

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

Wells Fargo Bank, N.A.,)	
)	
Plaintiff,)	
)	No. EQCV077115
vs.)	
)	RULING
Daniel S. Schinke, et al.,)	
)	
Defendants.)	

On this 8th day of April, 2013, Plaintiff's Motion for Summary Judgment, Application for Entry of Default and Motion for Default Judgment came before the undersigned for review. The Court finds a hearing on the Motions and Application is unnecessary. Having considered the file, relevant case law, and written arguments of counsel, the Court hereby enters the following ruling:

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed a Foreclosure Petition on November 14, 2012. Plaintiff states that on or about June 18, 2004, Defendants Daniel S. Schinke and Deana R. Schinke executed and delivered to Plaintiff a promissory note, and, to secure payment of the note, Defendants Schinke executed and delivered to Plaintiff a mortgage on property located in Linn County. Plaintiff claims the note is in default, and seeks to foreclose on the mortgage. Defendants Schinke were served as the parties in possession of the premises at issue; thus, there is no separate Defendant Parties in Possession. Household Finance Industrial Loan Company of Iowa has been served with original notice and the Petition based on an interest it may have in the subject property.

Defendants Schinke filed an Answer on January 10, 2013, denying the allegations of the Petition that are adverse to them. Defendants Schinke also have filed a Demand for Delay of Sale.

Plaintiff filed the pending Motions and Application on February 26, 2013. Plaintiff asserts there are no genuine issues of material fact as to the claims asserted against Defendants Schinke, and seeks entry of summary judgment against Defendants Schinke. Plaintiff also seeks entry of default and default judgment against Defendant Household Finance Industrial Loan Company of Iowa. Plaintiff has submitted the original note and mortgage along with its Motions and Application.

Defendants Schinke have resisted the Motion for Summary Judgment, arguing there is a genuine issue of material fact as to Plaintiff's standing; there is a genuine issue of material fact as to whether Plaintiff has complied with the requirements of the Freddie Mac Single-Family Seller/Service Program and the Home Affordable Modification Program (HAMP); there is a genuine issue of material fact as to whether Plaintiff has complied with the National Mortgage Settlement; and Plaintiff has unclean hands and is prohibited from seeking the equitable relief of foreclosure.

CONCLUSIONS OF LAW

“Summary judgment is appropriate if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law.” Kolarik v. Cory Intern. Corp., 721 N.W.2d 159, 162 (Iowa 2006) (citing Iowa Rule of Civil Procedure 1.981(3)). “Further considerations when reviewing a motion for summary judgment are summarized as follows:

‘A factual issue is material only if the dispute is over facts that might affect the outcome of the suit. The burden is on the party moving for summary judgment to prove the facts are undisputed. In ruling on a summary judgment motion, the court must look at the facts in a light most favorable to the party resisting the motion. The court must also consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record.’”

Id. (citing Estate of Harris v. Papa John’s Pizza, 679 N.W.2d 673, 677 (Iowa 2004) (quoting Phillips v. Covenant Clinic, 625 N.W.2d 714-717-18 (Iowa 2001))).

“To obtain a grant of summary judgment on some issue in an action, the moving party must affirmatively establish the existence of undisputed facts entitling that party to a particular result under controlling law.” McVey v. National Organization Service, Inc., 719 N.W.2d 801, 802 (Iowa 2006). “To affirmatively establish uncontroverted facts that are legally controlling as to the outcome of the case, the moving party may rely on admissions in the pleadings... affidavits, depositions, answers to interrogatories by the nonmoving party, and admissions on file.” Id. “Except as it may carry with it express stipulations concerning the anticipated summary judgment ruling, a statement of uncontroverted facts by the moving party made in compliance with rule 1.981(8) does not constitute a part of the record from which the absence of genuine issues of material fact may be determined.” Id. at 803. “The statement required by rule 1.981(8) is intended to be a mere summary of the moving party’s factual allegations that must rise or fall on the actual contents of the pleadings, depositions, answers to interrogatories, and admissions on file together with any affidavits.” Id. “If those matters do not reveal the absence of genuine factual issues, the motion for summary judgment must be denied.” Id.

“When two legitimate, conflicting inferences are present at the time of ruling upon the summary judgment motion, the court should rule in favor of the nonmoving party.” Eggiman v. Self-Insured Services Co., 718 N.W.2d 754, 763 (Iowa 2006) (citing Daboll v. Hoden, 222 N.W.2d 727, 733 (Iowa 1974) (“If reasonable minds could draw different inferences and reach different conclusions from the facts, even though undisputed, the issue must be reserved for trial.”)).

“However, to successfully resist a motion for summary judgment, the resisting party must set forth specific evidentiary facts showing the existence of a genuine issue of material fact.” Matter of Estate of Henrich, 389 N.W.2d 78, 80 (Iowa App. 1986). “[The resisting party] cannot rest on the mere allegations or denials of the pleadings.” Id.

In determining whether there are any genuine issues of material fact that preclude entry of summary judgment against the Schinkes, the Court will consider each of the Schinkes’

arguments in resistance to the Motion. The Court first considers whether Plaintiff has standing to bring this action. The Iowa Supreme Court has discussed the issue and previous authorities related to standing in detail in Alons v. Iowa Dist. Court for Woodbury County, 698 N.W.2d 858, 863-64 (Iowa 2005). There, the Court stated as follows:

In *Citizens for Responsible Choices v. City of Shenandoah*, we said that standing to sue means “a party must have ‘sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy.’” 686 N.W.2d 470, 475 (Iowa 2004) (citations omitted); accord *Sanchez v. State*, 692 N.W.2d 812, 821 (Iowa 2005). As far as Iowa law is concerned, this means “that a complaining party must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected.” *Id.* Having a legal interest in the litigation and being injuriously affected are separate requirements for standing. *Id.*

Standing is a doctrine courts employ to

refuse to determine the merits of a legal controversy irrespective of its correctness, where the party advancing it is not properly situated to prosecute the action. When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue and not whether the controversy is otherwise justiciable, or whether, on the merits, the plaintiff has a legally protected interest that the defendant's action has invaded.

59 Am. Jur. 2d *Parties* § 36, at 442 (2002) (footnotes omitted); see also *Hawkeye Bancorporation v. Iowa Coll. Aid Comm'n*, 360 N.W.2d 798, 802 (Iowa 1985) (“standing is a self-imposed rule of restraint”).

In short, the focus is on the party, not on the claim. 13 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3531, at 339 (1984) [hereinafter Wright]. Even if the claim could be meritorious, the court will not hear the claim if the party bringing it lacks standing. See *Citizens*, 686 N.W.2d at 475 (“Whether litigants have standing does not depend on the legal merit of their claims, but rather whether, if the wrong alleged produces a legally cognizable injury, they are among those who have sustained it.”).

Alons v. Iowa Dist. Court for Woodbury County, 698 N.W.2d 858, 863-64 (Iowa 2005).

Even viewing the summary judgment record in the light most favorable to Defendants, the Court concludes there is no specific evidentiary fact that has been set forth by Defendants that would permit the Court to find that Plaintiff does not have standing to pursue the foreclosure. Plaintiff’s standing is most convincingly established by the fact that Plaintiff has surrendered to the Court the original note and mortgage, showing that Plaintiff is the current owner of the note and mortgage and providing a basis for Plaintiff’s specific legal interest in this action.

The Court next considers whether there is a genuine issue of material fact on the question of Plaintiff’s compliance with the requirements of the Freddie Mac Single-Family Seller/Service

Program and of HAMP. The Court first finds that when the facts are viewed in the light most favorable to Defendants, there is a genuine issue of material fact on the question of whether the mortgage is subject to the terms of the Freddie Mac Single-Family Seller/Servicer Program. The summary judgment record is not conclusive on this issue. Further, with respect to HAMP, the Court finds there is a genuine issue of material fact on the question of whether Plaintiff complied with HAMP requirements before initiating this action. Plaintiff's Motion and supporting documents include no discussion of Plaintiff's efforts to comply with HAMP, or any argument as to why HAMP compliance may not be necessary under these facts.

The Court turns to the question of whether there is a fact issue as to Plaintiff's compliance with the National Mortgage Settlement. The Court has reviewed the terms of the Settlement, and concludes the Settlement does not provide for enforcement of the terms thereof by homeowners. Therefore, the National Mortgage Settlement provides no legal basis for denial of Plaintiff's Motion for Summary Judgment.

Finally, the Court considers whether Plaintiff has unclean hands and is prohibited from seeking the equitable relief of foreclosure. Based on the fact issues that exist regarding Plaintiff's compliance with the Freddie Mac Single-Family Seller/Servicer Program and HAMP, the Court concludes there also are fact issues on the question of Plaintiff's allegedly unclean hands in bringing this action. The fact-findings on the Freddie Mac/HAMP issues will impact Defendants' argument regarding Plaintiff's allegedly unclean hands.

Due to the existence of fact issues on the questions of compliance with Freddie Mac/HAMP programs, as well as fact issues on the unclean hands doctrine, the Court finds Plaintiff's Motion for Summary Judgment should be denied as to Defendants Schinke. Default should be entered against Defendant Household Finance Industrial Loan Company of Iowa. However, entry of default judgment shall be withheld pending the finalization of Plaintiff's claims against Defendants Schinke.

RULING

IT IS THEREFORE ORDERED that Plaintiff's Motion for Summary Judgment is **DENIED** as to Defendants Schinke.

IT IS FURTHER ORDERED that the Linn County Clerk of Court shall enter default against Defendant Household Finance Industrial Loan Company of Iowa.

Clerk to notify.
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MITCHELL E. TURNER, JUDGE
Sixth Judicial District of Iowa