

September 3 , 2013

South Carolina Supreme Court

Re: SunTrust v. Mark Ostendorff

Dear Justices:

I am writing you requesting that the automatic stay in my appeal be restored.

Judge Kimball in the attached order has indicated that he has plans to go forward with the foreclosure trial of my house unless you tell him otherwise.

The order had no findings of fact or conclusions of law, nor circumstances to justify lifting the automatic stay which is required under state statute and appellate rules of court.

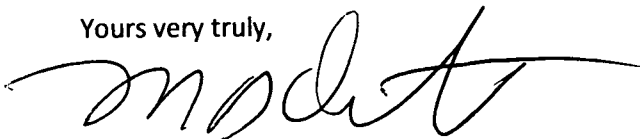
My motion to restore the stay is enclosed.

The attached email shows that I have made an attempt to modify my mortgage with SunTrust but they have made no effort to consider my offer .

Please order Judge Kimball not to continue with my case until all of my avenues of appeal are exhausted including , if necessary, to the U S Supreme Court to which I will appeal under Anderson v. Liberty Lobby and various constitutional issues.

Please note in my motion the affidavit I made to the Court of Appeals . It addressed the due date and erroneous facts from Judge Kimball's Order to Dismiss my compulsory counterclaim, which is on appeal with you. Judge Kimball was aware of my affidavit but lifted the automatic stay anyway.

Yours very truly,



Mark Ostendorff

Attachments: Order

RECEIVED

SEP 06 2013

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

COUNTY OF YORK

SunTrust Mortgage, Inc.,

Plaintiff,

vs.

Mark Ostendorff,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2007-CP-46-4305

ORDER TO LIFT STAY

This matter came before me on July 18, 2013, upon Plaintiff's motion to lift the stay of proceedings in this action, which was entered by order dated June 23, 2010. Plaintiff was represented by Brian S. Tatum, and the Defendant appeared *pro se*. Based on the record presented, I make the following findings and conclusions.

On December 18, 2009, I granted Plaintiff's motion for summary judgment with respect to Defendant's counterclaims. On January 17, 2009, Defendant filed a notice of appeal of the order granting summary judgment, and soon after, I stayed the foreclosure proceeding by order, pending the outcome of Defendant's appeal. On November 14, 2012, the Court of Appeals affirmed the decision granting Plaintiff's motion for summary judgment. On January 17, 2013, Defendant filed his Petition for Writ of Certiorari to the South Carolina Supreme Court (the "Petition"), which is still pending.

Plaintiff is not automatically precluded by statute or court rule from foreclosing its Mortgage during the pendency of Defendant's appeal. Defendant's appeal has resulted in a decision adverse to him, and has affirmed the grant of summary judgment in favor of Plaintiff, dismissing Defendant's counterclaims. While Defendant's petition for writ of certiorari to the Supreme Court could result in a reversal of the Court of Appeals, and consequent reinstatement of Defendant's counterclaims, I find and conclude that under the facts and circumstances of this case, Plaintiff should be permitted to proceed now with foreclosure of its mortgage, unless further stayed by action of the Supreme Court.

Thus, I find and conclude that the stay entered in the circuit court should be removed, and that Plaintiff be permitted to proceed with its mortgage foreclosure action in the normal course of such proceedings.

Leton
Amelton A
P. 1

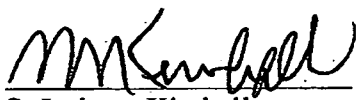
AM
5/1

Therefore, it is ordered as follows:

1. Plaintiff's Motion to Lift Stay in this action is hereby granted.
2. Plaintiff is hereby authorized to proceed with the foreclosure of its mortgage on the property described in the Mortgage recorded in Book 7985, at Page 302, in the office of the Clerk of Court for York County.
3. Plaintiff shall schedule a hearing on the foreclosure in this court at the earliest practicable date.

AND IT IS SO ORDERED.

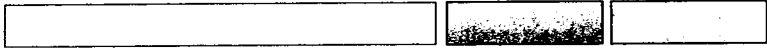
July 25, 2013


S. Jackson Kimball
Master-in-Equity for York County

2

Letter
Attachment A
Pg 2/2

Home Mail News Sports Finance Weather Games Groups Answers Flickr More



Mark

SENT CONTACTS CALENDAR Re: Motion "MOFREE..."

Compose Delete Move Actions

Inbox (999+)

Drafts (8)

Sent

Spam (8)

Trash


FOLDERS

MESSANGER

Me: Available

All contacts are currently offline.

APPLICATIONS



CONTINUOUSLY learn more

Re: Motion "MOFREE-Motion/Motion to Lift Stay" for Case "2007CP4604305- Sun Trust Mortgage Inc VS Mark Ostendorff" was added to a Motions Roster for 7/18/2013 at 11:00 AM

from Mark Ostendorff to 1 recipient Jul 25

Brian,

Let me do a little more research, the lifting of the automatic stay does not fit an exception to the general rule.

By the way, does SunTrust have a \$ value to which they would modify the note. I have an option to receive a reduced early retirement pension from North Carolina Retirement System starting in November this year. I was not aware of this option until just the other week, otherwise I would have approached you earlier. I take a considerable penalty by taking it early. I of course would move to dismiss my counterclaim. I do need to look at the federal income tax liability situation.

Thanks,
 Mark Ostendorff
 (864) 640-3340
markostendorff@yahoo.com

From: Brian Steed Tatum <bstatum@tatumlegal.com>
 To: "jack.kimball@yorkcountygov.com" <jack.kimball@yorkcountygov.com>
 Cc: Mark Ostendorff <markostendorff@yahoo.com>; Brian Steed Tatum <bstatum@tatumlegal.com>
 Sent: Tuesday, July 23, 2013 7:09 PM
 Subject: FW: Motion "MOFREE-Motion/Motion to Lift Stay" for Case "2007CP4604305- Sun Trust Mortgage Inc VS Mark Ostendorff" was added to a Motions Roster for 7/18/2013 at 11:00 AM

Your Honor,

Per your request, attached is a proposed order granting plaintiff's motion to lift stay. I am copying Mr. Ostendorff with this email so that he has an opportunity to respond.

Thanks,

Brian S. Tatum
 Tatum Law Firm, PLLC
 Direct: (704) 307-4197 | Fax: (704) 754-4140
 5970 Fairview Road, Suite 712 | Charlotte, NC 28210
 PO Box 11250 | Charlotte, NC 28220

—Original Message—

From: Lynn.strait@yorkcountygov.com [<mailto:Lynn.strait@yorkcountygov.com>]
 Sent: Friday, June 14, 2013 10:49 AM
 To: Brian Steed Tatum
 Subject: Motion "MOFREE-Motion/Motion to Lift Stay" for Case "2007CP4604305- Sun Trust Mortgage Inc VS Mark Ostendorff" was added to a Motions Roster for 7/18/2013 at 11:00 AM

You have a case that appears on the July 18, 2013 Motions Roster before Judge Kimball. These hearings will be held at Equity Court, 1 N. Congress Street, York SC 29745. You can view the roster at www.sccourts.org. Please contact me if your case is continued or settles. My email address is lynn.strait@yorkcountygov.com.

*Letter
 ATTACHED B
 Page 1/1*

AdChoices


On a Budget & Need Help?

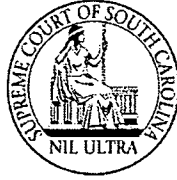
The Free Cell Phone & Minutes Program
 For Income Eligible

Receive your phone in 3 to 5 days!

SafeLink

Legal [Click Here](#)





The Supreme Court of South Carolina

Mark Ostendorff

09/06/2013

RECEIPT #69659

Case No: 2013-000144
Case Short Title: Sun Trust Mortgage v. Mark Ostendorff
Event:
Fee Type: Motion Fee
Amount: \$25.00
Payment Type: Check
Reference No: 1603
Check/Money Order Date: 09/03/2013
Comments: