

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

RICHARD J. WILLIAMS and MARY)
ANNE CLOUD-WILLIAMS, Delaware)
residents, on their behalf and of those)
similarly-situated Delaware residents,)

Plaintiffs,)

v.)

OCWEN LOAN SERVICING, LLC,)

Defendant.)

Civil Action No. 14-1096-LPS-CJB

MEMORANDUM ORDER

Presently before the Court is Plaintiffs Richard J. Williams and Mary Anne Cloud-Williams’ (collectively, “Plaintiffs”) “Motion for Expedited Discovery.” (D.I. 8) Having considered the parties’ written submissions, and for the reasons that follow, the Court DENIES Plaintiffs’ motion.

I. BACKGROUND

On August 5, 2014, Plaintiffs filed the instant suit against Defendant Ocwen Loan Servicing, LLC (“Defendant”) in the Superior Court for the State of Delaware, in and for New Castle County. (D.I. 1, ex. A) In the Complaint, Plaintiffs, on their own behalf and on behalf of similarly-situated Delaware residents, allege various state law causes of action and a claim for violation of the Fair Debt Collection Practices Act (“FDCPA”). (*Id.*) The Complaint’s allegations, *inter alia*, relate to a bankruptcy proceeding initiated by Plaintiffs on August 30, 2013. (*Id.* at ¶¶ 5-21) Plaintiffs allege that this bankruptcy proceeding was occasioned by the fact that Defendant, the servicer of Plaintiffs’ home mortgage, had wrongfully claimed that

Plaintiffs were in arrears as to the mortgage. (*Id.*) On August 25, 2014, Defendant filed a notice of removal of the case to this Court. (D.I. 1)

On November 4, 2014, Plaintiffs filed the instant motion. (D.I. 8)¹ With the motion, Plaintiffs seek the following information from Defendant: (1) “[a] payment history for their Mortgage (as that term is defined in the Complaint) from the date of 30 August 2013 to 1 November 2014[;]” (2) “[a]ny and all Mortgage account statements generated by the Defendant internally or for distribution to the Plaintiffs from the date of 30 August 2013 to 1 November 2014[;]” and (3) “[r]ecords reflecting any and all Mortgage escrow disbursements from the date of 30 August 2013 to 1 November 2014.” (*Id.* at 1) The instant motion was fully briefed on November 21, 2014. (D.I. 10)² On the same day, Chief Judge Leonard P. Stark referred this case to the Court to hear and resolve all pretrial matters, up to and including case-dispositive motions. (D.I. 9)

II. STANDARD OF REVIEW

Generally, “[a] party may not seek discovery from any source before the parties have conferred as required by Rule 26(f)” of the Federal Rules of Civil Procedure.³ Fed. R. Civ. P. 26(d)(1). However, courts have broad discretion to manage the discovery process, and can

¹ Also pending in the case is Defendant’s motion seeking dismissal of all claims of the Complaint, filed pursuant to Federal Rule of Civil Procedure 12(b)(6). (D.I. 3)

² An opening and answering brief has been filed, (D.I. 8, 10); Plaintiffs chose not to file a reply brief.

³ Rule 26(f) provides that except in certain circumstances not applicable here, or when the Court orders otherwise, “the parties must confer as soon as practicable—and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b).” Fed. R. Civ. P. 26(f)(1).

accelerate or otherwise alter the timing and sequence of discovery. *See id.*; *see also* Fed. R. Civ. P. 26(d) advisory committee’s note (1993) (“Discovery can begin earlier if authorized . . . by local rule, order, or stipulation. This will be appropriate in some cases, such as those involving requests for a preliminary injunction or motions challenging personal jurisdiction.”). Federal courts are also specifically authorized, if circumstances warrant, to shorten the time for responses to interrogatories and requests for production of documents, and to permit early depositions. Fed. R. Civ. P. 30(a)(2)(A)(iii), 33(b)(2) & 34(b)(2)(A).

The Federal Rules of Civil Procedure offer little guidance as to when it is appropriate to authorize expedited and/or early discovery. Although the Third Circuit has not adopted a standard for evaluating such requests, the Court has previously held that a “good cause” standard should apply—one requiring the party seeking discovery to demonstrate that its request is “reasonable” in light of the relevant circumstances. *See Kone Corp. v. ThyssenKrupp USA, Inc.*, Civ. Action No. 11-465-LPS-CJB, 2011 WL 4478477, at *4-6 (D. Del. Sept. 26, 2011); *see also Vision Films, Inc. v. John Does 1-24*, Civil Action No. 12-1746-LPS-SRF, 2013 WL 1163988, at *3 (D. Del. Mar. 20, 2013). Under this “reasonableness” standard, the court must weigh the need for discovery at an early juncture in the litigation against the breadth of the discovery requests and the prejudice to the responding party. *Kone Corp.*, 2011 WL 4478477, at *4. It does so by considering such factors as: (1) the timing and context of the discovery requests, including whether a preliminary injunction hearing has been scheduled; (2) the scope and purpose of the requests; and (3) the nature of the burden to the respondent. *Id.* (citing *Better Packages, Inc. v. Zheng*, No. Civ.A 05-4477(SRC), 2006 WL 1373055, at *3 (D.N.J. May 17, 2006)).

III. DISCUSSION

After considering the three factors set out above, the Court finds that expedited discovery is not warranted.

With regard to the timing and context of the discovery requests, this factor favors the moving party in situations where the urgent need for action is clear. For example, expedited discovery has been deemed appropriate where a plaintiff sought to issue subpoenas to internet service providers (“ISPs”) in order to identify alleged copyright infringers named as John Doe defendants; there, “expedited discovery [was] necessary because evidence identifying the defendants may be destroyed as a result of routine deletion by ISPs.” *Vision Films, Inc.*, 2013 WL 1163988, at *1-2, *4. Such discovery has also been found appropriate when sought “in connection with [a] pending motion for a preliminary injunction” in order to “help [] ensure a clear and focused factual record” at an upcoming hearing on the motion. *Kone Corp.*, 2011 WL 4478477, at *1, *7. But here, Plaintiffs do not clearly articulate why their request implicates similarly urgent circumstances. It is apparent that Plaintiffs are making the request because they “would like to know the circumstances surrounding their payment and the Defendant’s performance of its obligations under the mortgage.” (D.I. 8 at 2) However, they do not explain why obtaining the information in the regular course of discovery (assuming the information is relevant to their claims) would not suffice.

As to the scope and purpose of the requests, it is clear that Plaintiffs filed the motion because they have a subjective fear of future foreclosure, and because they want to be sure that their most recent mortgage payments are “timely and properly applied.” (D.I. 8 at 3-4 (“The Plaintiffs have already been the victims of wrongful foreclosure and do not wish to repeat their

prior experience.”)) What is a bit less clear, however, is how the requested discovery is relevant to the particular causes of action pled in the Complaint. (D.I. 10 at 4 (Defendant asserting that the requested discovery is “unrelated [and] unconnected” to the Complaint’s allegations)) It could be that the requests *are* relevant, as the Complaint’s allegations do relate, as a general matter, to the subject of the alleged misapplication by Defendant of Plaintiffs’ (prior, pre-bankruptcy) mortgage payments. (D.I. 1, ex. A at ¶ 36 (Complaint alleging that Defendant wrongfully diverted Plaintiffs’ past mortgage payments, by diverting those payments to “unauthorized and non-bona fide fees” instead of “properly applying them to escrow accounts and to reduce principal and interest”)) But Plaintiffs have not clearly explained that relevance in their briefing, and so this factor does not favor their position.

Lastly, as to the nature of the burden to the respondent, Defendant does not explicitly address how—were it required to produce the materials now—this would amount to a real burden to it. Yet because the other two “reasonableness” factors support Defendant’s position, and because Plaintiffs have not well explained the basis for their motion, the Court finds that the motion should be denied.⁴ *See Barbieri v. Wells Fargo & Co.*, Civil Action No. 09–3196, 2012 WL 3089373, at *3-4 (E.D. Pa. July 27, 2012) (denying plaintiffs’ request for expedited discovery by finding the “reasonableness” standard had not been met, in a case arising out of a dispute regarding a home mortgage placed into foreclosure, because the request was “vague, ambiguous and unlimited in scope[,]” and because the plaintiffs “fail[ed] to allege how [the

⁴ In light of Defendant’s representations, (D.I. 10 at 6-7), the Court is also concerned about whether the meet and confer requirements of Local Rule 7.1.1 were met regarding the motion. D. Del. LR 7.1.1. Such concern provides another reason militating in favor of denial of the motion.

requested] discovery . . . is relevant to the instant lawsuit”); *see also* *Techtronic Indus. N. Am., Inc. v. Inventek Colloidal Cleaners LLC*, Civil No. 13-4255 (NLH/JS), 2013 WL 4080648, at *1-3 (D.N.J. Aug. 13, 2013) (denying plaintiff’s request for expedited discovery in a case arising out of an alleged breach of a loan agreement where, *inter alia*, the proposed discovery was “overbroad” and plaintiff failed to “present[] a good reason why discovery needs to be accelerated”).

IV. CONCLUSION

For the reasons outlined above, it is hereby ordered that Plaintiffs’ motion for expedited discovery (D.I. 8) is DENIED.

Dated: January 13, 2015



Christopher J. Burke
UNITED STATES MAGISTRATE JUDGE