

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Mortgage Asset Management, LLC,

Plaintiff,

vs.

Louis Snedigar aka Louis F. Snedigar aka
Louis Fielding Snedigar, III, The United
States of America, acting by and through its
agent, the Secretary of Housing and Urban
Development, World Business Lenders, LLC,
Clay Schile, Blue Ridge Health Investors,
LLC, 1st Franklin Financial Corporation

Defendant(s).

IN THE COURT OF COMMON PLEAS

Case No.: 2021-CP-37-00734

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION TO VACATE**

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SC Court of Appeals

INTRODUCTION

Defendant Louis Snedigar is the owner of real property located at 200 Shoreline Drive, Seneca, South Carolina 29672. After learning that his property was sold at a judicial foreclosure sale in February 2023, he filed a Motion to Vacate ("Motion") the Sale pursuant to SCRPC Rule 60(b) on February 24, 2023. Plaintiff Mortgage Assets Management, LLC filed a Memo in Opposition of the Motion on March 8, 2023. A hearing was held on the matter before the Honorable Steven C. Kirven on March 16, 2023.

FACTS

Since 1980, Defendant Louis Snedigar has owned the property located at 200 Shoreline Drive, Seneca, South Carolina 29672 ("Property"). In 2010, Defendant decided to obtain a reverse mortgage on the property. He executed a "Home Equity Conversion Loan Agreement" ("Note") and Mortgage ("Mortgage") on May 26, 2010, with MetLife Home Loans. A copy of the Note is

attached as **Exhibit 1** and a copy of the Mortgage is attached as **Exhibit 2**. The Note and Mortgage were later assigned to the Plaintiff. The Defendant borrowed approximately \$350,000 through this reverse mortgage. The Mortgage granted a security interest to the Mortgagees in 200 Shoreline Drive to secure repayment of the obligations under the Note.

The Note, as a reverse mortgage, did not require Defendant to make monthly repayments to MetLife Home Loans. The Note required Defendant Snedigar to pay property taxes and insurance on the property. The Note provided in Paragraph 2.10.1 that, "Borrower may elect to require Lender to use Loan Advances to pay property charges consisting of taxes..." Paragraph 2.10.4 states "[i]f Borrower has made the election...Lender shall make Loan Advances under the line of credit payment plan as needed to make timely payments of property charges, provided that no such Loan Advance shall exceed the amount permitted by Section 2.6.1." Paragraph 2.10.5 states, "[i]f Borrower fails to pay the property [taxes] in a timely manner, and has not elected to have Lender make the payments, Lender shall pay the property [taxes] as a Loan Advance as required under Section 2.16. If a pattern of missed payments occurs, Lender may establish procedures to pay the property [taxes] from the Borrower's funds as if Borrower elected to have Lender pay the property [taxes]."

Paragraph 2.15.2 of the Note states, "[i]f Borrower fails to pay governmental or municipal [taxes] included in section 2.10...then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property. These expenditures will be considered loan advances as required under Section 2.16."

Article 4 of the Note is particularly relevant in the case at bar, and it states the following in regards to the Lender's ability to cease making loan advances:

Article 4- Termination of Lender's Obligation to Make Loan Advances

4.1 Loan Due and Payable. Lender shall have no obligation to make Loan Advances if Lender has notified Borrower that immediate payment-in-full to Lender is required under one or more of the Loan Documents unless and until the notice is rescinded by Lender.

4.2 Loan Advances by Secretary. If the Security Instrument has been assigned to the Secretary or the Secretary notifies Lender and Borrower that Loan Advances are secured by the Second Security Instrument. Lender shall have no further obligation to make Loan Advances under this Loan Agreement, unless the Secretary accepts later reimbursement by the Lender for all Loan Advances made, earned or disbursed by the Secretary. The Secretary may establish procedures for handling requests for payments and changes in payment plans during the interval between Lender's notification of intent to assign the Security Instrument to the Secretary and completion of the assignment. Borrower shall be informed of such procedures by Lender and/or the Secretary, and Borrower shall comply with such procedures.

4.3 Lien Status Jeopardized. Lender shall have no obligation to make further Loan Advances if the Lender or the Secretary determines that the lien status of the Security Instrument or the Second Security Instrument is jeopardized under State laws as described in Paragraph 12(a) of the Security Instrument or Second Security Instrument and the lien status is not extended in accordance with Paragraph 12(a).

4.4. Bankruptcy. Lender shall have no obligation to make further Loan Advances on or following the date that a petition for bankruptcy of Borrower is filed.

4.5 Mandatory Loan Advances. Notwithstanding anything in Sections 4.1 through 4.4, all Loan Advances under Sections 2.10 (property charges), 2.12 (interest), 2.13 (MIP or monthly charge), 2.15 (protection of Property) or 2.3.4 (servicing fee) shall be considered mandatory Loan Advances by Lender.

Paragraph 2 of the Mortgage, in regards to the payment of Property Taxes, states:

“Borrower shall pay all property charges consisting of taxes, ground rents, flood and hazard insurance premiums, and special assessments in a timely manner...unless Lender pays property charges by withholding funds from the monthly payments due to the Borrower or by charging such payments to a line of credit as provided for in the Loan Agreement.”

Additionally, the Mortgage expressly outlines Plaintiff's grounds for accelerating the debt in paragraph 9. Paragraph 9 reads:

(a) Due and Payable. Lender may require immediate payment in full of all sums secured by this Security Instrument if:

- (i) A Borrower dies and the property is not the principal residence of at least one surviving Borrower; or
- (ii) All of the Borrowers title in the property for his or her beneficial interest in a trust owing all or part of the Property is sold or otherwise transferred and no Borrower retains (a) title to the Property in fee simple. (b) a leasehold under a lease for not less than 99 years which is renewable or a lease having a remaining period of not less than 50 years beyond the date of the 100th birthday of the youngest Borrower, or (c) a life estate in the Property (or retains a beneficial interest in a trust with such an interest in the Property).

(b) Due and Payable with Secretary Approval. Lender may require immediate payment in full of all sums secured by this Security Instrument, upon approval by an authorized representative of the Secretary, if:

- (i) The Property ceases to be the principal residence of a Borrower for reason other than death and the Property is not the principal residence of at least one other Borrower, or
- (ii) For a period of longer than twelve (12) consecutive months, a Borrower fails to physically occupy the Property because of physical or mental illness and the Property is not the principal residence of at least one other borrower; or
- (iii) An obligation of the Borrower under this Security Instrument is not performed.

At some point on or around 2021, Defendant was unable to pay the property taxes covering the Property. On October 28, 2021, Plaintiff filed the present foreclosure action. The foreclosure action was filed shortly before Defendant requested Plaintiff pay his property taxes. The Complaint asserts that Defendants default was his failure to pay taxes and/or insurance on the property.

An Order of Foreclosure and Sale was entered on November 17, 2022. The Foreclosure Order provides, “[t]he Borrower(s) failed to pay real property taxes and/or insurance on the property as required by the loan documents, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness...” The property was sold at a foreclosure sale on February 6, 2023 to a third-party bidder.

ARGUMENT

"The cardinal rule of contract interpretation is that when the language of a contract is clear and unambiguous, the contract must be interpreted and enforced in accordance with the plain meaning." *Mac Papers, Inc. v. Genesis Press, Inc.*, 426 S.C. 393, 402, 826 S.E.2d 874, 879 (Ct. App. 2019). Also, a basic principle of contract law is that any ambiguity found in documents should be construed against the drafter of the agreement. If the language creates an ambiguity, a court will construe any doubts and ambiguities in an agreement against the drafter of the agreement. *Duncan v. Little*, 384 S.C. 420, 425, 682 S.E.2d 788, 790 (2009).

a. Note Does Not Permit Foreclosure

A plain reading of the Note clearly shows that Plaintiff is not entitled to foreclose based on Defendant's failure to pay property taxes. Paragraph 2.10 of the Note specifically outlines the parties' rights in the event Defendant fails to pay the property taxes. Paragraph 2.10 clearly states that Lender shall pay the property charges as a Loan Advance. Therefore, conveying a specific obligation on Plaintiff to pay the property taxes.

Article 4, which outlines when Loan Advances can be terminated, excludes Loan Advances in Section 2.10 and states that they shall be considered mandatory Loan Advances by Lender. Therefore, Plaintiff cannot elect to quit making the loan advances based on unpaid property taxes and to accelerate the debt. Upon a review of the Note, the plain language clearly evidences an intent of any property charges to be added to the loan balance as a Loan Advance and does not allow for an acceleration of debt and subsequent foreclosure based upon Defendant's failure to pay property taxes. No language in the Note allows for an acceleration of the debt for Defendant's failure to pay property taxes.

The Court should read the documents based on their plain meaning and not interpret an ability to accelerate the debt when one is not plainly written within the Note. Further, to the extent that ambiguity exists, the contract should be construed against the drafter, which is Plaintiff.

b. Mortgage Does Not Permit Foreclosure

Paragraph 9 of the Mortgage outlines the grounds for accelerating the debt. The pleadings and subsequent foreclosure order in this case clearly show the grounds for accelerating the debt is Plaintiff's failure to pay property charges. Paragraph 9(b)(iii) of the Mortgage would be the only subparagraph Plaintiff can rely on that would allow acceleration of the debt and that argument fails. Paragraph 9(b)(iii) only permits acceleration of the debt when the borrower of the Note fails to perform an obligation under the security instrument.

As previously discussed, Plaintiff has an obligation to pay the property taxes in the event Defendant failed to do so. The Note made the payment of the property taxes mandatory by the Plaintiff and does not permit acceleration of the debt as a remedy in that instance. Therefore, Defendant has not failed to perform an obligation under the Note and acceleration of the debt would not be permitted.

The plain reading of the Mortgage evidences no ability to foreclose on Defendant based on his failure to pay the property taxes. The Court should refrain from reading into or interpreting the plain language of the Mortgage as allowing an acceleration of debt clause where one does not exist. If the Note and Mortgage were intended to grant a specific right of acceleration of the debt and therefore, a foreclosure, one could have been plainly indicated in the documents. No such specific right was indicated, and a plain reading of all the documents evidence an intent to add property charges to the loan balance which will be collectable by Plaintiff at a later date.

To the extent that the mortgage lends itself to a different interpretation, which Defendant denies that it does, basic principles of contract law would require this Court to construe the ambiguity against the drafter, Plaintiff.

CONCLUSION

Considered individually and together, it is clear the Note and Mortgage do not permit, and were not intended to permit, acceleration of debt and subsequent foreclosure for Defendant's failure to pay property taxes. Since Plaintiff's entire foreclosure action is predicated on the acceleration of the debt due to Defendant's failure to pay property taxes, the foreclosure order and subsequent foreclosure sale should be vacated pursuant to Rule 60 of the South Carolina Rules of Civil Procedure as requested in the Motion to Vacate.

Jason Ward Law, LLC.

/s/ Jason M. Ward

Jason M. Ward, S.C. Bar No.: 100782

311 Pettigru Street,

Greenville SC 29601

(864) 239-0007- Telephone

Jason@WardLawSC.com

Attorney for Defendant Louis Snedigar

Date: March 23, 2023
Greenville, South Carolina