

January 30, 2003

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Date Submitted: January 15, 2003

Re: County Bank v. Andrew C. Lockwood, Jr. and Debbie L. Lockwood
C.A. No. 02L-06-021

Dear Counsel:

This case comes before the Court for consideration of Plaintiff's Motion for Summary Judgment. The motion is granted for the reasons stated herein.

I. Facts

On or about October 10, 2001, Andrew C. Lockwood and Debbie L. Lockwood executed and delivered to County Bank ("Bank") a construction mortgage (the "Mortgage") on property located on Route 17 in Frankford, Delaware 19945, and having a tax parcel number of 1-34-15.00-20.02 (the "Property"). The Mortgage was recorded on October 22, 2001, in the Office of the Recorder of Deeds, in and for Sussex County, Delaware, in Mortgage Book 4060, Page 37.

The Mortgage secured a promissory note in the original principal amount of ninety-five thousand dollars (\$95,000.00) (the "Note"), which was executed by Debbie Lockwood. The loan was due to mature on April 10, 2002.

On May, 2, 2002, Bank sent Debbie Lockwood a notice that her account was past due for the months of February, March, and April. Debbie Lockwood failed to make additional payment on the Note.¹

On June 25, 2002, Bank filed a Complaint with the Superior Court, seeking relief on both the Mortgage and the Note. Andrew Lockwood failed to answer the Complaint and Bank requested an entry of default judgment against him on August 20, 2002. A judgment was entered forthwith.

Debbie Lockwood timely filed an Answer in which she denied that she was in default of the payments due on the Note. As required by section 3901 of Title 10 of the Delaware Code, Debbie Lockwood attached an affidavit to her Answer, which purported to set forth a defense to the Complaint.

The basis for the defense reads as follows:

[Debbie Lockwood] verily believes that there is a legal defense to the whole cause of action since she is willing to take over payments in full as soon as her husband, Andrew Lockwood[,] conveys the property to her. Originally, Andrew Lockwood was to make the payments in full and receive the property; but he has failed to do so.

Bank has moved for Summary Judgment on the grounds that this affidavit was legally insufficient to set forth a valid defense to any part of this action.

¹ Debbie Lockwood acknowledged receipt of the notice in her Answer to Bank's Complaint.

II. Discussion

A. Standard of Review

Summary judgment may be granted only when no material issues of fact exist, and the moving party bears the burden of establishing the non-existence of material issues of fact. *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979). Once the moving party meets its burden, then the burden shifts to the non-moving party to establish the existence of material issues of fact. *Id.* at 681. Where the moving party produces an affidavit or other evidence sufficient under Superior Court Civil Rule 56 in support of its motion and the burden shifts, then the non-moving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial. Super. Ct. Civ. R. 56(e); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). If, after discovery, the non-moving party cannot make a sufficient showing of the existence of an essential element of his or her case, then summary judgment must be granted. *Burkhardt v. Davies*, 602 A.2d 56, 59 (Del. 1991), *cert. denied*, 504 U.S. 912 (1992); *Celotex Corp. v. Catrett*, *supra*. If however, material issues of fact exist or if the Court determines that it does not have sufficient facts to enable it to apply the law to the facts before it, then summary judgment is inappropriate. *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

B. Sufficiency of Affidavit

Pursuant to Section 3901 of Title 10, an affidavit of defense must set forth “the specific nature and character of any defense and the factual basis therefore.” 10 *Del. C.* § 3901. An affidavit will survive challenge if it sets forth facts upon which the Court can form an opinion as to the legality and sufficiency of the defense. *First Fed. Sav. & Loan Ass’n*, 310 A.2d 880, 882 (Del. Super. 1973). “The statute requires more than a conclusory statement which merely purports to put plaintiff to issue. Defendant must assert a statement of facts which, if believed, would negate plaintiff’s claim.” *Id.*

Debbie Lockwood alleges that she is not responsible for payment on the Note because she is

not in possession of the Property. She also claims that her husband was to make the loan payments.

Debbie Lockwood is the sole signatory of the Note. The obligation to repay the note is not subject to any conditions. Even if this Court accepted as true Debbie Lockwood's assertions that Andrew Lockwood originally agreed to make the loan payments and has failed to convey the Property to her, Debbie Lockwood's acknowledged signature on the Note renders these fact moot.

IV. Conclusion

Because Debbie Lockwood has failed to allege a legally cognizable defense, her affidavit of defense must fail. Bank's Motion for Summary Judgment is granted.

IT IS SO ORDERED.

Very Truly Yours,

T. Henley Graves

cc: Prothonotary's Office