

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

CASE NO. 2019-CP-46-04302

U.S. Bank National Association, As Trustee
For Securitized Asset Backed Receivables
LLC Trust 2006-NC1, Mortgage Pass-
Through Certificates, Series 2006-NC1,

PLAINTIFF,

v.

Aaron C. Wurdemann and Heather J.
Wurdemann,

DEFENDANT(S).

**ORDER TO DISBURSE
SURPLUS FUNDS**

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Mar 08 2023

SC Court of Appeals

This matter came before me for a hearing to determine disbursement of surplus funds in the amount of \$50,539.05 that resulted from a sale of mortgaged property located at 211 Leisure Lane, Catawba, South Carolina with Tax Map No. 690-00-00-015 (“property”). Present at the hearing: the Defendants, Aaron Wurdemann and Heather J. Wurdemann; and Maritza Flores (“Flores”), with her counsel Leonard Jordan.

FINDINGS OF FACT

By order on February 28, 2020, Plaintiff was granted a judgment of foreclosure and sale, and the property was ordered to be sold at public auction. The Defendants are the mortgagors, but the property is not their primary residence.

Shortly after judgment, Dennis Lepka, an agent of Robinhood Investments, LLC (“Robinhood”), approached the Defendants and claimed he could help them sell the property and avoid a foreclosure sale. Lepka assured the Defendants that he had potential buyers and could sale the property for a profit. The Defendants agreed to have Lepka assist them.¹

Lepka convinced the Defendants it would help the process if they transferred their interests in the property to Robinhood. So, the Defendants conveyed their interests in the property to Robinhood by deed dated July 1, 2020 and recorded on July 30, 2020 in Record Book 18459 at page 30 (“Robinhood Deed”). I take judicial notice of this deed. The Defendants received no consideration for the transfer. This is confirmed by the deed’s accompanying affidavit.

¹ The Defendants testified that they executed a written agreement with Lepka. They were granted additional time after the hearing to submit a copy of the agreement to the Court, but failed to do so.

Within one month of recording the Robinhood Deed, Flores entered into a lease with option to purchase (“Lease”) with Robinhood regarding the property. Flores paid \$45,000.00 to Robinhood as a down payment, and agreed to pay \$1200.00 per month, for 60 months, starting November 1, 2020. Robinhood failed to include the Defendants’ mortgage in the section entitled “Further Encumbrances”. No one on behalf of Robinhood informed the Defendants about the Lease, and the Defendants did not receive any funds paid by Flores to Robinhood.

The property was sold at public auction on April 4, 2022. A report of sale was filed on May 9, 2022 showing the receipts and disbursements made and that surplus funds remained. Due notice of surplus was served as shown in the certificate(s) of service. Following service of the notice of surplus, claims were filed by Lepka and Flores. Lepka filed a claim on behalf of Robinhood as an employee. The claim was not verified or supported by affidavit. Flores’ claim was verified, timely filed, and included the required information. The Defendants timely inquired about filing a claim, but were instructed by court staff that as the mortgagors, no formal claim was required by the court.

Though she is not a party to the action, Flores argues her claim is valid by assignment. Rule 71(c), SCRPC states that “[a]ny party to the action, or any person who had a lien on the mortgaged premises at the time of the sale, upon filing ... a claim of entitlement to the surplus fund, may have a hearing to determine such entitlement.” This entitlement extends to a party’s assignee. *See BAC Home Loan Servicing, L.P. v. Kinder*, 398 S.C. 619, 731 S.E.2d 547 (2012). In order for Flores to have acquired a right to surplus by assignment, the Defendants must be found to have assigned their rights to Robinhood. Considering the facts of this case, I disagree.

Robinhood sought out the Defendants knowing the property was scheduled to be sold at public auction. Instead of providing help, Robinhood acted solely for its own benefit. It convinced the Defendants to transfer their interests for no consideration, and thereafter entered into a lease with Flores, which it derived a substantial benefit by keeping all the funds to itself. *See Aaron v. Mahl*, 381 S.C. 585, 674 S.E.2d 482 (2009) (A party may not recover in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of an opposing party.).

Flores also argues that she is entitled to surplus because she lost the benefit of her contract with Robinhood. Though Flores may not have actually been aware of the foreclosure proceeding, or how to conduct a title search, she was placed on notice by the filing of *Lis Pendens* prior to her execution of the Lease.

I find and conclude that Robinhood has no entitlement to surplus. The claim itself was not verified or in affidavit form, and no one appeared on behalf of the LLC at the hearing to offer proof

of its claim. *See* Rule 71(c), SCRC. As discussed previously, equity precludes any recovery by Robinhood.

THEREFORE, IT IS ORDERED that surplus funds of \$50,539.05 be disbursed to the Defendants.

Judge's Signature Page to Follow



York Common Pleas

Case Caption: U S Bank National Association Trustee , plaintiff, et al VS Aaron C Wurdemann , defendant, et al
Case Number: 2019CP4604302
Type: Master/Order Surplus Funds

So Ordered

s/ Teasa K. Weaver 3084