**IN THE COURT OF APPEALS OF IOWA**

No. 3-144 / 12-1338
Filed April 24, 2013

**JP MORGAN CHASE BANK, NATIONAL ASSOCIATION, SUCCESSOR BY MERGER TO CHASE HOME FINANCE, L.L.C.,**
Plaintiff-Appellee,

**vs.**

**MICHAEL J. ACKLEY, APRIL ACKLEY and PARTIES IN POSSESSION,**
Defendants-Appellants.

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Appeal from the Iowa District Court for Tama County, Marsha A. Bergan, Judge.

Michael and April Ackley appeal the district court's grant of summary judgment in favor of JP Morgan Chase Bank. **AFFIRMED.**

David M. Loetz of Iowa Legal Aid, Ottumwa, for appellants.

Mark D. Walz and Elizabeth R. Meyer of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, for appellee.

Heard by Vogel, P.J., and Vaitheswaran and Bower, JJ.

**BOWER, J.**

Michael and April Ackley appeal the district court's grant of summary judgment in favor of JP Morgan Chase Bank in this foreclosure action. The Ackleys argue on appeal that summary judgment is precluded because of unclean hands on the part of JP Morgan Chase Bank. Because we find that the district court properly applied the law, and that no questions of material fact exist, we affirm.

## I. Background Facts and Proceedings

On June 14, 2010, JP Morgan Chase Bank (Chase) filed a foreclosure petition in district court. The petition alleged Michael and April Ackley executed a promissory note in the amount of $66,810, and to secure the debt executed a mortgage for the benefit of Weststar Mortgage, Inc. Chase is the successor in interest to Weststar Mortgage, Inc. The petition further alleged that because the Ackleys are in default, Chase has the right to foreclose upon the property. The Ackleys answered the petition on July 12, 2010, and raised various defenses. In this appeal the Ackleys claim Chase failed to comply with the Home Affordable Modification Program (HAMP) and therefore possessed unclean hands, precluding foreclosure.

Chase moved for summary judgment on January 30, 2012. The Ackleys resisted by arguing that Chase had failed to consider their eligibility under the HAMP, as required by the program. Michael Ackley provided an affidavit that Chase had failed to respond to any of his attempts to apply for relief under

HAMP. The Ackleys also argued Chase lacked clean hands due to noncompliance with the National Mortgage Settlement (NMS).

On June 28, 2012, the district court granted Chase's motion for summary judgment. The court analyzed the Ackley's claim of unclean hands and determined they lacked standing under the HAMP and that the NMS did not apply.

## II. Standard of Review

We review the grant of summary judgment by the district court for errors at law. *Mueller v. Wellmark, Inc.*, 818 N.W.2d 244, 253 (Iowa 2012). "Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Emp'rs Mut. Cas. Co. v. Van Haaften*, 815 N.W.2d 17, 22 (Iowa 2012). We view the evidence in the light most favorable to the non-moving party. *Mueller*, 818 N.W.2d at 253. When the motion is properly supported, however, the non-moving party is required to establish genuine issues for trial by coming forward with specific facts. *Id.*; *see also* Iowa R. Civ. P. 1.981(5).

## III. Discussion

On appeal, the Ackleys argue they have raised a genuine issue of material fact. They contend there are questions as to Chase's actions concerning the HAMP and the NMS.

The doctrine of unclean hands rests on the principle that courts sitting in equity will not provide shelter or aid to a party who seeks the benefit of their own

wrongdoing. *Opperman v. M. & I. Dehy, Inc.*, 644 N.W.2d 1, 6 (Iowa 2002).[1] "The maxim means that whenever a party who seeks to . . . obtain some equitable remedy has violated good conscience or good faith . . . the doors of equity will be shut." *Id.* (quoting 27A Am. Jur. 2d *Equity* §126, at 605 (1996)). To avail oneself of the defense, the bad conduct must have damaged or prejudiced the defensive party in some way. *Midwest Mgmt. Corp. v. Stephens*, 353 N.W.2d 76, 81 (Iowa 1984). "The defense of the clean hands doctrine is not favored by the courts." *Butler v. Butler*, 114 N.W.2d 595, 619 (Iowa 1962).

**A. HAMP**

The Ackleys contend Chase has unclean hands because HAMP required Chase to consider their modification application, and their applications went unanswered. The district court determined the Ackleys lack standing to enforce the requirements of HAMP, and that Chase complied with the program.

A review of the record shows: On May 16, 2011, Chase sent Michael Ackley a letter indicating the modification application was incomplete and requested several documents that were needed before the application could be considered. A second letter was sent on June 16, 2011, to the same effect. On July 8, 2011, Chase again requested documents and information from the Ackleys. On August 31, 2011, Chase sent a fourth request indicating which documents were missing from the application and clearly stated the Ackleys were required to comply with the request by September 30, 2011, or they would lose their ability to participate in the program. Chase provided the district court with

[1] "Mortgage foreclosure proceedings are equitable in nature." *West Des Moines State Bank v. Pameco, Inc.*, 501 N.W.2d 555, 557 (Iowa Ct. App. 1993).

copies of a complete modification application, which was dated March 1, 2012.[2] In a letter dated April 6, 2012, Chase informed the Ackleys that they were not eligible for the program and denied their application. The letter provided additional options to avoid foreclosure.

Assuming without deciding the Ackleys are able to force compliance with HAMP, we find that Chase considered the modification application as required by HAMP and determined the Ackleys were not eligible.[3] Understanding that Chase has complied with HAMP, we cannot say Chase has acted in bad faith or in an unconscionable way. This is especially true in light of the Ackley's failure to timely provide, after several requests, a full and complete application. The record is clear that Chase gave the Ackleys multiple opportunities to provide the necessary documents before the motion for summary judgment was filed. After the motion was filed, Chase considered and denied the application. The Ackleys raise no question of material fact that Chase comes to our courts with unclean hands with regards to their compliance with HAMP. The district court's conclusion is correct.

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[2] We note the application was signed and dated by Michael Ackley after the motion for summary judgment was filed. For their part, the Ackleys have not provided applications dated before March 1, 2012. Evidence supporting their resistance to the motion for summary judgment is limited to an affidavit filed by Michael Ackley asserting that their modification applications have gone unanswered. No documents are included which support this assertion.

[3] Chase notified the Ackleys on November 3, 2009, that they might be eligible for a loan modification. There is no indication in the record that the Ackleys responded to this letter by providing Chase with documentation to support a loan modification.

**B. NMS**

The situation with the NMS is similar. The district court concluded the Ackleys lacked standing to raise noncompliance as a defense under the NMS. Without standing there would be no material question of fact as to the unclean hands of Chase.

The NMS provides for enforcement of its terms. *See United States v. Bank of America Corp.*, Case 1:12-cv-00361-RMH, Exhibit E (J)(2), *retrieved from* http://www.justice.gov/opa/documents/chase-consent-judgement.pdf. "An enforcement action under this Consent Judgment may be brought by any Party to this Consent Judgment or the Monitoring Committee." *Id.* The Ackleys are not parties to the agreement. They have no right to enforce compliance with the NMS, which is what they seek to do. Accordingly, we affirm.

**AFFIRMED.**