

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

BAC HOME LOANS SERVICING,)	
FKA COUNTRYWIDE HOME)	C.A. No. 09L-12-117-PLA
LOANS SERVICING LP)	
)	
Plaintiff,)	
)	
v.)	
)	
ALICIA A. BROOKS,)	
)	
Defendant.)	

**ON DEFENDANT’S APPLICATION FOR CERTIFICATION OF
QUESTIONS OF LAW AND INTERLOCUTORY APPEAL
DENIED**

Submitted: January 12, 2012
Decided: January 18, 2012

This 18th day of January, 2012, it appears to the Court that:

1. This is a mortgage foreclosure action brought by Plaintiff BAC Home Loans Servicing, f/k/a Countrywide Home Loans Servicing LP against Defendant Alicia A. Brooks (“Brooks”). The case was originally scheduled for a one-day bench trial on February 6, 2012, but the trial date has been continued due to the Court’s error in scheduling the dispositive motion deadline too close to the trial date.

2. According to the Trial Scheduling Order entered on October 24, 2011, discovery closed on December 30, 2011.¹ The deadline for submitting dispositive motions was January 6, 2012. The Order states in bold print that this deadline is not subject to extension.²

3. Brooks now seeks to appeal this Court's Order of January 11, 2012, which denied a Motion to Extend Time to File Answers, Claims, Counterclaims, and a Motion to Dismiss. Brooks attempted to file her Motion on January 9, 2012 by sending the motion directly to Chambers. The Prothonotary's Office subsequently rejected the motion for exceeding the page limit imposed by the Superior Court Civil Case Management Plan.³ On January 11, 2012, Brooks called Chambers to schedule a hearing for her motion, even though the deadline for dispositive motions had expired. Brooks and an unidentified man who advised Brooks throughout the course of the call were uncooperative and abusive towards Court staff.⁴ The Court

¹ *BAC Home Loans Servicing v. Brooks*, C.A. No. 09L-12-117-PLA (Del. Super. Oct. 24, 2011) (ORDER).

² *Id.*

³ See Super. Ct. Civ. R. 107 and Superior Court New Castle County Civil Case Management Plan, §IV.A.2.c. Superior Court Civil Rule 107 requires parties to file briefs with the Prothonotary in the county where the case is pending. The Prothonotary will then deliver the original copy of each brief to the Judge or Judges hearing the case. Rule 107 also permits parties a maximum of thirty-five pages for an opening brief. However, the Superior Court Civil Case Management Plan limits parties to a four-page brief for dispositive motions, unless the parties have sought leave of the Court to bypass the four-page requirement.

⁴ The man advising Brooks in her communications with the Court is not a party to this litigation, nor has he entered an appearance as counsel for Brooks.

subsequently issued an Order on January 12, 2012 authorizing the Prothonotary's Office to reject any pleadings from Brooks that do not comply with the Superior Court Civil Rules and the Superior Court Civil Case Management Plan.⁵ Specifically, the Court ordered that motions exceeding the page limits of the Superior Court Civil Case Management Plan would not be accepted and that submissions sent directly to Chambers, rather than to the Prothonotary, would be deemed not to have been filed.

4. Brooks filed this Application for Certification of an Interlocutory Appeal challenging the Court's denial of her motion to extend time on January 12, 2012.⁶ In her Application, Brooks states only that she is moving for a certification of an interlocutory appeal of the Order dated January 11, 2012 denying her motion for extension of time. Brooks states no legal basis for seeking an interlocutory appeal. In her Notice of Appeal filed in the Supreme Court on January 11, 2012, Brooks identifies the order she seeks to appeal and alleges that her ability to present a defense has been impaired by what she characterizes as arbitrary conduct on the part of this

⁵ *BAC Home Loans Servicing v. Brooks*, C.A. No. 09L-12-117-PLA (Del. Super. Jan. 12, 2012) (ORDER).

⁶ Brooks also filed a Notice of Appeal in the Delaware Supreme Court on January 12, 2012. The Supreme Court notified Brooks by letter dated January 13, 2012 that no further action would be taken upon her interlocutory appeal until a supplemental notice of interlocutory appeal was filed in compliance with Delaware Supreme Court Rule 42(d)(iii). *Brooks v. BAC Home Loans Servicing, L.P.*, No. 14,2012 (Del. Jan. 13, 2012) (LETTER).

Court. Specifically, Brooks charges that the Court received her dispositive pleadings and “neglected” to deliver them to the Prothonotary and “inscrutably” ruled that her pleadings were time-barred, leaving her “defenseless” in a complex civil suit. Furthermore, Brooks alleges that the Court ruled that her pleadings exceeded the four-page limit even though Superior Court Civil Rule 107 permits the Court to grant leave to expand the number of pages permitted in a dispositive motion brief.

5. Under Delaware Supreme Court Rule 42, an interlocutory appeal will not be certified unless the trial court’s order determines a substantial issue, establishes a legal right, and meets at least one of the five additional criteria set forth in Rule 42(b).⁷ Ordinarily, the Delaware

⁷ The five criteria provided under the rule are as follows:

- (i) *Same as Certified Question*. Any of the criteria applicable to proceedings for certification of questions of law set forth in Rule 41; or
- (ii) *Controverted Jurisdiction*. The interlocutory order has sustained the controverted jurisdiction of the trial court; or
- (iii) *Substantial Issue*. An order of the trial court has reversed or set aside a prior decision of the court, a jury, or an administrative agency from which an appeal was taken to the trial court which had determined a substantial issue and established a legal right, and a review of the interlocutory order may terminate the litigation, substantially reduce further litigation, or otherwise serve considerations of justice; or
- (iv) *Prior Judgment Opened*. The interlocutory order has vacated or opened a judgment of the trial court; or
- (v) *Case Dispositive Issue*. A review of the interlocutory order may terminate the litigation or may otherwise serve considerations of justice.

Del. Supr. Ct. R. 42(b).

Supreme Court only hears appeals from final judgments. This so-called “final judgment rule” promotes judicial economy by preventing a succession of expensive and time-consuming appeals. The rule also minimizes appellate court interference with the numerous decisions made by trial courts in the course of litigation. In exceptional or extraordinary circumstances, the Supreme Court may hear appeals of trial court decisions before a final judgment has been entered.⁸ However, to further the goal of facilitating “orderly disposition of claims without inadvertently promoting a piecemeal approach to litigation,”⁹ the procedures for seeking an interlocutory appeal set forth in Supreme Court Rule 42 impose strict deadlines and require that the application for certification fulfill exacting criteria before the Supreme Court will accept an interlocutory appeal.¹⁰

6. The rule requires a two-part inquiry prior to certification. First, the applicant must establish to the trial court’s satisfaction that the Order determines a substantial issue or establishes a legal right. Secondly, the trial

The reasons for which the Supreme Court will accept certified questions of law under Rule 41 include, in relevant part, that “[t]he decisions of the trial courts are conflicting upon the question of law.” Del. Super. Ct. R. 41(b)(ii).

⁸ *Ryan v. Gifford*, 2008 WL 43699, *4 (Del. Ch. Jan. 2, 2008).

⁹ *E.I. duPont de Nemours and Co. v. Allstate Insurance Co.*, 686 A.2d 1015, 1016 (Del. 1997) (citing *Rhone-Poulenc Basic Chemicals Co. v. American Motorists Insurance Co.*, 616 A.2d 1192, 1193 n. 1 (Del. 1992)).

¹⁰ The fact that Rule 42 imposes strict deadlines on the parties does not exempt the applicant for interlocutory relief from fulfilling its exacting criteria by satisfying the two-step analysis.

court must determine that the Order satisfies at least one of the specific criteria set forth in Rule 42.

7. The Application for Certification of an Interlocutory Appeal filed by defendant Brooks falls well short of satisfying either of the two requirements for certification under Rule 42. First, Brooks makes no attempt to show that the Order entered by the Court determines a substantial issue in this litigation or establishes a legal right. Rather, Brooks only identifies the Order being appealed and requests relief. Even in her Notice of Appeal, Brooks makes no argument that the Court has determined a substantial issue in this litigation or established a legal right, except to declare, in conclusory fashion, that the Court's Order denying her motion to extend time has left her "defenseless" in a complex civil suit.

8. Even assuming, however, that that the Court's refusal to extend time for discovery or the filing of dispositive motions or to expand the page limits for dispositive motions would constitute the determination of a substantial issue or the establishment of a legal right, Brooks has also failed to meet the second prong of the Rule by satisfying one or more of the specific criteria set forth in Rule 42. Brooks' Application for Certification is fundamentally flawed because it fails to identify the specific issues for which certification is sought. In light of this deficiency, the Court is simply

incapable of determining whether the question or questions to be appealed are case dispositive issues, questions of first impression, or unsettled issues of law, or if they satisfy any of the criteria applicable to proceedings for certification of questions of law set forth in Supreme Court Rule 41.

9. As presented in her Application and Notice of Appeal, Brooks' conclusory assertions that the Court's allegedly negligent and "inscrutable" actions have left her "defenseless" in this litigation do not provide an appropriate basis for this Court to certify an interlocutory appeal. If all that were required to justify an immediate determination by the Supreme Court were a simple statement that a decision by this Court had made it more difficult for parties to do as they please, virtually every pretrial ruling would be eligible for interlocutory appeal, and the purpose of the Rule would be effectively emasculated.

10. Brooks has made no attempt whatsoever to specify the questions or issue for which certification is sought. She has likewise failed to demonstrate that the issues (whatever they may be) she seeks to appeal determine a substantial issue or establish a legal right. Finally, she has not identified any of the specific criteria in Supreme Court Rule 42 that her proposed contention on appeal satisfies.

11. The Court is satisfied that Brooks has failed to meet the stringent two-part test for certification of an interlocutory appeal under Supreme Court Rule 42 and regrets the need for further comment in this case. Brooks and her male advisor have routinely thwarted the Court's efforts to manage this litigation in an orderly and efficient manner. They have refused efforts by Court staff to communicate with them on the phone regarding scheduling matters and have even gone so far as to appear in the Prothonotary's office to harass the Judge's Civil Case Manager when Brooks' filing was rejected. Though Delaware courts do normally make an effort to accommodate *pro se* litigants where possible,¹¹ continued tolerance of Brooks' conduct goes beyond the limits of mere accommodation. Moreover, although Brooks has repeatedly invoked her status as a *pro se* litigant to insist that the Court relax its rules and requirements, there is no question from the letters, pleadings and other submissions that she is being counseled and assisted by a lawyer or at least an individual who has extensive knowledge of Delaware law. The concept of an interlocutory appeal, as here, is rarely understood by an individual who is not skilled in

¹¹ See, e.g., *Alston v. State*, 2002 WL 184247, *1 (Del. Super. Jan. 28, 2002) (noting that although procedural requirements are not relaxed for any litigant, the Court may grant *pro se* litigants some accommodations that do not affect the substantive rights of the parties at bar, such as by construing the pleadings in a way to do justice to all concerned). Allowing a *pro se* litigant to file unduly lengthy pleadings that far exceed the page limitation is not such an accommodation, particularly when these filings impose additional burdens on the Court and its staff.

the law. Given the nature of Brooks' interaction with the Court to date, it is appropriate and necessary for the Court to enforce strictly its filing deadlines and page limitations and to enter an Order clearly explaining its expectations for future filings from this Defendant.

13. For all of the reasons set forth above, Brooks' Application for Certification of Interlocutory Appeal is hereby **DENIED**.

IT IS SO ORDERED.

/s/ Peggy L. Ableman

Peggy L. Ableman, Judge

Original to Prothonotary
cc: Lisa R. Hatfield, Esquire