

STATE OF VERMONT
WINDSOR COUNTY, SS

HSBC Bank USA, N.A.
Plaintiff

v.

Douglas Moulton
Diane Moulton
Defendants

SUPERIOR COURT
Docket No. 770-10-09 Wrcv

DECISION ON MOTIONS FOR SUMMARY JUDGMENT

In this matter the parties have both moved for summary judgment, alleging that no material facts are in dispute. Plaintiff claims the Defendants are in default on their mortgage. Defendants claim they are current on their mortgage but for the unnecessary obtaining of homeowners insurance by Plaintiff and the diverting of payments made by Defendants away from the mortgage and into an escrow for the insurance premium.

Discussion

The Defendants in their opposition to the Plaintiff's summary judgment and in support of their motion for summary judgment have supplied an affidavit of payments they made on the mortgage. That affidavit shows that payments for several months were not made on the first of the month as required by paragraph six of the note. The note itself says that if payments are not made by the due date (the first of the month), the note is in default and subject to a late fee if made more than 15 days late. Defendants' affidavit shows the payments for May, June and August 2009 were all more than 15 days late.

While Defendants may dispute that insurance as implemented by the bank was unnecessary, this does not prevent the granting of summary judgment if Plaintiff is otherwise correct that the note was in default. In short, a dispute about the application of payments is beside the point if the payments themselves were untimely. Under the plain terms of the note, as compared to the affidavit submitted by Defendants outlining their payment history, several payments were late and the Defendants were, therefore, in default.

Standard

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, referred to in the statements required by Rule 56(c)(2), show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law." V.R.C.P.

FILED

JUN 17 2010

WINDSOR COUNTY CLERK

CONFORMED COPY

CONFORMED COPY

56(c)(3). The party moving for summary judgment has the burden of demonstrating that no genuine issue of material fact exists and that he is entitled to judgment as a matter of law. *Price v. Leland*, 149 Vt. 518, 521 (1988). The non-moving party has the burden of setting forth specific facts showing a genuine dispute for trial. V.R.C.P. 56(e). The purpose of summary judgment is to "pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (citation omitted).

In cases where the parties have filed cross-motions for summary judgment, the court must rule on each party's motion "on an individual and separate basis, determining, for each side, whether a judgment may be entered in accordance with the Rule 56 standard." 10A Wright, Miller & Kane, Federal Practice and Procedure: Civil 3d § 2720.

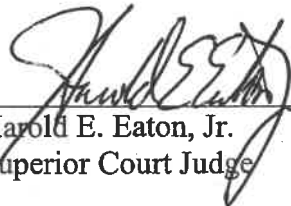
Here, the Defendants' own admissions as set forth in support of their motion for summary judgment, provide a basis for the finding of default in Plaintiff's favor. Regardless of the validity of Defendants' claims that escrow payments should not have been required, the payments which were made, regardless of how characterized, were late. Such being the case, Plaintiff is entitled to judgment in its favor.

Applying these same facts to Defendants' motion, the late payments by Defendants are sufficient to defeat their claim that they were not in default.

Based upon the foregoing, Plaintiff is entitled to judgment in its favor. The Clerk shall prepare a proposed accounting based upon the affidavits of amounts owing previously submitted. As the application of payments made by Defendants remains a contested issue, Defendants may object to the proposed accounting and request a hearing on the same should they wish to do so.

Plaintiff's motion for summary judgment is GRANTED. Defendants' motion for summary judgment is DENIED.

Dated at Woodstock this 17th day of June, 2010.


Harold E. Eaton, Jr.
Superior Court Judge

FILED

JUN 17 2010

WINDSOR COUNTY CLERK