

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION**

SUSQUEHANNA HOME FINANCE, LLC,	:	
Plaintiff	:	
vs.	:	
	:	No. 11-0689
GEORGE E. ANDREW,	:	
DOREEN K. ANDREW and	:	
JAMIE L. ANDREW-KROMER,	:	
Defendants	:	

Kimberly J. Hong, Esquire	Counsel for Plaintiff
Michael Ozalas, Esquire	Counsel for Plaintiff
George E. Andrew	Pro Se
Doreen K. Andrew	Pro Se
Jamie L. Andrew-Kromer	Pro Se

MEMORANDUM OPINION

Matika, J. – February 10, 2012

Before the Court is Susquehanna Home Finance, LLC’s (“Plaintiff”) Motion for Summary Judgment against George Andrew, Doreen Andrew, and Jamie Andrew-Kromer (“Defendants”) based on a mortgage foreclosure action involving property located at 400 Canal Street, Lehighton, PA 18235 (“Property”). For the reasons that follow, Plaintiff’s Motion for Summary Judgment is granted.

I. FACTUAL and PROCEDURAL BACKGROUND DISCUSSION

On February 11, 2008, Defendant, Jamie L. Andrew-Kromer, executed a Fixed/Adjustable Rate Note (“Note”) in a principle amount \$80,000.00. To secure the Note, Defendant Jamie Andrew-Kromer, along with her parents Defendants George E. Andrew and Doreen K. Andrew, executed and delivered to National Penn Bank, a Mortgage in the principle amount of \$80,000.00, said mortgage being a lien on the premises located at 400 Canal Street, Lehighton,

PA 18235. The Mortgage was recorded on February 22, 2008. National Penn Bank then assigned all of its rights, interest, and title in both the Note and Mortgage to Plaintiff on October 1, 2010. The Assignment of Mortgage (“Assignment”) was recorded October 27, 2010.

Monthly mortgage payments commenced on April 1, 2008. On or about on June 1, 2010, Defendants defaulted on their mortgage by failing to continue to make these payments. Plaintiff demanded payments from Defendants, but no payments have been made.

Plaintiff commenced this action by filing a Complaint in Mortgage Foreclosure against the Defendants. In Defendants’ Answer, they admit to the execution of the Mortgage and Note, but claim Plaintiff is not the Note holder, even though a copy of the Assignment is attached to the Complaint. Defendants also deny any obligation on the Mortgage or Note.

Plaintiff filed this Motion for Summary Judgment against Defendants to foreclose on the property.

II. DISCUSSION

A Trial Court can grant a Motion for Summary Judgment whenever there are no genuine issues of material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report. Pa.R.C.P. 1035.2. In response, the non-moving party must demonstrate that there is a genuine issue for trial and cannot rest upon the mere allegations and denials of his pleadings. *Phaff v. Gerner*, 451 Pa. 146, 149, 303 A.2d 826, 829 (1973); *Davis v. Resources for Human Development, Inc.*, 770 A.2d 353, 357 (Pa.Super.Ct. 2001). In granting a Motion for Summary Judgment the Trial Court must decide “whether the admissible evidence in the record, in whatever form, from whatever source, considered in the light most favorable to the [non-moving party] to the motion, fails to establish a prima facie case . . .” *In re Japanese Electronic Products Antitrust Litigation*,

723 F.2d 238 (3d Cir.1983), *cert. denied*, 481 U.S. 1029, 107 S.Ct. 1995 (1985), to allow the case to continue to trial.

In the Answer, Defendants admit to executing the Mortgage on the property in the principal amount of \$80,000.00 to secure the Note. Thus, there is no issue of dispute as to Defendants execution and delivery of the Note and Mortgage nor are there any disputes as to the Note and Mortgage not being paid, save for general denials which form Defendants' other opposition to the underlying complaint¹. Additionally, no affidavits of support or evidence to supplement the record were submitted by the Defendants in their opposition to the Motion for Summary Judgment. Pa.R.C.P. 1035(d) specifically provides that [the non-moving party] may not rest upon the averments contained in the pleadings. In order to properly raise a genuine issue of fact, the [non-moving party has] the burden to present 'facts' by counter-affidavits, depositions, admissions, or answers to interrogatories."

Washington Federal Savings and Loan Association v. Stein, 357 Pa.Super. 286, 515 A.2d 980, 982-83 (1986). Absent such substantiation, the Motion for Summary Judgment will be favored by the court.

Next, Defendants argue that Plaintiff is not the true Note holder and cannot pursue this action against them. Contracts are assignable and a mortgage is a form of a contract.

Beneficial Consumer Discount Co. v. Hamlin, 263 Pa.Super. 393, 408, 398 A.2d 193, 201 (1979). "An assignment is a transfer of property or some other right from one person to another, and unless in some way qualified, it extinguishes the assignor's right to the assignee." *Employers Insurance of Wausau v. Commonwealth*, 581 Pa. 381, 390 (2003) citing *Pentlong Corp. v. GLS Capital, Inc.*, 573 Pa. 34, 820 A.2d 1240, 1249 (2003).

¹ Defendants did question the legality of the verification attached to the Complaint. However, Plaintiff did file a Praecipe to Substitute Verification on or about June 15, 2011, thereby rendering this argument moot.

Plaintiff attached to the Complaint a copy of the valid Assignment from National Penn Bank. *See 21 P.S. § 623.* Plaintiff also submitted an affidavit in support of its Motion for Summary Judgment as prescribed by Rule 1035. The affidavit contains a sworn statement that National Penn Bank assigned all of its right, title, and interest in and to the Note and Mortgage to Plaintiff. As previously stated, the Assignment was duly recorded on October 27, 2010. Therefore, Susquehanna Home Finance, LLC has the legal right to pursue this action against the Defendants.

Accordingly, while the Defendants have raised some defenses, albeit untenable, as well as a counter-claim² against Plaintiff, all are without merit, unsupported, and insufficient to counter Plaintiff's motion. Defendants have failed to establish a genuine issue of material fact or law and for those reasons Plaintiff is entitled to Summary Judgment.

² Defendants, along with their general denials in their Answer, pled what appears to be New Matter couched in the word "Counterclaim." The Trial Court considered this pleading as New Matter and also considered the allegations, factual and, or legal, as insufficient to sustain the burden Defendants has vis-à-vis genuine issue of fact.