WILLIAM B. CHANDLER III
CHANCELLOR

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: October 10, 2007
Decided: October 11, 2007

Sheila Hayford
17 Pennwood Drive
Dover, DE 19901

Janet Z. Charlton
Young Conaway Stargatt & Taylor, LLP
The Brandywine Building, 17th Floor
1000 West Street
Wilmington, DE 19801

Re: *Hayford v. Citicorp Trust Bank, et al.*
Civil Action No. 3274-CC

Dear Ms. Hayford and Ms. Charlton:

Plaintiff Hayford filed this complaint for a temporary restraining order and permanent injunctive relief, seeking to enjoin defendant "from immediately evicting Sheila Hayford from the 17 Pennwood Drive home" in Dover where Hayford resides.

The background of this matter is as follows. Defendant filed a mortgage foreclosure action against plaintiff on February 20, 2002, relating to the property at 17 Pennwood Drive, Dover, Delaware in the Superior Court in and for Kent County (C.A. No. 02L-02-012; the "Superior Court Action"). Plaintiff was personally served with the complaint on February 25, 2002. She did not answer the complaint. A judgment was entered in defendant's favor on April 15, 2002.

Thereafter, defendant attempted to sell the property at sheriff sale. On six separate occasions, plaintiff was successful in stopping the sheriff sale from occurring by filing a bankruptcy petition. 11 U.S.C. § 362, as it existed at the time, required defendant to cancel the sale, by virtue of an automatic stay that requires

creditors to cease collection efforts against a debtor upon the filing of a bankruptcy petition. Finally, on its seventh attempt, defendant was the successful bidder at the September 7, 2006 sheriff's sale. Plaintiff, however, refused to vacate the property, forcing defendant to file a rule to show cause for a writ of possession. Plaintiff, for the first time, entered an appearance in the Superior Court action, and opposed the granting of a writ of possession. After a hearing and additional legal submissions by the parties, Judge Witham rejected plaintiff's contentions and granted possession of the property to defendant. *Traveler's Bank and Trust, FSB v. Hayford*, C.A. No. 02L-02-012, Witham, J. (Mar. 15, 2007), (*Hayford I)*.

On April 9, 2007, plaintiff appealed *Hayford I* to the Supreme Court of Delaware (C.A. No. 180), but did not move for a stay pending the appeal. On May 17, 2007, defendant requested execution on the writ of possession. On June 5, 2007, plaintiff moved in the Superior Court for a stay of execution pending the appeal. That motion was also denied. *Traveler's Bank and Trust, FSB v. Hayford*, C.A. No. 02L-02-012, Witham, J. (July 10, 2007) (*Hayford II).* The appeal to the Delaware Supreme Court has been fully briefed and evidently is under consideration by that Court.

Plaintiff has been living in the property during all these proceedings. No payments on the mortgage have been made since at least 2002. The sheriff's office, moreover, has informed defendant that it has scheduled "a lock out date" for possession of the property for November 1, 2007 at 10 a.m. On that date, the sheriff will keep the peace and remove occupants from the property while defendant secures the property with new locks. Thereafter, should plaintiff need to retrieve personal possessions from the property, she will be able to make arrangements with defendant to do so.

Plaintiff seeks to stay the lockout pending the outcome of her appeal to the Supreme Court. This is my decision on plaintiff's application.

To obtain a preliminary injunction, plaintiff must demonstrate: (1) a reasonable probability of success on the merits; (2) irreparable injury if an injunction does not issue; and (3) that the harm suffered by the plaintiff absent the injunction outweighs the harm to the defendant if an injunction does issue.[1] This standard is similar to that considered by Judge Witham in his decision to deny the stay pending appeal. *Hayford II*. A stay (or an injunction pending appeal) may be

[1] *Revlon, Inc. v. MacAndrews & Forbes Holdings*, 506 A.2d 173, 179 (Del. 1986).

granted or denied at the discretion of the trial court, whose decision shall be reviewable by the Supreme Court.[2]

In determining whether to exercise its discretion, the Superior Court must (1) make a preliminary assessment of the likelihood of success on the merits of the appeal, (2) assess whether the petitioner will suffer irreparable injury if the stay is not granted, (3) assess whether any other interested party will suffer substantial harm if the stay is granted, and (4) determine whether the public interest will be harmed if the stay is granted.[3]

After consideration of the facts before him, Judge Witham found that plaintiff was unlikely to succeed on the merits of her appeal.[4] Further, although plaintiff would suffer irreparable harm from being dispossessed, Judge Witham found that such harm was outweighed by the harm to defendant in not having possession of the property. Thus, Judge Witham concluded that no stay was warranted.[5]

Plaintiff makes the same argument here. In her brief complaint, she alleges that defendant "violated Superior Court Civil Rule 41(g) by failing to notify Superior Court in C.A. No. 02L-02-012 of the bankruptcy filing and foreclosing on the 17 Pennwood Drive home and property on or about September 7, 2006."[6]

Superior Court Civil Rule 4(g) states:

> When the Court is advised that a party has filed a bankruptcy petition, the action shall be stayed. The Prothonotary shall remove the action from the active docket to the dormant docket. All parties for whom an appearance has been entered, either by counsel or *pro se*, shall be notified of the date of the transfer to the dormant docket. Twenty-four months after the transfer, the action shall be dismissed without further notice unless, prior to the expiration of the twenty-four month period, a party seeks to extend the period, for good cause shown.

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[2] Supreme Court Rule 32.
[3] *Villabona v. Bd. of Med. Practice of the State of Del.*, Del. Super., No. 03A-09-007, 2007, Witham, J. (May 27, 2007) citing *Evans v. Buchanan*, 435 F. Supp. 832, 841-42 (D. Del. 1977).
[4] *Hayford II*, *supra*.
[5] *Id.*
[6] Compl. ¶ 4.

This rule coincides with the automatic stay imposed by 11 U.S.C. § 362, but has not been modified since the bankruptcy amendments that went into effect in 2005. Stripped to its essence, plaintiff argues that her bankruptcy filing should have stopped the sale. To the contrary, the Superior Court specifically found that the present bankruptcy laws do not require that the action be stayed.[7]

Plaintiff is barred by the doctrine of *res judicata* from rearguing that issue before this Court. "*Res Judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction may, in the absence of fraud or collusion, be raised as an absolute bar to the maintenance of a second suit in a different court upon the same matter by the same party or his privies."[8] *Res Judicata* is not a mere technicality. Rather, the doctrine stands as a foundation of the legal system, judicially created in order to ensure a definitive end to litigation. *Res Judicata* permits a litigant to press her claims but once, and requires her to be bound by the determination of the forum she has chosen, so that she may have one day in court but not two.[9]

Plaintiff had her day in court to argue that her bankruptcy should have stopped the sale. The Superior Court disagreed. The doctrine of *res judicata* does not permit this Court to revisit those rulings. For that reason alone, plaintiff's complaint must be dismissed.

In addition, it is highly unlikely that plaintiff will prevail in her appeal to the Supreme Court. She has not even challenged the basis for Judge Witham's ruling that a bankruptcy filing did not operate to stay the sheriff's sale of the Pennwood property. There appears to be zero chance, therefore, that the Supreme Court will reverse the Superior Court on grounds it never reached or considered. Tellingly, plaintiff has not paid any sum toward the mortgage for several years. But she must really like this house, as she has steadfastly refused to quit the premises for over five years. And she has continued to occupy the property for over a year after title formally passed to the defendant at the foreclosure sale. In all the circumstances, plaintiff's probability of success in these seemingly interminable proceedings would appear, at least to me, to be zero.

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[7] *See Hayford I.*
[8] *Epstein v. Chatham Park, Inc.*, 153 A.2d 180, 184 (Del. Super. 1959).
[9] *Orloff v. Shulman*, 2005 LEXIS 184 (Del. Ch. Nov. 23, 2005) citing *Maldonado v. Flynn*, 417 A.2d 378, 381 (Del. 1959).

For all of the above reasons, plaintiff's application for a temporary restraining order is denied, and her complaint is dismissed with prejudice.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

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