IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX AT KINGSHILL

HAMILTON FINANCIAL CORP., Plaintiff, vs. ANDREA WEISS and SMALL BUSINESS ADMINISTRATION, Defendants.	CIVIL NO. 384/1994 ACTION FOR DEBT & FORECLOSURE <u>NOT FOR PUBLICATION</u> <u>NOT FOR BULLETING BOARD</u>

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CABRET, J.

MEMORANDUM OPINION
(February 20, 1996)

THIS MATTER is before the Court on plaintiff's motion for summary judgment pursuant to Rule 7.1(j) of the Local Rules of Civil Procedure and Fed.R.Civ.P. 56(e). On June 12, 1995, the Court granted defendant Weiss a thirty (30) day extension in which to respond to the motion for summary judgment. To date, the Court has not received any response from defendant Weiss, and therefore, determines that this matter is ripe for disposition. After careful review of this motion, this Court concludes that there are no genuine issues as to any material facts and plaintiff is entitled to summary judgment as a matter of law.

FACTUAL BACKGROUND

The plaintiff filed this action for debt and foreclosure after defendant Weiss ("Weiss") failed to make the monthly installment payments due according to the terms of the Mortgage and Note executed by Weiss. On June 14, 1989, Fidelity Union Mortgage Corporation/V.I. ("Fidelity") loaned Weiss $217,500.00, and for consideration, Weiss executed and delivered to Fidelity a Note for $217,500.00 to be paid in monthly installments of principal and interest. On the same date, the Note was secured by a Mortgage on Parcel No. 14-27-1 Estate Frenchman's Bay, St. Thomas, USVI and recorded in Book 34-G, page 119, Document No. 3287.

Plaintiff's predecessor in interest, Hamilton Savings Bank, FSB, was assigned all rights of the holder of the Mortgage by Assignment of Mortgage dated June 14, 1989 and recorded on June 20, 1989 in Book 34-G, page 124, Document No. 3288. Additionally, plaintiff claims that defendant Small Business Administration ("SBA"), an agency of the United States, is a mortgagee of record relative to Parcel No. 14-27-1 Frenchman's Bay in the amount of $11,000.00. Said Mortgage dated September

19, 1989, was recorded in the Office of the Recorder of Deeds, St. Thomas, on September 20, 1990 in Book 36-R, page 25, Document No. 5263. By its answer, the SBA admits that its mortgage is subordinate to Hamilton's Mortgage interest in the subject property.

Plaintiff alleges that Weiss is in default for her failure to make monthly payments due according to the terms of the Mortgage and Note, and according to said terms, plaintiff has called the entire outstanding balance due and owing. In addition to seeking monetary relief in the amount of the loan that remains outstanding plus interest and costs, plaintiff also requests a judgment of foreclosure on its Mortgage.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is provided for in Rule 56 of the Federal Rules of Civil Procedure. Pursuant to Rule 56, a court shall enter summary judgment where the record reveals no genuine issue of material fact and the evidence entitles the movant to judgment as a matter of law. Fed.R.Civ.P 56(c). The moving party bears the initial burden of identifying those portions of the record which demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Once this showing has been made, the burden shifts to the nonmoving party to present affirmative evidence from which a jury might reasonably return a verdict in his or her favor. Id.

Where a motion for summary judgment is unopposed by the party against whom it is made, subsection (e) of rule 56 applies. This section of the rule provides for entry of summary judgment on an unopposed motion only if such entry is appropriate. Before granting an unopposed summary judgment motion, a court must "first determine whether summary judgment is appropriate - that is, whether the moving party has shown itself to be entitled to judgment as a matter of law." Anchorage Associates v. Virgin Islands Board of Tax Review, 922 F.2d 168, 175 (3rd Cir. 1990).

DISCUSSION

In the case at bar, defendant Weiss has failed to file a response to plaintiff's motion. Therefore, the Court will treat the motion as unopposed and conduct an analysis to determine the appropriateness of entering summary judgment pursuant to Federal Rule of Civil Procedure 56(e).

Plaintiff's motion for summary judgment is founded upon the fact that the terms of the Mortgage and Note provide that in the event that any monthly installment is not paid when due, the entire principal amount outstanding and accrued interest shall at once become due and payable at the option of the Note holder. In its complaint, plaintiff states that as of

April 22, 1994, defendant had failed to make eight (8) installment payments according to the terms of the Note and Mortgage. Additionally, plaintiff argues that Weiss has refused to satisfy the current arrearage despite plaintiff's continuing and insistent demands for payment.

In support of plaintiff's motion, it has submitted an affidavit of Melvin Westphal, Senior Vice President of Default Management in the Loan Services Department of Hamilton Financial Corp. ("Hamilton"). Mr. Westphal states that despite the obligation set forth in the Mortgage and Note, Weiss has defaulted in making the monthly payments, and consistent with the terms of the Mortgage and Note, Hamilton has called the unpaid principal balance, together with interest, costs incurred and funds advanced, presently due and owing. Mr. Westphal further states that as of May 15, 1995, in addition to attorney's fees and costs associated with the prosecution of this action, the total balance owed by Weiss on the Mortgage and Note is $258,576.70, with interest continuing to accrue on the principal balance at the rate of 11.5% per annum ($66.38 per day) from May 16, 1995, until paid or until entry of judgment.

In considering plaintiff's motion for summary judgment, the Court finds that there is no dispute that Weiss borrowed $217,500.00 from Hamilton's predecessor in interest, Fidelity, and in exchange, delivered a note secured by a June 14, 1989 mortgage giving Fidelity a security interest in Parcel

No. 14-27-1 Estate Frenchman's Bay. In fact, by her answer, Weiss admits the same. *Weiss' Answer,* ¶¶ 7 and 8. There is no dispute that SBA's mortgage on the subject property is subordinate to plaintiff's mortgage, as SBA has admitted the same. *SBA's Answer* ¶¶ 4 and 5. The Court finds that all rights of the holder of the Mortgage and Note were assigned to Hamilton's predecessor in interest from Fidelity. Further, the Court finds that there is no dispute that Weiss has defaulted on her obligation to make monthly installment payments under the Note and Mortgage, and Hamilton has called the entire outstanding loan balance due and owing. Finally, there is no dispute that as a result of Weiss' default and her failure to cure, plaintiff is entitled to foreclose on its mortgage.

CONCLUSION

For the above reasons, the Court concludes that there are no genuine issues as to material facts and that the plaintiff is entitled to summary judgment as a matter of law, and therefore, this Court deems conceded plaintiff's unopposed motion for summary judgment. An appropriate order follows.

MARIA M. CABRET
Judge