

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(Filed: July 10, 2012)

SEAN P. COOK :
STACEY D. COOK :
v. :
MORTGAGE ELECTRONIC :
REGISTRATION SYSTEMS; :
FREMONT INVESTMENT & LOAN; :
GRP LOAN, LLC :

C.A. No. PC 2010-1323

DECISION

RUBINE, J. Before this Court is Defendants' Mortgage Electronic Registration Systems ("MERS") and GRP Loan, LLC ("GRP") (collectively, "Defendants") Motion for Judgment on the Pleadings pursuant to Rule 12(c) of the Rhode Island Superior Court Rules of Civil Procedure.1 Plaintiffs Sean P. Cook and Stacey D. Cook (collectively, "Plaintiffs") filed a declaratory judgment action petitioning the Court to quiet title to certain real property located at 1825-1827 Pawtucket Avenue, East Providence, Rhode Island ("the Property"). This action arises out of Plaintiffs' challenge to Steel Mountain Home, LLC's ("Steel Mountain"), a non-party to this action, foreclosure sale of the Property on October 16, 2009.

It is blatantly obvious to the Court that Plaintiffs have failed to join Steel Mountain, a necessary and indispensable party to this action. Since this is an action for declaratory relief with respect to title, it seems evident that the current title holder, Steel Mountain, is

1 Defendant Fremont Investment & Loan is not a party to this Motion. Further, even though Steel Mountain Home, LLC is a named party to the motion, Steel Mountain is not a named party to this action. Defendants cannot "add" a party without following the proper rules of civil procedure.

a necessary party. “When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of person not parties to the proceeding.” Section 9-30-11. Our Supreme Court has held that “this provision is mandatory and that failure to join all persons who have an interest that would be affected by the declaration ordinarily is fatal to an action.” Thompson v. Town Council of the Town of Westerly, 487 A.2d 498 (R.I. 1985) (citing Langton v. Demers, R.I., 423 A.2d 1149, 1150 (1980)). “One of the essential purposes of the declaratory judgments act . . . is to terminate the uncertainty or controversy giving rise to the proceeding.” Id. (quoting In Re City of Warwick, 97 R.I. 294, 296, 197 A.2d 287, 288 (1964)); see also Section 9-30-6. A court may not assume subject-matter jurisdiction over a declaratory judgment action when a plaintiff fails to join all those necessary and indispensable parties who have an actual and essential interest that would be affected by the declaration. Meyer v. City of Newport, 844 A.2d 148 (R.I. 2004); see also Sullivan v. Chafee, 703 A.2d 748 (R.I. 1997). All parties who have an interest that would be affected by a declaration are indispensable and must be joined. Id. Accordingly, the trial court may, on its own motion, order such persons brought in as parties. 71 A.L.R.2d 723 § 8; see also Morganton v. Hutton & Bourbonnais Co., 247 N.C. 666, 101 S.E.2d 679 (1958) (in a declaratory action the rights of interested persons who have not been made parties might be prejudiced by the judgment, . . . the trial court should refuse to deal with the merits of the case until the absent parties are brought in, and in the absence of a proper motion by the parties the court should correct the defect on its own motion); Savin v. Delaney, 229 Ky. 226, 16 S.W.2d 1039 (1929) (if persons not before the court were interested in or affected by the proceeding, it is the duty

of the court to make them parties and bring them before it, or dismiss the action without prejudice).

This Court finds that Steel Mountain, as the foreclosing party and successful bidder at the foreclosure sale, has an interest in this declaratory judgment action as it involves the validity of the foreclosure sale as well as Steel Mountain's authority to foreclose and the validity of its title by way of the recordation of the foreclosure deed. Steel Mountain is a necessary and indispensable party who has "an actual and essential interest that would be affected by" a declaration of this Court. Meyer, 844 A.2d at 148. Plaintiffs' failure to join Steel Mountain as a party to this instant action is fatal and prejudicial to Steel Mountain. This Court will therefore dismiss this claim without prejudice allowing Steel Mountain to be joined and given an opportunity to respond. Accordingly, this Court will not at this time reach the merits of the Defendants' Motion for Judgment on the Pleadings.

### **Conclusion**

Based on the foregoing, the instant Complaint shall be dismissed without prejudice to allow Plaintiffs the opportunity to amend the Complaint to join Steel Mountain as a necessary party. Counsel shall confer and submit an Order to the Court in accordance with this Decision.