

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

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|--------------------------------|---|--------------------------|
| BAC HOME LOANS SERVICING, L.P. | : | |
| FKA COUNTRYWIDE HOME LOANS | : | C.A. No. N09L-12-117 PLA |
| SERVICING LP | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| ALICIA A. BROOKS, | : | |
| | : | |
| Defendant | : | |

UPON DEFENDANT ALICIA A. BROOKS' MOTION REQUESTING STAY
PENDING APPEAL TO THE SUPREME COURT

DENIED

Submitted: February 10, 2012
Decided: March 8, 2012

This 8th day of March 2012, it appears to the Court that:

1. The Court has before it a Motion Requesting Stay Pending Appeal filed by Defendant-Appellant Alicia A. Brooks ("Brooks"). This motion arises from a mortgage foreclosure action brought by Plaintiff BAC Home Loans, L.P. ("BAC"). For the reasons set forth below, Brooks' motion is denied.

2. In January 2008, Brooks executed a mortgage on residential property in New Castle, Delaware. BAC alleges that Brooks stopped making mortgage payments in March 2009. A writ of mortgage *sur facias* was issued on December 14, 2009. Brooks, who is acting *pro se* in this litigation, responded to the complaint on February 17, 2010.

The case was originally scheduled for a one-day bench trial on February 6, 2012. The trial was continued, however, because of the Court's error in setting the dispositive motion deadline too close to the trial date and because Plaintiff's counsel had filed a motion for summary judgment. Brooks, believing that the Court had conspired with Plaintiff's counsel to change the trial date, became enraged and began a harassment campaign against the Court in an apparent effort to redress perceived wrongs. On January 11, 2012, Brooks attempted to file a motion to extend time for the filing of answers, counterclaims, and a motion to dismiss, notwithstanding that the deadline for filing dispositive motions had already passed. The Court rejected Brooks' motion because it was untimely and because it did not comply with the page limits set forth in the Superior Court Civil Case Management Plan. Upon learning that her filing had been rejected, Brooks and an unidentified man became abusive to Court staff, even going so far as to appear in the Prothonotary's office to harass the Judge's Civil Case Manager.

Brooks then sought certification of an interlocutory appeal challenging the Court's rejection of her filings, arguing in essence that the Court's procedural rules and requirements should be relaxed for her because she is a *pro se* litigant. The Court denied certification, finding no legal basis for certifying an appeal.¹ Next, Brooks sought to have this Judge removed from the litigation, claiming that she

¹ *BAC Home Loans Servicing, L.P. v. Brooks*, C.A. No. N09L-12-117-PLA (Del. Super. Jan. 18, 2012) (Opinion) ("Brooks Interlocutory Appeal").

had been a victim of the Judge's personal bias. In particular, Brooks alleged that the Court had conspired against her by refusing to forward filings that had been sent to chambers to the Prothonotary's office and thereby had left her unable to present a proper defense. In an opinion issued February 2, 2012, the Court explained that there was no legal basis for recusal and denied Brooks' motion.²

Meanwhile, BAC had filed a motion for summary judgment on January 5, 2012, asserting that the case presented no genuine issue of material fact. In an order dated February 3, 2012, the Court agreed with BAC and granted the motion for summary judgment.³ The Court noted that Brooks had presented no facts supporting her claim that she had made mortgage payments after March 2009, and that her assertion that BAC had failed to perform a title search on the property did not create a genuine issue of material fact. Moreover, the Court found that Brooks had asserted no valid legal defense to foreclosure, and that her claim that her case should be heard in a court of equity was without legal merit.

3. Brooks subsequently appealed the Court's grant of summary judgment and has filed this motion asking the Court to stay its final order pending resolution of the appeal. A motion for a stay is addressed to the sound discretion of the

² *BAC Home Loans Servicing, L.P. v. Brooks*, C.A. No. N09L-12-117-PLA (Del. Super. Feb. 2, 2012) (Opinion).

³ *BAC Home Loans Servicing, L.P. v. Brooks*, C.A. No. N09L-12-117-PLA (Del. Super. Feb. 3, 2012) (Order).

Court.⁴ In reviewing a stay application, the Court must undertake the following four-part analysis:

(1) Make a preliminary assessment of 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.⁵

To balance the equities, these factors should be viewed as a whole.⁶ As such, when reviewing a motion for stay, the Court should avoid over-emphasizing the “likelihood of success on appeal” component at the expense of considering the collective merits of the other factors.⁷ In other words, if the other factors strongly favor interim relief, then a court may exercise its discretion to reach an equitable resolution by granting a stay if the petitioner has presented a serious legal question.⁸

5. Brooks’ arguments in support of granting a stay largely rehash her arguments in opposition to the summary judgment motion. Brooks contends that she is likely to succeed on appeal for the following reasons:

[T]he substantive legal issues have not been addressed; that the Supreme Court is likely to remand the case to require the lower Court to make factual

⁴ Supreme Court Rule 32(a): “[a] stay or injunction pending appeal may be granted or denied in the discretion of the trial court.”

⁵ *Kirpat, Inc. v. Delaware Alcoholic Beverage Control Comm’n*, 741 A.2d 356, 358 (Del. 1998) (citing *Evans v. Buchanan*, 435 F.Supp. 832, 841-42 (D. Del. 1977)).

⁶ *Id.*

⁷ *Id.*

⁸ *Munir v. Delaware Examining Bd. of Physical Therapy*, 1999 WL 458800, at *1 (Del. Super. May 25, 1999); see also *Kirpat, Inc.*, 741 A.2d at 358.

findings – including whether plaintiff below appellee failure to provide a verified title substantiating either entitlement or ownership lacks standing to bring a claim in accordance with Sci. Fa. Sur. Mortgage Action; that additional “equitable claims” mandate transfer to Delaware Chancery Court or the District of Delaware, which already have related litigation pending; that irreparable harm exists because appellant is a single mother with three young children who is entitled to due process and equal protection under the law, and [should] not be thrown into the street on orders that depart radically from precedent and, as such, are an abuse of discretion; appellee can move to repossess real property it has not actually shown with any substantive degree of legal sufficiency it actually has standing to take possession; [and] appellee will not be harmed if stay is granted because if its claims are deemed sufficient in a Court of Equity, it can simply repossess the property at a later date.⁹

In response, BAC argues that Brooks is simply repeating the arguments made in opposition to the motion for summary judgment and that it would suffer irreparable harm if the foreclosure sale were delayed because Brooks has offered no security on the mortgage for the duration of the stay.

6. Likelihood of Success on Appeal

In the instant case, with respect to the probability of success on appeal, there is no evidence in the parties’ submissions or in the record which would suggest

⁹ Throughout this litigation, Brooks has presented herself as a *pro se* litigant, completely ignorant of the law, who therefore should not be subject to the procedural requirements of this Court. The Court has previously articulated its suspicion that Brooks is receiving assistance from someone with at least a degree of legal sophistication, based on the fact that Brooks has filed motions (such as an interlocutory appeal) that would probably be unknown to a lay person. *See Brooks Interlocutory Appeal*. With respect to the present motion, the Court notes that Brooks’ statement of her arguments in favor of granting the stay mirrors the Court’s own language summarizing the appellant’s position in a recent opinion denying a stay pending appeal. *Compare Delaware Inst. of Health Sci., Inc. v. Delaware State Bd. of Nursing*, 2011 WL 5042382, at *1 (Del. Super. Oct. 21, 2011) (“The appellant contends that it is likely to succeed on appeal because the substantive legal issues have not been addressed; that the Supreme Court is likely to remand the case to require the Board to make factual findings – including which faculty members did not have proper experience....”).

that Brooks is likely to succeed on the merits of her appeal. Brooks has presented no new evidence which would support her claim that she did continue making mortgage payments. Nor has Brooks pointed to any area of the law pertaining to her case which is unsettled. Brooks only alleges, in the most conclusory fashion, that there remain substantive legal issues to be decided and that the Supreme Court is likely to require fact-finding over whether BAC has “standing” to bring a foreclosure action. The Court has already considered these arguments and determined that they are without merit. As such, the Court cannot conclude that Brooks has demonstrated a likelihood of success on the merits of her appeal.

7. Irreparable Harm

Brooks argues that she will suffer irreparable harm if the stay is not granted because she is a single mother of three young children who cannot “be thrown into the street on orders that depart radically from precedent.” She further alleges that allowing the foreclosure sale of her property to proceed would violate her rights to due process and equal protection under the law. Brooks provides no support for her assertion that the Court has departed from precedent and does not explain how allowing the foreclosure sale of her residence to proceed would violate her rights under the Fourteenth Amendment to the United States Constitution. While the Court recognizes the undesirable consequences that might arise from the denial of a stay, the Court does not agree that the loss of Brooks’ home would constitute an

irreparable injury because the Court can find no legal injury to Brooks. The writ of *sur facias* was issued in December 2009, nine months after BAC alleges that Brooks stopped making mortgage payments. Brooks did not assert any legal defense to foreclosure in her February 2010 response to the Complaint and does not appear to have made any serious effort to defend this action until after discovery closed and the dispositive motion deadline had passed. Brooks had every reasonable opportunity to prevent the sale of her property and her removal from it. Her failure to take those opportunities does not create an irreparable injury mandating a stay of the Court's order.

8. ***Substantial Harm***

Finally, Brooks contends that granting the stay would pose no harm to BAC because, if a court of equity were to conclude that the foreclosure sale should proceed, BAC would be able to repossess the property at a later date. BAC, however, correctly points out that it has not collected any money on this mortgage since March 2009. Delaying the foreclosure sale until the appeal is resolved would only further the harm to BAC's interest in collecting on its mortgage loan.

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Furthermore, granting a stay would harm the public interest in judicial economy. Brooks has consumed a great deal of the Court's time and limited resources with her numerous filings since January 2012, all of which the Court determined were without legal merit. Prolonging this litigation would harm the State's interest in the efficient administration of justice.

9. For all of the foregoing reasons, Brooks' Motion for Stay Pending Appeal is DENIED.

IT IS SO ORDERED.

/s/ Peggy L. Ableman _____
Peggy L. Ableman, Judge

Original to Prothonotary
cc: All counsel via File & Serve