

**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: April 28, 2006
Decided: July 31, 2006

John R. Weaver, Jr., Esquire
831 N. Tatnall Street, Suite 200
Wilmington, DE 19801

Douglas A. Shachtman, Esquire
Douglas A. Shachtman & Associates
1200 Pennsylvania Avenue, Suite 302
Wilmington, DE 19806

*Re: C.A. Mitchell v. Tyrone A. Church, C.A. No. 04L-10-042
Upon Cross Motions for Summary Judgment*

Dear Counsel:

This is a mortgage foreclosure. Defendant signed a contract for home repairs. He financed the work through a conditional sale contract, allegedly secured by a mortgage on the house. Based on the nature of the contract and the federal truth-in-lending law, which applies here, the contract boldly warned that assignees were subject to the debtor's contract defenses. The warning was meant to prevent anyone who bought the commercial paper from claiming holder-in-due-course status, which is precisely what is happening here.

According to Defendant, the contractor was a scam artist, probably in cahoots with the lender. While Defendant admits he signed the contract, he denies receiving the loan's proceeds or the remodeling. And, he also denies signing the mortgage. Defendant has some circumstantial evidence backing his defenses.

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In any event, the original lender sold the loan and the mortgage now belongs to Plaintiff, who is attempting to foreclose. Defendant seeks to raise all his defenses concerning the renovation's failure and fraud, including the allegedly forged mortgage. Plaintiff is emphatic that he is not enforcing the contract. He is relying on the mortgage and, as suggested above, he asserts holder-in-due-course status.

Although it is a New Jersey case and it addresses damages in another context, the fundamental reasoning of *Associates Home Equity Services, Inc. v. Troup*,¹ is helpful here. *Associates* explains the history and operation of the FTC's "Holder Rule." Basically, the federal rule addresses predatory lending practices, such as "dragging the body." The rule is intended to prevent loan companies from enforcing purchase money loans, such as the one here, without reference to the underlying transaction. As *Associates* further explains, however, and with citations:

The clear and unambiguous language of the Rule "notifies all *potential holders* that, if they accept an assignment of the contract, they will be stepping into the seller's shoes."
(Emphasis in the original.)²

According to *Associates*, the Rule applied to the debtors's benefit in the foreclosure action there.^{3 4}

¹ *Associates Home Equity Servs., Inc. v. Troup*, 778 A.2d 529, 540-541 (N.J. Super. Ct. App. Div. 2001).

² *Id.* at 542.

³ *Id.* at 543.

⁴ *See also, Ramadan v. Chase Manhattan Corp.*, 229 F.3d 194 (3d Cir. 2000); *Scott v. Mayflower Home Improvement Corp.*, 831 A.2d 564 (N.J. Super. Ct.

(continued...)

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In summary, Plaintiff is not entitled to holder-in-due-course status. By claiming holder-in-due-course status, Plaintiff cannot circumvent the Holder Rule and insulate himself from any predatory lending practices that allegedly occurred. Of course, it remains to be seen if Defendant's allegations are true. Meanwhile, however, the court believes this ruling, that the Holder Rule applies here, knocks out Plaintiff's motion for summary judgment.

For the foregoing reasons, Plaintiff's motion for summary judgment is **DENIED**. Defendant's cross-motion for summary judgment is **DENIED**, but without prejudice.

The court will allow counsel to consider this decision and confer. If the parties cannot resolve the case, the court may order mediation. Unless the court receives a written submission first, the court will hold a teleconference to discuss the case's future.

IT IS SO ORDERED.

Very truly yours,

/s/ Fred S. Silverman

FSS/lah
oc: Prothonotary (Civil Division)

⁴(...continued)

Law Div. 2001), *overruled on other grounds by Psensky v. American Honda Fin. Corp.*, 875 A.2d 290 (N.J. Super. Ct. App. Div. 2005); *Music Acceptance Corp. v. Lofing*, 39 Cal. Rptr. 2d 159 (Cal. App. 3 Dist. 1995).