

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO. 2021-CP-40-00895

RECEIVED
Mar 27 2023
SC Court of Appeals

DEUTSCHE BANK NATIONAL)
TRUST COMPANY, as Trustee for)
Residential Asset Securitization Trust 2005-)
A8CB Mortgage Pass-Through Certificates)
Series 2005-H,)

Plaintiff,

vs.

JOHN C. NELUMS,)
DELMARSHI NELUMS and)
WOODLAKE HOMEOWNERS')
ASSOCIATION, INC.,)

Defendants.

**ORDER DENYING DEFENDANTS
JOHN C. NELUMS AND DELMARSHI
NELUMS' RULE 60(B)(4) MOTION TO
VACATE ORDER GRANTING
SUMMARY JUDGMENT**

This matter came before me on February 2, 2023 for hearing on the Rule 60(b)(4) motion filed by Defendants John C. Nelums and Delmarshi Nelums to vacate the Order granting Plaintiff summary judgment issued by this Court on November 1, 2022. Present at the hearing were Plaintiff's counsel, John Kay, and counsel for the Nelums, Sean Adegbola, who had just recently been retained by the Nelums and who was their first-ever counsel. Also appearing at the hearing representing the Nelums was William Jeff Barnes, Esq. of the Florida and Colorado Bar. Mr. Barnes and Mr. Adegbola filed a motion to have Mr. Barnes admitted *pro hac vice* in this matter. I granted the *pro hac vice* motion prior to the hearing on the Rule 60(b) SCRCF motion without objection from Plaintiff's counsel. Counsel for the Plaintiff Deutsche Bank National Trust Company, as Trustee for Residential Asset Securitization Trust 2005-A8CB Mortgage Pass-Through Certificates Series 2005-H, opposed the motion to vacate summary final judgment and filed a memorandum in Opposition to the Motion.

INTRODUCTION AND FACTS

The instant action was one for foreclosure of a Mortgage on real property located at 315 Bentwood Lane, Columbia, SC 29229. On September 15, 2022, I held a hearing on all pending motions of the parties, including the Plaintiff's motion for summary judgment. Mr. Nelums requested to have counsel argue for him, but no counsel had entered an appearance as of that time and no counsel appeared at the hearing. I granted the Plaintiff's motions and denied the Defendants' motions and the issued a Master's Order and Judgment of Foreclosure and Sale denying Defendants' Motions and granting Plaintiff's Motions, including the Motion for Summary Judgment, and this Master's Order was entered November 1, 2022. Pursuant to the Master's Order, the property known as 315 Bentwood Lane in Columbia, South Carolina was sold at the Master's foreclosure sale designated for December 5, 2022. The Plaintiff was the highest bidder at that sale and a foreclosure deed was issued to the Plaintiff on December 15, 2022. Following the foreclosure sale on December 5, 2022, Defendants filed their Motion to Vacate Final Summary Judgment on December 7, 2022.

CONCLUSIONS OF LAW

Pursuant to SCRCP Rule 60(b)(4) a judgment may be set aside if it is void. "The definition of "void" under the rule only encompasses judgments from courts which failed to provide proper due process, or judgment from courts which lacked subject matter jurisdiction or personal jurisdiction". *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996). Moreover, "A judgment is not rendered void by irregularities which do not involve jurisdiction." *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002). "The fundamental requirement of due process is the opportunity to be heard at a

meaningful time and in a meaningful manner...the requirements of due process in a particular case are dependent upon the importance of the interest involved and the circumstances under which the deprivation may occur. *S.C. DSS ex rel. Tex. v. Holden*, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995).

Here, Mr. Nelums' had a meaningful opportunity to be heard at the hearing on September 15, 2022, and he does not allege that personal jurisdiction or subject matter jurisdiction was not obtained over himself and Delmarshi Nelums. This Court has subject matter jurisdiction of the foreclosure action, personal service was achieved over Defendants as is evidenced by the affidavits of service filed herein. Defendants were duly notified of the motion hearing. Mr. Nelums appeared at the hearing on September 15, 2022 and did request to have an attorney argue his position. I determined that Mr. Nelums was given a full and fair opportunity to argue his pending motions and defend the Plaintiff's motions. From the onset of the litigation, Mr. Nelums represented himself *pro se* in the action. This Court's decision to proceed with the hearing on September 15, 2022, was not made without inquiry into Mr. Nelums' ability to represent himself in this action. The Court questioned Mr. Nelums about the history of his representation, and Mr. Nelums' represented to Court that on his own behalf he previously filed several motions in his federal case, the appeal, and in present the litigation spanning from 2021. Furthermore, Mr. Nelums could not confirm at the hearing that he had counsel that was duly licensed to practice law in South Carolina or confirm a full name of local counsel. The Court also notes the Nelums filed no notice of appeal of the Master's Order in this matter, and the time has lapsed to file an appeal.

Because the Master's Order entered on November 1, 2022 is not void and there was no timely appeal, Defendants are not entitled to relief from the judgment pursuant to SCRCR Rule 60(b)(4) and Defendants' motion to do so is denied.

JUDGE, JOSEPH M. STRICKLAND'S SIGNATURE PAGE TO FOLLOW



Richland Common Pleas

Case Caption: Deutsche Bank National Trust Company Trustee , plaintiff, et al vs
John C Nelums , defendant, et al

Case Number: 2021CP4000895

Type: Master/Order/Other

It is so Ordered

s/Joseph M. Strickland, 3055