

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

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CLERK OF DISTRICT COURT

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LINN COUNTY, IOWA

Citimortgage, Inc., Successor in Interest to)
ABN AMRO Mortgage Group, Inc.,)
)
Plaintiff,)
)
vs.)
)
Joan Moores, et al.,)
)
Defendants.)

No. EQCV063490

RULING

On this 4th day of August, 2010, the Motion for Summary Judgment filed by Plaintiff and Resistance thereto filed by Defendants Moores came before the undersigned. The Court finds a hearing on the Motion 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 Petition on November 21, 2008, seeking to foreclose on a mortgage made, executed and delivered by Defendants Joan Moores and Jeffrey Moores to ABN AMRO Mortgage Group, Inc. The mortgage was made to secure payment of a note that was entered into by Defendants Moores and ABN AMRO. Plaintiff claims to be the current owner of the note and mortgage, and alleges Defendants Moores have failed to make payments required pursuant to the terms of the note. The other Defendants have been named by virtue of lien interests they may have in the subject property.

Defendants Moores have filed an Answer and Demand for Delay of Sale. No other Defendant has appeared in these proceedings.

Plaintiff filed the pending Motion for Summary Judgment on April 28, 2010. Plaintiff argues there are no genuine issues of material fact with respect to the relief sought in the Petition, and requests the Court enter judgment as a matter of law in favor of Plaintiff. Plaintiff previously had filed a Motion for Summary Judgment that Plaintiff later withdrew.

Defendants Moores resist the Motion, arguing Plaintiff has not shown it is the current owner of the note and mortgage, and Plaintiff has not shown that it has engaged in loan modification negotiations with Defendants Moores, as required by the Home Affordable Modification Program (HAMP). Defendants Moores have submitted affidavits in support of their Resistance, as well as copies of information establishing that efforts they have made to communicate to Plaintiff their desire to reach a loan modification agreement.

Plaintiff replies that it has standing to foreclose on the mortgage, and HAMP does not prevent a mortgagee from exercising its rights with respect to a mortgage in default.

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.*

The Court first addresses Defendants’ argument that Plaintiff does not have standing to foreclose on the mortgage. 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. The original mortgage was between Defendants Moores and ABN AMRO Mortgage Group, Inc., and the mortgage specifically references the note entered into by ABN AMRO Mortgage Group, Inc. and Defendants Moores (with the mortgage being executed to secure payment of the note). Plaintiff has submitted a copy (Exhibit A to Plaintiff's Reply brief) showing that ABN AMRO Mortgage, Inc. has merged with and into Citimortgage, Inc. under the name of Citimortgage, Inc. The Court finds this information is sufficient to establish that Plaintiff has standing to seek remedies related to the note and mortgage.

The Court turns to the question of whether Plaintiff has failed to make efforts to negotiate a loan modification agreement with Defendants Moores. The HAMP guidelines, which are found at Exhibit 16 of Defendants' Statement of Disputed Facts in Resistance to Motion for Summary Judgment (filed September 23, 2009 in response to a previously filed Motion for Summary Judgment) provide, at page 14: "To ensure that a borrower currently at risk of foreclosure has the opportunity to apply for the HAMP, servicers should not proceed with a foreclosure sale until the borrower has been evaluated for the program and, if eligible, an offer to participate in the HAMP has been made. Servicers must use reasonable efforts to contact borrowers facing foreclosure to determine their eligibility for the HAMP, including in-person contacts at the servicer's discretion."

Plaintiff does not dispute that it is a participant in the HAMP pursuant to Plaintiff's participation in the Commitment to Purchase Financial Instrument and Servicer Participation Agreement for the Home Affordable Modification Program under the Emergency Stabilization Act. *See, Plaintiff's Reply Brief*, p. 2. Plaintiff argues that Defendants, who are not parties to the Agreement, have no right to enforce the agreement to their benefit. The Court disagrees. The HAMP language clearly states that servicers must use reasonable efforts to contact borrowers facing foreclosure to determine their eligibility for the HAMP. This language places the burden on the servicer (Plaintiff in this case), and it is apparent to the Court that the HAMP language is intended to benefit parties such as Defendants who are facing foreclosure proceedings. The Court finds Defendants are not barred from relying on the provisions of HAMP to defend against a pending foreclosure.

Having considered the summary judgment record in the light most favorable to Defendants, the Court concludes there are genuine issues of material fact concerning whether Plaintiff made reasonable efforts to contact Defendants to determine their eligibility for the HAMP program. There is little information in the record to show what efforts, if any, were made by Plaintiff to contact Defendants to determine their eligibility for HAMP. Due to these fact issues, the Court finds Plaintiff's Motion for Summary Judgment should be denied.

RULING

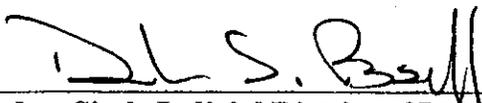
IT IS THEREFORE ORDERED that Plaintiff's Motion for Summary Judgment is **DENIED**.

Clerk to notify.

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MAILED/DELIVERED ON 08-05-10
BY MD TO:

Theodore Boecker-E
Lisa Gavin



Judge, Sixth Judicial District of Iowa

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