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BANK OF AMERICA, N.A. V.
JOHN A. HARBAUGH, JR. & AMY L. HARBAUGH

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INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on January 11, 2018. The name of the corporation is GETTYSBURG WARRIORS RUGBY ASSOCIATION.

The corporation has been incorporated under the Pennsylvania Nonprofit Corporation Law of 1988.

Todd A. King, Esq.
Campbell & White, P.C.
112 Baltimore Street
Gettysburg, PA 17325
Attorneys

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ARTICLES OF AMENDMENT

NOTICE IS HEREBY GIVEN that on or about February 9, 2018, Articles of Amendment shall be filed with the Department of State, Commonwealth of Pennsylvania by NEW OXFORD MUNICIPAL AUTHORITY pursuant to the provisions of 53 Pa. C.S.A. §5605. The amendment to the Articles of Incorporation shall be to (i) extend the term of existence of NEW OXFORD MUNICIPAL AUTHORITY to a date fifty (50) years from the date of approval of the Articles of Amendment and (ii) change the registered address to 409 Water Works Road, New Oxford, Pennsylvania.

Steven M. Hovis, Esquire
Stock and Leader

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NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees, and other persons concerned that the following accounts with statements of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Friday, February 16, 2018 at 8:30 a.m.

STERNER — Orphans' Court Action Number OC-46-2015. The First and Final Account of Betty L. Bond, Executrix of the Estate of Nancy A. Sterner, late of Highland Township, Adams County, Pennsylvania.

HOWLAND — Orphans' Court Action Number OC-102-2015. The First and Final Account of Carmen A. Doyle, Personal Representative of the Estate of William H. Howland, late of Cumberland Township, Adams County, Pennsylvania.

ROBINSON — Orphans' Court Action Number OC-151-2017. The First and Final Account of Edwin J. Higginbottom, Executor of the Estate of Gladys B. Robinson, late of Franklin Township, Adams County, Pennsylvania.

BONNER — Orphans' Court Action Number OC-154-2017. The First and Final Account of Iris J. Gardner, Administratrix of the Estate of Doris J. Bonner, late of Cumberland Township, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

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BANK OF AMERICA, N.A. V.
JOHN A. HARBAUGH, JR. & AMY L. HARBAUGH

1. A holder of a mortgage has the right, upon default, to bring a foreclosure action or to sue on the bond accompanying the mortgage.

2. Generally, if a mortgagor denies the amount due on a mortgage but fails to produce evidence showing the amount believed to be owed, such denial is treated as a general denial which ultimately acts as an admission.

3. Even if Defendants' response to the amount due on the mortgage listed in the Complaint and Affidavit in Support of Plaintiff's Motion for Summary Judgment were sufficiently specific to constitute a denial in the context of mortgage foreclosure proceedings, summary judgment may nevertheless be appropriate even if the mortgagers have not admitted the total amount of the indebtedness in their pleadings.

4. Further, while Defendants are entitled to an accounting to determine an accurate amount due, that accounting is not due until the property is sold at Sheriff's sale and distribution of the proceeds is made.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, CIVIL 2017-SU-566, BANK OF AMERICA,
N.A. V. JOHN A. HARBAUGH, JR. & AMY L. HARBAUGH.

Abigail Bunner, Esq., Attorney for Plaintiff

Matthew N. Stewart, Esq., Attorney for Defendants

Wagner, J., January, January 18, 2018.

OPINION

Before the Court for disposition is a Motion for Summary Judgment filed by Bank of America, N.A. ("Plaintiff") on October 31, 2017. For reasons set forth herein, Plaintiff's Motion for Summary Judgment is granted.

BACKGROUND

On August 29, 2008 Defendant's John A. Harbaugh, Jr. and Amy L. Harbaugh ("Defendants") executed a promissory note to Plaintiff and secured it with a mortgage in the original principal amount of \$98,000.00 on the premises located at 25 Mountain Lane, Fairfield, Adams County, Pennsylvania 17320. The mortgage was recorded in the Office of the Recorder of Deeds of Adams County on September 15, 2008 in book 5287, page 751.

On May 16, 2017 Plaintiff filed its Complaint in Mortgage Foreclosure against Defendant. Plaintiff avers that since January 4, 2016 the note and mortgage payments have been in default. Plaintiff avers that prior to filing the Complaint in Mortgage Foreclosure

Plaintiff complied with Act 6 of 1974 as Plaintiff appropriately notified Defendants Plaintiff's intent to foreclose under the mortgage and afforded Defendants thirty days to cure the arrearage before commencing its foreclosure action. Prior to filing the foreclosure action, Plaintiff served Defendants with required notices under Act 91 on or about November 3, 2016.

Defendants, through defense counsel, filed an Answer to Complaint in Mortgage Foreclosure on June 12, 2017. In the Answer, Defendants admitted the identity of the parties; admitted that they are the mortgagers and record owners of the mortgaged premises and admitted that they executed a mortgage on the property described; but denied that the mortgage is in default and alleged Plaintiff had diverted payments from mortgage payments to pay for insurance that was allegedly not required. Defendants did not file new matter nor did Defendant attach any documentation to their Answer.

Plaintiff alleges that the discovery deadline passed on September 6, 2017 and discovery is complete. It is noted Defendants have not filed any motions with this Court concerning any discovery matters, depositions or interrogatories.

On October 31, 2017 Plaintiff filed Motion for Summary Judgment and Plaintiff's Brief in Support of its Motion for Summary Judgment. Defendants filed an Answer to Plaintiff's Motion for Summary Judgment on November 30, 2017 but did not file a brief in this matter.

LEGAL STANDARD

Under the Pennsylvania Rules of Civil Procedure, a court may enter a summary judgment when the pleadings, depositions, answers to interrogatories, omissions and affidavits, and other materials demonstrate that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Pa. R. Civ. P. 1035.2; *Strine v. Commonwealth*, 894 A.2d 733,737 (Pa. 2006); *Roche v. Ugly Duckling Car Sales, Inc.*, 879 A.2d 785, 789 (Pa. Super. 2005) (quotations and citations omitted). The burden of demonstrating the lack of any genuine issue of material fact falls upon the moving party, and, in ruling on the motion, the court must consider the record in the light most favorable to the non-moving party. *Id.* Summary judgment is only appropriate in those cases which are

free and clear from doubt. *McConnaughey v. Building Components, Inc.*, 637 A.2d 1331, 1333 (Pa. Super. 1994).

However, where a motion for summary judgment has been supported with depositions, answers to interrogatories, or affidavits, the non-moving party may not rest on the mere allegations or denials in its pleadings. *Accu-Weather, Inc. v. Prospect Communications, Inc.*, 644 A.2d 1251, 1252 (Pa. Super. 1994). Rather, the non-moving party must, by affidavit, or in some other way provided for within the Rules of Civil Procedure, set forth specific facts showing that a genuine issue of material facts exists. *Id.* Furthermore, averments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication. Pa. R. C. P. 1029 (b). A general denial or demand of proof, except as provided by subdivision (c) and (e) of this rule, shall have the same effect of an admission. *Id.*

In an action for mortgage foreclosure, the entry of summary judgment is proper if the mortgagor admits the mortgage is in default, that he has failed to pay interest on the obligation, and that the recorded mortgage is in the specified amount. *Bank of America, N.A. v. Gibson*, 102 A.3d 462, 464 (Pa. Super. 2014). A defendant's statement that he or she is without sufficient information to admit or deny plaintiff's statements regarding the principal and interest owed on a mortgage shall be deemed as admissions of those facts since, apart from the plaintiff, the defendant would be the only party who would have sufficient knowledge on which to base a specific denial. *New York Guardian Mortgage Corp. v. Dietzel*, 524 A.2d 951, 952 (Pa. Super. 1987).

A holder of a mortgage has the right, upon default, to bring a foreclosure action or to sue on the bond accompanying the mortgage. *Cunningham v. McWilliams*, 714 A.2d 1054, 1056-7 (Pa. Super. 1998). The former is strictly an in rem proceeding, the purpose of which is to affect a judicial sale of the mortgaged property. *Rearick v. Elderton State Bank*, 97 A.3d 374, 383 (Pa. Super. 2014). In proceeding on the note or bond, the matter is in personam and the object is to obtain judgment against the obligor of the note. *Levitt v. Patrick*, 973 A.2d 581, 591 (Pa. Super. 2009). In the instant action Plaintiff is seeking an in rem judgment.

DISCUSSION

Plaintiff's Motion for Summary Judgment is supported by Plaintiff's Affidavit signed by Steven Allen Johnson, in the capacity of Assistant Vice-President at Bank of America, N.A. Plaintiff also attached to its Motion for Summary Judgment Exhibit C setting forth the entire mortgage payment history and fee description. As such, Defendants cannot rest on mere denials but rather must put forth evidence setting forth specific facts showing the existence of a genuine issue of material fact to overcome Plaintiff's Motion for Summary Judgment. Defendants generally deny Plaintiff's averment concerning the mortgage default since January 4, 2016. Defendants specifically aver that Defendants had payments automatically withdrawn from their bank accounts and such payments were being withdrawn up to a certain point; and that it is unclear to Defendants how any withdrawals for insurance affected the total amount withdrawn from Defendants' account for the monthly mortgage payments and why such payments stopped being withdrawn from Defendants' bank account.

Attached to Plaintiff's Motion for Summary Judgment is a payment history outlining the total amount of payments made on the mortgage from November 4, 2008 through February 4, 2016 and fee transaction activity dealing with insurance payments from June 23, 2009 through June 10, 2016. Defendants have made a vague claim that Plaintiff diverted payments from mortgage payments to pay for insurance that was allegedly required. Defendants have offered no evidence or documentation concerning this issue and have only made a general denial. A mortgagor's general denial as to the amount owed in a pleading in mortgage foreclosure is considered an admission because the mortgagor and the lender are the only entities that would have sufficient information upon which to base a specific denial. *First Wisconsin Trust Company v. Strausser*, 653 A.2d 688, 692 (Pa. Super. 1995). Generally, if a mortgagor denies the amount due on a mortgage but fails to produce evidence showing the amount believed to be owed, such denial is treated as a general denial which ultimately acts as an admission.

Plaintiff attached relevant loan documents to its Motion for Summary Judgment showing that the Defendants signed the note and mortgage on August 29, 2008 and that Defendants have been in default on that agreement since January 4, 2016. Because Plaintiff has satisfied its burden of

demonstrating the absence of a genuine issue of material fact, Defendants have the burden of presenting facts through “counter-affidavits, depositions, admissions or answers to interrogatories.” *New York Guardian Mortgage Corp. v. Dietzel*, 524 A.2d 951, 952 (Pa. Super, 1987). Defendants have not presented any such facts by affidavit or other matter provided for within the Rules of Civil Procedure.

Through Plaintiff’s Motion for Summary Judgment and the Exhibits attached thereto, Plaintiff has shown that it holds a recorded mortgage in the specified amount, that Defendants have failed to pay interest on the obligation, and that the mortgage is in default. Even if Defendants’ response to the amount due on the mortgage listed in the Complaint and Affidavit in Support of Plaintiff’s Motion for Summary Judgment were sufficiently specific to constitute a denial in the context of mortgage foreclosure proceedings, summary judgment may nevertheless be appropriate “even if the mortgagors have not admitted the total amount of the indebtedness in their pleadings.” *Cunningham v. McWilliams*, 714 A.2d 1054, 1057 (Pa. Super. 1998) (citing *Landau v. W. PA. National Bank*, 282 A.2d 335, 340 (Pa. 1971)). Further, while Defendants are entitled to an accounting to determine an accurate amount due, “that accounting is not due until the property is sold at Sheriff’s sale and distribution of the proceeds is made.” *Landau*, 282 A.2d at 340.

Although Defendants present argument disputing the amount due, Defendants have admitted the essential facts supporting summary judgment in favor of Plaintiff and have not presented sufficient facts to demonstrate the existence of a genuine issue of material fact. Therefore, Plaintiff’s Motion for Summary Judgment is granted. Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 18th day of January, 2018, upon consideration of the Motion for Summary Judgment filed on behalf of Plaintiff, it is hereby **Ordered, Adjudged** and **Decreed** that the Motion for Summary Judgment is granted and Judgment in Mortgage Foreclosure is entered in favor of Plaintiff and against Defendants in the amount of \$97,510.30 plus interest and those costs allowed by law, and for foreclosure and sale of the mortgaged premises commonly known and located at 25 Mountain Lane, Fairfield, Adams County, Pennsylvania 17320.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF WILLIAM B. CULLISON, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Billie Ann Guise, 4 Leyland Court, Gettysburg, PA 17325; Frances M. Fuhrman, 220 Oak Hill Circle, Hanover, PA 17331

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF RONALD J. DAVIS, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Administrator: Eric J. Davis, 64 Sugarboot Lane, Hanover, PA 17331

Attorney: Matthew E. Teeter, Esq., Teeter Law Office, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF MEREDA A. HELM, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Co-Executrices: Paulette Kelley, 149 North College Street, Carlisle, PA 17013; Faye Bowermaster, 142 East Penn Street, Carlisle, PA 17013

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF THOMAS B. LAMANO, SR., DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executor: Thomas B. Lamano, Jr., P.O. Box 117, Garden City, NY 11530

Attorney: Clayton A. Lingg, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF ALICE R. SHELLEMAN a/k/a ALICE REBECCA SHELLEMAN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Lloyd E. Shelleman, c/o Jared S. Childers, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

Attorney: Jared S. Childers, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

ESTATE OF JANE E. WALLACE a/k/a JANE ELLEN KLEIN, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Administratrix CTA: Julie McCall, 120 Norman Ave., Roebling, NJ 08554

Attorney: Melanie Kaplan, Esq., Rothkoff Law Group, 425 Rte. 70 West, Cherry Hill, NJ 08002

SECOND PUBLICATION**ESTATE OF CAROLYN G. COBER, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: ACNB Bank formerly Adams County National Bank, 675 Old Harrisburg Road, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325-2311

ESTATE OF LOIS E. DANNER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Donna D. Danner Leese, 435 Deerfield Dr., Hanover, PA 17331; Donald E. Danner, Jr., 1070 Peepytown Rd., East Berlin, PA 17316; Lyn D. Danner, 4050A Pine Hill Rd., Dover, PA 17315

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, Pennsylvania 17331

ESTATE OF LEONARD ALLEN GOTHBERG, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Administrator: Evan Chasse, 2501 Shannon Court, Orlando, FL 32806

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF PATRICIA L. GROFT, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Tammy K. Cleveland, 380 Tract Road, Fairfield, PA 17320; Christopher A. Groft, 165 Orrtanna Road, Orrtanna, PA 17353

Attorney: Teeter Law Office, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF JOHN A. HOFFACKER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

John A. Hoffacker, Jr., 151 Madara Drive, Hanover, PA 17331; Bret A. Hoffacker, 300 Orchard Drive, Hanover, PA 17331

Attorney: John M. Crabbs, Esq., Crabbs & Crabbs, 202 Broadway, Hanover, PA 17331

ESTATE OF INGRID M. KWIATEK, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: Albert F. Kwiatek, 290 Lake Meade Drive, East Berlin, PA 17316

ESTATE OF THERON J. MENGES, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executrix: Lisa M. Kessel, 125 East Hillcrest Drive, Carlisle, PA 17013

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

ESTATE OF SAMUEL M. SOLLENBERGER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Neil R. Sollenberger, 112 Rodes Avenue, Gettysburg, PA 17325

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF NANCY M. WATERS a/k/a NANCY MARIAN WATERS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Deborah J. Fornwald, c/o R. Thomas Murphy, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

Attorney: R. Thomas Murphy, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

**SECOND PUBLICATION
CONTINUED**

ESTATE OF MARY ELLEN WHERLEY
a/k/a MARY E. WHERLEY, DEC'D

Late of Hamilton Township, Adams
County, Pennsylvania

Executor: Rodney J. Wherley, 2A
Filbert Street, Hanover, PA 17331

Attorney: Keith R. Nonemaker, Esq.,
Guthrie, Nonemaker, Yingst &
Hart, LLP, 40 York Street, Hanover,
PA 17331

THIRD PUBLICATION

ESTATE OF HELEN I. DAYHOFF, DEC'D

Late of Mt. Pleasant Township, Adams
County, Pennsylvania

Sharon K. Saulsbury, 2331 Hanover
Rd., Gettysburg, PA 17325

ESTATE OF GEORGE FRANCIS
KRAMER, DEC'D

Late of Liberty Township, Adams
County, Pennsylvania

Administrator: Christina M. Gregory,
10576 Harney Road, Emmitsburg,
MD 21727

ESTATE OF VOULA P. LAGOS, DEC'D

Late of the Borough of Littlestown,
Adams County, Pennsylvania

Thomas P. Lagos, 106 Newark Street,
Littlestown, PA 17340

Attorney: David K. James, III, Esq.,
234 Baltimore St., Gettysburg, PA
17325

ESTATE OF GLORIA LAUGHMAN,
DEC'D

Late of Straban Township, Adams
County, Pennsylvania

Ronda Folmer, 114 South Queen St.,
Apt. #1, Littlestown, PA 17340

ESTATE OF ARTHUR L. STABLER, a/k/a
ARTHUR LEA STABLER, SR., DEC'D

Late of Hamilton Township, Adams
County, Pennsylvania

Donald L. Stabler, 726 Pine Run Road,
Abbottstown, PA 17301

Attorney: Henry O. Heiser, III, Esq., 104
Baltimore Street, Gettysburg, PA
17325

ESTATE OF DOROTHY C. WINTRODE,
a/k/a DOROTHY JUNE WINTRODE,
DEC'D

Late of Oxford Township, Adams
County, Pennsylvania

Executor: Jay Wintrode, c/o Amy E.W.
Ehrhart, Esq., 118 Carlisle Street,
Suite 202, Hanover, PA 17331

Attorney: Amy E.W. Ehrhart, Esq., 118
Carlisle Street, Suite 202, Hanover,
PA 17331