

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF WASHINGTON

TENTH JUDICIAL DISTRICT

Case Type: Mortgage Foreclosure

The Bank of New York Mellon f/k/a
The Bank of New York as Trustee
for the benefit of the Certificate
holders of the CWABS, Inc., Asset-
Backed Certificates, Series 2004-
3, as serviced by NewRez LLC f/k/a
New Penn Financial, LLC d/b/a
Shellpoint Mortgage Servicing

Court File No. 82-CV-19-5853

Plaintiff,

NOTICE OF SHERIFF'S
SALE UNDER JUDGMENT
AND DECREE
(Real Property)

vs.

Brenda S. Fuglsang n/k/a Brenda S.
Ringwelski, HSBC Finance
Corporation, John Doe and Mary
Roe,

Defendants.

Notice is hereby given, that under and by virtue of a Judgment and Decree entered in the above entitled action on May 3, 2022, a certified copy of which has been delivered to me directing the sale of the premises, hereinafter described, to satisfy the amount found and adjudged due said Plaintiff in the above entitled action from said Defendant Brenda S. Fuglsang n/k/a Brenda S. Ringwelski, as prescribed in the Judgment, the undersigned Sheriff of Washington County will sell at public auction, to the highest bidder, for cash, on July 28, 2022, at 10:00 AM, at the Sheriff's Office, Law Enforcement Center, 15015 62nd St. North, Stillwater, MN 55082, in the City of Stillwater,

.in said County and State, the premises and real estate described in said Judgment and Decree, to wit:

All that tract(s) of parcel(s) of land lying and being in the County of Washington and State of Minnesota, described as follows, to wit:

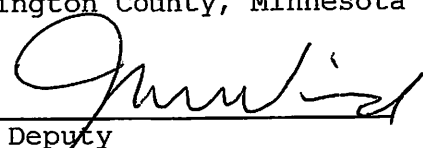
The Southerly 40.03 feet of Lot 1, Block 5,
Woodcliff 2nd Addition, Washington County,
Minnesota

PID No. 18.028.21.41.0043
Address: 2508 Copper Cliff Trail, Woodbury, MN 55125

"THE TIME ALLOWED BY LAW FOR REDEMPTION BY THE MORTGAGOR, THE MORTGAGOR'S PERSONAL REPRESENTATIVES OR ASSIGNS, MAY BE REDUCED TO FIVE WEEKS IF A JUDICIAL ORDER IS ENTERED UNDER MINNESOTA STATUTES, SECTION 582.032, DETERMINING, AMONG OTHER THINGS, THAT THE MORTGAGED PREMISES ARE IMPROVED WITH A RESIDENTIAL DWELLING OF LESS THAN FIVE UNITS, ARE NOT PROPERTY USED IN AGRICULTURAL PRODUCTION, AND ARE ABANDONED."

Dated this 31st day of May, 2022

Dan Starry, Sheriff,
Washington County, Minnesota

By: 
Deputy

LIEBO, WEINGARDEN, DOBIE & BARBEE P.L.L.P.
Kevin T. Dobie
Plaintiff's Attorney
4500 Park Glen Road #300
Minneapolis, MN 55416
(952) 925-6888

This is an attempt to collect a debt and any information obtained will be used for that purpose.

May 3 2022 4:42 PM

STATE OF MINNESOTA

DISTRICT COURT

TENTH JUDICIAL DISTRICT

COUNTY OF WASHINGTON

The Bank of New York Mellon f/k/a The Bank of New York as Trustee for the benefit of the Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2004-3, as serviced by NewRez LLC f/k/a New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing,

Plaintiff,

v.

Brenda S. Fuglsang n/k/a Brenda S. Ringwelski,
HSBC Finance Corporation,
John Doe and Mary Roe,

Defendants.

**ORDER GRANTING PLAINTIFF'S
MOTIONS FOR SUMMARY
JUDGMENT, DEFAULT, AND TO
AMEND THE SCHEDULING ORDER**

Court File No. 82-CV-19-5853

STATE OF MINNESOTA COUNTY OF WASHINGTON
 Certified to be a true and correct copy of the
 Record on file in my office.
 Court Administrator
 Washington County District Court
 5/6/2022
 Deputy
 By: *Pom Macer*

The above-entitled matter came on for a remote hearing on Plaintiff's motions for summary judgment, default and to amend the Scheduling Order before Douglas B. Meslow, Judge of District Court, Washington County Courthouse, Stillwater, Minnesota, on January 7, 2022. Kevin T. Dobie, Esq., appeared on behalf of Plaintiff. Defendant Brenda S. Ringwelski, appeared and was self-represented.¹ There were no other appearances.

The Court ruled from the bench and granted Plaintiff's motion to amend the scheduling order. The Court left the record open until January 21, 2022, to allow Defendant an opportunity to submit a response to discovery and until February 4, 2022, to allow Plaintiff an opportunity to submit a reply. The record closed on February 4, 2022.

Based upon all the files, records, and proceedings herein, including the arguments of counsel, the Court now makes the following:

¹ On March 22, 2022, Michael Stephani, Esq. filed a Notice of Appearance on behalf of Defendant Ringwelski after the hearing on Plaintiff's motions.

ORDER

1. Plaintiff's motion to amend the Scheduling Order is **GRANTED**.
2. Plaintiff's motion for default judgment against Defendant HSBC Finance Corporation is **GRANTED**.
3. Plaintiff's motion for summary judgment against Defendant Ringwelski is **GRANTED**.
4. Plaintiff/Third-Party Defendant's motion to dismiss the counterclaims and Third-Party Complaint is **GRANTED**.
5. Plaintiff is entitled to judgment adjudging that the amount due under the mortgage is the sum of \$201,836.15 as of October 10, 2021, plus interest to the date of judgment at \$14.33 per day, plus interest thereafter at the applicable judgment rate. As of January 7, 2022, the additional interest between October 10, 2021, and January 7, 2022, is \$1,275.37 (89 days multiplied by \$14.33), for a total amount due of \$203,111.52. ("Judgment").
6. Plaintiff is hereby granted a Decree of Foreclosure of the hereinabove described Mortgage filed as Washington County Recorder Document No. 3433125 to satisfy said Judgment; that the Property be sold by the Sheriff of Washington County at public auction in a manner provided by law. The sale shall be made subject to a redemption period of six months in accordance with Section 581.09, Minnesota Statutes. The proceeds of said sale be applied, first to the payment of costs and disbursements of said sale, and second, on the principal of said Judgment; that the purchaser of said sale or assigns, if no redemption therefrom is made within six (6) months from the date of confirmation of sale, be decreed to be the absolute owner of the premises purchased at said sale, subject to prior encumbrances of record if any legally described as:

The Southerly 40.03 feet of Lot 1, Block 5, Woodcliff 2nd Addition, Washington County, Minnesota.
7. Plaintiff complied with Minnesota Statutes section 582.043 when it evaluated Ms. Ringwelski's loss mitigation application for all available options and notified her in writing that it had denied her application. There was no appeal period. Ringwelski may not apply for another loss mitigation option prior to the foreclosure sale, and Plaintiff may proceed to sale without further delay.

8. The interests of Defendants Ringwelski and HSBC Finance Corporation, if any, are adjudged and decreed inferior to Plaintiff's lien thereon and that said Defendants and all persons claiming under or through them shall be foreclosed and barred from any right, title or interest in premises, except the right of redemption within the period fixed by statute therefor.

9. The Notice of Lis Pendens related to Court File No. 82-CV-16-4003 dated September 13, 2016, and recorded September 13, 2016, as Document No. 4082998 is hereby discharged.

10. The Notice of Lis Pendens, related to Court File No. 82-CV-19-1213 dated March 18, 2019, and recorded March 18, 2019, as Document No. 4187452 is hereby discharged.

11. The attached memorandum of law constitutes the Court's Findings of Fact and its Conclusions of Law and is incorporated and made a part of this Order.

12. The Court Administrator shall provide a copy of this Order and Memorandum on counsel of record, which constitutes due and proper notice of its provisions for all purposes.

THERE BEING NO JUST REASON FOR DELAY, LET JUDGMENT BE ENTERED ACCORDINGLY

BY THE COURT:

Dated: _____

Meslow, Douglas
(Judge)
2022.05.03 16:00:26

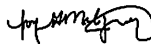
Douglas B. Meslow -05'00'
Judge of District Court

Filed in District Court
State of Minnesota

May 4 2022 4:02 PM

I hereby certify that the
foregoing order constitutes
the Judgment of the Court

May 4 2022 4:02 PM



May 4 2022 4:02 PM

MEMORANDUM

Facts Viewed in the Light Most Favorable to the Non-Moving Party:

Defendant Brenda S. Fuglsang now known as Brenda S. Ringwelski ("Ringwelski") was the owner and occupant of certain real property situated at 2508 Copper Cliff Trail, Woodbury Minnesota, legally described as follows to-wit:

The Southerly 40.03 feet of Lot 1, Block 5, Woodcliff 2nd Addition, Washington County, Minnesota (hereinafter, the "Property").

On December 5, 2019, Plaintiff, The Bank of New York Mellon f/k/a The Bank of New York as Trustee for the benefit of the Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2004-3, as serviced by NewRez LLC f/k/a New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing, served Ringwelski with a complaint ("Complaint") alleging the following causes of action:

Count One: Foreclosure

Count Two: Declaration of Loss Mitigation Ineligibility

Count Three: Discharge of Prior Notices of Lis Pendens

The Complaint and supporting documents allege the following:

- Ringwelski executed a promissory note (the "Note") dated January 27, 2004, to Full Spectrum Lending, Inc. in return for a loan and in which she promised to pay \$176,220.00. (Complaint ¶ 4.; Plaintiff Affidavit of Indebtedness filed 11/16/21 ["Debt. Aff.,"] ¶ 6, Ex. A);
- Ringwelski executed a mortgage (the "Mortgage") dated January 27, 2004, in favor of Mortgage Electronic Registration Systems, Inc., as nominee and mortgagee for Full Spectrum Lending, Inc., (Compl. ¶ 4; Debt Aff. ¶ 7, Ex. B.);
- The Mortgage was recorded in the office of the Washington County Recorder on April 5, 2004, as Document No. 3433125 ("Mortgage") and encumbers the Property;
- Mortgage Electronic Registration Systems, Inc. as nominee for Full Spectrum Lending, Inc. assigned the Mortgage to The Bank of New York Mellon fka The Bank of New York, as Trustee for the benefit of the Certificateholders of the CWABS Inc., Asset-backed Certificates, Series 2004-3 ("BONYM"), by Assignments of Mortgage dated

August 26, 2011, and November 9, 2011 (“Assignments of Mortgage”) (Debt Aff. ¶ 7, Ex. D; Compl. ¶ 4.);

- The Assignments of Mortgage were recorded in the office of the Washington County Recorder on September 12, 2011, as Document No. 3853794 and on November 22, 2011, as Document No. 3863441. (Debt Aff. ¶ 7, Ex. D; Compl. ¶ 4.);
- On or about February 2, 2015, Ringwelski executed a Loan Modification Agreement (“Loan Modification”) effective March 1, 2015, which reduced the interest rate from 7.5 percent to 2.25 percent for the first five years, to 3.25 percent for year six, and 3.75 percent thereafter and reduced the balance from \$185,952.38 to \$140,000.00 (Debt Aff. ¶ 7, Ex. C; Compl. ¶ 5.);
- On or about December 26, 2006, Ringwelski granted a second mortgage to Beneficial Loan and Thrift Co. (the “Second Mortgage”). The Second Mortgage was recorded in the office of the Washington County Recorder on February 2, 2007, as Document No. 3628218. (Dobie Decl. ¶ 3, Ex. C; Compl. ¶ 6.);
- HSBC Finance Corporation is the successor by merger to Beneficial Loan and Thrift Co. (Dobie Decl. ¶ 3, Ex. D.);
- BONYM executed a Limited Power of Attorney (“BONYM LPOA”), dated April 12, 2019, authorizing and appointing NewRez LLC fka New Penn Financial LLC dba Shellpoint Mortgage Servicing (“Shellpoint”), as servicer and Shellpoint and its officers to act as “true and lawful attorneys-in-fact and agents . . . for and in its name . . . to [foreclose the Mortgage] . . .” (Debt. Aff. ¶ 6 Ex. E.);
- The actions Shellpoint is authorized to take on behalf of the Trustee includes loan modifications, foreclosure proceedings, and enforcing and preserving the BONYM’s interests in the notes and mortgages. (Debt. Aff. ¶ 6 Ex. E.);
- Ringwelski agreed that the Lender and mortgagee, could foreclose the Mortgage and sell the Property upon an event of default. (Debt Aff. ¶ 6, Ex. B.);
- Ringwelski agreed that “Borrower shall pay when due [the payments].” (Debt Aff. ¶ 6, Ex. B.);
- Ringwelski agreed that the Lender and mortgagee may foreclose upon a default and that Ringwelski is required to pay the mortgagee’s attorneys’ fees and costs. (Debt Aff., Ex. B, ¶ 22.);

- Plaintiff accelerated the amount due on the Note and Mortgage and the amount due as of October 10, 2021, is \$201,836.15. (Debt Aff. ¶ 11.);
- Ringwelski's last payment was received on March 16, 2015, in the amount of \$950.25. (Debt. Aff. ¶ 10.);
- On April 17, 2019, Shellpoint denied Ringwelski's loan modification application in writing and there was no appeal period. (Debt Aff. ¶ 12, Ex. G.)

HSBC Finance Corporation failed to serve or file a response to the Complaint. On December 24, 2019, Ringwelski filed an Answer to the Complaint in the court file. The record is unclear regarding when BONYM was served with the Answer because Ringwelski failed to file an Affidavit of Service of her Answer in the court file.

On December 30, 2020, BONYM served Ringwelski with Plaintiff's First Set of Requests for Admissions, First Set of Interrogatories, and First Set of Request for Production of Documents. (Dobie Decl. ¶ 7, Ex. G.). On January 13, 2021, BONYM served Ringwelski with Plaintiff's Second Set of Requests for Admissions and Second Set of Interrogatories. (Dobie Decl. ¶ 7, Ex. H.). On February 15, 2021, Ringwelski sent an email to BOYM's attorney notifying him that she "had the opportunity to glance and your discovery requests" and that she would have her responses by the end of the week. (Dobie Decl. ¶ 7, Ex. I.). Ringwelski failed to respond to the discovery requests. On September 3, 2021, Plaintiff's attorney sent Ringwelski a Rule 115.10 letter requesting responses by September 15, 2021. (Dobie Decl. ¶ 7, Ex. J.). Ringwelski failed to respond to the discovery by the date set forth in the letter.

On November 10, 2021, Plaintiff filed a motion for default (as to HSBC Finance Corporation) and a motion for summary judgment (as to Ringwelski). The motions were scheduled to be heard on January 7, 2022. On January 6, 2022, the day before the hearing, Ringwelski filed a response to the summary judgment motion in the court file. The record is unclear regarding when BONYM was served with the response to the summary judgment motion because Ringwelski failed to file an Affidavit of Service of her response in the court file. On December 10, 2021, Plaintiff filed a motion to amend the Scheduling Order to allow the summary judgment motion to be heard.

Analysis

Motion to Amend Scheduling Order

The Scheduling Order issued on January 16, 2020, and was amended on May 5, 2020, September 3, 2020, February 5, 2021, and July 13, 2021. The Scheduling Order was amended numerous times due to the pandemic and the Federal foreclosure and eviction moratoriums related to the pandemic. The July 13, 2021 Amended Scheduling Order set the pre-trial for March 4, 2022, and the trial for April 25, 2022. The Scheduling Order provides that dispositive motions shall be heard 70 days before pretrial.

Plaintiff followed the Secretary of U.S. Housing and Urban Development (“HUD”) moratorium on foreclosures and evictions put in place due to the pandemic in this action. The federal eviction moratorium expired on September 30, 2021. Plaintiff contacted the Court in October 2021 to obtain dates for a summary judgment motion², Plaintiff filed its motion on November 9, 2021. A hearing was held on Plaintiff’s summary judgment motion on January 7, 2022.

Minn. R. Civ. P. 16.02 provides that a Scheduling Order shall not be modified except upon a showing of good cause. A district court has broad discretion in scheduling matters, and we will not reverse its decision absent an abuse of that discretion. *Mercer v. Andersen*, 715 N.W.2d 114, 123 (Minn. App. 2006). “When a party proposes an amendment that would modify the district court’s scheduling order, the party must show ‘good cause’ and act with due diligence in attempting to amend the pleadings.” *Staffing Specifix, Inc. v. TempWorks Management Services, Inc.* 896 N.W.2d 115, 127 (Minn. App. 2017). The pandemic constitutes good cause to delay the commencement of a criminal defendant’s trial after a speedy demand is made. *State v. Jackson*, 968 N.W.2d 55, 61 – 64 (Minn. App. 2021). The Court concludes that the pandemic constitutes good cause exists to amend the Scheduling Order in this case to allow Plaintiff’s motion for summary judgment to be heard. The Court also concludes that Plaintiff acted with due diligence in obtaining a hearing date on its motion for summary judgment less than a month after the expiration of the HUD moratorium.

² MNCIS indicates that the hearing date was entered into MNCIS by court administration in October 2021.

Default Judgment

Minn. R. Civ. P 55.01 provides that “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within the time allowed therefor by these rules or by statute, and that fact is made to appear by affidavit, judgment by default shall be entered against that party.” BONYM served HSBC Finance Corporation with its Complaint on December 4, 2019. Defendant HSBC Finance Corporation has failed to plead or otherwise defend within the time allowed. BONYM is entitled to default judgment against HSBC Finance Corporation.

Summary Judgment

Summary judgment should be granted where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03; *DLH, Inc. v. Russ*, 566 N.W.2d 60, 68 (Minn. 1997). While the court must view the facts in a light most favorable to the nonmoving party, the nonmoving party may not simply rely upon his general statements of fact or averments in his pleadings to defeat the summary judgment. *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1980) citing *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

The moving party has the burden of proving that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Vieths v. Thorp Finance Co*, 232 N.W.2d 776, 778 (Minn. 1975). The court does not weigh the evidence on a motion for summary judgment. *DLH* at 70. The court may, however, take into account whether a piece of evidence lacks probative value, such that reasonable persons could not draw different conclusions from it. *Id.* A motion for summary judgment must be denied when reasonable persons could reach differing outcomes after reviewing the evidence. *Wagner v. Schwegmann’s Southtown Liquor, Inc.*, 485 N.W.2d 730, 733 (Minn. App. 1992)(citing *Anderson v. Twin City Rapid Transit Co.*, 250 Minn. 167, 186, 84 N.W.2d 593, 605 (1957). However, “[m]ere speculation, without some concrete evidence, is not enough to avoid summary judgment.” *Bob Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 328 (Minn.1993).

It is undisputed that BONYM served Requests for Admissions on Ringwelski on December 30, 2021, and January 13, 2022. Ringwelski failed to respond to discovery on January 7, 2022, the date of the hearing on Plaintiff’s motion for summary judgment. The Court granted

Ringwelski one last chance to respond to the long overdue discovery and allowed her to submit discovery responses by January 21, 2022.

On January 31, 2022, Ringwelski filed an untimely affidavit. The Court could have stricken Ringwelski's submission because she filed it late. The Court has the discretion to close the record and not accept further filings after close of the record. *State v. Allwine*, 963 N.W.2d 178, 190 at n. 18 (Minn. 2021). However, the Court did consider Ringwelski's affidavit and rejects the affidavit as it is not a proper written answer to the discovery requests as required by the rules. Additionally, the "affidavit" submitted by Ringwelski, who is an attorney, is not an even a proper affidavit. Minn. R. Gen. P. 15 defines "affidavit" as:

Unless otherwise specified in any court rule, the term "affidavit" means:

- (a) a document that has been signed, sworn, and notarized; and
- (b) a document that has been signed under penalty of perjury pursuant to Minn. Stat. § 358.116, provided that the signature is affixed immediately below a declaration using substantially the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." In addition to the signature, the date of signing and the county and state where the document was signed shall be noted on the document.

Ringwelski's "affidavit" is not sworn or notarized, and the affidavit does not contain the required declaration pursuant to Rule 15(b).

Minn. R. Civ. P 36.01 provides that after service of a written request for admission, "[t]he matter is admitted unless within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party." Any matter admitted pursuant to this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. (Minn. R. Civ. P. 36.02).

Ringwelski failed to provide a proper written answer to Plaintiff's Requests for Admission within 30 days after service of the requests. Thus, the Court concludes that the Requests for Admission served by Plaintiff are deemed admitted.

Ringwelski admitted the following by failing to serve proper written answers to the duly served Requests for Admission:

- Ringwelski executed the Note and Mortgage. (Dobie Decl. Ex. G. – RFA 4, 6);

- The Note and Mortgage attached to the Request for Admission are true and correct copies of those documents. (Dobie Decl. Ex. G. – RFA 3, 5);
- The Mortgage was assigned to Plaintiff. (Dobie Decl. Ex. G. – RFA 10 - 13);
- BONYM appointed servicer NewRez LLC f/k/a New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing, as its attorney in fact to enforce and foreclose the Mortgage. (Dobie Decl. Ex. G. – RFA 18 - 19);
- Ringwelski executed the Loan Modification Agreement on February 2, 2015. (Dobie Decl. Ex. G. – RFA 8);
- The Loan Modification Agreement attached to the Request for Admission is a true and correct copy of that document. (Dobie Decl. Ex. G. – RFA 9);
- After April 1, 2015, Ringwelski failed to make any of the monthly installments due under the Note and Loan Modification Agreement. (Dobie Decl. Ex. G. – RFA 16);
- After April 1, 2015, Ringwelski failed to perform all of the terms and conditions in the Note and Loan Modification Agreement. (Dobie Decl. Ex. G. – RFA 17);
- Ringwelski is currently in default under the terms of the Mortgage and the Mortgage as modified and is unable to cure the defaults. (Dobie Decl. Ex. H. – RFA 41- 45);
- Ringwelski received a letter dated May 18, 2015, titled “Notice of Default and Intent to Accelerate” the Mortgage and she did not cure the default as described in the Notice. (Dobie Decl. Ex. H. – RFA 1 - 4)

Ringwelski admitted that she executed the Note, Mortgage, and Loan Modification, which require payments be made on a monthly basis and that the lender may foreclose if the borrower is in default. Ringwelski admitted that she is in default under the Mortgage and that the lender may foreclose. “If a mortgagor defaults, the mortgagee and holder of the promissory note ... may sell the property and apply the proceeds of the sale to payment of the debt.” *JPMorgan Chase Bank, N.A. v. Erlandson*, 821 N.W.2d 600, 606 (Minn. App. 2012)(citation omitted).

The Court concludes that BONYM is entitled to summary judgment on count one of its Complaint - to foreclose on the Mortgage. BONYM is entitled to the amount due and owing of \$201,836.15 as set forth in further detail in Plaintiff’s Affidavit of Indebtedness filed on November 16, 2021. Postjudgment interest shall accrue at the statutory rate pursuant to Minn.

Stat. §549.09, to the date of the sheriff's sale, and then interest shall accrue at the contract rate as stated on the sheriff's certificate of sale pursuant to Minn. Stat. §581.10.

County two of the Complaint is a request for a Declaration of Loss Mitigation Ineligibility. Minn. Stat. §582.043 is Minnesota's loss mitigation statutes and it states, in relevant part, as follows:

Subd. 5. Loss mitigation. A servicer must:

- (1) notify a mortgagor in writing of available loss mitigation options offered by the servicer that are applicable to the mortgagor's loan before referring the mortgage loan to an attorney for foreclosure;
- (2) after receiving a request for a loan modification or other loss mitigation option, exercise reasonable diligence in obtaining documents and information from the mortgagor to complete a loss mitigation application, facilitate the submission and review of loss mitigation applications, and give the mortgagor a reasonable amount of time to provide the required documents;
- (3) upon the timely receipt of a loss mitigation application, evaluate the mortgagor for all available loss mitigation options prior to referring a mortgage loan to an attorney for foreclosure;
- (4) after review of the loss mitigation application, timely offer the mortgagor a loan modification if the mortgagor is eligible or, if not, timely offer the mortgagor any other loss mitigation option for which the mortgagor is eligible; and
- (5) comply with any applicable appeal period and procedures applicable to the specific loss mitigation option.

Ringwelski admitted the following by failing to serve proper written answers to the duly served Requests for Admission:

- On October 2, 2018, she received a "Loss Mitigation Letter" attached to the Requests for Admissions. (Dobie Decl. Ex. H. – RFA 5 -6);
- On February 19, 2019, Ringwelski applied for loss mitigation and submitted documents. (Dobie Decl. Ex. H. – RFA 7 - 9);
- Ringwelski acknowledged in her application for loss mitigation that the Servicer is not obligated to offer assistance. (Dobie Decl. Ex. H. – RFA 10 - 11);
- Ringwelski received a letter dated April 17, 2019, denying the loan modification request prior to the commencement of this action. (Dobie Decl. Ex. H. – RFA 12 - 16);

- There is no appeal period of the denial required by law. (Dobie Decl. Ex. G. – RFA 18 - 20);
- The Loss Mitigation Denial Letter notified Ringwelski that Shellpoint may have other programs to help and that the letter requested Ringwelski call to discuss short-sale or deed-in-lieu options. (Dobie Decl. Ex. H. – RFA 26 - 30);
- “Short sale” or “deed in lieu” are not included in the definitions of loss mitigation options. (Dobie Decl. Ex. H. – RFA 24 - 25);
- Ringwelski did not request such options. Ringwelski no longer qualifies for any protections or application of Minn. Stat. §582.043 in connection with the Mortgage. (Dobie Decl. Ex. H. – RFA 28 - 30);
- Plaintiff never violated Minn. Stat. §582.043, Minnesota’s loss mitigation statute. To the extent the statute applied, Plaintiff fully complied. (Dobie Decl. Ex. H. – RFA 23, 30 -32).

The Court concludes that BONYM is entitled to summary judgment on count two of its Complaint – Declaration of Loss Mitigation Ineligibility.

Count three of the Complaint is a request to discharge all prior lis pendens which have been filed against the Property because those lawsuits are complete.

A party to an action “in which the title to, or any interest in or lien upon, real property is involved or affected, or is brought in question by either party” may permissibly “file for record with the county recorder of each county in which any part of the premises lies a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the real property.” Minn. Stat. § 557.02.

A lis pendens is, in essence, a “warning that title to property is in litigation.” *Bly v. Gensmer*, 386 N.W.2d 767, 769 (Minn. App. 1986). “[T]he sole function of [a] lis pendens is to give constructive notice to all the world of the pendency of [an] action, which is, alone, notice to all persons of the rights and equities of the party filing the lis pendens in the land therein described.” *Trask v. Bodson*, 169 N.W. 489, 490 (Minn. 1918); *see also Bly*, 386 N.W.2d at 769 (explaining that a lis pendens “impedes a property owner’s right to free alienability of real estate”).

In Court File No. 82-CV-16-4003, *Brenda S. Ringwelski v. Bank of America, N.A. and The Bank of New York Mellon FKA the Bank of New York as Trustee for the benefit of the*

Certificateholders of the CWABS Inc., Asset-Backed Certificates, Series 2004-3, foreclosure proceedings were commenced. Ringwelski filed a complaint alleging failure to comply with Minn. Stat. §582.043. Ringwelski filed a Notice of Lis Pendens and recorded it as Document No. 4082998 in connection with court file No. 82-CV-16-4003. This case was dismissed with prejudice on November 23, 2016. The Complaint in this matter alleges that Ringwelski failed to record a discharge of the lis pendens in court file No. 82-CV-16-4003 and Plaintiff seeks an Order from the Court discharging the lis pendens.

In Court File No. 82-CV-19-1213, *Brenda Ringwelski v. NewRez, LLC dba Shellpoint Mortgage Servicing, Bank of New York Mellon FKA the Bank of New York as Trustee for the benefit of the Certificateholders of the CWABS Inc., Asset-Backed Certificates, Series 2004-3*, Ringwelski filed a complaint alleging failure to comply with Minn. Stat. §582.043. On March 14, 2019, Ringwelski filed the complaint and a motion for a temporary injunction to enjoin a Sheriff's sale scheduled for March 18, 2019. On March 15, 2019, counsel for Defendant sent a letter notifying the Court that the foreclosure sale had been postponed. On March 15, 2019, Judge Hannon signed the letter stating "Motion denied as moot. Case to be closed." Ringwelski filed a notice of lis pendens and recorded it as Document No. 4187452 in connection with court file no. 82-CV-19-1213. This case was closed on March 15, 2019. The Complaint in this matter alleges that Ringwelski failed to record a discharge of the lis pendens in court file No. 82-CV-19-1213 and Plaintiff seeks an order from the Court discharging the lis pendens.

A party who claims an interest in real property may apply for an order discharging a lis pendens pursuant to Minn. Stat. §557.02 which provides, in relevant part, as follows:

Any party claiming any title or interest in or to the real property involved or affected may on such notice as the court shall in each case prescribe, make application to the district court in the county in which the action is pending or in which the real property involved or affected is situated, for an order discharging the lis pendens of record, **when any such action has not been brought on for trial within two years after the filing of the lis pendens** and in case the court orders the lis pendens discharged of record upon the filing of a certified copy of the order of the court in the office of the county recorder, where the real property is situated, the lis pendens shall be void and of no force nor effect.

The two prior cases are completed cases and have not been brought to trial within two years. Plaintiff is entitled to a discharge of the prior lis pendens/notices of lis pendens.

- D.B.M.