

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

FRANK LEE ROBINSON,)	
)	
Plaintiff,)	
)	
v.)	Case No. N14C-05-058 WCC
)	
OCWEN LOAN SERVICING LLC,)	
and)	
LITTON LOAN SERVICING LLC)	
)	
Defendants.)	

Submitted: September 11, 2014
Decided: December 29, 2014

Defendants' Motion to Dismiss – DENIED

ORDER

Frank Lee Robinson, 1705 West 3rd Street, Wilmington, DE 19805, *Pro Se*
Plaintiff.

Jarret P. Hitchings, Esquire, Duane, Morris LLP, 222 Delaware Avenue, Suite
1600, Wilmington, DE 19801, Attorney for Defendants.

CARPENTER, J.

FACTUAL AND PROCEDURAL BACKGROUND

Frank Lee Robinson (the “Plaintiff”), is the owner of real property located at 1705 West 3rd Street, Wilmington, Delaware (the “Property”). On September 13, 2006, Plaintiff and his now ex-wife Viola Robinson (“Viola”) signed a promissory note (the “Note”) in favor of Equity One, Inc. (the “Lender”) in the amount of \$80,000. The Note is secured by a mortgage (the “Mortgage,” collectively with the Note, the “Loan Documents”) on the Property, executed on the same day by Plaintiff and Viola.¹ Defendant Ocwen Loan Servicing (“Ocwen”) services Plaintiff’s mortgage on behalf of the Lender. On April 22, 2010, Plaintiff and Viola were granted a Judgment of Absolute Divorce by the Circuit Court for Caroline County, Maryland.²

In 2009, Plaintiff and Viola stopped paying on the Mortgage and defaulted under the Loan Documents. On December 1, 2010, Plaintiff signed a Modification Agreement (the “Modification”) which amended and supplemented the Loan Documents. In particular, the Modification amended certain repayment terms and modified the principal loan balance to include all unpaid and deferred interest, fees, and other costs bringing the principal balance of the loan to \$88,102.95. Although

¹ Neither the note, nor the mortgage was included in the record by either party.

² See *Robinson v. Robinson*, Cir. Ct. for Caroline County, Maryland, 05-C-10-013592, Apr. 22, 2010, “JUDGMENT OF ABSOLUTE DIVORCE” attached to Complaint.

Viola's name was on the original Loan Documents, the Plaintiff did not require her to sign the Modification because Plaintiff and Viola were "divorced and the property [was] transferred to [Plaintiff] in the divorce decree."³ However, the Modification is clear that the Lender reserved the right to continue to hold Viola liable under the Loan Documents.⁴

In July 2013, the Property was damaged by a fire. At the time, the Property was covered by an insurance policy issued by the Delaware Fair Plan (the "Insurer"). On October 9, 2013, the Insurer issued Check No. 7515 payable to Plaintiff in the amount of \$2,111.20 for his claim of personal property damages. On the same day, Insurer issued Check No. 070516 payable to Plaintiff and Ocwen in the amount of \$2,104.41 for Plaintiff's claim for damages to the Property. The check was remitted to Ocwen for processing and on November 25, 2013, Ocwen issued Check No. 02964207 to Frank and Viola Robinson in the amount of \$2,104.41.

Plaintiff subsequently returned Check No. 02964207 to Ocwen because he could not negotiate it with Viola listed as a payee. Ocwen did not reissue or return

³ See Modification Agreement at 4(A), attached to Complaint. The Plaintiff provided a document which appears to be signed by a Master in the Circuit Court for Caroline County which indicated that the Property would be given to the Plaintiff in the divorce.

⁴ *Id.* ("although the non-signing spouse may continue to be held liable for the obligation under the Loan Documents").

the check to Plaintiff because at the time Plaintiff was again in default under the Loan Documents for failure to pay amounts due.

Ocwen is allegedly holding the funds pursuant to Section 5 of the Mortgage which they claim allows the Lender to hold insurance proceeds until the Lender has had an opportunity to inspect the Property to ensure the work has been completed to the Lender's satisfaction.

The Plaintiff filed a complaint, *pro se*, on May 8, 2014, because the check was never reissued to him. Defendants moved to dismiss his complaint for failure to state a claim. The Court held argument on Defendants' motion on August 5, 2014. This is the Court's Opinion on Defendants' Motion to Dismiss.

STANDARD OF REVIEW

While the Defendants posture this motion as a Motion to Dismiss, both parties have submitted material in addition to the Complaint. As such, the Motion will be converted to a Motion for Summary Judgment.⁵

In reviewing a Motion for Summary Judgment pursuant to Rule 56, the Court must determine whether any genuine issues of material fact exist.⁶

⁵ See Super Ct. Civ. R. 12(c); *Reynolds v. State*, 1999 WL 1427760 (Del. Super. Nov. 10, 1999); *Chrysler Corp. v. Airtemp Corp.*, 426 A.2d 845, 847 (Del. Super. 1980).

⁶ Super. Ct. Civ. R. 56(c); *Wilm. Trust Co. v. Aetna*, 690 A.2d 914, 916 (Del. 1996).

Specifically, the moving party bears the burden of showing that there are no genuine issues of material fact so that he is entitled to judgment as a matter of law.⁷ Further, the Court must view all factual inferences in a light most favorable to the non-moving party.⁸

DISCUSSION

At the hearing on Defendants' Motion it became clear to the Court that Plaintiff was requesting the following: (1) that Viola's name be removed from the mortgage; (2) a letter from Defendants indicating that as of a certain date Viola was removed as a borrower; (3) that a check be reissued by Defendants and made out to Plaintiff only; and (4) twelve-percent interest on \$2104.41 from the time the check was returned by Plaintiff until it is reissued. The Court will address each of Plaintiff's claims in turn.

Plaintiff's divorce from Viola and the subsequent modification of the loan did not remove Viola's name from the Mortgage. Viola signed the original Loan Documents, and in spite of the divorce decree, she remains an obligor under the loan. Plaintiff's contention that the Modification removed Viola from the Mortgage is incorrect. The Modification specifically provides that the "spouse

⁷ *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

⁸ *Alabi v. DHL Airways, Inc.*, 583 A.2d 1358, 1361 (Del. 1990).

who no longer has an interest in the property need not sign” but that “the non-signing spouse may continue to be held liable for the obligation under the Loan Documents.” Therefore, while it may be true that the Defendants now are only looking to the Plaintiff to pay the loan under the Modification; neither the divorce, nor the Modification removed Viola from the Loan Documents. In order to remove Viola’s name from the Mortgage, Plaintiff either had to refinance the loan himself, or have the Defendants agree to waive their rights against Viola, and none of these occurred. Since Viola’s name has not been removed from the Loan Documents, Defendants are within their right to refuse to reissue a check to Plaintiff only and are not required to provide the Plaintiff a letter indicating Viola has been removed as a borrower.

Defendants also argue that they are within their right to hold the insurance proceeds until repairs are completed to their satisfaction. In support of this contention, Defendants cite to Section 5 of the Mortgage. However, since the Mortgage is not part of the record, the Court is unable to make a determination on the validity of this claim. Furthermore, the Court notes that in that section of the Mortgage cited in defense counsel’s letter dated August 25, 2014, there is a promptness requirement that must be met with regards to inspection of the Property. It also appears to the Court that the Defendant may have waived any

objection to paying the insurance claim when they issued the check to the Plaintiff in November 2013. As such, there remains an issue of fact regarding whether Defendants' withholding of insurance funds was appropriate and, thus summary judgment cannot be granted at this time.

Having denied the Motion, the Court offers the following suggestion to the parties which it is willing to do, but both parties must agree. If the Defendants issue a check in the amount of the insurance proceeds payable to the Prothonotary, the Court will issue an order to show cause to Viola Robinson as to why the proceeds should not be distributed solely to the Plaintiff. If she does not respond within the time provided for in the order, the Court will issue a check to the Plaintiff. If she does respond, the Court can rule on whether she has any interest that would prevent the proceeds from going to the Plaintiff. This gets the Defendants out of the case and the Plaintiff his money. To the Court this seems to be a reasonable solution to resolve the dispute. However, if both parties cannot agree to this suggestion, the Defendants shall file an answer to the Complaint within 45 days of this order.⁹

⁹ The Court notes that since the dispute is only over \$2104.41, if the parties are unable to agree to the Court's suggestion, the Defendants may find it more economically advisable to inspect the Property and pay the claim if appropriate instead of litigating the issue further. If the claim is paid in full the litigation will be dismissed.

CONCLUSION

Therefore, for the aforementioned reasons, Defendant's Motion for Summary Judgment is hereby **DENIED**.

IT IS SO ORDERED

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.