IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE MORTGAGE BETWEEN PAMELA S. PANTALONE, as Borrower, and WELLS FARGO BANK, N.A., as Lender.	)))	C.A. No. 6796-VCL

MEMORANDUM OPINION

Date Submitted: December 2, 2011
Date Decided: December 9, 2011

Melvyn A. Woloshin, Esquire, *Pro Se*.

LASTER, Vice Chancellor.

Petitioner Melvyn A. Woloshin, Esquire, brought this action *pro se* seeking reformation of a mortgage. Woloshin is not a party to the mortgage or the loan it secured. He has no interest in the underlying property. He sued in his own name and not on behalf of either the borrower or the lender. There are no defendants. Because Woloshin lacks standing, the case is dismissed.

I. FACTUAL BACKGROUND

The facts are drawn from Woloshin's "Petition to Reform Mortgage." I have assumed the truth of his allegations.

A. The Mortgage

Non-party Pamela S. Pantalone executed a mortgage dated September 6, 2007, in the amount of $255,000 in favor of non-party Wells Fargo Bank, N.A. (the "Bank"). On September 12, 2007, the document was recorded in the Office of the Recorder of Deeds in and for New Castle County. It bears Instrument Number 20070912-0080419 (the "Mortgage").

The Mortgage was intended to create a security interest in property located at 14 Thistleberry Drive, Newark, Delaware (the "Property"). Woloshin's firm prepared the Mortgage. Unfortunately, they included the wrong legal description for the Property. Woloshin blames his paralegal for the error.

B. The Default

Pantalone subsequently defaulted on the loan secured by the Mortgage. When the Bank tried to foreclose, the attorney handling the matter discovered the incorrect legal

description. The Bank cannot proceed with a foreclosure without a proper legal description.

C. This Litigation

After learning of the Bank's difficulties and recognizing his potential exposure for negligence, Woloshin filed this action. He seeks an order reforming the Mortgage by substituting the correct legal description for the Property. As noted, Woloshin is not a party to the Mortgage or the loan and does not have any interest in the Property.

Woloshin filed this action *pro se*. He did not sue on behalf of Pantalone or the Bank. He did not name Pantalone, the Bank, or anyone else as defendants.

On November 22, 2011, I held a telephonic hearing during which I asked Woloshin to explain why he had standing to file suit. Woloshin asserted that his potential exposure for negligence gave him a sufficient interest to bring the action. He also claimed that the Court of Chancery historically granted petitions of this sort on a routine basis. I directed Woloshin to submit any authority that would support these propositions.

By letter dated December 2, 2011, Woloshin again asserted that "this Court has routinely granted requests for relief of this nature in the past." Dkt. 6 at 1. He did not submit or cite a single example. His letter continued:

> With respect to standing, I believe that our firm does have the ability to bring this Petition before the Court. While we represented Ms. Pantalone at the 2007 refinance closing, we also had a fiduciary duty to close the loan in accordance with the lender's closing instructions, which included a direction that the Mortgage be in a first lien position against the subject property. Although our firm is neither the lender nor borrower, it did have sufficient involvement in the underlying transaction to give it standing to seek relief.

Id. Woloshin did not cite any authority in support of his assertion that a lawyer who represents the borrower on a transaction owes a fiduciary duty to the lender who is adverse to his client on the deal. Nor is it obvious to me why such an obligation, were it to exist, would empower Woloshin to bring this action.

Woloshin's letter confirmed that he seeks an order correcting the Mortgage *nunc pro tunc*, so that the corrected filing would take precedence over any holder of a lien or mortgage who relied on the incorrect legal description. Woloshin represented that a search of the public records did not reveal any other liens or judgments but conceded that there could be unrecorded liens or unasserted claims that could take precedence over the Bank and whose holders would be prejudiced by a decree of reformation. Woloshin did not discuss the fact that his former client, Pantalone, would be deprived of a defense she currently has to foreclosure if Woloshin's reformation action were successful.

II. LEGAL ANALYSIS

This Court has an independent obligation to consider whether it can properly exercise jurisdiction over a matter, "regardless of whether the issue has been raised by the parties."[1] A party seeking to invoke the jurisdiction of a court bears the burden of establishing standing to sue. *Dover Historical Soc'y v. City of Dover Planning Comm'n*, 838 A.2d 1103, 1109 (Del. 2003). "Standing is a threshold question, and, because

[1] *IBM Corp. v. Comdisco, Inc.*, 602 A.2d 74, 77 n.5 (Del. Ch. 1991); *accord Chavin v. H.H. Rosin & Co.*, 246 A.2d 921, 922 (Del. 1968) ("Lack of jurisdiction may be raised at any time on motion of the court . . . ."); *see also* Ct. Ch. R. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.").

standing is jurisdictional in nature, the Court may raise it *sua sponte*." *Thornton v. Bernard Techs., Inc.*, 2009 WL 426179, at *4 (Del. Ch. Feb. 20, 2009).

"Standing is the requisite interest that must exist in the outcome of the litigation at the time the action is commenced." *Gen. Motors Corp. v. New Castle County*, 701 A.2d 819, 823 (Del. 1997).

> The concept of "standing," in its procedural sense, refers to the right of a party to invoke the jurisdiction of a court to enforce a claim or redress a grievance. It is concerned only with the question of *who* is entitled to mount a legal challenge and not with the merits of the subject matter of the controversy. In order to achieve standing, the plaintiff's interest in the controversy must be distinguishable from the interest shared by other members of a class or the public in general. Unlike the federal courts, where standing may be subject to stated constitutional limits, state courts apply the concept of standing as a matter of self-restraint to avoid the rendering of advisory opinions at the behest of parties who are "mere intermeddlers."

Schoon v. Smith, 953 A.2d 196, 200 (Del. 2008) (quoting *Stuart Kingston, Inc. v. Robinson*, 596 A.2d 1378, 1382 (Del. 1991)).

Non-parties to a contract—even third party beneficiaries—lack standing to seek reformation. *Fritz v. Nationwide Mut. Ins. Co.*, 1990 WL 186448 (Del. Ch. Nov. 26, 1990); *Malone v. U.S. Fid. & Guar. Co.*, 1987 WL 18107 (Del. Ch. Oct. 5, 1987). Woloshin is not a party to the agreement. As to this matter, he is a mere intermeddler.

III. CONCLUSION

Because Woloshin lacks standing, this case is dismissed. **IT IS SO ORDERED.**