

**SUPERIOR COURT  
OF THE STATE OF DELAWARE**

FRED S. SILVERMAN  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 N. KING STREET, SUITE 10400  
WILMINGTON, DELAWARE 19801  
(302) 255-0669

Submitted: July 10, 2003  
Decided: November 25, 2003

John J. Thompson, Esquire  
Levine & Thompson  
1205 King Street  
Wilmington, DE 19801

Leo J. Ramunno, Esquire  
1205 N. King Street  
Wilmington, DE 19801

Re: *Citifinancial, Inc. v. Hancock, et al., C.A. No. 01L-06-083-FSS*  
*Upon Motion for Reargument – **GRANTED**, in part*

Dear Counsel:

After the court issued its June 27, 2003 letter order, Plaintiff filed a timely Motion for Reargument. The letter order, in summary, said the court was not satisfied that Plaintiff held an enforceable mortgage. In contrast to what is expected in a mortgage foreclosure the debt instruments were irregular. The letter order also relied heavily on Plaintiff's having failed to file a post-trial brief, as ordered.

The Motion for Reargument, in effect, is the overdue, post-trial brief. The court appreciates Defendants' opposition to reargument. But the court recalls that the first thing Defendants' counsel had to do after he appeared was to get Defendants' default lifted. In this case, the court is not treating either side's defaults as fatal.

Plaintiff, finally, contends that it properly filed and executed two notarized

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mortgages with the Recorder of Deeds. The first was taken out in August and the second in November, 1998. The second transaction allegedly refinanced the August mortgage. In their Affidavit of Defense, Defendants swore that they had a mortgage with Plaintiff, but claimed the November mortgage was invalid. Plaintiff points out that Defendants cannot explain why the first payment after the November refinancing was the new, lower amount. Plaintiff further asserts that Defendants acknowledge that they owe Plaintiff money.

The court continues to question the November 1998 transaction's validity, and the court is not satisfied that Plaintiff's record keeping is sufficiently reliable. The court's characterization of Plaintiff's records is charitable, considering the testimony of Plaintiff's notary to the effect that she notarized documents that were not signed or ratified in her presence. But despite the gaps in the record, it is probable that Plaintiff loaned at least \$215,367.18 to Defendants in August 1998. Defendants virtually admit as much in their Affidavit of Defense. That goes for both Defendants, despite the fact that Linda Hancock did not sign the August 1998 note. Taking her admitted conduct into account, the court considers Linda Hancock estopped from denying the August 1998 note. She signed the mortgage, received the loan proceeds and participated in the loan's repayment, until default. She cannot deny the August 1998 debt and she is on the August 1998 mortgage, along with Walter Hancock.

The court granted partial summary judgment for \$200,000 to Plaintiff before trial. The court will enter an order, upon submission and approval as to form, granting final judgment to Plaintiff for \$215,367.18, minus all payments made by Defendants, plus interest at 8.75 16% on the remaining principal, and \$5,500 in attorneys fees.

For the foregoing reasons, Plaintiff's July 7, 2003 Motion for Reargument is **GRANTED**, as to the August 1998 note and mortgage.

**IT IS SO ORDERED.**

Very truly yours,

FSS/lah  
oc: Prothonotary (Civil Division)  
pc: Ms. Melanie Williams, Civil Case Manager