

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
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April 2, 2015

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Carolyn Swift a/k/a Carolyn L. Swift
112 Red Cedar Drive
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RE: **CitiMortgage, Inc. v. Carolyn Swift a/k/a Carolyn L. Swift**
C.A. No.: S14L-07-015 RFS

Dear Counsel:

The Motion for Summary Judgment filed by Plaintiff is denied. Material facts are disputed, and judgment may not be entered as a matter of law.

Plaintiff seeks entry of an order granting summary judgment; however, material factual matters in dispute are apparent upon review of the record. “[S]ummary judgment may not be granted when the record indicates a material

fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.”¹ When considering the facts in the light most favorable to the non-moving party,² there are details set forth in the answer, accompanying affidavits, and documents illustrating genuine issues of material fact regarding an alleged deed in lieu of foreclosure.³

Plaintiff contends Defendant’s bankruptcy proceedings may not protect Plaintiff from an *in rem* action⁴ such as the present *scire facias* action.⁵ Even if this is correct, questions may arise concerning whether a deed in lieu of foreclosure was accepted by Plaintiff and whether adequate notice was provided regarding Plaintiff’s alleged rejection of a deed in lieu of foreclosure. These contested issues present genuine factual disputes and prevent this Court from entering an order granting summary judgment.⁶

¹ *Guy v. Judicial Nominating Comm'n*, 659 A.2d 777, 780 (Del. Super. 1995).

² *Pullman, Inc. v. Phoenix Steel Corp.*, 304 A.2d 334, 335 (Del. Super. 1973) (discussing the standard of review at the summary judgment stage).

³ Including a letter dated July 2, 2012 referencing a deed in lieu of foreclosure. *See*, Def.’s Aff. Ex. A, No. 1(b).

⁴ *See e.g., In re Mandehzadeh*, 2014 WL 423609 (Bankr. E.D. Va. Feb. 4, 2014) (explaining “[a] creditor’s *in personam* and *in rem* rights are treated separately” because “[t]he *in personam* right is eliminated by a discharge in bankruptcy” but “[a] discharge does not affect the *in rem* right” which can “pass[] through bankruptcy unaffected by a discharge” (citing *Branigan v. Davis (In re Davis)*, 716 F.3d 331, 338 (4th Cir.2013)).

⁵ *See, Quadrant Structured Products Co., Ltd. v. Vertin*, 106 A.3d 992, 1009 (Del.) *certified question accepted*, 980 N.Y.S.2d 379 (N.Y. 2013) *and certified question answered*, 992 N.Y.S.2d 687 (N.Y. 2014) (explaining “[i]f the borrower defaults, the bank can proceed *in rem* by foreclosing on the mortgage, sue the borrower *in personam* on the promissory note, or both”).

⁶ Super. Ct. Civ. R. 56(c).

At this juncture, further inquiry is required and this case may not be summarily resolved. For the foregoing reasons, Plaintiff's Motion for Summary Judgment is **DENIED**.

IT IS SO ORDERED

Very Truly Yours,

/s/ Richard F. Stokes

Hon. Richard F. Stokes

cc: Prothonotary