue was resolved against Ms. Permenter by the Superior Court, a decision affirmed by the Supreme Court. The Supreme Court's order was final and is not subject to further appeal. The third, fourth, and fifth prongs of the *res judicata* standard therefore are met.

Because Ms. Permenter's claims are barred by the doctrine of *res judicata*, this action should be dismissed promptly. Two different courts – the Superior Court and the Supreme Court – have heard Ms. Permenter's arguments and

[22] *LaPoint v. AmerisourceBergen Corp.*, 970 A.2d at 192.
[23] Supreme Court Order ¶ 4 & n.3.
[24] *Chase Home Finance, LLC v. Permenter*, No. N10L-05-167 JAP, Revised Order (Apr. 1, 2014).
[25] *Chase Home Finance, LLC v. Permenter*, No. N10L-05-167 JAP, Motion for Temporary/Permanent Injunctive Relief.
[26] Letter to the Court from Ms. Permenter dated Sept. 19, 2015 at 2.

determined they are without merit. There is no basis to allow her claims to proceed before a third court.

CONCLUSION

For the foregoing reasons, I recommend that the Court grant JP Morgan's motion for judgment on the pleadings. This is my final report and exceptions may be taken in accordance with Court of Chancery Rule 144.

Sincerely,

/s/ *Abigail M. LeGrow*
Master in Chancery