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SC Court of Appeals

ELECTRONICALLY FILED - 2023 Oct 23 3:06 PM - BERKELEY - COMMON PLEAS - CASE#2022CP0802386

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

VAK M250 Fund, LLC,

Plaintiff,

vs.

Ronald D. Pringle, Cleo R. Pringle, and
SERVHL Underlying Trust 2019-1,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 2022-CP-08-02386

**ORDER DENYING
DEFENDANTS RONALD D. PRINGLE AND
CLEO R. PRINGLE’S PETITION TO SET ASIDE
ORDER of SUMMARY JUDGMENT AND SALE**

On August 24, 2023, this Court entered an Order of Summary Judgment of Foreclosure and Sale Decree (“Order”) that foreclosed on a mortgage secured by property located at 1298 Old Gilliard Road, Ridgeville, South Carolina (“Property”), and ordered the property to be sold at public auction on October 4, 2023. On September 20, 2023, Defendants Ronald D. and Cleo R. Pringle (“Defendants”) filed a Motion to Set Aside this Order. On September 27, 2023, Defendants filed what was described as a Verified Petition for an Ex Parte Temporary Restraining Order to Set Aside Foreclosure Sale, which restated Defendants’ arguments raised within its September 20th Motion. On September 28, 2023, this Court entered a Temporary Restraining Order and stayed the foreclosure sale pending a hearing on Defendant’s Motion or Petition scheduled for October 12, 2023. On October 4, 2023, Plaintiff filed a Brief in Opposition to Defendants’ Motion and Petition, which was served upon Defendants.

On October 12, 2023, a hearing was held on Defendants’ Motion. M. McMullen Taylor appeared on behalf of the Plaintiff. Tamiaka Pollard, the Pringles’ appointed agent, was present for the Pringles. Defendants did not introduce any evidence during the hearing. Plaintiff’s counsel presented the original Note and Allonges, which was examined by Defendants and this Court. Based upon the filed Motion and

Petition and Brief in Opposition, along with oral arguments made during the hearing and the examination of the original Note and Allonges, I find, conclude and order as follows.

STANDARD OF REVIEW

Due to Defendant's Motion or Petition being filed past the 10-day time period in which a party may move to alter or amend the Order under Rule 59(e), SCRCP, the Motion or Petition are untimely under Rule 59(e). Therefore, this Court characterizes Defendants' Motion or Petition as a Motion for Relief from Judgment pursuant to Rule 60(b), SCRCP.

"The decision to deny or grant a motion made pursuant to Rule 60(b), SCRCP, is within the sound discretion of the trial judge." Ware v. Ware, 404 S.C. 1, 10, 743 S.E.2d 817, 822 (2013). "The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief." Sanders v. Smith, 431 S.C. 605, 613, 848 S.E.2d 604, 608 (Ct. App. 2020). "A claim of fraud upon the court requires proof by clear and convincing evidence." Id.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Under Rule 60(b), SCRCP, a party may move for relief from judgment for the following reasons:

- (1) Mistake, inadvertence, surprise, or excusable neglect;
- (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) Fraud, misrepresentation, or other misconduct of an adverse party;
- (4) The judgment is void;
- (5) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Defendants claim that Plaintiff lacks standing to bring the foreclosure action against them because Plaintiff allegedly does not have an enforceable interest in the note or mortgage. They based their claims upon the Note and its Allonges, and the Mortgage Assignments, all of which were available to Defendants during this Court's hearing on Plaintiff's Motion for Summary Judgment. Defendants did not present any competent evidence supporting their Motion.

Plaintiff is the holder of or otherwise entitled to enforce the Note and Mortgage. A “holder” is defined to include “the person in possession of a negotiable instrument that is payable either to bearer or an identified person that is the person in possession.” S.C. Code Ann. § 36-1-201(21). In 1997, Defendants signed a Note payable to First Family Financial Services, Inc. By a Note Allonge made out to blank, the Note was held by Wilmington Savings Fund Society, Trustee of Stanwich Mortgage Loan Trust A. The Note was then endorsed to Revolve Capital Group, LLC, who, by a subsequent Note Allonge, endorsed the Note to Plaintiff. South Carolina law authorizes endorsements that appear on a separate piece of paper (known as an allonge) affixed to the Note. S.C. Code Ann. § 36-3-204(a). The holder of a mortgage note is entitled to enforce the note and mortgage. S.C. Code Ann. § 36-3-301. Plaintiff sufficiently established that it is the holder of the Note. Therefore, Plaintiff is a real party in interest and has standing to bring the foreclosure action against Defendants.

Defendants also argue that the mortgage assignment chain is broken by virtue of alleged fraudulent signatures of assignors of the Mortgage. Without any evidence, Defendants claim that the Assignments were signed by people who either lacked authority to sign or misrepresented their authority to sign the Assignments. All of the Assignments in this case explicitly state, either below the signature or within the Acknowledgement, that the signor has the authority to sign the Assignment. Defendants merely offer conjecture and speculation, which cannot defeat the validity of the Assignments.

Even if Defendants had standing and introduced competent evidence to support their claims of invalid assignments, their argument would still fail because the Plaintiff’s possession of the Note automatically carries with it the assignment of the Mortgage securing the Note. Union Nat. Bank of Columbia v. Cook, 110 S.C. 99, 96 S.E. 484, 486 (1918); Bank of Am., N.A. v. Draper, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Ct. App. 2013). Plaintiff holds the Note, therefore, Plaintiff possesses an interest in the Mortgage and can enforce it.

IT IS SO ORDERED that Defendants' Motion and Petition are denied.

SIGNATURE PAGE TO FOLLOW

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF BERKELEY
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NO. 2022-CP-08-02386

VAK M250 Fund, LLC

PLAINTIFF

vs.
 Ronald D. Pringle, Cleo R. Pringle, and SERVHL Underlying
 Trust 2019-1

DEFENDANTS.

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Nov 30 2023
 SC Court of Appeals

Submitted by: Riley Pope & Laney, LLC Post Office Box 11412, Columbia, SC 29211	Attorney for Plaintiff
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other – _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy; Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other – _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other – _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow); Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
		N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

Tax Map # 156-00-02-069; 1298 Old Gilliard Road, Ridgeville, SC 29472

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

 Circuit Court Judge

 Judge Code

 Date



Berkeley Common Pleas

Case Caption: Vak M250 Fund, Llc , plaintiff, et al VS Ronald D Pringle , defendant,
et al
Case Number: 2022CP0802386
Type: Order/Other

AND IT SO ORDERED!

s/Dale E. Van Slambrook #3079