

STATE OF VERMONT  
WINDSOR COUNTY

RICHARD DANIELS )  
 )  
v. ) Windsor Superior Court  
 ) Docket No. 49-1-09 Wrcv  
 )  
THE ELKS CLUB OF HARTFORD, VT., INC., )  
VERMONT HUMAN RIGHTS COMMISSION, )  
WALTRAUD KIELLY, MARILYN McMILLAN, )  
JANE THIBODEAU, MAYLEEN E. CAMERON, )  
WATTS LAW FIRM PC, )  
and BEST BINGO SUPPLIES, INC. )

ENTRY ORDER: ACCOUNTING

This is a foreclosure action in which plaintiff Richard Daniels has submitted an affidavit of amounts due. The court has now reviewed the affidavit,<sup>1</sup> and it is approved with the following exceptions.

*Taxes Paid and Interest.* The request for interest on taxes paid at the rate of 18% will not be approved unless plaintiff provides a citation to the location in the note or mortgage that justifies interest on taxes paid at the rate of 18% per annum. It does not appear to the court that any justification is provided by the 2006 promissory note. That document provides that, upon default, "the interest rate *on this loan* shall be increased to 18.000% per annum," but it does not appear to make any provision regarding the interest rates applicable to other costs and expenses secured by the mortgage.

*Attorneys' Fees.* The request for attorneys' fees in the amount of approximately \$35,000—more than triple the amount of reasonable attorneys' fees ordinarily permitted as a matter of course under Rule 80.1(f)—is not approved for the following reasons.

First and foremost, the request for attorneys' fees includes a substantial component for time spent litigating the prior proceedings in Washington Superior Court. It may well have been that those proceedings were very similar in substance to this judicial foreclosure action. But the preliminary injunction hearing was not the foreclosure action, and indeed the foreclosing mortgagee was actually the defending party there. As such, the court seriously doubts whether the costs of that action can be

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<sup>1</sup> The gender discrimination creditors filed an objection to the affidavit of amounts due on November 23, 2009. For the most part, the objection was not relevant to the accounting, but rather was an attempt to re-litigate the substantive issues that were already decided at the summary-judgment stage. The request to revisit those issues is denied. To the extent that the objection raised any issues pertinent to the accounting, it involved the inclusion of interest on taxes paid, and the amount of the attorneys' fees. Both of those issues are discussed herein.

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construed as the “reasonable costs and expenses incurred in pursuing” the mortgagee’s remedies under paragraph 16 of the mortgage.

Second, the request for attorneys’ fees for time spent litigating another case blurs the distinction between an award of costs in this case and an award of damages or sanctions for frivolous litigation. Cf. *Murphy v. Stowe Club Highlands*, 171 Vt. 144, 163 (2000). If plaintiff believes that he is entitled to an award of attorneys’ fees arising out of the Washington Superior Court case—whether by contract or Rule 11—he is free to seek such a remedy in that court. It will not be awarded here.

Third, the request for attorneys’ fees includes amounts incurred by attorneys who have not entered an appearance in this case: Plante & Hanley, P.C. It comes as a surprise to the court that they are involved in this matter; their requested fees are not approved. (In any event, it appears that the bulk of their time was spent on the Washington Superior Court proceedings.)

Finally, the request includes a substantial amount of time spent deciding whether or not to pursue a non-judicial foreclosure of the mortgaged property. The time spent on this decision is not a cost that is related to this judicial foreclosure proceeding, and it will not be approved here.

It therefore appears to the court that the amount of approved attorneys’ fees should be \$13,342.00. This represents the time billed by Attorney Burke between December 31, 2008, and present, with the exception of the time billed on January 7, 2009, in connection with the other court case. It also includes the estimated ten hours it will take to complete the case. (59.3 hours x \$225 per hour = \$13,342.00.)

Either party may request a hearing on the amount or reasonableness of the proposed attorneys’ fees pursuant to V.R.C.P. 80.1(f). The scope of any hearing shall be limited to the amount or reasonableness of the proposed fee award. This is not an invitation to revisit any other issue in the accounting, or any other issue in the case. Any request for a hearing must include a statement of the evidence which the party wishes to offer. V.R.C.P. 78(b)(2).

*Costs.* The requests for costs incurred in recording plaintiff’s assignment of the mortgage, and the costs incurred in connection with the non-judicial foreclosure proceedings, are not approved. The amount of approved costs is \$691.65.

*Proposed Accounting.* An accounting shall be prepared as follows unless (1) plaintiff provides a citation supporting an award of interest on taxes paid at the rate of 18% or (2) either party requests a hearing on the amount or reasonableness of the proposed attorneys’ fees. Any citations or requests for hearing shall be filed by March 19, 2010.

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|--|-----------------------------|
| 1. Principal due on note                     | \$493,558.35                |
| 2. Interest on principal at 18% from 6/19/08 | (tbd at time of accounting) |

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3. Taxes Paid	\$34,107.41
4. Interest on taxes paid at 12% from dates noted in the affidavit of amounts due	(tbd at time of accounting)
5. Attorneys' Fees	\$13,342.00
6. Costs	\$691.65

Once the accounting is taken, interest shall accrue per diem at the legal rate rather than at the rate of the note.

**ORDER**

The clerk shall prepare the accounting in accordance with the foregoing conclusions unless (1) plaintiff provides a citation to the location in the note or mortgage supporting an award of interest on taxes paid at the rate of 18% per annum or (2) any party requests a hearing on the amount or reasonableness of the proposed attorneys' fees. Any citation or request for hearing shall be filed by March 19, 2010.

Dated at Woodstock, Vermont this 10 day of March, 2010.

  
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 Hon. Harold E. Eaton, Jr.  
 Presiding Judge

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**WINDSOR COUNTY CLERK**