

STATE OF VERMONT

SUPERIOR COURT  
Windsor Unit

CIVIL DIVISION  
Docket No. 354-6-12 Wrcv

Thomas Anderson and Sandra Lee Anderson  
Plaintiffs

v.

Thomas McFeeley  
Defendant

Decision on Defendant's Motion to Dismiss

Plaintiffs Thomas and Sandra Anderson sold real property to defendant Thomas McFeeley in exchange for a promissory note and a mortgage. Plaintiffs now allege that defendant has defaulted on his obligations, and seek the following forms of relief in their complaint: (1) an order requiring defendant to "pay to the clerk of the court for the benefit of the plaintiffs" all amounts due under the accelerated note, and in default thereof, to grant plaintiffs foreclosure of the premises; (2) a writ of possession to the mortgaged premises in the event that defendant fails to redeem his interest in the property; (3) a judgment; (4) an award of taxes and insurance paid by plaintiffs pending redemption or foreclosure of the property; and (5) an award of the costs of action.

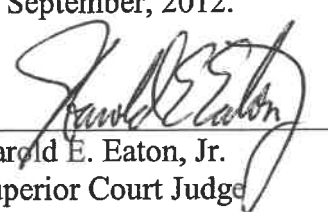
Defendant has moved for dismissal of the complaint. Among the shortcomings identified by defendant are that plaintiffs have not set forth most of the allegations that are required to be included in a foreclosure complaint under Vermont Civil Procedure Rule 80.1(b)(1) and have not attached to the complaint copies of the original note and mortgage deed and proof of ownership thereof. It is not clear whether plaintiffs seek strict foreclosure or foreclosure by sale.

Plaintiffs have argued, in response, that dismissal is not appropriate because their complaint is not really seeking foreclosure but rather was intended to "goad the defendant to become current on his delinquent mortgage payments and property taxes, and to renew insurance protection of the property." The court interprets this statement as meaning that plaintiffs hope that defendant is able to redeem the property before foreclosure occurs. In any event, in view of the general rule that a complaint should only be filed for the purpose of obtaining the relief requested in the complaint, e.g., *Jacobsen v. Garzo*, 149 Vt. 205, 207 (1988), the court must interpret the complaint as seeking the remedy of foreclosure, and thus subject to the pleading requirements of Rule 80.1. Given the deficiencies in the present complaint under that rule, the best course of action is to dismiss the complaint under the authority of *U.S. Bank Nat'l Ass'n v. Kimball*, 2011 VT 81, 190 Vt. 210, without prejudice as to the filing of a new complaint that conforms to the rule.

**ORDER**

Defendant's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted (MPR #2), filed June 28, 2012, is *granted*. Plaintiff's Complaint is *dismissed without prejudice* to the filing of a new complaint that conforms to the requirements of Vermont Civil Procedure Rule 80.1. All other pending motions in this matter are *denied*.

Dated at Woodstock, Vermont this 18 day of September, 2012.

  
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Harold E. Eaton, Jr.  
Superior Court Judge

**FILED**

SEP 19 2012

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