

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL DIVISION

LIMOSA, LLC, :
Plaintiff :
Vs. : No. 18-1429
KENNETH D. SABOL, :
Defendant :

Michael J. Clark, Esquire Counsel for Plaintiff
Robert T. Yurchak, Esquire Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - June 19, 2020

This opinion is written as a result of the appeal taken by Kenneth D. Sabol (hereinafter "Sabol") to the grant of summary judgment issued by this Court and the entry of an in rem judgment in favor of Limosa, LLC (hereinafter "Limosa") in the amount of \$19,384.16. For the reasons stated herein, this Court would ask the Appellate Court to allow that judgment to stand.

FACTUAL AND PROCEDURAL BACKGROUND

On May 30, 2018, Bayview Loan Servicing, LLC (hereinafter "Bayview") filed a complaint in foreclosure against Sabol alleging that Sabol defaulted on a mortgage¹ made, delivered and executed by Sabol on December 20, 1993. This mortgage, in the amount of

¹ The original mortgage was executed with First Valley Bank, which, by virtue of an assignment of mortgage, assigned that original mortgage to Bayview on July 20, 2015 and recorded in the Carbon County Recorder of Deeds Office in Mortgage Book 2176 Page Number 332 on July 20, 2015.

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\$35, 000.00, encumbered property located at 221 East Bertsch Street, Lansford, Carbon County, Pennsylvania.

On March 10, 2017, Sabol executed a loan modification agreement with Bayview in the new principal amount of \$11,661.35. Thereafter, Bayview claimed that Sabol defaulted on that modification agreement as a result of his failure to make monthly payments of principal and interest effective with the October 1, 2017 payment. As a result, Bayview instituted this action by filing a mortgage foreclosure complaint on May 30, 2018. In that complaint Bayview claimed that the following amounts were due and owing:

Principal Balance	\$10,029.72
Interest (from September 1, 2017 through May 17, 2018 at 7.625%) plus \$2.10 per diem rate thereafter	\$543.36
Escrow balances	<u>\$3,701.95</u>
Total:	\$14,275.03

On June 21, 2018, Sabol filed preliminary objections to this complaint. In those objections, Sabol claimed that the complaint was legally insufficient (Demurrer) and that due to his claim that the complaint did not comply with Pa.R.C.P. Rule 1019(h)(i),² the complaint should be dismissed or alternatively, Bayview should be required to file a more specific complaint.

² While, as written, this reference to the rule suggests that "(i)" is a subsection of "(h)", however no such subsection exists, further, this Court took this to mean subdivisions (h) and (i).

Specifically, and with regard to these preliminary objections, Sabol claimed that the complaint was legally insufficient because "Plaintiff did not allege or aver that it sent to defendant an Act 6 or Act 91 notice in accordance with 41 P.S. Section 403 which requires a mortgagee who intends to foreclose to send written notice to the mortgagor by registered or certified mail nor does the Plaintiff attach a signed copy o said notices nor the proof of mailing and/or receipt of same by defendant." See Defendant's Preliminary Objections to Complaint ("Preliminary Objections") at paragraph 3. Sabol also claimed that the complaint should be dismissed or alternatively, Bayview should be required to file an amended complaint because: 1) it failed to attach a copy of the assignment from First Valley Bank to Bayview; 2) the complaint included interest beginning September 1, 2017, a date that pre-dates the alleged default date of October, 2017; and 3) the complaint failed to identify what the escrow advances were for and to whom they were paid and in what amounts.

These preliminary objections were denied by this Court by Order dated October 19, 2018.³

On November 9, 2018, Sabol filed an answer and new matter to the complaint. Thereafter, on November 28, 2018, Bayview filed its reply to new matter.

³ A copy of this Order is attached to this Opinion avoiding full recitation of our explanation and rationale herein.

On March 28, 2019, Counsel for Limosa filed a praecipe, pursuant to Pa.R.C.P. 2352, to substitute Limosa for Bayview as Plaintiff in the underlying action due to an assignment of the Bayview mortgage. A statement of material facts in support of that substitution accompanied that praecipe. Thereafter, on August 22, 2019, Limosa filed a motion for summary judgment, complete with an accompanying affidavit in support thereof along with a memorandum of law. On December 6, 2019, Sabol lodged his brief in opposition to the motion. Oral argument was held on that motion for summary judgment on December 19, 2019.

In its motion for summary judgment, Limosa argued that there were no genuine issues of material fact to warrant this matter proceeding to a trial on the merits. As a result, it requested an in rem judgment in its favor in the amount of \$20,271.85⁴ plus interest for July 25, 2019. This amount included attorney fees and detailed costs as permitted by the mortgage and as set forth in the motion's accompanying affidavit.

In his brief and as presented by counsel at oral argument, Sabol raised three (3) issues to counter Limosa's motion for summary judgment claiming that: 1) Where a mortgage was dated December 20, 1993 and had a twenty (20) year term but was never modified or extended prior to the maturity date of December of

⁴ For the reason outlined in the April 24, 2020 Order granting Limosa's motion for summary judgment, this Court explained how and why we granted judgment for Limosa but only in the amount of \$19,384.16.

2013, that mortgage document is incapable of being extended after the maturity date and interest and costs and fees added after the maturity date; 2) where the Act 6 and Act 91 notices were never sent via certified mail to defendant as required by 41 P.S. Section (b) nor any signed receipt of same attached to the complaint, this Honorable Court does not have jurisdiction to proceed on this action in Mortgage Foreclosure; and 3) the Plaintiff has not sufficiently provided an itemized statement of account due when it alleges interest due after the maturity date of the mortgage, it alleges escrow advances but does not indicated when these advances were made or for what, it alleges corporate advances but does not indicate when these advances were made or for what, it alleges corporate advances but does not indicate for what or when, never states when the principal balance was determined and what the late charge alleged is and for what and when it was incurred.

On April 24, 2020, this Court granted Limosa's motion for summary judgment and entered an in rem judgment in favor of Limosa and against Sabol in the amount of \$19,384.16 together with interest and for the foreclosure and sale of 221 East Bertsch Street, Lansford, Pennsylvania. This judgment, however, did not include Limosa's request for "corporate advances" in the amount of \$1,466.04 as that claim was never requested nor outlined in the foreclosure complaint, nor did such a claim appear in the subject

mortgage as an amount that can be sought by Limosa in a foreclosure action.⁵

On May 22, 2020, Sabol filed an appeal to Superior Court. On May 26, 2020, this Court issued an order directing Sabol to file, within twenty-one (21) days, a concise statement of the matters he was complaining of on appeal. On June 15, 2020, Sabol filed that concise statement. In that statement, Sabol claims that the Court erred in the following ways:

"1- Where a mortgage was dated December 20, 1993 and had a twenty (20) year term but was never modified or extended prior to the maturity date of December of 2013, is that mortgage document capable of being extended after the maturity date and interest and costs and fees added after the maturity date?

2- Where the Act 6 and Act 91 notices were never sent via certified mail to defendant as required by 41 P.S. Section (b) nor any signed receipt of same attached to the complaint, does this Honorable Court have jurisdiction to proceed on this action in Mortgage Foreclosure?

3- Whether the Plaintiff has sufficiently provided an itemized statement of account due when it alleges interest due after the maturity date of the mortgage, it alleges escrow advances but does not indicate when these advances were made or for what, it alleges corporate advances but does not indicate for what or when, never states when the principal balance was determined and what the late charge alleged is and for what and when it was incurred?

4- Whether the Plaintiff satisfied the requirements for Summary Judgment by showing that there were no material issues of fact?

⁵ While a denial of such a claim would otherwise create a genuine issue of material fact, this Court does not find so here as such a claim was neither ripe nor did it accrue under the terms of the mortgage. Therefore, pursuant to Limosa's motion, no issue remains unresolved by our granting of this judgment. Conversely, while it would appear that Sabol raises a genuine issue on the issue of corporate advances, since we find no such claim was ever apparent to begin with, Sabol's argument is moot.

5- Whether Plaintiff was required to produce evidence of an assignment from the previous party to the mortgage in order to proceed with the foreclosure."

This Court is now prepared to address each of these claimed errors herein.

LEGAL DISCUSSION

As noted above, Sabol, in his preliminary objections raised the issues of service of the Act 6 and Act 91 notices, the lack of an "attached" assignment and specificity as to the interest and escrow advances claimed by Limosa (then Bayview).⁶ In our Order dated October 19, 2018 denying these preliminary objections, we addressed each of those issues. We see no reason to further explain the rationale behind that decision and would simply refer to the order attached hereto for those explanations.

Additionally, at the time of argument on Limosa's motion for summary judgment as well as in his brief, Sabol again raised the issue of the Act 6 and Act 91 notices along with the issue of the itemization and propriety of interest and escrow advances.⁷ Further, in that brief and at argument, Sabol also claimed Limosa was not entitled to summary judgment for the reasons stated in concise statement items 1 and 4.

⁶ These issues raised by preliminary objections are items 2,3 and 5 of Sabol's concise statement.

⁷ Items 2 and 3 of the concise statement and previously referenced as part of Sabol's preliminary objections.

We believe our Order of April 24, 2020 dealing with the motion for summary judgment sufficiently and adequately explains our decision to grant Limosa's motion for summary judgment in its entirety save for the issue of "corporate advances." Once again, we see no reason to reiterate those bases here and would simply reference that Order which is also attached hereto.

CONCLUSION

Having presented the Appellate Court with the basis for our decisions at the trial court level, we would ask that our Orders be affirmed on appeal.

BY THE COURT:



Joseph J. Matika, J.

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BAYVIEW LOAN SERVICING, LLC,
Plaintiff

v.

KENNETH D. SABOL,
Defendant

No. 18-1429

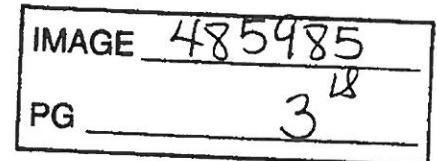
Kevin G. McDonald, Esquire
Michael J. Clark, Esquire

Counsel for Plaintiff
Counsel for Plaintiff

Robert T. Yurchak, Esquire

Counsel for Defendant

ORDER OF COURT



AND NOW, this 19th day of October, 2018, upon consideration of the June 21, 2018 Preliminary Objections filed by Defendant Kenneth D. Sabol to Plaintiff's Complaint, the brief in support thereof, and Plaintiff's response and memorandum of law in opposition thereto, it is hereby **ORDERED and DECREED** that said Preliminary Objections are **DENIED**.¹

¹Defendant's First Preliminary Objection: "Legal Insufficiency of Complaint (Demurrer)"

Rule 1147(a) of the Pennsylvania Rules of Civil Procedure delineates those items which a plaintiff must include in a mortgage foreclosure complaint. Rule 1147(a) states:

(a) The plaintiff shall set forth in the complaint:

(1) the parties to and the date of the mortgage, and of any assignments, and a statement of the place of record of the mortgage and assignments;

(2) a description of the land subject to the mortgage;

(3) the names, addresses and interest of the defendants in the action and that the present real owner is unknown if the real owner is not made a party;

(4) a specific averment of default;

(5) an itemized statement of the amount due; and

(6) a demand for judgment of the amount due.

See Pa.R.C.P. 1147(a).

Plaintiff's Complaint contains each of the requisite elements set forth in Rule 1147(a). See generally Complaint.

Defendant contends that "Plaintiff did not allege or aver that it sent to defendant an Act 6 or Act 91 notice in accordance with 41 P.S. Section 403 which requires a mortgagee who intends to foreclose to send written notice to the mortgagor by registered or certified mail nor does the Plaintiff attach a signed copy of said notices nor the proof of mailing and/or receipt of same by defendant." See Defendant's Preliminary Objections to Complaint ("Preliminary Objections") at ¶3.

Notwithstanding, and as Defendant freely acknowledges, Plaintiff has alleged that:

"Notice of Intention to Foreclose pursuant to Act 6 of 1974, Notice of Homeowner's Emergency Mortgage Assistance pursuant to Act 91 of 1983 (as amended in 2008), and/or Notice of Default as required by the terms of the Mortgage, as applicable, have been sent to the Defendants(s)" and "[c]opies of the notice(s), redacted to remove confidential account information, are attached hereto as Exhibit 'B' and made a part hereof." See Complaint at ¶8; Preliminary Objections at ¶2.

Rule 1147(a) of the Pennsylvania Rules of Civil Procedure does not require Plaintiff to include such allegations in its Complaint. If the Pennsylvania Rules of Civil Procedure did require such contentions, Plaintiff's allegations would satisfy Defendant's allegations of deficiency. Lack of allegations with respect to Act 6 or Act 91 notices do not, in any event, implicate the subject matter jurisdiction of this Court. See *Beneficial Consumer Discount Company v. Vukman*, 77 A.3d 547 (Pa. 2013).

Accordingly, Defendant's first preliminary objection is **DENIED**.

Defendant's Second Preliminary Objection: "Motion for Dismissal or More Specific Complaint"

Defendant respectively contends that:

"5. Plaintiff refers to an assignment from First Valley Bank dated July 20, 2015 but fails to attach a copy of the assignment as required by Pa. Rule of Civil Procedure No. 1019(h)(i).

6. The complaint alleges a default because "...monthly payments of principal and interest are due and unpaid for October 1, 2017..." yet in paragraph #6 requests interest for September of 2017.

Defendant is directed to file an Answer to the Complaint within twenty (20) days from the date of this Order of Court.

BY THE COURT:


Joseph J. Matika, J.

7. Paragraph #6 requests payment for 'escrow advances' yet fails to specify what those advances are or when paid or to whom.

8. Without the aforesaid information, Defendant is without sufficient information to form an opinion as to the averments contained therein"

See Preliminary Objections at ¶¶5-8.

Rule 1019(g) of the Pennsylvania Rules of Civil Procedure states, in pertinent part that "[a] party may incorporate by reference any matter of record in any State or Federal court of record whose records are within the county in which the action is pending, or any matter which is recorded or transcribed verbatim in the office of the prothonotary, clerk of any court of record, recorder of deeds or register of wills of such county." Plaintiff properly has done so with respect to both the assignment and mortgage at issue in this matter. See Complaint at ¶3. See also *U.S. Bank v. Mallory*, 982 A.2d 986, 992-993 (Pa.Super. 2009) (A party need not both incorporate documents by reference in a complaint pursuant to Rule 1019(g) and attach them pursuant to Rule 1019(i)).

The Complaint informs Defendant with sufficient accuracy and completeness of the specific basis upon which Plaintiff seeks recovery so that Defendant knows upon which grounds to render a defense, if any. See *Rambo v. Greene*, 906 A.2d 1232, 1236 (Pa.Super. 2006). See also Pa.R.C.P. 1019(a) ("The material facts upon which a cause of action or defense is based shall be stated in a concise and summary form."). See also Pa.R.C.P. 1029(a) ("A responsive pleading shall admit or deny each averment of fact in the preceding pleading or any part thereof to which it is responsive..."); Pa.R.C.P. 1029(c) ("A statement by a party that after reasonable investigation the party is without knowledge or information sufficient to form a belief as the truth of an averment shall have the effect of a denial."); Pa.R.C.P. 1141(b) ("...the procedure in the [mortgage foreclosure] action shall be in accordance with the rules relating to civil action.").

Accordingly, Defendant's second preliminary objection is **DENIED**.

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LIMOSA, LLC,
Plaintiff

v.

KENNETH D. SABOL,
Defendant

No. 18-1429

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Michael J. Clark, Esq.
Robert T. Yurchak, Esq.

Counsel for Plaintiff
Counsel for Defendant

ORDER OF COURT

AND NOW, this 24th-day of April, 2020, upon consideration of
the

- "Plaintiff's Motion for Summary Judgment" filed on August 22, 2019;
- "Plaintiff's Memorandum of Law in Support of its Motion for Summary Judgment" filed on August 22, 2019 ("Plaintiff's Memorandum of Law");
- "Defendant's Brief in Opposition to Plaintiff's Motion for Summary Judgment" filed on December 6, 2019 ("Defendant's Brief"); and

after December 19, 2019 oral argument thereupon, and after comprehensively reviewing the evidentiary record in this matter as defined at Rule 1035.1 of the Pennsylvania Rules of Civil Procedure, it is hereby **ORDERED and DECREED** that Plaintiff's Motion for Summary Judgment is **GRANTED** as noted herein and that an *in rem* judgment shall be entered in favor of Plaintiff Limosa, LLC

("Limosa") and against Defendant Kenneth D. Sabol ("Mr. Sabol") in the amount of \$19,384.16 together with any additional interest incurred after the filing of the Complaint in this matter through the date of judgment and any costs and charges collectible under the mortgage at issue in this case, and for foreclosure and sale of the mortgaged property described in the Complaint in Mortgage Foreclosure and bearing a street address of 221 East Bertsch Street, Lansford, Pennsylvania 18232.¹

¹ Summary Judgment Standard.

Rule 1035.2 of the Pennsylvania Rules of Civil Procedure, governing motions for summary judgment, states:

Rule 1035.2 Motion

After the relevant pleadings are closed, but within such time as to not unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

See Pa.R.C.P. 1035.2.

A record that supports summary judgment demonstrates that no dispute exists with respect to material facts or contains insufficient factual evidence to establish a *prima facie* cause of action.

The Note to Rule 1035.2 advises that "Rule 1035.2 sets forth the general principle that a motion for summary judgment is based on an evidentiary record which entitles the moving party to judgment as a

matter of law." See Pa.R.C.P. 1035.2, Note. With respect to the first subdivision of Rule 1035.2, the Note counsels that "[u]nder subdivision (1), the record shows that the material facts are undisputed and therefore, there is no issue to submit to a jury." See Pa.R.C.P. 1035.2, Note. Accordingly, "[a]n example of a motion under subdivision (1) is a motion supported by a record containing an admission" and "[b]y virtue of the admission no issue of fact could be established by further discovery or expert report." See Pa.R.C.P. 1035.2, Note.

With respect to the second subdivision of Rule 1035.2, the Note counsels that "[u]nder subdivision (2), the record contains insufficient evidence to make out a *prima facie* cause of action or defense and, therefore, there is no issue to be submitted to a jury. See Pa.R.C.P. 1035.2, Note. Accordingly, "[t]he motion in this instance is made by a party who does not have the burden of proof at trial and who does not have access to the evidence to make a record which affirmatively supports the motion" and "[t]o defeat this motion, the adverse party must come forth with evidence showing the existence of facts essential to the cause of action or defense." See Pa.R.C.P. 1035.2, Note.

Rule 1035.3(a)(1) of the Pennsylvania Rules of Civil Procedure states in part that "the adverse party may not rest on the mere allegations or denials of the pleadings, but must file a response within thirty days after service of the motion identifying one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion." See Pa.R.C.P. 1035.3(a)(1).

The Pennsylvania Supreme Court has stated that "where a motion for summary judgment has been made and properly supported, parties seeking to avoid the imposition of summary judgment must show by specific facts in their depositions, answers to interrogatories, admissions, or affidavits that there is a genuine issue for trial." See *Marks v. Tasman*, 589 A.2d 205, 206 (Pa. 1991).

No Genuine Issue of Material Fact.

Rule 1147(a) of the Pennsylvania Rules of Civil Procedure delineates those items which a plaintiff must include in a mortgage foreclosure complaint. Rule 1147(a) states:

(a) The plaintiff shall set forth in the complaint:

(1) the parties to and the date of the mortgage, and of any assignments, and a statement of the place of record of the mortgage and assignments;

(2) a description of the land subject to the mortgage;

(3) the names, addresses and interest of the defendants in the action and that the present real owner is unknown if the real owner is not made a party;

(4) a specific averment of default;

(5) an itemized statement of the amount due; and

(6) a demand for judgment of the amount due.

See Pa.R.C.P. 1147(a).

An "Act 6 Notice" "must precede any action by the residential mortgage lender whereby he 'accelerates the maturity' of the obligation, institutes 'legal action including... foreclosure,' or repossesses 'any security' of the debtor." See *General Electric Credit Corp. v. Slawek*, 409 A.2d 420, 422 (Pa.Super. 1979) citing 41 P.S. §403 [Act 6 Notice], *Ministers & Missionaries Benefit v. Goldsworthy*, 385 A.2d 358 (Pa.Super. 1978). An "Act 91 Notice" may be in lieu of any other notice. See 35 P.S. §1680.403c [Act 91 Notice]. While requiring the giving of notice, neither Act 6 Notice nor Act 91 Notice statutory provisions require a mortgagee to present proof of receipt of notice. See 41 P.S. §403; 35 P.S. §1680.403c.

In an action for mortgage foreclosure, a court properly enters summary judgment if a mortgage default has occurred and the recorded mortgage contains a specified amount. See *Bank of America, N.A. v. Gibson*, 102 A.3d 462, 464 (Pa.Super. 2013) citing *Cunningham v. McWilliams*, 714 A.2d 1054, 1056-1057 (Pa.Super. 1988).

The Complaint in Mortgage Foreclosure filed by Bayview Loan Servicing, LLC, Limosa's predecessor in interest in this matter, includes each of the requisite elements set forth in Rule 1147(a) as well as appropriate notice. See generally Complaint in Mortgage Foreclosure.

Mr. Sabol, in turn, has either explicitly or implicitly admitted each of these elements. See generally Complaint in Mortgage Foreclosure at ¶¶2 - 6, Prayer for Relief; Defendant's Answer with New Matter at ¶¶2 - 6. See also Pa.R.C.P. 1029(b) ("Averments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication" and that [a] general denial or a demand for proof... shall have the effect of an admission."); *Swift v. Milner*, 538 A.2d 28, 30-31 (Pa.Super. 1988); *First Wisconsin Trust Co. v. Strausser*, 653 A.2d 688, 692 (Pa.Super. 1995); Pa.R.C.P. 4014(b) ("A denial shall fairly meet the substance of the admission...").

Broadly put, Mr. Sabol has explicitly or implicitly admitted every factual averment necessary for Plaintiff to establish its case with no genuine issue of material fact remaining.

Even beyond Mr. Sabol's admissions within the pleadings themselves, he has failed to identify one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion

or from a challenge to the credibility of one or more witnesses testifying in support of the motion. See Pa.R.C.P. 1035.3(a)(1). Mr. Sabol has not directed this Court's attention to specific facts in depositions, answers to interrogatories, admissions or affidavits so as to demonstrate that a genuine issue for trial exists in this matter. See *Marks v. Tasman*, 589 A.2d 205, 206 (Pa. 1991)

Rather, with the sole exception of his one paragraph Affidavit attached as Exhibit "A" to Defendant's Brief, Mr. Sabol has rested upon the mere allegations and denials of the pleadings in the fashion that Rule 1035.3(a)(1) proscribes. Mr. Sabol's Affidavit states in pertinent part only that "I never received either an Act 6 notice or an Act 91 notice stating I was in default on my mortgage allegedly sent to me in February of 2018 by certified mail or by regular mail." See Affidavit, Exhibit "A" to Defendant's Brief.

In short, Defendant's Brief and minimal supporting materials do not satisfy the necessary level of citation to record evidence established in the Pennsylvania Rules of Civil Procedure and by the Pennsylvania Supreme Court to withstand successfully Limosa's properly supported motion for summary judgment.

The Arguments Set Forth in Defendant's Brief.

Even had Mr. Sabol appropriately supported his opposition to Limosa's summary judgment motion, his arguments nonetheless would not succeed on the merits. Mr. Sabol, in Defendant's Brief, sets forth three distinct arguments.

Mr. Sabol initially claims that "there is a genuine issue of fact as to the viability of the mortgage upon which this foreclosure is based along with the asserted fees which have been listed..." See Defendant's Brief at pp. 4-5. Mr. Sabol contends that a mortgage loses its "viability" subsequent to its maturity date after which it can no longer support the imposition of additional fees or, apparently, the remedy of foreclosure. See Defendant's Brief at pp. 4-5.

The Court declines to adopt Mr. Sabol's novel argument that mortgages in Pennsylvania become functionally unenforceable, and their terms inoperable, subsequent to their maturity dates. The Court notes that the cases presented by Mr. Sabol do not support the proposition that Limosa cannot enforce the mortgage in this matter. See Defendant's Brief at p. 4; *Blumenfeld v. Weisberg*, 56 Pa.D&C 519 (C.C.P. Philadelphia 1946) (Court analysis of mortgage prepayment); *Beckman v. Altoona Trust Co.*, 2 A.2d 826, 332 Pa. 545 (1938) (Court notes that mortgage lien remains until mortgage debt has been paid).

Mr. Sabol additionally contends that, as set forth in his Affidavit, that "I never received either an Act 6 notice or an Act 91 notice stating I was in default on my mortgage allegedly sent to me in

February of 2018 by certified mail or by regular mail." See Affidavit, Exhibit "A" to Defendant's Brief. The Court does not consider Mr. Sabol's contention to be germane to the instant matter. As noted above, while requiring the giving of notice, neither Act 6 Notice nor Act 91 Notice statutory provisions require a mortgagee to present proof of receipt of notice. See 41 P.S. §403; 35 P.S. §1680.403c.

Finally, Mr. Sabol contends that Limosa did not sufficiently specify the "itemized statement of the amount due" as required in a mortgage foreclosure complaint pursuant to Rule 1147(a)(5) of the Pennsylvania Rules of Civil Procedure. See Defendant's Brief at pp. 7-9; Pa.R.C.P. 1147(a)(5).

Mr. Sabol's contention regarding specificity, in actuality, challenges the form of the Complaint in Mortgage Foreclosure. The Pennsylvania Rules of Civil Procedure specifically counsel that preliminary objections provide the appropriate manner in which to raise an objection to the form of a pleading. See Pa.R.C.P. 1028(a)(2) ("[p]reliminary objections may be filed by any party to any pleading and are limited to the following grounds..." "failure of a pleading to conform to law or rule of court,"). Mr. Sabol previously raised this issue in his Defendant's Preliminary Objections to Complaint. See generally Defendant's Preliminary Objections to Complaint. The Court denied Defendant's Preliminary Objections by Order of Court dated October 19, 2018 and filed October 22, 2018. The Court will not here re-visit the issue of the specificity of the Complaint in Mortgage Foreclosure.

Judgment Amount.

In ascertaining the judgment amount, the Court has included the following properly supported items:

Principal Balance	\$10,029.72
Interest (September 1, 2017 through April 22, 2020 at per diem rate of \$2.10	\$2,238.70
Late Charge Payment	\$18.60
Escrow Advances	\$5,036.39
Attorneys' Fees	<u>\$2,268.75</u>
Total	\$19,384.16

The Court denies Limosa's claim for "Prior Servicer Corporate Advances." See Plaintiff's Motion for Summary Judgment at ¶10. Limosa neither included a claim for such damages in its Complaint in Mortgage Foreclosure nor does the Mortgage at issue support such a category of damages. See Complaint at ¶16. See also Mortgage, Exhibit "A" to Complaint.

BY THE COURT:



Joseph J. Matika, J.

Conclusion.

After having thoroughly reviewed this matter, and for the foregoing reasons, the Court holds that no genuine issues of material fact exists, and Plaintiff's Motion for Summary Judgment shall be **GRANTED** as noted herein.