

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

<b>JPMORGAN CHASE BANK,</b>	)	
<b>NATIONAL ASSOCIATION,</b>	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>C.A. No. N11L-09-289 PRW</b>
	)	
<b>MICHELLE HOPKINS,</b>	)	
<b>Defendant.</b>	)	

Submitted: September 12, 2013  
Decided: September 12, 2013  
Opinion Issued: September 16, 2013  
Revised: September 17, 2013

*Upon Plaintiff's Motion for Summary Judgment,*  
**GRANTED.**

**MEMORANDUM OPINION**

Robert T. Aulgur, Jr., Esquire, and Monica Loftin Townsend, Esquire, Whittington & Aulgur, Middletown, Delaware, Attorneys for Plaintiff JPMorgan Chase Bank.

Michelle Hopkins, Wilmington, Delaware, *pro se*.

**WALLACE, J.**

## I. INTRODUCTION

Plaintiff JPMorgan Chase Bank (“JPMorgan Chase”) filed a *scire facias sur* mortgage complaint against Defendant Michelle Hopkins (“Defendant”), seeking foreclosure of JPMorgan Chase’s interest in property located on St. Thomas Court in Wilmington, Delaware. The operative mortgage agreements between the parties provided *inter alia* that, upon Ms. Hopkins’ failure to pay obligations when due, default would result and JPMorgan Chase could foreclose upon the property for collection of the obligation and certain related costs.

For the following reasons, Plaintiff’s Motion for Summary Judgment is **GRANTED**.

## II. FACTUAL BACKGROUND

Michelle Hopkins executed a mortgage with Chase Manhattan Mortgage Corp. on September 24, 2001.<sup>1</sup> On January 5, 2007, Ms. Hopkins executed a Loan Modification Agreement effective January 1, 2007, with Chase Home Finance, LLC,<sup>2</sup> successor in interest (by merger) to Chase Manhattan Mortgage Corp.<sup>3</sup> On April 18, 2008, Michelle Hopkins executed another Loan Modification Agreement

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<sup>1</sup> See Ex. A to Complaint.

<sup>2</sup> JPMorgan Chase Bank, National Association is a successor in interest (by merger) to Chase Home Finance, LLC.

<sup>3</sup> See Ex. B to Complaint.

with Chase Home Finance, LLC.<sup>4</sup> Ms. Hopkins defaulted in payments on or about April 1, 2009.<sup>5</sup> More specifically, Ms. Hopkins failed to make regular periodic payments required by 2008 Loan Modification Agreement<sup>6</sup> which references the Promissory Note signed in connection with the origination of the loan. To date the arrearages have neither been paid nor has the default otherwise been cured.

### III. PROCEDURAL BACKGROUND

Classifying its action as “Non-Arbitration Case/*Scire Facias Sur* Mortgage,” JPMorgan Chase filed its *in rem* mortgage foreclosure Complaint on September 30, 2011. Ms. Hopkins answered several months thereafter. In her Answer, Ms. Hopkins claimed that all prior loan modifications had been vacated by JPMorgan Chase, that her loan was currently under review for a new modification and that representatives of JPMorgan Chase had advised her to stop making payments during the loan modification process.<sup>7</sup>

On March 19, 2013, JPMorgan Chase filed its Affidavit of Loss Mitigation.<sup>8</sup> In its affidavit, JPMorgan Chase made clear that Ms. Hopkins is currently

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<sup>4</sup> See Ex. C to Complaint.

<sup>5</sup> See Complaint at ¶ 5; *Pro Se* Deft’s Answer; Resp. to Pltf’s Mot. for Summary Judgment.

<sup>6</sup> Ms. Hopkins does not dispute that she stopped making payments, but claims she was justified because the mortgage company advised her to discontinue payments and that she was seeking yet another loan modification agreement.

<sup>7</sup> *Pro Se* Deft’s Answer at 1.

<sup>8</sup> See Ex. A to Pltf’s Mot. for Summary Judgment.

ineligible for any applicable loss mitigation program due to multiple prior failures on her part.<sup>9</sup>

On August 8, 2013, JPMorgan Chase filed a motion for summary judgment. Ms. Hopkins responded in writing, and the Court heard oral argument on the motion on September 12, 2013. At the hearing, the Court granted summary judgment. This is the Court's written opinion thereon.

#### **IV. PARTIES' CONTENTIONS**

JPMorgan Chase alleges that there is no genuine issue of material fact in this case, "because there is ample evidence to show that a debt secured by a Mortgage existed between [it] and Michelle Hopkins and, by not performing, Michelle Hopkins is in breach of the terms of the Mortgage and the 2008 Loan Modification Agreement."<sup>10</sup> Ms. Hopkins alleges, in effect, that her default should be excused because, according to her, "[JPMorgan] Chase's instructions to stop payment; [JPMorgan] Chase's prolonged modification process; the federal government's investigation into modification procedures[;] and [JPMorgan] Chase's halt on all loan modification applications" caused her to fall into arrears.<sup>11</sup>

#### **V. DISCUSSION**

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<sup>9</sup> *Id.*

<sup>10</sup> Pltf's Mot. for Summary Judgment at ¶ 12.

<sup>11</sup> *See* Deft's Resp. to Pltf's Mot. for Summary Judgment at 2.

A *scire facias sur* mortgage action is an *in rem* proceeding used to foreclose a mortgage.<sup>12</sup> It is “in essence . . . a rule to show cause that requires the mortgagor to appear and establish why the mortgagee should not be allowed to foreclose.”<sup>13</sup> Delaware law on *scire facias* actions is clear: only claims that arise under the mortgage agreement subject to foreclosure can be asserted in a *scire facias sur* mortgage action.<sup>14</sup> And Delaware courts recognize only the defenses of payment, satisfaction, or a plea in avoidance against a *scire facias* action.<sup>15</sup> A plea in avoidance must “relate to the mortgage sued upon, i.e., the plea must relate to the validity or illegality of the mortgage documents.”<sup>16</sup> Traditionally recognized avoidance defenses include: “acts of God, assignment, conditional liability, duress, exception, forfeiture, fraud, illegality, justification, non-performance of condition

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<sup>12</sup> *Gordy v. Preform Bldg. Components, Inc.*, 310 A.2d 893, 894 (Del. Super. Ct. 1973).

<sup>13</sup> *American Nat. Ins. Co. v. G-Wilmington Assoc., L.P.*, 2002 WL 31383924, at \*2 (Del. Super. Ct. Oct. 18, 2002); *see Davenport Servs., Inc. v. Five North Corp.*, 2003 WL 21739066, at \*2 (Del. Super. Ct. May 19, 2003) (observing that a *scire facias* mortgage action derives from a writ of *scire facias* which requires “the mortgagor to show cause why judgment should not be given against him for the amount of the mortgage debt with a special execution for the sale of the mortgaged premises”(quoting 59A C.J.S. *Mortgages* § 696 (1998))).

<sup>14</sup> *Harmon v. Wilmington Trust Co.*, 1995 WL 379214, at \*2 (Del. June 19, 1995); *Christiana Falls, L.P. v. First Fed. Sav. & Loan Ass’n of Norwalk*, 1986 WL 18356, at \*1 (Del. Dec. 30, 1986); *Wells Fargo Bank, N.A. v. Williford*, 2011 WL 5822630, at \*3 (Del. Super. Ct. Nov. 17, 2011); *American Nat. Ins. Co.*, 2002 WL 31383924, at \*2; *Gordy*, 310 A.2d at 895-96.

<sup>15</sup> *Williford*, 2011 WL 5822630, at \*3; *First Fed. Sav. & Loan Assn. of Norwalk v. Falls*, 1986 WL 9916, at \*1 (Del. Super. Ct. Sept. 9, 1986), *aff’d sub. nom.*, *Christiana Falls*, 1986 WL 18356.

<sup>16</sup> *Davenport Servs., Inc.*, 2003 WL 21739066, at \* 3.

precedents, ratification, unjust enrichment and waiver.”<sup>17</sup> None of these have been plead by Ms. Hopkins.

Summary judgment is appropriate where the record indicates that there are no genuine issues of material fact and where, viewing the facts in the light most favorable to the non-moving party, the moving party is entitled to judgment as a matter of law.<sup>18</sup> Summary judgment will not be granted when, with the evidence produced, there is reasonable indication a material fact is in dispute.<sup>19</sup> The moving party has the burden of proof to show there are no genuine issues of material fact.<sup>20</sup> If the moving party meets that burden, summary judgment is warranted unless the non-moving party then proves the existence of a genuine issue of material fact.<sup>21</sup> “Summary judgment will not be granted when a more thorough inquiry into the facts is desirable to clarify the application of the law to the circumstances.”<sup>22</sup>

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<sup>17</sup> *CitiMortgage, Inc. v. Bishop*, 2013 WL 1143670, at \*5 (Del. Super. Ct. Mar. 4, 2013) (internal quotation marks and citations omitted); see *CitiMortgage, Inc. v. Kine*, 2011 WL 6000755, at \*2 (Del. Super. Ct. Nov. 1, 2011).

<sup>18</sup> Del. Super. Ct. Civ. R. 56(c).

<sup>19</sup> *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

<sup>20</sup> *Charlton v. Wal-Mart Stores, Inc.*, 2008 WL 5206775, at \*1 (Del. Super. Ct. Nov. 25, 2008).

<sup>21</sup> *Moore v. Sizemore*, 405 A.2d 679, 681 (Del. 1979); *Ebersole*, 180 A.2d at 470.

<sup>22</sup> *Phillip-Postle v. BJ Prods., Inc.*, 2006 WL 1720073, at \*1 (Del. Super. Ct. Apr. 26, 2006)(citing *Ebersole*, 180 A.2d at 470).

Under Superior Court Civil Rule 56, summary judgment is appropriate in this case. JPMorgan Chase, as the moving party, is required to show that there are no genuine issues of material fact. In its *scire facias sur* mortgage Complaint, JPMorgan alleges Ms. Hopkins is in default of her mortgage (and the subsequent loan modification agreements) in the amount of \$153,842.87, with interest, late charges, advances to the date of confirmation and reasonable attorney's fees and costs. Ms. Hopkins, both in her papers and at the hearing, admitted she was in default of her mortgage and offered certain excuses for her default. But because Ms. Hopkins' proffered defenses "do not plead payment, or satisfaction or avoidance of the mortgage," she "has failed to set forth specific facts that a genuine issue of material fact exists and she has raised no defenses that may be properly asserted in an action for *scire facias sur* mortgage."<sup>23</sup>

## VI. CONCLUSION

For the forgoing reasons – i.e., the undisputed record demonstrates that JPMorgan Chase is a valid holder of the mortgage and note on the subject property, that Ms. Hopkins executed those documents and subsequent loan modification agreements, that Ms. Hopkins has defaulted on her obligation to JPMorgan Chase

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<sup>23</sup> *CitiMortgage, Inc. v. Kine*, 2011 WL 6000755, at \*2 (Del. Super. Ct. Nov. 1, 2011) (granting plaintiff mortgage company's motion for summary judgment where defendant asserted legal defenses and claimed she never received a copy of the Fair Debt Collections Practices Act).

and that Ms. Hopkins owes the amount of the judgment sought<sup>24</sup> – the Motion for Summary Judgment is hereby **GRANTED**.

**IT IS SO ORDERED.**

*/s/ Paul R. Wallace*

Paul R. Wallace, Judge

Original to Prothonotary

cc: Counsel via File & Serve

Ms. Michelle Hopkins via First Class Mail

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<sup>24</sup> See, e.g., *Jacques v. Chase Bank USA, N.A.*, 2012 WL 1623393, at \*2 (Del. May 8, 2012).