

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

JPMORGAN CHASE BANK, N.A., a)
foreign corporation; Assignee of)
Wilmington Mortgage Services, Inc., a)
corporation organized and existing under)
the laws of the State of Delaware,)
Plaintiff,)

v.)

C.A. No. 08L-10-153 ALR

RICHARD S. WILLIAMS;)
CELESTE F. WILLIAMS,)
A/K/A CELESTE WILLIAMS,)
Defendants.)

ORDER OF DISMISSAL WITH PREJUDICE

1. This matter was initiated in the Superior Court by Plaintiff which filed a complaint on October 15, 2008, seeking payment from Defendants from default on a mortgage, together with reasonable counsel fees, late charges, and costs.
2. Defendants filed an answer to Plaintiff's complaint on November 26, 2008, and included a counterclaim against Plaintiff.
3. On October 16, 2009, the Court filed a letter notifying the parties that the matter was moved from the active docket to the dormant docket pursuant to Rule 41(g).¹

The letter advised the parties that the matter would be dismissed within twenty-four months unless a party filed a motion to extend for good cause.

¹ Super. Ct. Civ. R. 41(g) ("When the Court is advised that a party has filed a bankruptcy petition, the action shall be stayed. The Prothonotary shall remove the action from the active docket to the dormant docket. All parties for whom an appearance has been entered, either by counsel or *pro se*, shall be notified of the date of the transfer to the dormant docket. Twenty-four months after the transfer, the action shall be dismissed without further notice unless, prior to the expiration of the twenty-four month period, a party seeks to extend the period, for good cause shown. Actions pending on the effective date of this rule and stayed due to bankruptcy shall be transferred to the dormant docket. [. . .]").

4. On October 14, 2011, Plaintiff filed a motion to extend the time for this matter to remain on the Court's active docket, which was granted by Order dated November 1, 2011.
5. On May 23, 2012, the Court dismissed this action because the parties failed to file a motion showing good cause to extend the time for this matter to remain on the Court's active docket.
6. On June 5, 2012, Plaintiff filed a motion to vacate the dismissal of action, which was granted by Order dated July 3, 2012.
7. On January 15, 2013, the Court filed a letter notifying the parties that the no proceedings occurred within this matter for six months and this action would be dismissed for lack of prosecution under Rule 41(e) if no action was taken within thirty days.²
8. On January 28, 2013, Plaintiff filed a motion to dismiss Defendants' counterclaim under Rule 12(b)(6), to which Defendants responded on August 8, 2013.
9. By Order dated August 26, 2013, the matter was scheduled for trial, and the parties were put on notice that "[f]ailure to comply with the deadlines established in this order may result in the Court considering objections waived by the non-complying party and/or the imposition of appropriate sanctions."

² Super. Ct. Civ. R. 41(e) ("The Court may order an action dismissed, sua sponte, upon notice of the Court, for failure of a party diligently to prosecute the action, for failure to comply with any rule, statute, or order of the Court, or for any other reason deemed by the Court to be appropriate.").

10. On November 8, 2013, Plaintiff filed a motion for summary judgment on Defendants' counterclaim. Defendants filed their response on December 3, 2013.
11. On April 22, 2014, the Court referred this matter to mediation with a Superior Court Commissioner. Consideration of the motion for summary judgment was stayed pending mediation. On October 17, 2014, Plaintiff filed a letter with the Court requesting a continuance of mediation because the parties reached an agreement.
12. The Court conducted a conference on May 26, 2015. The parties continued to insist that the matter had been resolved. Trial was scheduled for September 18, 2015, and the pre-trial stipulation was required by noon on September 4, 2015. In the alternative, the parties could submit a stipulation of dismissal. The parties were reminded that failure to comply with the deadlines would result in dismissal by the Court for failure to prosecute.
13. The parties have not filed a pre-trial stipulation or a stipulation of dismissal. Rather, on September 4, 2015, the parties filed a stipulation of *partial* dismissal only as to Defendants' counterclaim, which was granted by Order dated September 15, 2015.
14. Under Rule 41(e), the "Court may order an action dismissed, *sua sponte*, upon notice of the Court, for failure of a party diligently to prosecute the action, for

failure to comply with any rule, statute, or order of the Court, or for any other reason deemed by the Court to be appropriate.”³

15. The parties have failed to diligently prosecute this action, which was commenced in 2008, and have failed to comply with the deadlines set by the Court.

16. Dismissal of this action is appropriate and consistent with due process, as well as consistent with concerns for judicial efficiency.

NOW, THEREFORE, this 15th day of September, 2015, this case is hereby DISMISSED WITH PREJUDICE, each party to bear its own costs.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli

³ Super. Ct. Civ. R. 41(e).