

FIRST UNION NATIONAL BANK,	:	IN THE COURT OF COMMON PLEAS OF
S/M/B TO COMMONWEALTH BANK	:	LYCOMING COUNTY, PENNSYLVANIA
1100 CORPORATE CENTER DRIVE	:	
RALEIGH, NC 27607-5066,	:	
Plaintiff	:	
	:	
vs.	:	NO. 99-02,001
	:	
STEVEN E. MUNDRICK	:	
JUNE C. MUNDRICK,	:	
888 RIDGE ROAD	:	
MONTGOMERY, PA 17752	:	
Defendants	:	

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Defendants filed Petition to Open Default Judgment, claiming any default in mortgage payments was caused by the bank. Specifically, Defendants claimed that although they were delinquent in their tax payments, the bank had no authority under the mortgage to pay the back taxes from their mortgage payments and increase the amount of the monthly payment to create an escrow account, which they could not afford.

HELD: Petition denied. Generally, a default judgment may be opened if the moving party promptly files a petition to open the judgment, shows a meritorious defense, and provides a reasonable excuse or explanation for the failure to file a responsive pleading. In the instant case, Defendants failed to show a meritorious defense. The mortgage clearly authorized the bank to take the actions it did; a threatened legal proceeding was not a necessary prerequisite, as Defendants claimed.

**MEMORANDUM OPINION and ORDER**

*AND NOW*, this 6<sup>th</sup> day of June 2000, after consideration of Defendants' Amended Petition to Open Default Judgment,<sup>1</sup> the Petition is **HEREBY DENIED**.

Plaintiffs filed a mortgage foreclosure Complaint against Defendants on December 20, 1999. Thereafter, Plaintiffs praeciped for judgment for Defendants' failure to answer the Complaint; the default judgment was entered by the Lycoming County Prothonotary February 22, 2000.

Defendants filed their original Petition to open the default judgment February 29, 2000. Argument was held April 11, 2000, after which this Court entered an Order reserving determination of the Petition. Although not sufficiently averred in the Petition, defense counsel raised certain allegations that, if properly pled, would raise a meritorious defense. Defendants were given twenty days to file an Amended Petition and include a proposed Answer to Plaintiff's Complaint wherein the defense was set forth.

The Answer is attached to the Amended Petition as Exhibit "B." In their New Matter, Defendants aver that any alleged defaults were caused by the actions of Plaintiff rather than Defendants. Defendants continue (in relevant part) as follows:

14. Specifically, when Defendants obtained this mortgage from Plaintiff, there was no provision nor the requirement that Defendants' taxes and insurance be paid into an escrow account. From August, 1992, until August, 1999, Defendants paid their taxes on their own. On August 4, 1999, Defendants, for the first time, received notice from the Plaintiff that they were paying the taxes on Defendants' home...Although the taxes were delinquent, Plaintiff's security was not jeopardized as no legal action by the tax collector had been instituted and Defendants had every intention of paying said taxes.

15. On August 5, 1999, Plaintiff first advised Defendants that their bi-weekly payment was increasing from Two hundred thirty-five dollars and thirty-one cents (\$235.31) to Four hundred forty-nine dollars and sixty-five cents (\$449.65)...

16. As a result of this unreasonable and unwarranted increase in Defendants' bi-weekly payments by Plaintiff, Defendants were thrown into financial difficulty.

17. Defendants have attempted to make payments on prior occasions, said payments having been denied by Plaintiff.

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<sup>1</sup> The Amended Petition was filed May 1, 2000.

Neither Plaintiff nor Defendants have provided a copy of the Mortgage, which is recorded at Book 1868 Page 240. Having reviewed this document, we find Defendants averments 14-16 are clearly incorrect.

The mortgage in Paragraph 2 under Uniform Covenants, found at page 2, plainly states that, subject to applicable law or written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note yearly taxes and assessments (as well as insurance premiums). Further, Lender may at any time collect and hold Funds in an amount not to exceed the maximum allowable under law. Moreover, under paragraph 4 of that section, the mortgage provides that Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over the mortgage. Finally, paragraph 7 (on page 3) states that if Borrower fails to perform the covenants and agreements contained in the mortgage, *or* if there is a legal proceeding that may significantly affect Lender's rights in the property, the Lender may do and pay for whatever is necessary to protect the value of the property and Lender's rights in it.

Accordingly, Plaintiff was clearly within its rights to impose escrow payments upon Defendants to ensure its rights were protected. Contrary to the contentions of Defendants, it was not necessary that a legal proceeding be instituted before Plaintiff was entitled to take action.

With regard to paragraph 17 of Defendants' New Matter, the Court notes that Plaintiff, in its response to Defendants' Petition to open the judgment, denies that it refused to accept any "proper" payments tendered by Defendants. In any event, there is nothing in the

mortgage to bind Plaintiff to accept any amount less than that due to it each month, or anything to authorize Defendants to offer less than they were obligated to pay.

Generally, a default judgment may be opened when three elements are established: the moving party must (1) promptly file a petition to open the default judgment, (2) show a meritorious defense, and (3) provide a reasonable excuse or explanation for its failure to file a responsive pleading. *Penn-Delco School District v. Bell Atlantic-Pa., Inc.*, 1999 WL 1211607 (Pa.Super. 1999). However, in 1995, Pa.R.C.P. 237.3 went into effect, the purpose of which is to ease the burden of parties who move promptly for relief from judgment entered by default (or non-pros). *Ibid.* It provides that if a petition for relief from a judgment entered pursuant to Rule 237.1 (Notice of Praecipe for Entry of Judgment of Non Pros for Failure to File Complaint or by Default for Failure to Plead) is promptly filed and has a verified copy of the answer (or complaint) the petitioner seeks to file, the court shall open the judgment if the answer (or complaint) sets forth a meritorious defense.

Of course, in the instant case, Rule 237.1 was not applicable as the original mortgage amount exceeded \$50,000.00. *See* Complaint paragraph 8; *PennWest Farm Credit, ACA v. Hare*, 600 A.2d 2132 (Pa.Super. 1991). However, under either the tripartite test or Rule 237.3, Defendants cannot prevail.

There is no dispute that the petition to open the judgment was timely filed. Further, there seems to be no disagreement that there were ongoing discussions between the parties to resolve the matter,<sup>2</sup> which may or may not be a valid reason for Defendants' failure to file a responsive pleading to the mortgage foreclosure Complaint. Nevertheless, as set forth in

the foregoing discussion, it is clear that Defendants have failed to demonstrate a meritorious defense, a necessary element of either Rule 237.3 or the tripartite test. Accordingly, the Petition to Open Judgment must be denied.

BY THE COURT:

William S. Kieser, Judge

cc: Court Administrator  
David F. Wilk, Esquire  
Lisa D. Blankenburg, Esquire  
Federman & Phelan; Two Penn Center Plaza, Suite 900; Phila., PA 19102-1799  
Judges  
Nancy M. Snyder, Esquire

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<sup>2</sup> It is only the characterization, intention and purpose of these negotiations that suffer different interpretations, depending upon which party's view is being presented.