

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

May 10, 2012

Seth J. Reidenberg, Esquire
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Wilmington, DE 19801

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RE: *Wilmington Savings Fund Society, FSB v. SD Properties, LLC*
C.A. No. S11L-07-005 RFS

Dear Counsel:

In this mortgage foreclosure action, Plaintiff Wilmington Savings Fund Society, FSB filed a motion for summary judgment and supporting affidavit on grounds of non-payment of monthly mortgage installments. Although Defendant SD Properties, LLC in its answer denied the allegations of nonpayment and disagreed with the amounts due, it did not comply with this Court's discovery order, file an answering brief or take other action in its defense.

Plaintiff's requests for admission posit that Defendant has not made required payments and interest payments on the Mortgage. Defendant's silence is an admission of both assertions. Super.Ct.Civ.R. 37(b)(2)A. As to the amounts due, inability to determine the accuracy of alleged amounts due does not create an issue of material fact. *Wells Fargo Bank, NA v. Nickel*, 2001 WL 6000787, at *2 (Del. Super.).

Plaintiff has met its burden of showing that no material issues of fact exist, and Defendant by inaction has conceded the allegations in the complaint. *Moore v. Sizemore*,

405 A.2d 679, 680 (Del.1979). Viewing the record in a light most favorable to Defendant, entry of judgment for Plaintiff is appropriate. *Burkhart v. Davies*, 602 A.2d 56, 59 (Del.1991).

Summary judgment will be entered for Plaintiff. The parties shall file a stipulation of amounts due, including the principal amount of the mortgage, interest, late charges and fees as alleged by Plaintiff. The stipulation shall be filed by the close of business Friday, June 1, 2012.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

Original to Prothonotary