

Supreme Court

No. 14-42-A
(PC-2009-4334 C.A.)

Eileen Vieira :
v. :
GE Money Bank, WMC Mortgage :
Corporation, Mortgage Electronic :
Registration Systems and Arch Bay Holdings, :
LLC :

ORDER

This case came before the Court in conference on September 18, 2014 on the defendants' motion for a ruling on a previously-deferred motion to dismiss the plaintiff's appeal. After careful review of the motion and accompanying papers, the Court concludes that dismissal of the appeal is warranted.

We note, first of all, that the defendants' dismissal motion initially came before the Court for decision at the March 20, 2014 conference. Defendants asserted that the plaintiff's appeal should be dismissed as untimely. The Court had then recently received notice of the plaintiff's Chapter 7 bankruptcy filing and a question arose as to whether the automatic stay provisions of 11 U.S.C. § 362 precluded action on the dismissal motion at that time. The Court therefore deferred action on the dismissal motion and directed counsel for the parties to file memoranda addressing this issue. The plaintiff's memorandum was due on or before April 7, 2014. However, though plaintiff's counsel was subsequently granted a 30-day extension of this filing period, he failed to comply with the Court's directive, and he also neglected to inform this Court

that on June 17, 2014, his client received a discharge in bankruptcy pursuant to Title 11, Section 727, of the Bankruptcy Code, thus rendering the automatic stay issue moot. Finally, it must be noted that the plaintiff's counsel has failed to comply with the provisions of Rule 11 of the Rules of Appellate Procedure pertaining to an appellant's obligation to secure the transmission of the record on appeal to this Court and/or to timely seek extensions of the transmission period where needed. On August 12, 2014, the defendants' counsel informed the Court of plaintiff's bankruptcy discharge and requested a ruling on the defendants' pending dismissal motion. Plaintiff's counsel has not responded to the defendants' latest filing.

Accordingly, for the reasons stated, i. e. the plaintiff's untimely notice of appeal, her noncompliance with the provisions of Rule 11 pertaining to the transmission of the record on appeal, and her disregard of this Court's directive to file a memorandum on the automatic stay issue, the defendants' motion to dismiss plaintiff's appeal is hereby granted.

Entered as an Order of this Court this 25th day of *September 2014*.

By Order,

_____/s/_____
Clerk



RHODE ISLAND SUPREME COURT CLERK'S OFFICE

Clerk's Office Order/Opinion Cover Sheet

TITLE OF CASE: Eileen Vieira v. GE Money Bank, WMC Mortgage Corporation, Mortgage Electronic Registration Systems and Arch Bay Holdings, LLC

CASE NO: No. 2014-42-A
(PC-2009-4334 C.A.)

COURT: Supreme Court

DATE ORDER FILED: September 25, 2014

JUSTICES: Suttell, C.J., Goldberg, Flaherty, Robinson, and Indeglia, JJ.

WRITTEN BY: N/A – Court Order

SOURCE OF APPEAL: Providence County Superior Court

JUDGE FROM LOWER COURT:
Associate Justice Allen P. Rubine

ATTORNEYS ON APPEAL:
For Plaintiff: George E. Babcock, Esq.
For Defendants: Maura K. McKelvey, Esq.
Ranen S. Schechner, Esq.