

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

FEDERAL NATIONAL MORTGAGE)
ASSOCIATION,)

Plaintiff,)

v.)

WILMA FORREST AND DERWIN)
FORREST,)

Defendants.)

C.A. No. N15L-12-040 FWW

Submitted: July 19, 2017

Decided: August 2, 2017

Upon Plaintiff's Motion for Summary Judgment:
GRANTED.

ORDER

Wilma Forrest, Derwin Forrest, *pro se*, 2206 North West Street, Wilmington, Delaware, 19802; Defendants.

Melanie J. Thompson, Esquire, Atlantic Law Group, LLC, 913 North Market Street, Suite 1011, Wilmington, Delaware 19801; Attorney for Plaintiff Federal National Mortgage Association.

WHARTON, J.

This 2nd day of August 2017, upon consideration of Federal National Mortgage Association's ("Plaintiff") Motion for Summary Judgment, Wilma and Derwin Forrest's ("Defendants") Answer to the Complaint and Settlement Proposal, argument on June 27, 2017, and Plaintiff's Supplement to the Motion for Summary Judgment, it appears to the Court that:

1. On October 22, 2017, Defendants executed and delivered a mortgage securing a promissory note to American Mortgage Network, Inc. for real property located in Wilmington, Delaware. American Mortgage Network, Inc., for valuable consideration, duly assigned its entire interest in the mortgage to JP Morgan Chase Bank National Association, which in turn assigned its entire interest to Plaintiff.
2. Defendants defaulted on the loan by failing to pay the monthly installments of the mortgage. The mortgage permits Plaintiff to accelerate the sum secured by the mortgage and foreclose on the property for the collection of the owed debt. Defendants were given proper notice and the opportunity to cure the default, but Defendants failed to do so.
3. On December 9, 2015, Plaintiff filed a *scire facias sur* mortgage action against Defendants.
4. On January 8, 2016, Defendants filed an Answer to Plaintiff's Complaint. Defendants asserted Plaintiff lacked standing to bring the lawsuit because Plaintiff

was not in possession of the promissory note. Defendants therefore argued the claims against them must be dismissed.

5. Mandatory mediation was scheduled for February 17, 2016. Plaintiff's counsel appeared at the mediation conference, but Defendants did not.

6. On March 28, 2017, Plaintiff filed a Motion for Summary Judgment ("Motion"). Plaintiff argues that, "[u]nder Delaware law, the mortgagee's right to foreclose emanates from the mortgage, not the Note."¹ Accordingly, Plaintiff argues "[t]he status of the Note is irrelevant," and Defendants have failed to plead one of the limited allowable defenses to a *scire facias sur* mortgage action.² Also, Plaintiff argues Defendants have failed to raise any genuine issues of material fact.³

7. On April 17, 2017, Defendants submitted a Settlement Proposal, without any substantive response to Plaintiff's Motion.

8. The Court scheduled oral argument for June 27, 2017. Plaintiff's counsel appeared before the Court, but Defendants did not. The Court ordered Plaintiff's counsel to file a supplement to the Motion to include the promissory note in light of the Delaware Supreme Court's recent decision in *Shrewsbury v. Bank of N.Y. Mellon*.⁴

¹ Pl.'s Mot. Summ. J., D.I. 17, at ¶ 6.

² *Id.*

³ *Id.* at ¶ 11.

⁴ 160 A.3d 471 (Del. 2017).

9. On June 28, 2017, Plaintiff supplemented the Motion by providing the promissory note. By letter dated June 28, 2017, the Court notified Defendants that they were able to respond to Plaintiff's supplementation of the Motion. However, Defendants never responded.

10. Superior Court Civil Rule 56(c) provides that summary judgment is appropriate when there is "no genuine issue as to any material fact" and "the moving party is entitled to a judgment as a matter of law." When considering a motion for summary judgment, the Court's function is to examine the record to determine whether genuine issues of material fact exist "but not to decide such issues."⁵ The moving party bears the initial burden of demonstrating that the undisputed facts support its claims or defenses.⁶ If the moving party meets its burden, then the burden shifts to the non-moving party to demonstrate that there are material issues of fact to be resolved by the ultimate fact-finder.⁷

11. In a mortgage foreclosure action, "a mortgagor must establish why the mortgaged property should not be seized and sold to pay the mortgagor's indebtedness."⁸ A mortgagor's defenses in such a proceeding "are limited to

⁵ *Merrill v. Crothall-Am., Inc.*, 606 A.2d 96, 99 (Del. 1992).

⁶ *Moore v. Sizemore*, 405 A.2d 679, 681 (Del. 1979).

⁷ *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995).

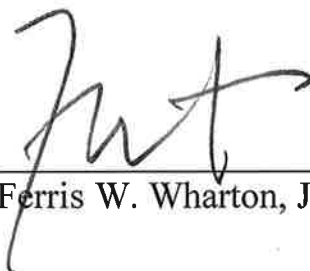
⁸ *McCafferty v. Wells Fargo Bank, N.A.*, 105 A.3d 989, at *2 (Del. 2014) (TABLE) (citing 10 Del. C. § 3901).

defenses to the mortgagor's obligations under the mortgage.”⁹ In other words, “a defense that does not relate to the mortgage is not properly raised in a mortgage foreclosure action.”¹⁰ As such, Defendants’ “available defenses are ‘limited to payment, satisfaction, absence of seal, or a plea in avoidance of the deed.’”¹¹

12. The Court finds Defendants have failed to plead any allowable defenses that are supported by evidence. Plaintiff, as the legal holder of the promissory note, has standing to bring this lawsuit. Further, the Court finds Defendants have failed to raise any genuine issues of material fact. Defendants have therefore failed to meet their burden for the purpose of this Motion.

THEREFORE, Plaintiff’s Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED.



Ferris W. Wharton, J.

⁹ *Id.* (citing *Brooks v. BAC Home Loans Servicing*, 53 A.3d 301 (Del. 2012) (TABLE)).

¹⁰ *Id.* (citing *Harmon v. Wilmington Trust Co.*, 663 A.2d 487 (Del. 1995) (TABLE)).

¹¹ *Bayview Loan Servicing, LLC v. Edwards*, 2017 WL 1019729, at *3 (quoting *Gordy v. Preform Bldg. Components, Inc.*, 310 A.2d 893, 895 (Del. Super. 1973)). *See also Gordy*, 310 A.2d at 895–96 (“Examples of matters which could be asserted under a plea in confession and avoidance are: act of God, assignment of cause of action, conditional liability, discharge, duress, exception or proviso of statute, forfeiture, fraud, illegality of transaction, justification, nonperformance of condition precedent, ratification, unjust enrichment and waiver.”).

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