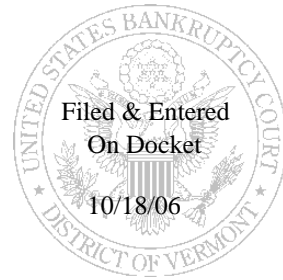


UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT



In re:

CYNTHIA DIANN MAYER-MYERS,  
Debtor.

Chapter 13 Case  
# 05-12466

CYNTHIA DIANN MAYER-MYERS,  
Plaintiff,

Adversary Proceeding  
# 06-1018

v.

GREEN TREE SERVICING, LLC,  
Defendant.

Appearances:

Rebecca A. Rice, Esq.  
Rutland, Vt.  
For the Plaintiff

Tavian M. Mayer, Esq.  
South Royalton, Vt.  
For the Defendant

**ORDER**  
**CONVERTING DEFENDANT'S MOTION TO DISMISS ADVERSARY PROCEEDING**  
**TO A MOTION FOR SUMMARY JUDGMENT**  
**AND ESTABLISHING CASE MANAGEMENT SCHEDULE**

WHEREAS Cynthia Diann Mayer-Meyers (the "Plaintiff") initiated the above-referenced adversary proceeding to subordinate the claim of Green Tree Servicing, LLC (the "Defendant" and collectively with the Plaintiff, the "Parties"), alleging that Green Tree had breached its contract with the Plaintiff and its fiduciary duties when it advanced payments on a construction loan without the Plaintiff's consent and contrary to her explicit instructions (doc. #1); and

WHEREAS the Defendant has moved to dismiss the adversary proceeding on several grounds, pursuant to Fed. R. Civ. Proc. 12(b) and Fed. R. Bankr. P. 7012(b), including: (1) lack of subject matter jurisdiction, (2) improper venue, and (3) failure to state a claim upon which relief can be granted; and stated in its moving papers that it reserves the right to supplement its filings if the Court finds such conversion appropriate (doc. #5); and

WHEREAS, in the pending motion to dismiss in this adversary proceeding, the Parties have argued the merits of their positions based on documents outside the complaint;

THE COURT FINDS that it is necessary and appropriate to treat the Defendant's motion to dismiss as a motion for summary judgment, in order to address the relief sought.

THE COURT FURTHER FINDS that pursuant to Fed. R. Civ. P. 12, as incorporated into Fed. R. Bankr. P. 7012, the Parties should be given a reasonable opportunity to present all material and arguments pertinent to a motion for summary judgment.

THEREFORE, IT IS HEREBY ORDERED that the following case management schedule is established to implement the memorandum of decision of even date:

1. the Defendant shall file a motion for summary judgment, clarifying the nature of the relief it seeks, and a Statement of Undisputed Material Facts (preferably a Joint Statement) **by November 1, 2006**, and Plaintiff shall file her opposition to the motion (as will the chapter 13 Trustee if he chooses to participate in the briefing of the issues) by **November 15, 2006**;
2. the pre-trial conference in this adversary proceeding shall be held on **December 21, 2006** at 2:30 P.M. (as shall the continued confirmation hearing in this case); and
3. the hearing set for October 19, 2006 shall proceed and shall be a status conference on both this adversary proceeding and the chapter 13 case.

SO ORDERED.



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Colleen A. Brown  
United States Bankruptcy Judge

October 18, 2006  
Rutland, Vermont