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| JUDITH FOLMAR, | : | IN THE COURT OF COMMON PLEAS OF |
| | : | LYCOMING COUNTY, PENNSYLVANIA |
| Plaintiff | : | JURY TRIAL DEMANDED |
| | : | |
| vs. | : | NO. 00-00,690 |
| | : | |
| FIRST UNION NATIONAL BANK | : | CIVIL ACTION |
| S/B/M TO COMMONWEALTH BANK, | : | |
| | : | |
| Defendant | : | |

DATE: July 24, 2001

OPINION AND ORDER

Before the Court is the resolution of a discovery dispute between the parties as referenced in this Court’s prior Order of July 3, 2001. At issue is whether or not Defendant should further disclose ledger entries relating to the default of Plaintiff. Plaintiff’s action seeks to recover damages arising out of Defendant’s alleged inappropriate foreclosure action brought under the mortgage loan owed by Plaintiff to Defendant. Plaintiff relies upon theories of negligence and breach of contract asserting that Defendant had failed to properly apply payments made on account of the mortgage debt to her account.

The instant dispute as set forth in Plaintiff’s Motion filed June 8, 2001, involves a response to discovery made by Defendant to Plaintiff in the way of Production of Documents, in which a “consolidated default log” was forwarded to Plaintiff, however, several items on the log were redacted. Plaintiff requests an unredacted copy. Defendant states the information that is redacted is not discoverable on the theory that it is subject to attorney-client privilege and further that it is irrelevant and will not lead to admission of evidence nor discovery of other relevant material.

This Court disagrees.

In accordance with the agreement reached between counsel at the July 3, 2001, argument the Court has been furnished an unredacted copy of the document. In reviewing the redacted entries the Court finds that they relate to times when payoff figures were furnished by the client to the attorney, statements concerning how long reinstatement figures were good for, a request made, apparently from counsel, indicating that the ledgers were required in order to review to prepare a response, dates various information was forwarded to the attorney's office and dates items were received from the attorney's office for signature, such as motion for summary judgment. There is also an indication as to the dates when a complaint from the mortgagor was received, that the file was in litigation as of a particular date and the date judgment was entered and the date of the original sale along with a comment that it may be delayed due to litigation.

The Court fails to see how any of this relates to the attorney work product privileges or attorney-client privilege. There are no opinions expressed by counsel or any other comment about the merits of the claim nor is there anything that could be regarded as confidential information being given to the attorney. However, what Defendant knew and when they knew it, how they responded when they obtained certain knowledge is relevant to the issues in this case.

The Court is not sufficiently familiar with the actual facts in dispute in order to determine with absolute certainty that this information would not lead to other discoverable and evidentiary material. This is a common problem where the Court is asked to review redacted documents, because the Court not knowing all the facts in the case at this time or even all of the

possible theories of the case, is not always in a position to say the redacted material would not be helpful to the other side.

Accordingly, the following Order is entered.

ORDER

Defendant shall furnish an unredacted copy of the “Consolidated Default Log” to Plaintiff within seven days of receipt of this Order.

BY THE COURT,

William S. Kieser, Judge

cc: Nancy Borgess, Court Scheduling Technician
Joseph Orso, Esquire
Matthew Rappley, Esquire
111 North Sixth Street; P. O. Box 679; Reading, PA 19603
Judges
Suzanne Lovecchio, Law Clerk
Gary L. Weber, Esquire (Lycoming Reporter)