

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 09-40064-RGS

SIMA SCHWARTZ

v.

DEUTSCHE BANK NATIONAL TRUST
and HOMEQ SERVICING CORP.

MEMORANDUM AND ORDER ON DEFENDANTS'
MOTION FOR LEAVE TO FILE AN INTERLOCUTORY APPEAL

October 15, 2009

STEARNS, D.J.

This motion for leave to file an interlocutory appeal arises out of the denial of defendants' motion for summary judgment by Judge Joel B. Rosenthal of the United States Bankruptcy Court for the District of Massachusetts. Plaintiff Sima Schwartz is a debtor who filed a Complaint against defendants Deutsche Bank National Trust and HomeEq Servicing Corporation alleging claims for wrongful foreclosure, fraud, void lien, unfair and deceptive practices in violation of Mass. Gen. Laws Ch. 93A, unfair servicing practices, intentional infliction of emotional distress, and violations of the Massachusetts Fair Debt Collection Practices Act. The claims stem from an earlier ruling by Judge Rosenthal that defendants had not demonstrated a colorable title to the property for which foreclosure was sought. The facts of this case and the prior proceedings are laid out in detail in the Bankruptcy Court's previous opinions denying relief from stay, 366 B.R. 265 (Bankr. D. Mass. 2007), and denying defendants' motion for summary judgment, 2009 WL 530278 (Bankr. D. Mass. Feb. 23, 2009). A hearing was held on October 14, 2009.

DISCUSSION

In deciding whether to grant a motion for leave to file an interlocutory appeal, the court must consider “whether (1) the order involves a controlling question of law (2) as to which there is substantial ground for difference of opinion, and (3) whether an immediate appeal from the order may materially advance the ultimate termination of the litigation.” In re Bank of New England, 218 B.R. 643, 652 (1st Cir.BAP 1998) (citations omitted). Interlocutory appeals are granted “sparingly and only in exceptional circumstances.” In re San Juan DuPont Plaza Hotel Fire Litig., 859 F.2d 1007, 1010 n.1 (1st Cir. 1988) (citations omitted).

After hearing counsels’ well-presented arguments, and after further deliberation, it is the opinion of this court that the standard has not been met. This court does not necessarily agree with the Bankruptcy Court’s interpretation of Grella v. Salem Five Cent Sav. Bank, 42 F.3d 26 (1st Cir. 1994), and its finding that issue preclusion bars defendants from presenting evidence of title in an adversarial proceeding. However, as defendants’ counsel candidly acknowledged at the hearing, there are other issues at play in the litigation beyond those implicated by Judge Rosenthal’s preclusion ruling. That being the case, this court would necessarily be forced to speculate on the ultimate judgment that might be rendered by Judge Rosenthal after trial.¹ This is a somewhat reluctant conclusion as the court recognizes the larger significance of the underlying foreclosure issue. See In re Bank of New England, 218 B.R. at 652-653 (the first prong question is

¹Moreover, it is always open to Judge Rosenthal to reconsider its finding of issue preclusion at any time prior to final judgment.

whether the order is outcome-determinative, not simply whether it is precedential).

ORDER

For the foregoing reasons, defendants' motion for leave to file an interlocutory appeal is DENIED.

SO ORDERED

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE