IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARK L. MILLER and DEBORAH A.L. MILLER,	§	
	§	No. 80, 2013
Defendants Below-Appellants,	§	
v.	§	Court Below—Superior Court of the State of Delaware,
PENNYMAC CORP.,	§	in and for Sussex County
	§	C.A. No. S11L-11-067
Plaintiff Below-Appellee.	§	

Submitted: August 2, 2013
Decided: September 16, 2013

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

O R D E R

This 16th day of September 2013, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The defendants-appellants, Mark and Deborah Miller ("the Millers"), filed this appeal from the Superior Court's post-trial judgment entered in favor of the plaintiff-appellee, PennyMac Corp., in the amount of $477,006.46. After careful review, we find no merit to the Millers' appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that, on February 12, 2007, the Millers executed and delivered a mortgage agreement to Mortgage Electronic Registration Systems,

Inc., as nominee for American Brokers Conduit. The mortgage document secured Mark Miller's obligations under a note and became a first priority lien on the Millers' property. The Millers stopped making payments on the loan in July 2008. In December 2008, the Millers were notified that they were in default. The default was not cured, and the loan was accelerated. On May 11, 2009, American Brokers Conduit assigned the mortgage to CitiMortgage. In November 2011, CitiMortgage filed a complaint against the Millers seeking all sums due under the mortgage. On October 4, 2012, CitiMorgage assigned the mortgage to PennyMac. The Superior Court, over the Millers' objection, permitted PennyMac's substitution as plaintiff in the case. Following a trial on January 24, 2013, the Superior Court entered a judgment in PennyMac's favor in the amount of $477,006.46. The Millers filed this appeal.

(3) The Millers enumerate three arguments in their opening brief on appeal. The Millers first contend that the Superior Court erred in allowing PennyMac to be substituted for CitiMortgage as the plaintiff in this action. Second, the Millers argue that the Superior Court erred in refusing to grant their request for a continuance and in denying their request to amend their answer. Third, the Millers seem to suggest[1] that the Superior Court erred in failing to accept their defense of avoidance of the mortgage in this case.

[1] The Millers enumerate a third argument in their opening brief entitled "Plea in Avoidance."

(4) We review a trial judge's factual findings made following a bench trial to determine whether they are supported by credible and sufficient evidence in the record.[2] We review *de novo* any issue involving mixed questions of law and fact.[3]

(5) In this case, there is ample evidence in the record to support the Superior Court's conclusion that the assignments of the mortgage from American Brokers Conduit to CitiMortgage and from CitiMortgage to PennyMac were valid, recorded assignments. Thus, we find no error of law in the Superior Court's conclusion that PennyMac was the holder in due course of the note and the mortgage and thus had standing to enforce the debt by pursuing an in rem mortgage proceeding against the Millers. We find no merit to the Millers' first issue on appeal.

(6) With respect to their second argument, the decision to grant a continuance of trial is a matter that rests in the sound discretion of the trial judge.[4] The denial of a motion for a continuance will not be disturbed on appeal unless the denial was arbitrary and capricious.[5] At a hearing on his motion, Mark Miller

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While this section of their brief sets forth the standard for evaluating a plea in avoidance, the Millers do not actually set forth any facts or argument to support a plea in avoidance in this case.

[2] *Wedderien v. Collins*, 2007 WL 3262148 (Del. Nov. 6, 2007).

[3] *Id*. (*citing Zirn v. VLI Corp*., 681 A.2d 1050, 1055 (Del. 1996)).

[4] *Secrest v. State*, 679 A.2d 58, 64 (Del. 1996)

[5] *Id.*

indicated that he wanted the continuance in order to pursue negotiations with PennyMac. The trial court, however, had previously granted a continuance of the trial date in order to give the parties time to negotiate a settlement. Under the circumstances, we do not find that the Superior Court's denial of the Millers' motion for a continuance a month before trial to be arbitrary or capricious. Accordingly, we reject the Millers second argument of appeal.

(7) The Millers' third enumerated argument in their opening brief does not, in fact, contain any argument. They cite case law explaining the legal defense of plea in avoidance of a deed. They do not, however, cite to any facts in this record that would support an argument that they pled and proved a defense of avoidance of the deed.[6] Accordingly, we find no basis to review this claim on appeal.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

[6] *See Gordy v. Preform Building Components, Inc.*, 310 A.2d 893, 895-96 (Del. Super. 1973) (setting forth examples of matters that could be asserted under a plea in avoidance of a deed: an act of God, assignment of the cause of action, conditional liability, discharge, duress, forfeiture, fraud, illegality of transaction, justification, nonperformance of condition precedent, ratification, unjust enrichment and waiver).