

VERMONT SUPERIOR COURT  
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CIVIL DIVISION  
Case No. 23-CV-02325

Edward Deptula v. Alpine Haven Property Owners Association, Inc. et al

**DECISION ON CROSS-MOTIONS TO DISMISS**  
**AND FOR JUDGMENT ON THE PLEADINGS**

Plaintiff Edward Deptula sues Defendant Alpine Haven Property Owners Association (“AHPOA”) and its Secretary and Treasurer, Defendant Colleen Pratt, for damages and injunctive relief arising out of AHPOA’s failure to record and deliver a discharge within thirty days of Mr. Deptula’s satisfaction of AHPOA’s judgment lien. AHPOA and Ms. Pratt move to dismiss, and Mr. Deptula cross-moves, nominally pursuant to both V.R.C.P. 12(b)(6) and 12(c), for judgment. The court grants Defendants’ motion in part and denies it in part and denies Mr. Deptula’s motions.

The pleadings establish that AHPOA recorded a judgment lien against Mr. Deptula’s property. They establish further that on May 11, 2022, Ms. Pratt acknowledged satisfaction of the judgment on behalf of APHOA. At no time prior to the initiation of this suit, however, did APHOA record and deliver a discharge of the judgment lien.

The obligations with respect to the discharge of judgment liens are clearly set forth in statute. 12 V.S.A. § 2905 provides: “A judgment lien shall be discharged in the same manner as a mortgage pursuant to 27 V.S.A. chapter 5.” 27 V.S.A. chapter 5, in turn—specifically, § 464(b)—provides: “Within 30 days after full performance of the conditions of the mortgage, the mortgagee of record shall execute and deliver a valid and complete discharge as provided in sections 461-463 of this title . . . .” There is no dispute that AHPOA failed to fulfill this obligation. The question, therefore, is what remedy the law requires.

Here also, the statute is clear. Section 464(b) continues: “If a discharge is not executed and delivered within 30 days, the holder and any servicer shall be jointly and severally liable to any aggrieved party in a civil action for statutory damages equal to \$25.00 per day after the expiration of the 30 days, up to an aggregate maximum of \$5,000.00 for all aggrieved parties.” By its express terms, the statute is no-fault. It requires no proof of demand or refusal, or any other culpable conduct. Rather, all the statute requires is proof that the discharge was not executed and delivered within 30 days.

Defendants do not dispute that they did not execute and deliver the discharge within 30 days of Mr. Deptula's satisfaction of judgment. They argue instead that the statute requires proof that the judgment debtor request a discharge before seeking damages. Motion to Dismiss at 3. This argument, however, rests on a 1979 Supreme Court decision that in turn rests on the version of § 464(b) in effect at that time. In 1999, however, the Legislature rewrote the statute to remove the requirement of a request for discharge. Defendants' argument therefore holds no water.

Defendants do make one cogent argument. The statute is clear that the obligation to discharge falls on the "mortgagee of record." There is no provision extending that obligation, or the penalty that follows, to any officer or employee of the mortgagee (or here, the judgment creditor). As 27 V.S.A. § 464(b) is penal in nature, the court must construe it strictly. Thus, there is no room for inferring a duty by implication; equally, there is no basis for levying the statutory penalty on anyone other than the holder of the judgment lien. In short, any liability in this case falls exclusively on AHPOA; the claim against Ms. Pratt will not lie.

These observations compel the denial of Defendants' motion, except to the extent that they seek dismissal of Mr. Deptula's claims against Ms. Pratt. This leaves only the question whether Mr. Deptula is entitled to judgment on the pleadings. In this regard, AHPOA's admissions establish a prima facie claim for violation of the statute and imposition of the statutory penalty. In its Answer, however, AHPOA has asserted affirmative defenses. Mr. Deptula has made no effort to show that those defenses fail as a matter of either law or fact. Thus, at least at the pleading stage, the assertion of those defenses alone is sufficient to preclude judgment in his favor.

### **ORDER**

The court denies Defendant's motion to dismiss in part and grants it in part. All claims against Ms. Pratt are dismissed; claims against AHPOA remain. The court denies Mr. Deptula's cross-motion. While he is entitled to a determination that AHPOA violated the statute and so may be liable for the maximum statutory penalty, AHPOA's affirmative defenses await further adjudication. The clerk will set a status conference for the purpose of setting a discovery/ADR schedule. If, ahead of that conference, the parties submit a discovery/ADR stipulation, the court will cancel the hearing.

Electronically signed pursuant to V.R.E.F. 9(d): 8/4/2023 10:45 AM

  
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Samuel Hoar, Jr.  
Superior Court Judge

