

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

BANKERS TRUST COMPANY OF)
CALIFORNIA, N.A.,)
)
Plaintiff,)
)
v.) C.A. No. 02L-10-122 MMJ
)
CHERYL G. WILSON, SANDRA L.)
BURGOYNE and ROBERT M.)
BURGOYNE, and THE UNITED)
STATES OF AMERICA,)
)
Defendants.)

ORDER

Submitted: December 20, 2004

Decided: January 5, 2005

Upon Plaintiff's Motion for Summary Judgment

1. Plaintiff filed a foreclosure action against Defendants on October 28, 2002. Plaintiff alleged that Defendants have committed a material default in connection with the Note and Mortgage by failing to make regular payments in accordance with the express terms of the Note and Mortgage for well over a year.
2. Defendant Wilson does not dispute the arrearages. Defendant Wilson instead asserts that she entered into a forbearance agreement with Plaintiff.

Defendant Wilson claims that Plaintiff wrongfully rejected the final payment pursuant to the agreement. Therefore, payment is the defense to foreclosure.

3. Wilson filed a Complaint for Declaratory Judgment against Bankers Trust Company of California, N.A. and Wilshire Credit Corporation on June 3, 2003.¹ That Complaint alleges that those defendants failed to comply with the forbearance agreement. The counts includes breach of contract, fraud, declaratory judgment, violations of the Fair Debt Collection Practices Act, negligent infliction of emotional distress, and libel.

4. Many of the factual and legal issues raised in *Wilson v. Bankers Trust Co.*, are directly related to, and potentially dispositive of, Wilson's defense of payment in this action. If this case were to proceed simultaneously with *Wilson v. Bankers Trust Co.*, there would be a substantial risk of inconsistent resolution of common questions of law or fact.

5. This Court has broad discretion to control the docket and manage cases, in the interests of judicial economy and justice.

THEREFORE, this action is stayed pending resolution of common questions of law and fact in *Wilson v. Bankers Trust Co.*, C.A. No. 03C-06-12

¹*Wilson v. Bankers Trust Co.*, C.A. No. 03C-06-12 MMJ.

MMJ. The Court will not decide Plaintiff's Motion for Summary Judgment at this time.

IT IS SO ORDERED.

The Honorable Mary M. Johnston

Original to Prothonotary, Civil Division