## Superior Court of the State of Delaware

Jan R. Jurden Judge

New Castle County Courthouse 500 North King Street, Suite 10400 Wilmington, Delaware 19801-3733 Telephone (302) 255-0665

November 22, 2013

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Mr. and Mrs. William W. Stevenson, III 1313 Idlewood Road Wilmington, DE 19805

Date Submitted: August 27, 2013
Date Decided: November 22, 2013

RE: Citimortgage, Inc. v. William W. Stevenson, III and Linda M. Stevenson C.A. No. N10L-09-311 JRJ

Upon Defendants' Motion to Dismiss Action and Order the Mortgage to be Declared Unenforceable or Void Under Delaware Law 5072 and Common Law 10 Del. C./SCC 5072 - **DENIED** 

Dear Counsel and Mr. & Mrs. Stevenson:

The Court has reviewed the Stevensons' "Motion to Dismiss Action and Order the Mortgage to be Declared Unenforceable or Void Under Delaware Law 5072 and Common Law 10 Del. C./SCC 5072" and the Plaintiff's Opposition thereto.

On October 22, 2004, the Stevensons obtained a loan (the "Loan") from Gilpin Financial Services, Inc. ("Gilpin"). Subsequently, a mortgage (the "Mortgage") was executed between the Stevensons and Mortgage Electronic Registration Systems ("MERS") as the nominee for Gilpin, securing the Loan against real property located at 1313 Idlewood Road, Wilmington, Delaware, 19805.

It is undisputed that the Stevensons defaulted on the Loan in 2010. On September 22, 2010, the Mortgage was assigned to Citimortgage and on September 27, 2010, Citimortgage commenced foreclosure proceedings against the Stevensons.

The Stevensons argue that the Mortgage should be voided because in 2004, prior to closing, Gilpin sent the Stevensons a letter advising them that the Loan had been purchased and would be serviced by Citimortgage. The Stevensons allege that the assignment of the Mortgage from MERS to Citimortgage was untimely and improper, and that Citimortgage essentially purchased an unenforceable, "unsigned contract." The Stevensons further contend that because Citimortgage purchased the Mortgage, MERS never became the mortgagee, and thus the assignment of the Mortgage from MERS to Citimortgage was invalid. Finally, the Stevensons argue that the assignment of the Mortgage was untimely because it was entered five years, 11 months and 15 days after the closing on the Loan.

This Court previously denied an identical challenge to Citimortgage's standing on March 7, 2011, and the Court will not revisit that ruling. Assuming, *arguendo*, that the Court had not previously denied the identical challenge to Citimortgage's standing, the evidence reveals that MERS was the mortgagee and that MERS assigned the Mortgage to Citimortgage prior to the institution of this action. The assignment from MERS was proper and enforceable. With respect to the Stevensons' argument regarding the sale of an unsigned mortgage, the letter that the Stevensons rely upon was sent by Gilpin, not Citimortgage. The letter was intended to inform the Stevensons that Citimortgage would be purchasing and servicing the Loan. The letter was not intended to denote an actual transfer on that date or even reflect a prior transfer of the Mortgage to Citimortgage. Additionally, two days after the letter, the Stevensons executed the Mortgage over to MERS. Consequently, the letter merely indicated that Citimortgage had agreed to purchase the Loan before it was made. Citimortgage could not have purchased the Loan until after the Loan was actually made. The Court finds nothing improper with that transaction.

There is no evidence to suggest that the Stevensons did not execute the Mortgage in question, or that the Mortgage did not contain an express acceleration clause. Additionally, it is undisputed that the Stevensons defaulted on the Loan, resulting in Citimortgage's foreclosure proceedings. It is also clear that the Mortgage was properly assigned to Citimortgage. The Stevensons have expressly conceded their default and have failed to assert any counterclaims or viable defenses against Citimortgage. Consequently, the Stevensons are not entitled to have the action dismissed. The Mortgage is not unenforceable and void under Delaware law.

For these reasons, the Stevensons' Motion to Dismiss Action and Order the Mortgage to be Declared Unenforceable or Void Under Delaware Law 5072 and Common Law 10 Del. C./SCC 5072 is **DENIED**. The Court will issue a separate opinion on Plaintiff's Motion for Summary Judgment.

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<sup>&</sup>lt;sup>1</sup> See Savage v. U.S. Nat. Bank Ass'n., 19 A.3d 302, 2011 WL 1878008, at \*1-2 (Del. May 12, 2001) (TABLE); CitiMortgage, Inc. v. Kine, 2011 WL 6000755, at \*1 (Del. Super. Nov. 1, 2011).

## IT IS SO ORDERED.

Very truly yours,

Jan R. Jurden Judge

JRJ:mls

cc: Prothonotary