

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

**WILLIAM L. WITHAM, JR.**  
RESIDENT JUDGE

**KENT COUNTY COURT HOUSE  
38 THE GREEN  
DOVER, DELAWARE 19901**

December 1, 2015

Daniel T. Conway, Esquire  
Atlantic Law Group, LLC  
512 East Market Street  
Georgetown, Delaware 19947

Mr. Alexander Tsipouras  
595 Gravesend Road  
Smyrna, Delaware 19977

Re: *Nationstar Mortgage LLC v. Alexander Tsipouras*  
C.A. No. K15M-03-005 WLW  
***Letter Order Decision After Evidentiary Hearing***

Dear Mr. Conway and Mr. Tsipouras:

Both parties appeared before the Court to present their respective positions. The question before the Court is whether Plaintiff Nationstar Mortgage LLC DBA Champion Mortgage Company's ("Nationstar") petition to strike the errant satisfaction of a mortgage executed by Defendant Alexander Tsipouras ("Tsipouras") in favor of MetLife Home Loans ("MetLife") and later assigned to Nationstar should be granted pursuant to title 25, section 2122 of the Delaware Code.<sup>1</sup>

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<sup>1</sup> 25 *Del. C.* § 2122 is titled "Procedure to strike an entry of satisfaction or other indication of a mortgage satisfaction." In pertinent part, § 2122(a) states:

When entry of satisfaction, recordation of a mortgage satisfaction piece or other indication of a mortgage satisfaction has been made upon the record through inadvertence, error or mistake, any person or party affected by such inadvertence, error or mistake may, upon sworn petition to the Superior Court of the county in which such mortgage was recorded, setting forth the facts, obtain from such Court a rule on the mortgagor or obligor or their heirs, executors, administrators or assigns, returnable at such time as the Court may direct, requiring such mortgagor or obligor or their heirs, executors, administrators or assigns to appear on the day fixed by the

## I. FACTS AND PROCEDURAL HISTORY

On May 14, 2009, Tsipouras executed and delivered a Home Equity Conversion Mortgage (the “Mortgage”) to MetLife. The Mortgage was recorded on November 2, 2009. Because the Mortgage was a Reverse Mortgage, a second mortgage mirroring the Mortgage was executed by and between Tsipouras and the Secretary of Housing and Urban Development (“HUD”).<sup>2</sup> The HUD mortgage was also recorded on November 2, 2009. On September 20, 2010, the Mortgage and the HUD mortgage were re-recorded to correct the legal description of the property.<sup>3</sup> Following the second recording, a Satisfaction of the Mortgage (“Satisfaction”) was errantly executed and filed. The Satisfaction was dated April 12, 2011, and was recorded on April 19, 2011.<sup>4</sup> On August 8, 2011, the Mortgage was recorded for a third time.<sup>5</sup> On May 28, 2014, MetLife assigned its interest in the Mortgage to Nationstar, and the assignment was recorded on July 16, 2014.<sup>6</sup> A copy of each transaction was submitted as an exhibit with the petition.<sup>7</sup>

In a letter dated April 19, 2013, Nationstar sent notice to Tsipouras via certified mail that the Mortgage was in default for nonpayment of taxes and/or insurance on the principle residence.<sup>8</sup> On December 19, 2014, MetLife filed a foreclosure action in the

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Court and show cause, if they have any, why the entry of satisfaction or other indication of a mortgage satisfaction should not be stricken.

<sup>2</sup> The HUD mortgage does not act as a traditional “second” mortgage. HUD is insuring both the lender and the borrower, and the HUD mortgage is recorded for insurance purposes only. *See* Pl. Br. in Supp. of Evidentiary Hr’g, at 1 n.1 [hereinafter *Nationstar Brief*].

<sup>3</sup> Pl. Pet. to Strike Errant Satisfaction of a Mortgage, at 1-2 [hereinafter *Nationstar Petition*]; *Nationstar Brief*, *supra* note 2, at 2.

<sup>4</sup> *Nationstar Petition*, *supra* note 3, at 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Nationstar Petition*, *supra* note 3, Ex. A-E.

<sup>8</sup> *Nationstar Petition*, *supra* note 3, Ex. F.

Court of Chancery.<sup>9</sup> On March 12, 2015, Nationstar filed this petition to strike the errant Satisfaction of the Mortgage in this Court in order to remove the cloud from the title created by the errant Satisfaction and allow foreclosure proceedings to move forward in Court of Chancery. The action in the Court of Chancery is currently stayed pending the outcome of Nationstar's petition.<sup>10</sup> On August 14, 2015, this Court held an evidentiary hearing on the petition. Matthew Pryll, a director of mortgage underwriting with MetLife, testified for the Plaintiff that the Satisfaction was not entered as a result of the underlying note being paid off by the borrower. Darryl Saunders, a reverse foreclosure manager, testified for the Plaintiff that the Mortgage was currently in default for non payment of taxes and/or insurance. Tsipouras questioned each witness, but his questions related to the Mortgage process and the disposition of the Mortgage funds. Tsipouras was told repeatedly that the only issue before the Court was whether the Satisfaction had been entered in error, but Tsipouras asked no questions relevant to the proceedings. Counsel for the Plaintiff stated that Nationstar is the senior lien holder and that no parties would be prejudiced by striking the Satisfaction. Tsipouras offered no reason as to why the Satisfaction should not be stricken. Each party was given leave to submit a memorandum in support of their position. Nationstar submitted a memorandum in support of the evidentiary hearing, but no memorandum was received from Tsipouras.

## II. DISCUSSION

Section 2122 establishes procedures to strike an entry of a mortgage satisfaction when made through inadvertence, error or mistake.<sup>11</sup> An affected party, upon a sworn petition to the Superior Court, may obtain a rule on the mortgagor requiring the mortgagor to appear and show cause why the entry of satisfaction should not be stricken.<sup>12</sup> If the Court is satisfied from the evidence produced that the Satisfaction was entered in error, the Court shall "order and decree that the entry of satisfaction or other indication of a mortgage satisfaction of such mortgage shall be stricken as if such

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<sup>9</sup> *Nationstar Mortg. LLC v. Tsipouras*, C.A. No. 10475-MA (Del. Ch. July 29, 2015).

<sup>10</sup> *Tsipouras*, C.A. No. 10475-MA, letter to parties (July 29, 2015).

<sup>11</sup> 25 *Del. C.* § 2122(a).

<sup>12</sup> *Id.*

satisfaction or other indication of a mortgage satisfaction had not been made.”<sup>13</sup>

This Court has required the mortgagor to appear and show cause as to why the Satisfaction should not be stricken. Nationstar has offered testimony stating that the Satisfaction was not entered as a result of the underlying note being paid off by the borrower, and that no parties would be prejudiced by striking the Satisfaction. Tsipouras did not address the issue at the evidentiary hearing and has submitted no memorandum in support of his position.

The evidence indicates that the Mortgage was satisfied in error. “When an encumbrance has been discharged through error, equity affords relief.”<sup>14</sup> Because the Satisfaction was entered in error, the Court is required to order that the Satisfaction be stricken from the record.

### III. CONCLUSION

Because the Mortgage was erroneously satisfied and no parties were prejudiced by reliance on the Satisfaction, I prescribe the Mortgage be reinstated as having priority and the Satisfaction be stricken.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

Resident Judge

WLW/dmh

xc: Prothonotary

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<sup>13</sup> 25 *Del. C.* § 2122(b).

<sup>14</sup> *Mfrs. & Traders Trust Co. v. Wilm. Savings Fund Soc’y*, 2012 WL 1416003, at \*4 (De. Super. Mar. 22, 2012) (citing *Alliance Funding Co. V. Stahl*, 829 A.2d 1179, 1181 (Pa. Super Ct. 2003)).