### IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

# IN AND FOR KENT COUNTY

LEO MADDOX, :

: C.A. No. K13C-02-026 WLW

Plaintiff, :

:

V. :

MICHAEL ISAACS, :

•

Defendant. :

Submitted: April 19, 2013 Decided: May 7, 2013

### **ORDER**

Upon Plaintiff's Motion for Reargument. *Denied*.

Mr. Leo R. Maddox, pro se

Seth A. Niederman, Esquire of Fox Rothschild, LLP, Wilmington, Delaware; attorney for Defendant.

WITHAM, R.J.

Plaintiff, Leo Maddox, has filed a Motion for Reargument pursuant to Superior Court Civil Rule 59(e). This is the Court's decision on the motion. The facts are as follows:

On February 21, 2013, Plaintiff Leo Maddox ("Plaintiff") filed a Complaint against Michael Isaacs (hereinafter "Defendant") arising out of a mortgage loan transaction between Plaintiff and third-party lender Central Money Mortgage ("the lender") that closed on or about May 7, 1998. The Complaint, although vague, appears to allege that the mortgage was procured by fraud and/or forgery and is therefore void. The Complaint is inexplicitly only sought against the attorney who handled the mortgage transaction. Plaintiff, acting *pro se*, waited more than fourteen years after the closing of the loan to institute this action, and named Mr. Isaacs, the lender's closing attorney, as the sole defendant.

On March 20, 2013, Defendant filed a motion to dismiss the complaint ("Motion to Dismiss") as time barred by the applicable statute of limitations, or alternatively, for failure to state a claim. Plaintiff did not file a written opposition to Defendant's Motion to Dismiss.<sup>1</sup> The Court held argument on the Motion to Dismiss on April 12, 2013. In support of his contention that the statute should be tolled, Plaintiff presented the Court with correspondence from the Delaware Department of Justice stating that Plaintiff was eligible to receive relief under the so-called National

<sup>&</sup>lt;sup>1</sup> The Court, if it chose, could have treated the motion as unopposed due to the lack of response under Superior Court Rules and the Civil Case Management Plan.

Mortgage Settlement.<sup>2</sup> Plaintiff mistakenly believed that this settlement tolled the statute of limitations on any viable claims Plaintiff may have had against the lender for fraud and/or forgery. Determining that the applicable three-year statute of limitations had run on Plaintiff's fraud claims, the Court entered an order of dismissal. Immediately thereafter, Plaintiff filed this Motion for Reargument, the merits of which the Court will now consider.

## Standard of Review

The standard for a Rule 59(e) motion for reargument is well defined under Delaware law.<sup>3</sup> A motion for reargument "will be denied unless the Court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision."<sup>4</sup> A motion for reargument is not an opportunity for a party to rehash arguments already decided by the Court or to present new arguments not

<sup>&</sup>lt;sup>2</sup> On March 12, 2012, the United States Department of Justice and the attorney generals of forty-nine states and the District of Columbia filed a joint complaint against five mortgage servicers alleging various foreclosure abuses. *See* Ex. D, Pl.'s Mot. for Rearg. Shortly after the Complaint was filed, the parties reached a settlement intended to provide relief to affected borrowers. *Id.* The settlement specifically reserved the right of claimants to pursue legal action against their mortgage servicer and provided that a Borrower may file a claim online or by mail using the enclosed pre-paid envelope by January 18, 2013 to get a payment. *Id.* 

<sup>&</sup>lt;sup>3</sup> Kennedy v. Invacare Corp., 2006 WL 488590, at \*1 (Del. Super. Ct. Jan. 31, 2006).

<sup>&</sup>lt;sup>4</sup> *Id*.

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previously raised.5

#### Discussion

Defendant argues that Plaintiff's Motion for Reargument should be denied because Plaintiff is merely rehashing the arguments Plaintiff made at the April 12, 2013 hearing. Defendant also contends that Plaintiff's Motion for Reargument is vague and incomprehensible, and does not set forth the grounds for the motion with particularity as required by Superior Court Civil Rule 7(b). In his motion, Plaintiff sets forth the following grounds for reargument:

- a. January 2008 to December 2011 claims are updated to 2013 by the Department of Justice.
- b. Proof of forged signatures.
- c. Unclosed [sic] mortgage by Mr. Isaacs
- d. January 18 [20]13 National Mortgage Claim Form

Although the Court may hold *pro se* litigants to a less exacting standard when reviewing their pleadings, *pro se* litigants are expected to comply with the rules of this Court. The Court will accommodate *pro se* litigants only to the extent that such leniency does not affect the substantive rights of the parties.

<sup>&</sup>lt;sup>5</sup> *Id.* (citing *McElroy v. Shell Petroleum, Inc.*, 618 A.2d 91, at \*1 (Del. 1992) (unpublished table decision)).

<sup>&</sup>lt;sup>6</sup> See Anderson v. Tingle, 2011 WL 3654531, at \*2 (Del. Super. Ct. Aug. 15, 2011).

<sup>&</sup>lt;sup>7</sup> *Id.* (citing *Draper v. Med. Ctr. of Del.*, 767 A.2d 796, 799 (Del. 2001)).

<sup>&</sup>lt;sup>8</sup> *Id.*; see also Alston v. State, 2002 WL 184247, at \*1 (Del. Super. Ct. Jan. 28, 2002) ("While some procedural requirements are not relaxed for any type of litigant (barring extraordinary circumstances or to prevent substantial injustice), the Court may grant *pro se* litigants some

Plaintiff has failed to establish that the Court overlooked a precedent or legal principle that would have controlling effect, or that it misapprehended the law or facts such as would effect the outcome of the decision. Plaintiff's reargument motion is nothing more than a transparent attempt to rehash arguments already decided by this Court. Although Plaintiff did not file a written opposition to the Motion to Dismiss, the Court permitted Plaintiff to raise arguments and offer documents in opposition to dismissal. Nonetheless, the Court determined that Plaintiff's claims, which were filed more than 14 years after the closing of his loan, were time-barred by 10 *Del. C.* § 8106, the applicable statute of limitations. <sup>9</sup> Plaintiff has failed to meet his burden of showing that this Court misapplied the law and/or misapprehended the facts when it concluded that the statute had run on Plaintiff's fraud and forgery claims.

#### CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Reargument is **DENIED**. IT IS SO ORDERED.

/s/ William L. Witham, Jr. Resident Judge

WLW/dmh

accommodations that do not affect the substantive rights of those parties involved in the case at bar.").

<sup>&</sup>lt;sup>9</sup> Title 10, Section 8106 of the Delaware Code imposes a three-year limitations period on all fraud claims that begins to run at the time of accrual. *Reading Intern, Inc. v. St. Francis*, 2005 WL 1654343, at \*1 (Del. Super. Ct. June 17, 2005). A cause of action for fraud accrues at the time the fraud is perpetrated. *Id.*