

SUPERIOR COURT
OF THE
STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, DE 19801-3733
Telephone (302) 255-0669

March 1, 2012

(VIA E-FILED and U.S. Mail)

Francis G. X. Pileggi, Esquire
Jill Agro, Esquire
Eckert Seamans Cherin & Mellott, LLC
300 Delaware Avenue, Suite 1210
Wilmington, DE 19801

RE: *Select Portfolio Servicing Inc., As Servicing Agent v.
The Honorable Michael E. Kozikowski, New Castle County
Recorder of Deeds
C.A. No. 11M-11-080 FSS*

**Upon Complaint for Writ of Mandamus – DISMISSED without prejudice;
Upon Motion to Intervene – DENIED**

Dear Mr. Pileggi and Ms. Agro:

This is intended to head-off motion practice in response to yesterday's letter. I have no interest in the claims Mr. Gunn makes about me or the Superior Court in other litigation. The court(s) where those claims are made will give them the consideration they deserve. Since the January 6, 2012 letter, Mr. Gunn has submitted nothing in this case to which paragraph 5 of the order applies.

More importantly, at a procedural level this writ of mandamus proceeding is problematic. The court does not see how the Recorder of Deeds has a clear duty to reject Mr. Gunn's notices of the pendency of action. Thus, the court is unwilling to exercise its discretion to issue an extraordinary writ.

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C.A. No. 11M-11-080 FSS

Letter/Order

March 1, 2012

Page 2

The complaint, however, refers to 25 *Del. C.* Ch 16, concerning *lis pendens*. If Plaintiff wants the court to consider canceling a notice of pendency and mark the indices accordingly, it must file an accurately captioned, appropriate motion under 25 *Del. C.* § 1606. Moreover, if Plaintiff seeks prospective relief, it must specifically request it under 25 *Del. C.* § 1608. Along the same lines, if Plaintiff seeks costs and attorneys fees, the motion must request them under 25 *Del. C.* § 1611. And so on. Any motion for relief under 25 *Del. C.* Ch. 16 must be directed in the first instance to the party asserting the *lis pendens* claim. That, of course, is Mr. Gunn.

In the event that a motion to cancel is filed, the court will issue an order allowing Mr. Gunn to file a response in opposition, if he chooses. As to that, the court will enforce its order about civility. The moving party will have an opportunity to file a reply, if it chooses to file one.

For the foregoing reasons, Plaintiff's complaint for writ of mandamus is **DISMISSED**, without prejudice to Plaintiff, in its discretion, filing a motion for mandatory cancellation. As provided above, upon receipt the court will enter an appropriate scheduling order. In light of this decision, Mr. Gunn's motion to intervene in the now-dismissed mandamus proceeding is **DENIED** as moot. As of now, there is nothing pending in this matter. Accordingly, there is no reason for another filing by anyone, other than the motion mentioned above.

IT IS SO ORDERED.

Very truly yours,

/s/ Fred S. Silverman

FSS:mes

oc: Prothonotary (Civil)

Mr. La Mar Gunn, via U.S. Mail