

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

CHASE HOME FINANCE, LLC,)
a Delaware Corporation, Assignee of)
Mortgage Electronic Registration)
Systems, Inc., as nominee, a)
corporation organized and existing)
under the laws of the State of)
Delaware,)
)
Plaintiff,) C.A. No. N10L-05-167 JAP
)
v.)
)
SIRENA R. PERMENTER;)
JOHN R. PERMENTER,)
)
Defendants.)

CORRECTED ORDER

1. This is a mortgage foreclosure action in which Defendant filed “Motion for Emergency Stay” in which she apparently seeks to preclude Plaintiff’s assignee from taking possession of her house. The court entered a final judgment in January, 2014 when it granted a Rule Absolute whereupon a Writ of Possession issued to the Sheriff of New Castle County commanding him to cause

Plaintiff's assignee to have peaceable possession of Defendant's home. Defendant states "I require the Judge, John A. Parkins, Jr., of the Superior Court of the State of Delaware, New Castle County, without delay, grant a ninety (90) day stay, until the Plaintiff's show Evidence of the burden of proof under penalty of perjury."

2. It is perhaps useful to summarize the history of this litigation.

- Defendant and her husband apparently had difficulty making their mortgage payments on their home in Middletown. On November 9, 2009 they were sent a Notice of Default on their mortgage.
- Plaintiffs did not file the instant foreclosure action until May 10, 2010, thus giving Defendants time to cure their default.
- Defendants did not answer or otherwise respond to the complaint. On July 21, 2010 Plaintiffs' counsel directed the Prothonotary to enter a default. Two writs of *Laveri Facias* issued in 2010, but Plaintiffs' counsel informally stayed this matter, so the home was not then put up for sheriff's sale.

- On or about June 20, 2013 Plaintiffs filed served another Lev Fac on Defendants. At this point--more than three years after the action had been filed--Defendants had yet to appear in this action.
- The following month Defendants filed a motion to compel discovery even though they had not filed any discovery requests in this action. This was Defendants' first activity in this case. Shortly thereafter they sought to stay any further foreclosure proceedings. After a hearing and a request for supplemental information, the court denied the requested stay on August 9, 2013.
- The property went to sheriff's auction in August, and Plaintiff was the successful bidder. Thereafter it assigned its successful bid to Federal home Loan Mortgage Corporation. Plaintiffs were notified in October, 2013 of the completed sheriff's sale.
- On November 27 the court issued a Rule to Show Cause by January 10, 2014 why a Writ of Possession should not issue. The court conducted a hearing on the return date which was attended by Defendant Mrs. Permenter. (It

appears that Defendants were in the process of a divorce at this time. Mr. Permenter never appeared after the August 9, 2013 hearing.) The court granted the writ but at Defendant's request directed that lockout not occur for 90 days. (The court very much appreciates Plaintiff's counsel's co-operation in this regard.)

- On March 28, 2014 Defendant filed a "motion to rescind" which the court denied on April 1.

3. As with Defendant's previous filings the court has struggled to discern what Defendant is trying to say (see Court's April 1, 2014 order.) Once again the motion is filled with fantastic assertions such as "It has been established that the United States Federal Government has been dissolved by the Emergency Banking Act, March 9, 1933." Elsewhere she asserts that Federal Reserve notes are not valid and that only gold and silver are legal tender. Reading Defendant's motion in the broadest fashion possible, the court can discern only one contention that is not patently frivolous: Plaintiff does not have standing to foreclose on her home.

4. Before considering the merits of Defendant's contention the court notes the extremely limited scope of its authority. The court's

order of January 10, 2014 was the final judgment in this matter. It was the final step in the foreclosure process and the court intended it to be its final act in this case. The current motion was filed far beyond the five day jurisdictional limitation in Civil Rule 59(e), and therefore this court does not have jurisdiction to hear a motion for reargument. To the extent that this court has any authority to consider this motion, it must come from Superior Court Civil Rule 60(b). That rule provides this court may relieve a party from judgment upon a showing of:

(1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

5. Defendant has failed to satisfy any of these requirements.

Subparts (1), (2), (4) and (5) on their face do not apply here.

- Subpart 3 allows for relief in the event of fraud and indeed Defendant fills her motion with the phrases “fraud” and “perjury.” But she never asserts a non-frivolous claim of fraud. For example, Defendant contends that there is no evidence that the proceeds of her mortgage were deposited in her account. The answer to this is obvious. Proceeds of a mortgage are never paid to the buyer, they are paid to the seller and its agent.
- Subpart (6) permits relief from judgment “for any other reason justifying relief. This has been construed to require a showing of “extraordinary circumstances.”¹ None are shown here. The contention that Plaintiff does not have standing has already been litigated in this case. There has been a full exploration of the original lender’s assignment of the mortgage and note (which assignment is permitted under the pertinent documents) to Chase and of the subsequent merger of JP Morgan and

¹ *Jewell v. Division of Social Services*, 401 A.2d 88 (Del. 1979)

Chase. No extraordinary circumstances are present here.

In sum, Defendant is not entitled to relief under Rule 60.

For the foregoing reasons Defendant Mrs. Permenter's motion for a stay is **DENIED**.

So ordered this 14th day of April, 2014.

John A. Parkins, Jr.
Superior Court Judge