

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL

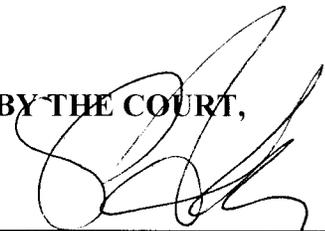
THE PATRIOT GROUP, LLC, : December Term 2012
Plaintiff, :
v. : No. 31
LIFE EQUITIES CORP., :
Defendant. : Commerce Program
: Control Number 13112322

DOCKETED
MAR 11 2014
C. HART
CIVIL ADMINISTRATION

ORDER

AND NOW, this 7 day of March 2014, upon consideration of Plaintiff's Motion for Summary Judgment, Defendant's response in opposition and in accord with the attached Opinion, it hereby is **ORDERED** that the Motion for Summary Judgment is **Granted in part and Denied in part**. Defendant Life Equities Corp. is in default of the Mortgage however a genuine issue of material fact exists as to the amount that is due and owing Plaintiff The Patriot Group, LLC. As such, an assessment of damages hearing is scheduled for APRIL 15, 2014, at 10:00 a.m. in court room 612 City Hall, Philadelphia, Pa. 19107.

BY THE COURT,


PAMELA PRYOR DEMBE, J.

The Patriot Group, Llc -ORDOP



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CIVIL ASSESSMENT SECTION

OPINION

This is a mortgage foreclosure action. Plaintiff is The Patriot Group, LLC (“Patriot Group”), a Delaware limited liability company. Defendant is Life Equities Corp. (“Life Equities”) a business corporation existing under the laws of Delaware. Alternative Business Credit, LLC loaned Life Equities \$305,000.00 as evidenced by a Note. The Note was secured by a mortgage dated March 28, 2008 covering Life Equities’ real property located at 419 North Front Street, Philadelphia, Pa. On April 4, 2008, the Note and Mortgage were assigned to the Patriot Group together with the bonds, notes or obligations described in the mortgage. The Mortgage was recorded on April 23, 2008 in the Office of the Recorder of Deeds/Commissioner of Records for the City of Philadelphia at Document No. 51892611.

On July 8, 2010, Life Equities and the Patriot Group entered into a Loan Payoff/Modification Agreement. The Payoff Agreement provided that certain insurance proceeds would be applied to the unpaid principal balance of the Note. The Payoff Agreement also provided for an approved, reduced payoff amount of \$141,323.72 with regard to the unpaid principal amount due under the Note, subject however to certain express terms and conditions.

On March 31, 2011, Life Equities and Patriot Group entered into Amendment Number 1 to Loan Payoff/Modification Agreement dated March 31, 2011. The Amendment extended the

date when Life Equities was required to pay the approved payoff amount to Patriot Group under the Payoff Agreement until on or before May 13, 2011. The Amendment provided that the Payoff Agreement was modified in pertinent part as follows: “Failure to make any payment, when due, shall constitute a default under this agreement and shall immediately render this Loan Payoff/Modification Agreement null and void.” Life Equities failed to pay to Patriot Group the approved payoff amount by May 13, 2011 as required by the amendment. Life Equities admitted that it failed to make the required full payment.¹

On June 6, 2011, Patriot Group demanded payment of the entire unpaid principal balance under the Note and Mortgage. In the meantime, Patriot Group sued Lawyers Title Insurance Corporation and various other defendants in Philadelphia County for failing to ensure first priority lien status on the mortgaged property.² As of this writing the action has been marked settled, discontinued and ended.

On or about December 2012, the Patriot Group filed this action against Life Equities in mortgage foreclosure. Life Equities filed an answer to the complaint with new matter and counterclaim. Life Equities asserted in its answer that the mortgage held by Patriot Group was not a first priority mortgage on the property and Life Equities therefore was unable to complete the refinancing to repay the loan. On August 1, 2013, Patriot Group filed preliminary objections to Life Equities’ new matter and counterclaim averring the filings were improper and irrelevant to Patriot Group’s mortgage foreclosure claim. On August 30, 2013, Life Equities acknowledged that its counterclaim and new matter were problematic and asked the court to permit Life Equities to withdraw the counterclaim, amend its new matter and file a joinder

¹ Defendant’s Answer at paragraph 18.

² The Patriot Group, LLC v. Lawyers Title Insurance Corporation et. al., December term 2011 No. 2872.

complaint against a third party. On September 11, 2013, the court ordered that the counterclaim be withdrawn and granted Life Equities leave to amend its new matter and join a third party or parties as additional defendants in the action within twenty (20) days. Life Equities did not file any amended new matter, a third party joinder complaint, or added any parties as additional defendants. Patriot Group has now moved for summary judgment.

DISCUSSION

Summary judgment is governed by the Pennsylvania Rules of Civil Procedure. After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law whenever there is no genuine issue of any material fact.³

A proper grant of summary judgment depends upon the evidentiary record as to whether material facts are undisputed or contain insufficient evidence of facts to make out a *prima facie* cause of action or defense and therefore, there is no issue to be submitted to the jury.⁴ Where a motion for summary judgment is based upon insufficient evidence of facts, the adverse party must come forward with evidence essential to preserve the cause of action. If the non-moving party fails to come forward with sufficient evidence to establish or contest a material issue to the case, the moving party is entitled to judgment as a matter of law. The non-moving party must adduce sufficient evidence on an issue essential to its case and on which it bears the burden of proof such that a jury could return a verdict favorable to the non-moving party. As with all summary judgment cases, the court must examine the record in the light most favorable to the non-moving party and resolve all doubts against the moving party as to the

³ Pa.R.C.P. 1035.2.

⁴ Pa.R.C.P. 1035.2 *Note*.

existence of a triable issue.⁵ The non-moving party may not rest on averments on its pleadings and must demonstrate by evidence that there exists a genuine issue for trial.⁶

In the case of a mortgage foreclosure action, pretrial disposition is proper if there is no genuine dispute that: (1) the recorded mortgage is in the specified amount, (2) the mortgage is in default and (3) the mortgagor failed to pay interest on the obligation. This is even true if the mortgagor has not admitted the specific amount of indebtedness in their pleadings.⁷

In the case *sub judice*, the Mortgage and the Note have been executed, notarized and duly recorded in the Office of the Recorder of Deeds of Philadelphia County. Life Equities admitted in its answer to the complaint that it failed to make the required payoff payment on May 13, 2011, as set forth in the amendment to the loan documents. Life Equities also admitted in its deposition testimony that it has not made any payment to Patriot Group on the mortgage from at least 2012 to the present date. Since Life Equities failed to pay the amount of the payoff in May 2011 and failed to make any monthly or other payments due under the Mortgage from at least the beginning of 2012 to the present summary judgment is warranted.⁸

Life Equities, however, does contest the amount due. Patriot Group in support of the amount due relies upon the affidavit of Mr. Wellner as evidence of the amount of unpaid principal due under the note, the amount of accrued and unpaid interest and the amount of late

⁵ *Petrongola v. Comcast-Spectacor, L.P.*, 789 A.2d 204, 209 (Pa. Super. 2001).

⁶ *Younger v. Heckler*, 269 Pa. Super. 445, 450-51, 410 A.2d 340, 342 (1979).

⁷ *First Com Bank v. Olde Post Office Complex Partnership*, 16 Pa. D. & C. 5th 353 (2010)(citing *Cunningham v. McWilliams*, 714 A.2d 1054, 1057 (Pa. Super. 1998)).

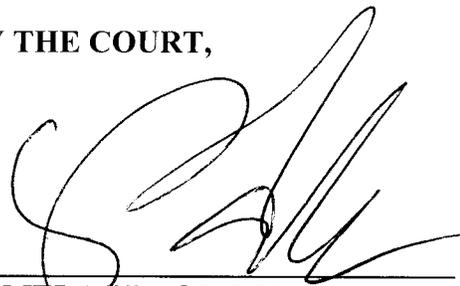
⁸ Defenant's answer p. 18; Deposition of Larry Irwin, corporate designee of Life Equities p. 40-41, 44.

charges.⁹ Life Equities disputes the amount identified by Wellner indicating the figure may be too high based on a settlement in the action captioned *The Patriot Group, LLC v. Lawyers Title Insurance Corporation et. al.*, 1112-2872. Based on the foregoing, the court finds that a genuine issue of material fact exists as to the amount due under the loan documents.

CONCLUSION

For the foregoing reasons, the Patriot Groups' motion for summary judgment is granted in part as it pertains to the default and denied in part as to the amount due and owing. An assessment of damages hearing will be scheduled to determine the outstanding amount due Patriot Life under the loan documents.

BY THE COURT,



PAMELA PRYOR DEMBE, J.

⁹ Oral testimony alone, in this case a testimonial affidavit, of the moving party or the moving party's witness, even if uncontradicted, is generally insufficient to establish the absence of a genuine issue of material fact. See, Note to Pa. R. Civ. P. 1035.2 citing *Borough of Nanty-Glo. American Surety Co of New York*. 309 Pa. 236, 163 A. 523 (1932).