

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ACTION ADJUSTMENT SERVICE, INC.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO.: 20-cv-2032
	:	
DEBRA HEENAN, et al.,	:	
Defendants.	:	

MEMORANDUM OPINION

SITARSKI, M.J.

November 18, 2021

Presently pending before the Court is Plaintiff’s Motion to Release Funds Paid into Registry by Allstate and Satisfy Judgment against Debra Heenan (Mot. to Release Funds, ECF No. 39), Defendant PHH Mortgage Corporation’s¹ response in opposition thereto (Resp., ECF No. 41-1), and Plaintiff’s reply in support.² (Reply, ECF No. 46). For the reasons that follow, the Court grants Plaintiff’s motion.

I. FACTUAL AND PROCEDURAL HISTORY³

On February 1, 2018, nonparty Deutsche Bank, the assignee of Heenan’s mortgage and the entity for which Ocwen (now PHH) served as servicer and attorney-in-fact relative to the mortgage, obtained a default judgment in mortgage foreclosure in the Montgomery County Court

¹ PHH Mortgage Corporation (PHH) is the “successor by merger” to Ocwen Loan Servicing, LLC (Ocwen). (Jt. Status Rpt., ECF No. 17 at 5).

² The Honorable C. Darnell Jones, II referred this matter to me for disposition pursuant to 28 U.S.C. § 636(b)(1)(A). (Order, ECF No. 191).

³ For additional background, see my June 2, 2021, Report and Recommendation on Heenan’s Motion to Set Aside Default Judgment. (R & R, ECF No. 40). The instant Memorandum includes only factual and procedural history pertinent to the issue now before me.

of Common Pleas against Heenan in the amount of \$239,127.84. (Resp., ECF No. 41-1, at n.2; Default Judgment, ECF No. 41-7). After purchasing the property for a nominal amount at a sheriff's sale on July 18, 2018, Deutsche Bank then sold the property for \$184,800 on November 9, 2018, leaving a deficiency of \$54,327.84. (Prop. Rec., ECF No. 41-8).

Action Adjustment Service, Inc. (Action Adjustment), Heenan's insurance adjuster on a property damage claim she had submitted to her homeowners insurer, Allstate Insurance Company (Allstate), for a 2015 fire, filed its Complaint in this matter on April 27, 2020, to recover funds debited from its bank account to reimburse Allstate for claim proceeds mistakenly paid out to Action Adjustment in 2016.⁴ (Compl., ECF No. 1, at ¶¶ 14-15). The Complaint included two claims against Ocwen for unjust enrichment and constructive trust, which it moved to dismiss on July 21, 2020. (*Id.* at ¶¶ 63-72,81-92; Mot. to Dismiss, ECF No. 13).

On July 24, 2020, Judge Jones ordered the parties to file a joint status report. (Order, ECF No. 15). On August 14, 2020, the parties⁵ submitted the report. In Paragraph II of the report, they proposed that Allstate deposit the funds at issue into the Court Registry, followed by the dismissal of all Defendants except PHH and Heenan. (Jt. Status Rpt., ECF No. 17, at 2). PHH further "recommend[ed] that that it be allowed to re-style its pending Motion to Dismiss as a combined motion to dismiss/motion for distribution of the funds at issue" and that Action Adjustment be permitted to respond. (*Id.* at 3). Action Adjustment also indicated its intention to

⁴ Allstate issued a check from its account with Bank of America to Action Adjustment, Heenan, and Ocwen. (Compl., ECF No. 1, at ¶ 16). Action Adjustment endorsed the check on behalf of itself and, with her permission, Heenan, but inadvertently failed to obtain Ocwen's signature before presenting it for deposit. (*Id.* at ¶¶ 17-18). Nonetheless, Allstate's Bank (TD Bank) and, in turn, Bank of America both accepted the check, and the funds became available to Action Adjustment for disbursement. (*Id.* at ¶ 18).

⁵ Heenan, who had not appeared in the litigation to that point, did not participate in the formulation of the report. (Jt. Status Rpt., ECF No. 17, at 5 n.2).

move for a default judgment against Heenan. (*Id.*). On October 19, 2020, Judge Jones ordered that “[t]he matter shall proceed in accordance with the parties’ proposal, as set forth in Paragraph II of the Status Report” (Order, ECF No. 18).

On December 3, 2020, Judge Jones, upon Action Adjustment’s motion, entered a default judgment against Heenan and in favor of Action Adjustment. (Order, ECF No. 22). After a hearing, I assessed damages against her at \$83,459.61. (Order, ECF No. 31). On March 16, 2021, Heenan moved to set aside the judgment, but on June 2, 2021, I issued a Report and Recommendation recommending that the motion be denied. (Mot. to Set Aside, ECF No. 34; R & R, ECF No. 40). On July 20, 2021, Judge Jones approved and adopted my Report and Recommendation and denied Heenan’s motion. (Order, ECF No. 43).

On June 3, 2021, Action Adjustment filed the instant motion to disburse the \$87,852.22 that Allstate had previously deposited into the Court Registry pursuant to Federal Rule of Civil Procedure 67(a)⁶ (plus interest accruing thereupon) and to mark the judgment against Heenan satisfied. (Mot. to Release Funds, ECF No. 39). PHH filed a response in opposition on June 17, 2021. (Resp., ECF No. 41-1). After Allstate obtained leave to file a reply, it was docketed on September 22, 2021. (Reply, ECF No. 46).

II. LEGAL STANDARD

Money paid into the Court Registry pursuant to Rule 67 must be withdrawn in accordance with 28 U.S.C. § 2042. FED. R. CIV. P. 67(b). This section specifies that no money

⁶ This subsection provides in relevant part: “If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party – on notice to every other party and by leave of court – may deposit with the court all or part of the money or thing, whether or not that party claims any of it.” FED. R. CIV. P. 67(a).

“shall be withdrawn except by order of court.” 28 U.S.C. § 2042; *see also* Order, ECF No. 21 (“The Clerk of Court shall not disburse the funds absent further Order of this Court[.]”). In a civil proceeding, Section 2042 requires that “a claimant must satisfy the preponderance standard of proof.” *United States v. Beach*, 113 F.3d 188, 191 (11th Cir. 1997) (citing *United States v. Kim*, 870 F.2d 81, 84-85 (2d Cir. 1989)).

III. DISCUSSION

Pennsylvania’s Deficiency Judgment Act establishes the following “[g]eneral rule”:

Whenever any real property is sold, directly or indirectly, to the judgment creditor in execution proceedings and the price for which such property has been sold is not sufficient to satisfy the amount of the judgment, interest and costs and the judgment creditor seeks to collect the balance due on said judgment, interest and costs, the judgment creditor shall petition the court to fix the fair market value of the real property sold. The petition shall be filed as a supplementary proceeding in the matter in which the judgment was entered.

42 PA. C.S.A. § 8103(a).

A judgment creditor must file the petition to fix fair market value within six months of the sale. *Id.* § 5522(b)(2). Failure to do so “raises as a matter of law the conclusive presumption that the judgment has been satisfied.” *Reliable Sav. & Loan Ass’n of Bridgeville v. Joyce*, 561 A.2d 804, 807-08 (Pa. Super. Ct. 1989) (citing *First National Consumer Discount Co. v. Fetherman*, 527 A.2d 100 (1987)); *see also McCartney v. Integra Nat’l Bank N.*, 106 F.3d 506, 509 (3d Cir. 1997) (“Failure to file a petition within this time period ‘creates an irrebuttable presumption that the creditor was paid in full in kind.’”) (citing *Valley Tr. Co. of Palmyra v. Lapitsky*, 339 Pa. Super. 177, 488 A.2d 608, 611 (1985)). Further, “[t]his presumption serves to discharge all parties either directly or indirectly liable to the judgment creditor for payment of

the debt” *Id.* (citations omitted).

Here, the foreclosure docket indicates that PHH never filed a petition to establish the fair market value of the real property securing the mortgage. (Reply, ECF No. 46, at Ex. A; *see also* 42 PA. C.S.A. § 8103(a) (“The petition shall be filed as a supplementary proceeding in the matter in which the judgment was entered.”)). Accordingly, it has been conclusively and irrebuttably established that PHH’s judgment has been satisfied, both as to Heenan and Action Adjustment. *Reliable Sav. & Loan Ass’n of Bridgeville*, 561 A.2d at 807-08; *McCartney*, 106 F.3d at 509. Because there is no existing liability to PHH for the debt, Action Adjustment has shown that it is the party more likely than not entitled to the escrowed funds because the money was drawn from Action Adjustment’s bank account to reimburse Allstate after the original insurance proceeds were wrongly paid out to Heenan.⁷ (R & R, ECF No. 40, at 1-3). PHH argues that Action Adjustment has failed to make out its unjust enrichment and constructive trust claims against it, but the Court is not entering judgment against PHH. In fact, Action Adjustment asks that the Court dismiss its claims against PHH with prejudice after disbursing the funds to Action Adjustment. The basis for disbursement is Action Adjustment’s showing of an entitlement to the funds under Rule 67, not its claims against PHH.

Finally, PHH also argues that Action Adjustment’s motion is “premature” because Judge Jones adopted the parties’ proposed “framework for how this case could proceed if Allstate were allowed to deposit the Funds in the Court’s registry” but not their proposed case schedule. (Resp., ECF No. 41-1, at 5). PHH claims that it “anticipated” that the Court would therefore

⁷ As Action Adjustment notes, while the deposited funds exceed the amount of its judgment against Heenan by \$4,392.61, this amount represents the fee Action Adjustment charged Heenan for its services. This amount was also debited from its account. (Mot. to Release Funds, ECF No. 39, at 6).

impose a different schedule, but Action Adjustment has filed its motion before the Court could do so. (*Id.*). It observes that the pleadings have not closed and that the parties have not participated in a Rule 26 discovery conference or Rule 16 scheduling conference. (*Id.*). But PHH's argument misses the point. As just noted, Action Adjustment is entitled to the escrowed funds under Rule 67, not on the basis of its claims against PHH. Further litigation will not change the fact that PHH failed to file a timely petition to fix the fair market value of the property, as required by 42 PA. C.S.A. § 5522(b)(2). In addition, PHH disavowed the need for any discovery in the Joint Status Report, and it has been heard on disbursement via its response to the instant motion. (Jt. Status Rpt., ECF No. 17, at 2-3; Resp., ECF No. 41-1, at 5). There is no reason to await the closing of the pleadings, discovery or further motion practice before disbursing the funds.

For the foregoing reasons, I will grant Action Adjustment's motion. An appropriate Order follows.

BY THE COURT:

/s/ Lynne A. Sitarski
LYNNE A. SITARSKI
United States Magistrate Judge