

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

RHONDA THOMAS,

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Plaintiff,

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v.

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C.A. No. 10770-ML

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NATIONSTAR MORTGAGE, LLC,

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Defendant.

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MASTER’S REPORT

(Motion to Dismiss)

Date Submitted: June 9, 2015
Final Report: September 18, 2015

Rhonda Thomas, *pro se*, Plaintiff.

Matthew G. Summers, Esquire and Jessica C. Watt, Esquire of Ballard Spahr, LLP,
Wilmington, Delaware, Attorneys for Defendant.

LEGROW, Master

I. BACKGROUND

The following facts are drawn from the verified complaint and are assumed to be true for purposes of the present motion. Rhonda Thomas (“Ms. Thomas”) is the owner of a residential property (the “Property”) at 18 E. Moyer Drive, Bear, Delaware 19701.¹ Ms. Thomas alleges that she received a loan secured by a mortgage on the Property “years ago,”² although she does not provide the year or date the loan or mortgage was executed. Nationstar Mortgage, LLC (“Nationstar”) is the current servicer of Ms. Thomas’s loan.³ On March 13, 2015, Ms. Thomas filed the instant action alleging various amorphous causes of action against Nationstar in connection with its servicing of her loan.⁴ Although the complaint is difficult to parse, Ms. Thomas seems to allege that Nationstar (i) illegally modified her loan;⁵ (ii) is not authorized to take action on the loan, note, or mortgage because Nationstar is merely the loan servicer;⁶ (iii) engaged in fraud by representing itself as a lender instead of a servicer;⁷ and (iv) libeled Ms. Thomas by reporting the loan to be in default to credit reporting agencies.⁸ Ms. Thomas

¹ Verified Compl. at 2.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 6.

⁷ Verified Compl. at 10.

⁸ *Id.* at 11.

also alleges the loan is void because Nationstar was not one of the original parties to the loan agreement.⁹

Nationstar filed a motion to dismiss on May 7, 2015, citing procedural and substantive deficiencies with Ms. Thomas's complaint.¹⁰ Nationstar contends four significant procedural defects require dismissal: (1) service of process was not sufficient; (2) Ms. Thomas failed to join indispensable parties; (3) this Court lacks subject matter jurisdiction over the claims; and (4) the claims are not ripe. Nationstar also argues the complaint fails to state a claim upon which relief may be granted. In the alternative, Nationstar has moved for a more definite statement on the grounds that Ms. Thomas's complaint is vague and ambiguous.¹¹

Because I conclude that Ms. Thomas failed properly to serve the complaint on Nationstar, I recommend that the Court dismiss Ms. Thomas's claim without prejudice. Having concluded that the Court lacks personal jurisdiction because of defects in service, I do not reach the alternate bases for dismissal raised in Nationstar's motion. There is, however, apparent merit in Nationstar's motion for a more definite statement, and I therefore suggest that – if she wishes to pursue these claims – Ms. Thomas file a complaint concretely identifying and delineating the causes of action and supporting facts. This is particularly so in view of Ms.

⁹ *Id.* at 7-8.

¹⁰ Def.'s Mot. to Dismiss.

¹¹ *Id.* at 26.

Thomas's response to the motion to dismiss, in which she ignores the claims referenced in her complaint and defends a claim that is not plainly pled.

II. ANALYSIS

Under Court of Chancery Rule 4(d)(4), service on a Delaware corporation shall be made as provided by statute. Service on a corporation may be made as set forth in 8 *Del. C.* § 321 or 10 *Del. C.* § 3111. Under 8 *Del. C.* § 321, service on a Delaware corporation shall be made:

by delivering a copy personally to any officer or director of the corporation in this State, or the registered agent of the corporation in this State, or by leaving it at the dwelling house or usual place of abode in this State of any officer, director or registered agent (if the registered agent be an individual), or at the registered office or other place of business of the corporation in this State.¹²

Although seldom used, 10 *Del. C.* § 3111 provides alternate, if similar, methods to personally serve a Delaware corporation: serving the president or head officer residing in the State or any officer, director, or manager if the head officer does not reside in the State.¹³ Neither statute contemplates service by mail. Service by mail under 10 *Del. C.* § 3104 is appropriate only when a party is not a resident of Delaware.

¹² 8 *Del. C.* § 321(a). Under 8 *Del. C.* § 321(b), “[i]n case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the corporation upon the Secretary of State.”

¹³ 10 *Del. C.* § 3111(a).

Court of Chancery Rule 12(b)(5) requires dismissal of a complaint for improper service of process. It is fundamental that the Court only may exercise personal jurisdiction over a defendant when service is properly effected, regardless of whether or not actual notice is achieved.¹⁴ “Personal jurisdiction must be effected through proper service of process, and actual notice by a defendant does not satisfy this constitutional requirement.”¹⁵ When service is defective, it is no excuse that the plaintiff has acted in good faith to perfect service.¹⁶ The plaintiff bears the burden of demonstrating that service of process was effective.¹⁷

Ms. Thomas concedes she did not serve Nationstar in accordance with the statutory methods for serving a Delaware corporation. Rather, she mailed a copy of the summons and complaint by certified mail to two Texas addresses provided by Nationstar, and also sent a copy to Nationstar’s counsel.¹⁸ The Texas addresses were provided to Ms. Thomas by Nationstar in response to two email inquiries wherein Ms. Thomas asked Nationstar to provide the name and address of Nationstar’s registered agent in Delaware and confirm the address to which she

¹⁴ *Boulden v. Albiorix, Inc.*, 2013 WL 396254, at *9 (Del. Ch. Jan. 31, 2013).

¹⁵ *Id.* (quoting *Shurr v. Mun. City of Newark, Del.*, 2004 WL 332508, at *1 (D. Del. Jan. 28, 2004)).

¹⁶ *Shurr v. Mun. City of Newark, Del.*, 2004 WL 332508, at *1 (D. Del. Jan. 28, 2004) (“Notwithstanding plaintiff’s good motives, due process demands that where a plaintiff has failed to obtain personal jurisdiction over each of the defendants through proper service of process the case must be dismissed”).

¹⁷ *Boulden*, 2013 WL 396254, at *9 (citing *Cairns v. Gelmon*, 1998 WL 276226, at *4 (Del.Ch. May 21, 1998)).

¹⁸ It does not appear from the record, and Ms. Thomas does not contend, that Nationstar’s counsel indicated it was authorized to accept service of the complaint on behalf of its client.

should send a court summons.¹⁹ While I accept that Ms. Thomas's requests for service information from Nationstar were made in good faith, the litigant bears the responsibility of familiarizing herself with court rules and governing statutes.²⁰ There is no lower standard for a self-represented litigant in establishing jurisdiction. Although courts at times have held submissions by *pro se* litigants to "a somewhat less stringent technical standard than those drafted by lawyers,"²¹ this leniency does not extend to the constitutional requirements of personal jurisdiction.²² Further, I find no evidence of bad faith or intent to mislead on the part of the Nationstar representatives who responded to Ms. Thomas's email inquiries. In fairness, it appears that the email responses were automatically generated in response to Ms. Thomas's questions.

¹⁹ Pl.'s Reply to Mot. to Dismiss Ex. A.

²⁰ All persons are presumed to know the law, including laypersons. It is for this reason, for example, that courts have declined to recognize a misrepresentation as to a matter of law as a basis for a charge of fraud or deceit in making a contract. *See Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 872 A.2d 611 (Del. Ch. 2005) (citing *Lakeside Invs. Group, Inc. v. Allen*, 559 S.E.2d 491, 493 (Ga. Ct. App. 2002)), *rev'd on other grounds*, 901 A.2d 106 (Del. 2006). The same principle governs this Court's presumption that a testator is presumed to know the law at the time a will is executed and the consequences of making a will. *See, e.g., In re Estate of Hart*, 1993 WL 1501284, at *3 (Del. Ch. Nov. 22, 1993).

²¹ *Sloan v. Segal*, 2008 WL 81513, at *7 (Del. Ch. Jan. 3, 2008) (internal quotation, citation omitted).

²² *Draper v. Med. Ctr. Of Del.*, 767 A.2d 796, 799 (Del. 2001) ("[T]here is no different set of rules for *pro se* plaintiffs"); *Anderson v. Tingle*, 2011 WL 3654531, at *2 (explaining that the Court "will accommodate *pro se* litigants only to the extent that such leniency does not affect the substantive rights of the parties").

III. CONCLUSION

For the foregoing reasons, I recommend that the Court enter an order dismissing this action without prejudice for improper service of process. Because the Court does not have personal jurisdiction over Nationstar, I cannot reach the alternate grounds for dismissal raised in the motion to dismiss.²³ If Ms. Thomas files a new action, however, I strongly urge her to revise her complaint to clarify her claims. She also should consider whether one or more additional parties should be named as defendants, and whether this Court has subject matter jurisdiction over any claims she elects to pursue. This is my final report and exceptions may be taken in accordance with Rule 144.

Respectfully Submitted,

/s/ Abigail M. LeGrow
Master in Chancery

²³ *Branson v. Exide Electronics Corp.*, 625 A.2d 267, 269 (Del. 1993).