

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

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|-------------------------|---|-------------------------|
| CITIMORTGAGE, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | C.A. No. 09L-07-313 CLS |
| ROMIE DAVID BISHOP, and |) | |
| SHIRLEY BISHOP, |) | |
| |) | |
| Defendants. |) | |

Date Submitted: March 18, 2011
Date Decided: March 29, 2011

On Defendant Shirley Bishop’s Motion for Reargument of the Order Dismissing the Counterclaims. **DENIED.** On Defendant Romie Bishop’s Motion for Reargument of the Order Dismissing the Counterclaims. **DENIED.** On Defendants’ Joint Motion for Reargument of the Order Dismissing the Counterclaims. **DENIED.** On Defendants’ Joint Motion for Reargument of All the March 7, 2011 Orders Issued by the Court. **DENIED.**

ORDER

Lisa R. Hatfield, Esq., Bryan P. Smith, Esq., 284 East Main St., Newark, DE 19711. Attorneys for Plaintiff.

Romie D. Bishop, 2715 N. DuPont Parkway, Middletown, DE 19709. *Pro Se.*

Shirley A. Bishop, 220 Hazel Ridge Dr., Wilmington, DE 19810. *Pro Se.*

Scott, J.

Introduction

Before this Court are several motions for reargument of the Orders issued on March 7, 2011. For the reasons that follow, all the motions for reargument are denied.

Facts

Romie David Bishop and Shirley Bishop (collectively “Defendants”) purchased the subject of the foreclosure action, 220 Hazel Ridge Drive, Wilmington, DE, on May 4, 2007. The mortgage was secured through Mortgage Electronic Registration Systems, Inc. acting solely as nominee for lender, Cardinal Financial Company. Subsequently, the mortgage was allegedly assigned to Citimortgage, Inc. (“Plaintiff”). Plaintiff filed this mortgage foreclosure action on July 27, 2009. The Defendants filed their answer on August 24, 2009. In this *in rem* proceeding Plaintiff seeks judgment against the property for non-payment of the mortgage.

Discussion

I. Motions for Reargument of the Order Dismissing the Counterclaims

Whether a motion for reargument will be granted is determined by the Court based on the motion and the response to the motion.¹ New arguments, or arguments that could have been raised prior to the Court’s decision, cannot be

¹ Super. Ct. Civ. R. 59(e).

raised in a motion for reargument.² “It will be denied unless the Court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision.”³ “A motion for reargument is not intended to rehash the arguments already decided by the court.”⁴

A. Defendant Shirley Bishop’s Motion for Reargument

Ms. Bishop’s motion for reargument of the dismissal of the counterclaims is denied. The first two paragraphs attack the facts section of the order, which is only background information and contains no legal argument. Paragraphs 3, 16, and 21 contain no legal argument. Paragraphs 4, 5, 6, 7 argue facts but Ms. Bishop does not state how the law was misapplied to those facts. Ms. Bishop raises arguments that have already been decided in paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 22 and 23. Paragraph 17 attacks this Court by stating “The Court wrongly fails to acknowledge claims made in the Summary Judgment of Mrs. Bishop. It picks and choose as an attempt to mis-represent the record for appeal.”⁵ Ms. Bishop’s motion for reargument is denied because she has failed to demonstrate how this Court has overlooked legal precedent or misapplied the law in this case.

² *Plummer v. Sherman*, 2004 WL 63414 (Del. Super.).

³ *Beatty v. Smedley*, 2003 WL 23353491 (Del. Super.) (citation omitted).

⁴ *Kennedy v. Invacare Corp.*, 2006 WL 488590 (Del. Super.).

⁵ D.I. 104.

B. Defendant Romie Bishop's Motion for Reargument

Mr. Bishop's motion for reargument of the dismissal of the counterclaims is denied. Mr. Bishop raises arguments that have already been decided without indicating which legal precedent has been overlooked or how the Court misapplied the law in paragraphs 1, 4, 7, 8, 9, 11, 12, 13, 14, and 15. The Defendant also criticizes the facts section of the order in paragraphs 2, 3, 5, and 6, which is only background information and does not contain any legal conclusions of law. Mr. Bishop also attacks the Court in paragraphs 10⁶, 11⁷, 12⁸, 14⁹, 15¹⁰, and 16¹¹. Since Mr. Bishop has failed to show how this Court has overlooked legal precedent or misapplied the law, his motion for reargument is denied.

C. Defendants' Joint Motion for Reargument

The Defendants' joint motion for reargument of the dismissal of the counterclaims is denied. The Defendants have already raised the arguments

⁶ "Page six and into page seven of the Order continues to muddy the water by injecting a standalone co-defendants Motion into Movant Motion."

⁷ "Page seven of the Court refuses to acknowledge Plaintiff was required by the rules that to file evidence disputing the summary judgment filed with evidence (affidavit) instead the Court intentional attempt to evade the omitted Affidavit and Muddy the waters by discussing Affidavits by the attorney that are the subject of Motions to strike."

⁸ "Page seven the Court again misrepresents the record by injecting Motions not involved in the ruling regarding affidavits, no affidavit or document was filed by the Plaintiff in response to the instant Movant summary judgment that was filed with evidence (affidavit). Plaintiff by not filing an Affidavit in response or evidence even after receiving (3) three Court extensions totaling 12 months is not cause for a summary judgment."

⁹ "Page seven rules that the attorney can file non-conforming documents with impunity by refusing to acknowledge failures easily identified by the filings themselves."

¹⁰ "The Court refuses to allow Movant to schedule Motions to be heard and by doing so denied the DUE PROCESS RIGHTS of the Movant to be heard on the record."

¹¹ "The Court now attempts to remove Movant right to request a re-argument."

contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15¹², 17, 18, 19, 20, 21, and 22. The Defendants have failed to demonstrate how the Court misapplied the law or overlooked legal precedent. The Defendants also raise a new argument in paragraph 16 where they allege the Plaintiff failed to comply with the fifteen day notice requirement when the mortgage was assigned to it.¹³ Since this argument was not raised in the counterclaims or in the response to dismiss the counterclaims it cannot be raised in this motion for reargument. Therefore, the Defendants' motion for reargument is denied.

II. Defendants' Motion for Reargument on All the March 7, 2011 Orders

The Defendants' joint motion for reargument addresses each of the orders issued on March 7, 2011. Paragraphs 1 through 3 address the right to a jury trial. This issue has already been decided and the Court did not overlook or misapply legal precedent in reaching its decision. Paragraphs 4, 6, and 10 raise the same arguments that have already been considered and decided. Paragraph 5 appears to argue the facts and interpret the Court's order regarding counterclaims. The counterclaims have already been dismissed and the Defendants have failed to demonstrate a misapplication of the law or facts to the law.

¹² The Real Estate Settlement Procedures Act does require a fifteen day notice of each transfer of mortgage servicing as the Defendants state. *See* 12 U.S.C.A. § 2605. In their response to the Plaintiff's motion for summary judgment, the Defendants did not raise the issue of when the statute of limitations began to toll, which would have been the appropriate time. Since the Defendants were able to raise the issue at that time but did not, this Court cannot consider those arguments at this time. *See Plummer*, 2004 WL 63414 at *2.

¹³ *See* D.I. 8 and D.I. 9.

The Defendants indicate they are being denied their right to a trial, in paragraph 7, because they are unable to raise the defense of avoidance. However, trial is scheduled to begin on October 31, 2011 and the Defendants may raise the defense of payment. They have not been denied the right to a trial because they are unable to raise the defense of avoidance.¹⁴

The amendment of pleadings is addressed in paragraph 8. Under Super. Ct. Civ. R. 15(a):

¹⁴ Even if the Defendants were successful in raising the defense of avoidance, there are two remedies available: monetary damages and rescission. *See* 15 U.S.C.A. § 1640 and 12 U.S.C.A. § 2607(d) (monetary damages). A violation of the Truth In Lending Act also permits the remedy of rescission, a remedy requested by the Defendants in paragraph 49 of their answer and paragraphs 15, 22, 26, 27 and 31 of their counterclaim. *See* 15 U.S.C.A. § 1635. Section 1635(b) states:

When an obligor exercises his right to rescind under subsection (a) of this section, he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it. The procedures prescribed by this subsection shall apply except when otherwise ordered by a court.

So even if the Defendants were able to succeed on their remedy of rescission, they would be required to repay all the money borrowed or tender the property to the lender. They would not be able to keep the property unless the lender did not take possession of the property within twenty days. Based on the federal statute, the Court would not be able to award the property to the Defendants without the security interest.

A party may amend the party's pleading once as a matter of course at any time *before* a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the party's pleading *only by leave of court or by written consent of the adverse party*; and leave shall be freely given when justice so requires.¹⁵

The Defendants' argument that dismissal of the counterclaim is premature because traditionally, all parties are permitted to amend their complaints is not true. As the rule clearly states after a responsive pleading has been filed the parties need to seek leave of the court or obtain the written consent of the adverse party. The Defendants have sought leave from the Court to amend their answer to the complaint and on March 14, 2011, they were instructed to file a motion to amend their answer.

No legal claims have been addressed in paragraphs 9 and 11, so they do not need to be addressed. To the extent they raise arguments that have already been decided, the Defendants have failed to demonstrate a misapplication of the law or an oversight of binding precedent.

¹⁵ Emphasis added.

Conclusion

Based on the forgoing, all of the Defendants' motions for reargument are

DENIED.

IT IS SO ORDERED.

/S/ CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.