

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
2020-CP-43-00287

Secretary of the U.S. Department of)
Veteran's Affairs, an Officer of the United)
States,)

Petitioner,)

In Re:)

Wintrust Mortgage, a Division of)
Barrington Bank and Trust Co., NA,)

Plaintiff,)

vs.)

John B. Heyward and Wanda Heyward,)
Defendants.)

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DEC 06 2023

SC Court of Appeals

WRIT OF ASSISTANCE

This matter came before me on August 23, 2023 for hearing on Petitioner's application for a Writ of Assistance to be issued by this Court to the Sheriff of Sumter County ordering and directing him to remove, peaceably or forcibly, the defendants, or any person claiming under them and al personal property located within or on the below subject property. Present and appearing before me were John Hearn, attorney for Petitioner, and Defendants John and Wanda Heyward.

Petitioner seeks possession of property following foreclosure of a mortgage. Defendants contest their removal from the property and filed an objection to the application for the writ.

Both parties were given opportunity to make argument, after which the court took the matter under advisement.

FINDINGS OF FACT

An Order for Foreclosure was entered in this case July 19, 2022. No appeal was taken from that order and it remains the law of the case. Additional procedural orders were entered in case that supplemented the foreclosure order.

The order provided for sale of the mortgaged property and that sale took place on April 3, 2023. Plaintiff was the successful bidder and a deed was recorded into the Plaintiff, followed by a deed into Petitioner (VA). It appears that the VA indemnified the mortgage company (Wintrust) against loss pursuant to a typical VA guarantee and the insured status of the mortgage loan. Defendant John Heyward served in the military was eligible for a VA insured mortgage loan.

The Order of Foreclosure provided:

“9. It is further ordered, adjudged and decreed that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants in possession herein, the Sheriff of Sumter County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.”

The Defendants John and Wanda Heyward, or others claiming through them, still occupy the subject premises, 511 Winn Street, Sumter, South Carolina, 29150 and there is personal property apparently belonging to the Defendants in the subject premises.

One of Defendants’ several challenges (listed as items B & C on the objection filed August 11, 2023) is to removal of the case from the active roster, arguing it had the effect of concluding the matter with prejudice, such that it would have to be re-filed entirely. This argument is without merit. The file reflects the case was removed from the roster by order filed August 24, 2022 due to bankruptcy filing by Defendant John Heyward. The case was then restored to the active roster by order filed December 13, 2022. An exhibit to this order was an Order of Bankruptcy Judge David Duncan entered November 16, 2022 under Case Number 22-01884-dd (Chapter 7, liquidation) granting John Berry Heyward a discharge and closing the bankruptcy case. None of the orders served to dismiss the case with prejudice. The bankruptcy discharge is personal only and does not serve to satisfy or diminish Wintrust’s mortgage lien on the property.

The remaining challenges by the Defendants relate to events, confusing allegations of fraud and grievances occurring in the Heywards’ mortgage loan origination, closing and servicing, all

of which are barred by the prior foreclosure order and law of the case doctrine. The argument as to payment (listed as item A on the objection filed August 11, 2023) lacks merit. At the foreclosure sale, defendants made an oral bid for certain coins that did not comply with the notice of sale and was not the high bid. It was only the defendants who placed any value whatsoever on the coins. Accordingly, it was rejected and competitive bidding continued which resulted in the high bid from Wintrust.

Defendant Wanda Heyward made a reference to personal health and illness during the hearing. Notwithstanding the sometimes combative attitude exhibited by the defendants at the hearing, the Court wants to make sure that the Heywards have every opportunity to protect their residence status given the circumstances.

Accordingly, the defendants shall have until October 24, 2023, at 12:00 noon, before their removal by execution of this writ of assistance. This should allow ample time for defendants to explore their options and to vacate the property and remove their possessions.

The defendants were equivocal in their responses as to leaving the premises peaceably upon issuance of a writ. This is concerning to the court and warrants a warning that any willful violation of a court order can result in a finding of contempt of court and sanctions imposed.

NOW, THEREFORE, upon motion of Petitioner,

IT IS ORDERED that the Sheriff of Sumter County is authorized to enter upon said premises, by force if the same be necessary, do eject and remove from the premises the defendants or other occupant(s) of the property described above, together with all personal property located thereon, put the Petitioner in full, quiet, and peaceable possession of said premises on October 24, 2023, at 12:00 noon, and to keep said successful bidder or its assigns in such peaceable possession.

IT IS ORDERED that any personal property remaining abandoned after such removal by the Sheriff may be placed on the public street or highway or disposal.

AND IT IS SO ORDERED.

By:

Michael M. Jordan
Master in Equity, Sumter County

_____, 2023
Sumter, South Carolina