

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALICIA A. BROOKS,	§
	§
Defendant Below-	§ No. 60, 2012
Appellant,	§
	§
v.	§
	§ Court Below—Superior Court
BAC HOME LOANS SERVICING,	§ of the State of Delaware,
LP f/k/a COUNTRYWIDE HOME	§ in and for New Castle County
LOANS SERVICING LP,	§ C.A. No. N09L-12-117
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 22, 2012

Decided: August 23, 2012

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

This 23rd day of August 2012, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Alicia Brooks, filed this appeal from an order of the Superior Court, docketed February 3, 2012, granting summary judgment to the appellee, BAC Home Loans Servicing, LP ("BAC"). BAC filed its complaint seeking to foreclose on Brooks' property due to her failure to make timely monthly mortgage payments. We find no merit to Brooks' appeal. Accordingly, we affirm the Superior Court's judgment.

(2) BAC filed a complaint on December 14, 2009 seeking to foreclose on Brooks' mortgaged property. BAC's complaint alleged that Brooks had failed to make her required monthly mortgage payments when due. Brooks filed an answer to the complaint on February 17, 2010 denying that she had failed to make the required payments. She enumerated four affirmative defenses: (i) she had been "improperly dismissed" from her job; (ii) she notified BAC of her difficulty making the mortgage payments, yet she "continued to make payments or offers thereof;" (iii) BAC acted in bad faith and deprived her of the opportunity to participate in the Homeowner Affordability and Stability Plan; and (iv) BAC failed to cooperate in allowing Brooks to sell the property.

(3) On October 24, 2011, the Superior Court entered a scheduling order setting a discovery deadline of December 30, 2011 and a dispositive motion deadline of January 6, 2012. Trial was scheduled for February 6, 2012. On January 5, 2012, BAC filed a motion for summary judgment. On January 20, 2012, Brooks filed a response to the motion for summary judgment and attempted to raise the additional claims and defenses of fraud, unconscionability, and breach of contract. Brooks also filed a motion requesting the assigned trial judge to recuse herself, which the trial judge denied in a twelve-page decision dated February 2, 2012. On February 3,

2012, the Superior Court granted summary judgment to BAC because BAC had established that Brooks had not made the required monthly mortgage payments since March 2009 and because Brooks offered no cognizable legal defense to foreclosure. This appeal followed.

(4) While it is not entirely clear, it appears that Brooks raises three issues in her opening brief on appeal. First, she contends that the Superior Court lacked subject matter jurisdiction in this case. Second, she argues that the trial judge erred in failing to recuse herself. Finally, she contends that the Superior Court erred in granting summary judgment to BAC because there was substantial evidence that a dispute of material fact existed in the case. We address these claims in order.

(5) With respect to Brooks' first issue, Section 5061 of Title 10 of the Delaware Code vests subject matter jurisdiction in the Superior Court to hear foreclosure actions at law through a writ of *scire facias sur mortgage*.¹ While the Court of Chancery may have concurrent jurisdiction to hear a mortgage foreclosure action in equity, the mortgagee (BAC, in this case) has the right to elect whether to pursue a legal remedy in the Superior Court or an equitable remedy in the Court of Chancery.² Accordingly, we find no

¹ DEL. CODE ANN. tit. 10, § 5061 (1999).

² *Monroe Park v. Metropolitan Life Ins. Co.*, 457 A.2d 734, 735 (Del. 1983).

merit to Brooks' contention that the Superior Court lacked jurisdiction in this case.

(6) Brooks next asserts that the trial judge erred in denying Brooks' motion for recusal. Brooks contends that the trial judge exhibited bias against her as a *pro se* litigant by treating her disrespectfully and refusing to accept Brooks' nonconforming and untimely documents for filing. In addressing a motion to recuse, a judge must engage in a two-step analysis to determine whether disqualification is appropriate.³ First, the judge must be satisfied as a subjective matter that the judge can proceed to hear the case without bias.⁴ Next, the judge must determine as an objective matter whether recusal is appropriate because of an appearance of bias sufficient to cast doubt on the judge's impartiality.⁵

(7) In this case, the judge applied the two-part test and concluded that, subjectively, she had no bias for or against Brooks. The judge also found that the only arguable appearance of bias was based on the judge's adverse rulings in the case wherein the judge declined to ignore the procedural rules and accept Brooks' improperly-filed and untimely documents.

³ *Jones v. State*, 940 A.2d 1, 18 (Del. 2007).

⁴ *Los v. Los*, 595 A.2d 381, 384-85 (Del. 1991).

⁵ *Id.* at 385.

(8) We find no error or abuse of discretion in the trial judge’s ruling. This Court has noted that a *pro se* litigant’s filings should not be held to the same stringent drafting standards expected of a lawyer.⁶ This does not mean, however, that a court is required to ignore the application of procedural rules and “sacrifice the orderly and efficient administration of justice to accommodate” a *pro se* litigant.⁷ In this case, Brooks attempted to file substantive pleadings that exceeded page limitations and were filed beyond established deadlines. We do not find that the Superior Court’s refusal to accept such documents for filing reflects an appearance of bias sufficient to cast doubt on the judge’s impartiality. The trial court’s adverse rulings simply form no valid basis for the judge’s disqualification in this case.⁸

(9) Finally, we find no error in the Superior Court’s grant of summary judgment to BAC because Brooks presented no genuine issue of material fact.⁹ While Brooks initially denied BAC’s assertion that she had failed to make timely mortgage payments, such a denial does not raise a

⁶ *Vick v. Haller*, 1987 WL 36716 (Del. Mar. 2, 1987).

⁷ *Buck v. Cassidy Painting, Inc.*, 2011 WL 3654531 (Del. Super. Aug. 15, 2011) (*quoting Draper v. Med. Ctr. of Del.*, 767 A.2d 796, 799 (Del. 2001)).

⁸ *See In re Wittrock*, 649 A.2d 1053, 1054 (Del. 1994) (citing *Liteky v. United States*, 510 U.S. 540, 555 (1994)).

⁹ *Moore v. Sizemore*, 405 A.2d 679, 680-81 (Del. 1979) (when a moving party seeks summary judgment asserting no genuine issues of material fact exist, the burden shifts to the nonmoving party to establish that there are material issues of fact).

genuine issue of material fact because Brooks did not substantiate her denial with any evidence establishing that she had timely made the required payments.¹⁰ Brooks' defenses to BAC's complaint were that she had lost her job, that she had offered to make partial payments, that she was denied the opportunity to renegotiate the terms of her contract, and that BAC had failed to cooperate in Brooks' attempt to sell the property. None of these assertions, however, present a valid defense to the foreclosure action.¹¹

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹⁰ *Kennedy v. Giannone*, 1987 WL 37799 (Del. June 16, 1987).

¹¹ *Gordy v. Preform Building Components, Inc.*, 310 A.2d 893, 895 (Del. Super. 1973) (available defenses to a foreclosure action are "limited to payment, satisfaction, absence of seal, or a plea in avoidance of the deed").