

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

MORTGAGE ELECTRONIC )  
REGISTRATION SYSTEMS, INC. )  
 )  
Plaintiff ) C.A. No. 08L-12-156-RRC  
v. )  
 )  
JONI CHARALAMBOUS )  
 )  
Defendant )

Submitted: December 29, 2011

Decided: January 13, 2012

Upon Defendant's "Motion for Unfair Practices."

**DENIED.**

**ORDER**

Robert T. Aulgur, Jr., Esquire, Whittington & Aulgur and Monica L. Townsend, Esquire, Whittington & Aulgur, Middletown, Delaware, Attorneys for Plaintiff

Joni L. Charalambous, New Castle, Delaware, *pro se*

COOCH, R.J.

This 13th day of January, 2012, upon consideration of Defendant's "Motion for Unfair Practices," it appears to the Court that:

1. *Pro Se* Defendant filed a Motion alleging unfair practices regarding her home mortgage foreclosure that was commenced by the plaintiff corporation. Plaintiff served as the nominee on the mortgage and secured a first priority lien on Defendant's home. About one month prior to the Motion, Plaintiff successfully foreclosed and sold Defendant's home at Sheriff's Sale in September 2011. Defendant seemingly claims that prior to the foreclosure and sale, the mortgage should have been refinanced or modified. Defendant contends that because the mortgage was not

refinanced or modified as she wished, the foreclosure and Sheriff's Sale were illegal and unfair. Defendant seeks the Court's involvement to provide relief from the allegedly unfair practices and urges the Court to "research [Plaintiff's mortgage] methods."<sup>1</sup>

2. Defendant executed and delivered the mortgage to Plaintiff in August 2005. In December 2008, in response to Defendant's defaulting on the attached promissory note, Plaintiff sought to foreclose on the property. A default judgment was entered against Defendant in June 2009.
3. After various attempts by Plaintiff to sell Defendant's home at Sheriff's Sale, the property was eventually sold on September 13, 2011.<sup>2</sup> The Sheriff's Sale was confirmed on October 17, 2011 and on November 7, 2011 the Sheriff's deed was recorded. Plaintiff's application to obtain a writ of possession is scheduled for February 7, 2012. Defendant never filed an application to set aside the Sheriff's Sale, but instead filed the instant Motion on October 26, 2011. Despite not formally filing a Motion to set aside the Sheriff's Sale, the instant "Motion for Unfair Practices" must be interpreted as such because presumably, if the Court determined that Plaintiff's practices were so "unfair" as to require that the Sheriff's Sale be vacated, the Court would set aside the sale.
4. Defendant contends that before the Plaintiff sought foreclosure of her property, it provided an opportunity to refinance or modify the mortgage. Plaintiff allegedly requested paperwork which Defendant asserts she provided in full. It is apparently unclear to Defendant why her mortgage was not refinanced or modified. However, Defendant asserts that Plaintiff never responded to her paperwork despite receiving assurances during the process that it was progressing smoothly. Defendant asserts that the Plaintiff ignored her paperwork and instead shuffled it between other companies to prevent her from getting her mortgage refinanced or modified.

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<sup>1</sup> Def's Letter Br. at 2.

<sup>2</sup> On two occasions prior to the September 2011 Sheriff's Sale, the Plaintiff scheduled Sheriff's sales but those were later cancelled. The first was rescheduled by the direction of the loan servicer and the second was rescheduled when Defendant filed for Chapter 7 Bankruptcy. The bankruptcy filing was dismissed in September 2010. *See In re Joni Charalambous*, No. 10-12498-CSS (Bankr. D. Del. Sept. 13, 2010) (Order Dismissing Bankruptcy Case).

5. In response, Plaintiff contends that the foreclosure action was appropriate in every regard. Plaintiff also contends that Defendant was evaluated for potential refinancing or modification of her mortgage and that she was deemed unqualified. Regarding Defendant's contentions that the mortgage paperwork was shuffled between companies, Plaintiff explains this was caused by the mortgage being assigned to a new company, which is a common practice in the industry.
6. The Court cannot provide the relief requested. If the Defendant's motion is interpreted as one to set aside the Sheriff's Sale, the motion fails. Confirmation of a foreclosure sale "bars collateral attack on [the] foreclosure sale."<sup>3</sup> The Delaware Supreme Court has stated "[b]y the rules of the court, applications to set aside sheriffs' sales must be made on or before the first Thursday of the term to which the writs are returned, and all sales not objected to on or before the first Thursday, are on the first Friday, confirmed as a matter of course."<sup>4</sup> "[A] sale so confirmed is final in its character and effect, and cannot afterwards be inquired into, nor can its validity be controverted collaterally."<sup>5</sup>
7. Subsequent objections to a sheriff's sale after the confirmation period are untimely "unless the court finds a lack of notice or other basis to relieve the party of the consequences of the unexcused delay."<sup>6</sup> Examples where Delaware courts have set aside sheriff's sales beyond the confirmation period usually occur where there is confusion regarding the identity of the property sold.<sup>7</sup> In such cases, the confusion regarding the identity of the property amounted to "excusable neglect" forgiving the untimely motion.<sup>8</sup> If a party does not articulate excusable neglect, there is no cure for the Defendant's untimeliness.<sup>9</sup>
8. Defendant's Motion is therefore untimely. Defendant's Motion was filed after the Sale's confirmation. It is not the role or function of this

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<sup>3</sup> See *Second Nat'l Bldg. and Loan, Inc. v. The Sussex Trust Co.*, 508 A.2d 902, 906 (Del. Super. 1985).

<sup>4</sup> *Deibler v. Atlantic Properties Grp., Inc.*, 652 A.2d 553, 556 (Del. 1985).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 556; accord *City of Dover v. Hunter*, 880 A.2d 239 (Del. Super. 2004); *Swiggett v. Kollock*, 3 Houst. 326, 332 (1866).

<sup>7</sup> See *Hunter*, 880 A.2d 239 at 246-47.

<sup>8</sup> *Id.*

<sup>9</sup> *Shipley v. New Castle Co.*, 975 A.2d 764, 771-72 (Del. 2009).

Court to “research” Plaintiff’s alleged unfair practices. The Delaware Supreme Court has explained that it is improper to inquire into a confirmed sheriff’s sale, and that language suggests that there is no basis for a court to sua sponte “research” the mortgage practices underlying that sale. Defendant’s request that the Court investigate Plaintiff’s mortgage practices demonstrates a misunderstanding of the Superior Court’s role. The Superior Court is not the entity to “research” substantive claims of wrongdoing asserted by litigants.<sup>10</sup>

9. Moreover, even if the Court were to investigate Plaintiff’s mortgage practices in this case, an investigation would necessarily require the Court to inquire regarding the validity of the Sheriff’s Sale and would therefore contravene Supreme Court case law.
10. Defendant proffers no reason for the delay in seeking to set aside the Sheriff’s Sale. At no point does it appear that there was confusion regarding the property being foreclosed and sold, nor does it appear Defendant was not properly notified of the proceedings. Therefore, there is no excusable neglect for the delay in seeking to set aside the Sheriff’s Sale.
11. The Court understands Defendant’s apparent current economic difficulties and is not insensitive to Defendant’s situation. Plaintiff has similarly expressed its sympathies in its papers.<sup>11</sup> However, the Court cannot afford Defendant the relief that she seeks.
12. Defendant’s requested relief is untimely and this Court cannot “research” Plaintiff’s mortgage practices. Therefore, Defendant’s “Motion for Unfair Practices” is **DENIED**.

**IT IS SO ORDERED.**

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Richard R. Cooch, R.J.

cc: Prothonotary

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<sup>10</sup> The Court notes that the State of Delaware Department of Justice has filed suit against the Plaintiff corporation alleging violations of the Deceptive Trade Practices Act pursuant to 6 Del C. §2532. *See State v. MESCORP, Inc.*, C.A. No. 6987 (Del. Ch.).

<sup>11</sup> Pl’s Response to Def’s M. Alleging Unfair Practices at 4.