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

WELLS FARGO BANK, N.A.,	:	
	:	
Plaintiff	:	
	:	
Vs.	:	No. 11-3002
	:	
KEVIN P. BAKER,	:	
	:	
Defendant	:	

Ralph M. Salvia, Esquire — Counsel for Plaintiff
Jason M. Rapa, Esquire — Counsel for Defendant

MEMORANDUM OPINION

Serfass, J. – December 31, 2012

Here before the Court is Plaintiff, Wells Fargo Bank, N.A.'s (hereinafter "Plaintiff") Motion for Summary Judgment filed in the context of a mortgage foreclosure action against Defendant, Kevin P. Baker (hereinafter "Defendant") concerning property known as 1104 Princeton Avenue, Palmerton, Pennsylvania. For the reasons set forth hereinafter, we will **GRANT** Plaintiff's Motion for Summary Judgment.

FACTUAL AND PRODECURAL HISTORY

On or about October 2, 2008, Defendant executed a note in favor of Plaintiff in the original principal amount of one hundred twenty-five thousand, four hundred eight dollars ($125,408.00). As security for payment of the aforesaid note,

Defendant made, executed and delivered to Plaintiff a mortgage on real property and improvements thereon commonly known as 1104 Princeton Avenue, Palmerton, Pennsylvania (hereinafter the "Property"). This mortgage was recorded on October 9, 2008 in the Carbon County Recorder of Deeds Office.

On December 15, 2011, Plaintiff filed its Complaint in Mortgage Foreclosure. Plaintiff claims that Defendant's mortgage payments due March 1, 2011 and each month thereafter remain due and unpaid. Because Defendant failed to cure his default on the subject mortgage, Plaintiff accelerated said mortgage and has demanded an *in rem* judgment in mortgage foreclosure for the amount of one hundred twenty-seven thousand, seven hundred ninety-four dollars and twenty-eight cents ($127,794.28), plus interest, costs and for foreclosure and sale of the Property. In Defendant's Answer, which was filed on January 23, 2012, he admits that he executed and delivered the note and mortgage to Plaintiff. However, Defendant states that he is without sufficient knowledge to admit or deny the default or outstanding balance which Plaintiff claims is due and owing because said Plaintiff has failed to "provide any explanation of the charges or proof that such charges were actually incurred" (see Defendant's Answer at paragraphs 6 and 8).

Claiming that Defendant has failed to raise a genuine issue of material fact in his Answer and that he has effectively

admitted all material allegations against him, Plaintiff filed the instant motion for summary judgment on July 25, 2012. In support of its motion, Plaintiff has filed a sworn affidavit in which an authorized representative of said Plaintiff certifies that Defendant is in default under the terms of the note and mortgage, and further confirms the amount due and owing to Plaintiff.

DISCUSSION

Pursuant to Pennsylvania Rule of Civil Procedure 1035.2, any party may move for summary judgment as a matter of law whenever there is no genuine issue of any material fact as to a necessary element of the cause of action. When considering a motion for summary judgment, the record and any inferences therefrom must be viewed in the light most favorable to the non-moving party and any doubt as to the existence of a genuine issue of material fact must be resolved against the moving party. Davis v. Pennzoil, 438 Pa. 194, 264 A.2d 597 (1970). Furthermore, summary judgment may be granted only where the right is clear and free from doubt. Musser v. Vilsmeier Auction Co., Inc., 522 Pa. 367, 562 A.2d 279 (1989). Although the moving party has the burden of proving that there is no genuine issue of material fact, "…parties seeking to avoid entry of summary judgment against them may not rest upon the averments contained in their pleadings. On the contrary, they are

required to show, by depositions, answers to interrogatories, admissions or affidavits, that there is a genuine issue for trial." Washington Federal Savings and Loan Association v. Steins, 515 A.2d 980 (Pa. Super 1986).

In Defendant's Answer, he has admitted to the execution and delivery of the note and mortgage pursuant to which he is obligated to Plaintiff. Defendant claims he is "without sufficient knowledge to admit or deny Plaintiff's averment" concerning default. He further claims that he is without sufficient information to admit or deny that the outstanding balance is due and owing "as Plaintiff has failed to provide any explanation of the charges or proof that such charges were actually incurred." These responsive pleadings are deficient under Pennsylvania Rule of Civil Procedure 1029 which provides, in pertinent part:

> (b) Averments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication. A general denial or a demand for proof, except as provided by subdivision (c) of this rule, shall have the effect of an admission.
>
> (c) A statement by a party that after reasonable investigation the party is without knowledge or information sufficient to form a belief as to the truth of an averment shall have the effect of a denial.

Note

Reliance on subdivision (c) does not excuse a failure to admit or deny a factual allegation when it is clear that the pleader must know whether a particular allegation is true or false. *See Cercone v. Cercone*, 254 Pa.Super. 381, 386 A.2d 1 (1978).

Because Defendant's answers to the averments in Plaintiff's Complaint amount to nothing more than general denials under Pa.R.C.P. 1029(c), such purported denials are deemed admissions pursuant to the provisions of Pa.R.C.P. 1029(b).

In mortgage foreclosure actions, a general denial by which the defendant claims that he or she is without sufficient information to form a belief as to the truth of averments concerning the principal and interest owing on the mortgage must be considered an admission of those facts. New York Guardian Mortgage Corp. v. Dietzel, 524 A.2d 951, 952 (Pa. Super. 1987). See also First Wisconsin Trust Co. v. Strausser, 653 A.2d 688, 692 (Pa. Super. 1995). Defendant asserts that Plaintiff has failed to provide a complete accounting of the credits and debits to the mortgage account; however, where, as here, the defendant "must know whether a particular allegation is true or false," a general denial as to that allegation will be deemed an admission and summary judgment based on that admission is

appropriate. Strausser, 653 A.2d at 692, citing Cercone v. Cercone, 386 A.2d 1 (Pa. Super. 1978).

CONCLUSION

Defendant having asserted no cognizable defenses on his behalf which would excuse his obligation under the mortgage and the Court finding that no genuine issues of material fact remain unresolved between the parties, for the reasons set forth hereinabove, we will grant Plaintiff's motion for summary judgment and enter the following:

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

WELLS FARGO BANK, N.A.,	:	
	:	
Plaintiff	:	
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vs.	:	No. 11-3002
	:	
KEVIN P. BAKER,	:	
	:	
Defendant	:	

Ralph M. Salvia, Esquire — Counsel for Plaintiff
Jason M. Rapa, Esquire — Counsel for Defendant

ORDER OF COURT

AND NOW, to wit, this 31st day of December, 2012, upon consideration of Plaintiff's "Motion for Summary Judgment Pursuant to Pa. R.C.P. 1035.2," Plaintiff's brief in support thereof, the Defendant's answer and brief in opposition thereto, after oral argument thereon, and having reviewed the record in this matter as defined by Pennsylvania Rule of Civil Procedure 1035.1, the Court finding that no genuine issue of material fact remains unresolved between the parties, it is hereby

ORDERED and DECREED that the Plaintiff's motion is **GRANTED**, and that an *in rem* judgment is entered in favor of Plaintiff and against Defendant, with damages assessed in the amount of one hundred twenty-eight thousand, two hundred forty-four dollars and twenty-eight cents ($128,244.28), plus interest thereon at the per diem rate of twenty dollars and forty-three cents

($20.43) and the costs of this action, and for foreclosure and sale of the mortgaged premises.

BY THE COURT:

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Steven R. Serfass, J.