

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Wachovia Bank, N.A., as successor in interest to First Union National Bank of South Carolina,

Plaintiff,

v.

Glenn M. Gallant, National City Bank as successor in interest to The Provident Bank, The United States of America,

Defendants.

IN THE COURT OF COMMON PLEAS
C/A No.: 2008-CP-38-1772

RECEIVED

OCT 17 2013

SC Court of Appeals

ORDER DENYING DEFENDANT'S MOTION
TO RECONSIDER

ATTEST: TRUE COPY

Wingja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

This is an action for foreclosure, which was concluded by sale at public auction to a third party as reflected in the Master's Deed of October 3, 2011. This matter is before the Court on Defendant Gallant's (hereinafter "Defendant") Motion to Reconsider. Shawn M. French, Esquire, made an appearance on behalf of Defendant; William P. Stork, Esquire, of the Weston Adams Law Firm, made an appearance on behalf of Plaintiff Wachovia Bank, N.A. Wachovia Bank, N.A., as successor in interest to First Union National Bank of South Carolina (hereinafter "Plaintiff"); Marc S. Asbill, of Brock and Scott, PLLC, made an appearance on behalf of Defendant National City Bank as successor in interest to The Provident Bank.

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FEDERAL COURTS
CLERK OF COURT
ORANGEBURG COUNTY, SC

For the reasons set forth below, and after careful consideration and review of the motions, memoranda, and argument of Counsel for the parties at the hearing, this Court finds that Defendant's Motion should be and hereby is **DENIED**.

FINDINGS OF FACT¹

1. The defendant was personally served with the summons and complaint at Butner Federal Corrections Institute in Butner, North Carolina.

¹ To the extent any of the Findings of Fact constitute Conclusions of Law herein this Order, they are adopted as such and, conversely, to the extent any Conclusions of Law constitute Findings of Fact, they are also adopted as such.

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2. The defendant did not file an answer.
3. Plaintiff sent all hearing notices to the property address, but failed to send the notices to the defendant at Butner Federal Corrections Institute.
4. No deficiency was requested by the senior or junior lienholder.
5. The property was sold to a third party for \$325,000.00.
6. Defendant filed a Motion to Vacate Judgment and Set Aside Sale which was denied.
7. Pursuant to this Court's prior order, an Affidavit of Debt was provided on July 22, 2013.

CONCLUSIONS OF LAW

1. Service of the summons and complaint upon the Defendant was proper under SCRPC 5(b)(1).
2. Defendant did not file an answer within the 30 day time frame provided in SCRPC 12(a). Because Defendant did not file an answer, he is in default and all of the allegations in the complaint are deemed to be admitted. Under SCRPC 53(b), the Master in Equity for Orangeburg County has appropriate jurisdiction due to the subject matter of this case involving foreclosure of real property in Orangeburg County.
3. Plaintiff's attorney should have sent all hearing notices to the defendant at Butner Federal Corrections Institute, but failed to do so. This is a serious error that Plaintiff's counsel should have caught and corrected.
4. Defendant argues that due to the improper notice of hearing, judgment should be voided pursuant to the holding in Roche v. Young Brothers, 318 S.C. 207, 456 S.E.2d 897 (1995). The holding in the *Roche* case states that a defendant is entitled to a hearing on damages if proper notice was not given, not that the judgment was voided.
5. An affidavit of debt was provided to the Court and to Defendant's counsel on July 22, 2013. In this Court's previously issued Order Denying Defendant's Motion to Vacate Judgment and Set Aside Default, the Defendant was given an avenue to challenge the provided debt figures by requesting a

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hearing within 30 days of receipt of the affidavit of debt. This satisfies the hearing requirement in *Roche*.

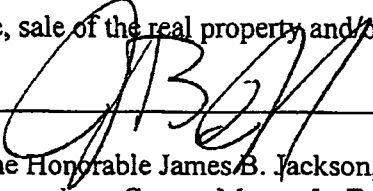
6. Defendant also argues that when a judgment is void there is no requirement under SCRCP 60(b)(4) to show evidence of a meritorious defense. Rule 60(b)(4) provides, "On motion and upon such terms as are just, the court may relieve a party or his legal representative from final judgment, order, or proceeding" if "the judgment is void[.]" Rule 60(b)(4), SCRCP. For the reasons set above the judgment was not rendered void, therefore the burden of showing a meritorious defense rests upon the Defendant. Defendant did not show a meritorious defense and is not entitled to relief.

7. Defendant further argues that the foreclosure sale to National City Bank should be set aside. National City Bank had no notice of the hearing notice issue, and therefore were a bona fide purchaser for value without notice at the foreclosure auction. Upon the execution and delivery of the Master's Deed, the sale "shall be deemed res judicata as to any and all bona fide purchasers for value without notice." S.C. Code Ann. § 15-39-870. National City Bank has fully complied with its bid and the Master's Deed has been executed and recorded, therefore the sale shall not be set aside.

CONCLUSION

For the reasons set forth above, it is hereby **ORDERED, ADJUDGED, AND DECREED** that Defendant's Motion to Reconsider should be and hereby is **DENIED**.

IT IS, FURTHER, ORDERED, ADJUDGED AND DECREED that the undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, issuance of a Writ of Assistance, supplemental proceedings, omitted lienholders, appeal or supersedeas bond, and other issues related to the foreclosure, sale of the real property and/or deficiency judgment.


The Honorable James B. Jackson, Jr.
Orangeburg County Master-In-Equity

Dated: September 4, 2013
Orangeburg, South Carolina

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Equity Court of Orangeburg County Orangeburg, South Carolina 29116

James B. Jackson, Jr.
Master-In-Equity and
Special Circuit Court Judge

Telephone: (803) 533-6286
Fax: (803) 533-5898

September 9, 2013

Shawn M. French
Attorney at Law
1476 Ben Sawyer Boulevard, Suite 3
Mt. Pleasant, South Carolina 29464

William P. Stork
Weston Adams Law Firm
Post Office Box 204
Columbia, South Carolina 29202

Marc S. Asbill
Drock and Scott, PLLC
5121 Parkway Plaza Boulevard.
Charlotte, North Carolina 28217

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SC Court of Appeals

Re: Wachovia Bank, N.A. as successors in interest to First Union National Bank of South Carolina vs. Glenn M. Gallant, National City Bank as successor in interest to The Provident Bank; The United States of America

Dear Gentlemen:

Enclosed please find a certified true copy of the Order signed by me in the above captioned case. This will be considered the Court's certification of Service of this Order on the above parties.

With kindest regards, I am

Sincerely,


James B. Jackson, Jr.
Master-in-Equity

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Wachovia Bank, N.A., as successor in interest to First Union National Bank of Glenn M. Gallant, National City Bank as successor in interest to The Provident Bank, The United States of America.

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