

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: July 22, 2015]

MARIA J. CASIMIRO :
CHARLES M. SMITH III :

v. :

C.A. No. PC 2011-1592

MORTGAGE ELECTRONIC :
REGISTRATION SYSTEMS, INC.; :
GREENPOINT MORTGAGE FUNDING, :
INC.; BAC HOME LOAN SERVICING, LP; :
FEDERAL NATIONAL MORTGAGE :
ASSOCIATION :

DECISION AND ORDER

RUBINE, J. This matter came before this Court, Justice Allen P. Rubine presiding, on June 16, 2015 on Defendants, Mortgage Electronic Registration Systems, Inc. and Federal National Mortgage Association’s motion for summary judgment pursuant to Rule 56(b) of the Rhode Island Superior Court Rules of Civil Procedure. Due to Plaintiffs’ counsel’s unexcused absence,¹ this Court did not hear oral arguments and considered the parties’ arguments solely on their briefs and other written materials.² After consideration, this Court finds as follows:

¹ Counsel cannot assume his absence is excused, based upon an oral statement left in a message to the Clerk that he is ill and that a doctor advised he was medically unable to attend. This is particularly true when counsel wishes to obtain a continuance based upon his medical condition and when opposing counsel did not consent to such continuance. See generally Silvia v. Brule, 9 A.3d 659, 660 n.2 (R.I. 2010). This Court also notes that Plaintiffs’ counsel did not submit a certificate of a practicing physician until a day after the scheduled hearing date. See Super. R. Civ. P. 40 (“A motion for a continuance on the ground of sickness of a party or witness shall be accompanied by a certificate of a practicing physician stating the fact of said sickness, and the kind, degree, and the time of beginning thereof.”).

² This Court notes that there is no constitutional right to oral arguments at a summary judgment hearing, and “[t]he decision as to whether or not to hold a hearing and allow oral argument is within the discretion of the [superior] court.” Ryan v. Roman Catholic Bishop of Providence, 941 A.2d 174, 187-88 (R.I. 2008).

“Summary judgment is appropriate when no genuine issue of material fact is evident from ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any,’ and the motion justice finds that the moving party is entitled to prevail as a matter of law.” Mruk v. Mortg. Elec. Registration Sys., Inc., 82 A.3d 527, 532 (R.I. 2013) (quoting Swain v. Estate of Tyre, 57 A.3d 283, 288 (R.I. 2012)). “[T]he nonmoving party bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions.” Id. (quoting Daniels v. Flurette, 64 A.3d 302, 304 (R.I. 2013)).

Before this Court may consider the merits of plaintiffs’ complaint regarding the invalidity of foreclosure, it first must address the threshold question of justiciability. See State v. Lead Indus. Ass’n, Inc., 898 A.2d 1234, 1237 (R.I. 2006). Our Supreme Court “long has recognized the need, apart from certain exceptional circumstances, to confine judicial review only to those cases that present a ripe case or controversy.” Id. at 1238. Accordingly, our Supreme Court “will not issue advisory opinions or rule on abstract questions.” Id. (quoting Vose v. Rhode Island Bhd. of Corr. Officers, 587 A.2d 913, 915 n.2 (R.I. 1991)); see also Morris v. D’Amario, 416 A.2d 137, 139 (R.I. 1980) (“As a general rule we only consider cases involving issues in dispute; we shall not address moot, abstract, academic, or hypothetical questions”).

The Plaintiffs’ complaint is in two counts. Plaintiffs seek declaratory judgment declaring the alleged foreclosure sale invalid and a claim to quiet title, pursuant to G.L. 1956 § 34-16-5. Although the Plaintiffs seek to invalidate a foreclosure, it appears undisputed that, to date, no foreclosure sale has occurred. At this time, there is not enough evidence before the Court to determine if there is a ripe case or controversy. The Uniform Declaratory Judgments Act cannot be used by a plaintiff to obtain an advisory opinion, as there must be a present case or

controversy for the Court to entertain issuing a declaratory ruling.³ This Court also questions whether a quiet title action is appropriate based on the recent case of Lister v. Bank of America, N.A., No. 14-1448, 2015 WL 3635282, at *4 (1st Cir. June 12, 2015). A separate hearing with notice to all parties shall be held on September 22, 2015 to consider facts and hear argument to aid in its determination of whether there is justiciable issue in this case. The parties should submit briefs and evidence (affidavits may be filed) pertinent to this issue.

Entered as an Order of this Court on this ____ day of July, 2015.

ENTER:

PER ORDER:

Allen P. Rubine
Associate Justice

Clerk

³ Under the current circumstances, the Plaintiffs seek an advisory determination as to whether the Defendants can exercise the statutory power of sale as contained in the mortgage.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Maria J. Casimiro, et al. v. Mortgage Electronic Registration Systems, Inc., et al.

CASE NO: PC 2011-1592

COURT: Providence County Superior Court

DATE DECISION FILED: July 22, 2015

JUSTICE/MAGISTRATE: Rubine, J.

ATTORNEYS:

For Plaintiff: George E. Babcock, Esq.

For Defendant: Dean J. Wagner, Esq.