

COPY

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2013 OCT 10 A 9 39

Wells Fargo Bank, N.A.,

BETH A. CARRIG
CLERK OF COURT
LEXINGTON
Plaintiff,

C/A No.: 2012-CP-32-2742

vs

ORDER

Charles E. Huff, III and Deborah M. Huff,

Defendants.

This matter came before me upon the Defendants' Emergency Motion for Rule to Show Cause Why The Judgment Entered In This Case Should Not Be Vacated; For Temporary Restraining Order; and Temporary Orders If Necessary (hereinafter "Motion to Vacate Judgment") filed with the Court on September 15, 2013.

Two hearings were held on this matter: the first on September 24, 2013, and the second on October 7, 2013.

CASE HISTORY

A brief history of this file is necessary in order to better understand the procedural posture of this motion.

1. Initial Pleadings

This case is a foreclosure of a first mortgage on real estate which is the Defendants' primary residence. The Lis Pendens, Civil Action Coversheet, Certificate of Exemption from ADR, Summons, Complaint and Notice of Right to Foreclosure Intervention (hereinafter "initial

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pleadings") were filed July 2, 2012. The Defendants filed a *pro se* Answer on July 30, 2012.¹ A Reply to the Answer was filed by the Plaintiff on February 12, 2013. The Plaintiff's counsel filed its Certificate of Compliance with the 2011 Supreme Court Administrative Order regarding foreclosures on March 4, 2013.

2. Reference to Judgment

The matter was referred to the Lexington County Master in Equity on March 21, 2013. A hearing was scheduled for May 14, 2013, and appropriate notice given to the Defendants. On May 13, 2013, the Defendants filed a Motion for Extension of Time to file an answer and retain counsel.² The foreclosure hearing proceeded on May 14, 2013 at which the Defendants did not appear. At that hearing, foreclosure judgment was granted and a sale was scheduled for July 1, 2013. The Judgment was filed on May 16, 2013, and served upon the Defendants on by US Mail on May 17, 2013.

3. Sale and Post Sale

On Friday, June 20, 2013, the Defendants filed an Emergency Motion to Cancel Sale Scheduled [sic] July 1, 2013 and Request [sic] Additional Time to Continue to Work With Lender (hereinafter "Motion to Cancel Sale"). In an exchange of emails by and among the Court, Plaintiff's Counsel and Defendants, Plaintiff's counsel affirmatively advised that the Defendants were not under Loss Mitigation review, and had not been under Loss Mitigation review since May 21, 2012, more than thirteen months earlier. The Court cancelled the sale scheduled for

¹ Plaintiff's counsel asserted to this Court that it was never served with the Defendants' Answer. The Plaintiff's Reply was filed when Plaintiff's counsel reviewed the Court's website in preparation of the proposed Order of Reference and obtained a copy at that time.

² Plaintiff's counsel asserted to this Court that it was never served with the Defendants' Motion for Extension of Time. The motion was discovered when Plaintiff's counsel reviewed the Court's website in preparation of the Memorandum in Opposition to Defendants' Motion to Vacate and obtained a copy at that time.

July 1, 2013, and rescheduled the same for September 2, 2013. At the September sale, a third party (Skipper Properties, LLC) was the successful bidder. As the third party bidder attempted to comply with its bid, the Defendants filed their Motion to Vacate Judgment, which is the subject of this Order.

In the within motion, the Defendants claim that they "did not have actual notice of the summons and complaint (and false affidavit of service) until late afternoon of Monday, September 16, 2013." The motion further argues that the Court never had personal jurisdiction over the Huffs because "the defendants Huffs were never served with the summons and complaint." The Huffs further claim that they "never saw the summons, complaint or affidavit of service in this case until the late afternoon of September 16, 2013, when they personally viewed the contents of the actual case file maintained at the Lexington County Courthouse." The Huffs then report that the Affidavit of Service filed in this case indicates that the initial pleadings were served upon their fifteen year-old son. They then argue that their son is not a person of suitable age and discretion for service of the initial pleadings.

At the initial hearing on September 24, 2013, Charles E. Huff, III, appeared. Deborah M. Huff did not appear. Present for the Plaintiff was Michael S. Medlock of Scott Law Firm, P.A. Also present was A. David Ruple, Esq., attorney for the third party bidder. At this hearing the Plaintiff filed its Memorandum in Opposition to Defendants' Motion. Included in that Memorandum was a request for an award of attorneys' fees and costs and/or sanctions for having to defend what they deemed was a frivolous motion and for the Defendants' misleading statements to the Court.

Mr. Huff made his arguments to the Court and Mr. Medlock responded to those arguments. At the conclusion of arguments, Mr. Huff again advised the Court that he was currently under Loss Mitigation Review with Wells Fargo, N.A. The Court then gave Mr. Huff until Friday, September 27, 2013, to provide written proof to the Court that he was, indeed, currently under Loss Mitigation Review. Based on the document supplied to the Court in response to its request, a second hearing was scheduled for October 4, 2013.

FINDINGS OF FACT

Based upon the pleadings filed in this case, together with arguments from the Defendant, Charles E. Huff, III, and counsel for the Plaintiff, together with sworn testimony of the Defendant, Charles E. Huff, III, and the affidavit of Blanca Cardenas of Wells Fargo, N.A., all of which were carefully considered by me, I make the following findings of fact:

1. As to the Huffs' allegations that service upon their fifteen year-old son, I find that such service made at the Defendants' usual place of above was good and effective pursuant to Rule 4(d)(1), SCRCF (service of process on a defendant's 15 year old son at her usual place of abode was proper where the affidavit of service established that the defendant's son was a person of suitable age and discretion and that the defendant resides at the place where the pleadings were left. MCC Financial Services, Inc. v. Duffel, 265 S.C. 519, 220 S.E.2d 127 (1975)).

2. Further, the Huffs filed an Answer within two weeks of being served. This Answer responded to the allegations of the Complaint line for line. Rule 4(d), SCRCF, specifically provides that, "[v]oluntary appearance by [a] defendant is equivalent to personal service[.]"

An appearance may be expressly made by a party, such that the court acquires jurisdiction over the party, by formal written or oral declaration, or record entry, or it may be implied from some act done with the intention of appearing and submitting to the court's jurisdiction. Stearns Bank Nat.

defense of the motion; ~~(3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained.~~ Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998); Baron Data Systems v. Loter, 297 S.C. 382, 377 S.E.2d 296 (S.C. 1989).

As to the Scott Law Firm, P.A. and its professional standing, it is noted that counsel for the Plaintiff is regionally and nationally recognized for its professional expertise in mortgage default credit matters as evidenced by its listing in BEST LAWYERS IN AMERICATM. This Court has specifically reviewed and satisfied itself with all six (6) factors as well as the disclosed client billing by Plaintiff's counsel considered in awarding reasonable attorneys' fees in this matter. Further, I find that costs, in the amount of \$1,332.50 should be assessed.

I further find The Ruple Firm, P.A. was engaged by the Bidder to respond to the Emergency Motion of Defendants. In the pending Motion before the court, counsel for Bidder has engaged in legal research as well as prepared for and argued the Motion before the Court. ~~I find that the third party bidder is entitled to an award of attorneys' fees in the amount of \$525.00.~~

However, I further find that these fees and costs were incurred as a direct result of Pam Lauer of K & P Financial Consultants, LLC of Ormond Beach, Florida, engaging in the unauthorized practice of law. Under oath, Mr. Huff advised the Court that Ms. Lauer has provided him with all of the pleadings he has filed in this case. ^{Plaintiff states that} Ms. Lauer is not an attorney licensed to practice law in South Carolina.³ Mr. Huff further indicated under oath that "John Hall" or "Jack Hall" of Texas is an attorney assisting Ms. Lauer.⁴ Therefore, I find that this award of attorneys' fees and costs should be assessed against Pam Lauer and K & P Financial Consultants, LLC. I find that by the preparation of the pleadings for filing by the Defendants, Pam Lauer and K & P Financial Consultants, LLC has sufficiently appeared, and this Court has

³ The Court further notes that a review of the South Carolina Department of Consumer Affairs' website does not indicate that Pam Lauer and K & P Financial Consultants, LLC, are licensed in South Carolina as credit counselors.

⁴ Plaintiff shall furnish affidavit regarding Jack Hall or John Hall stating as attorney entitled to practice law in S.C.

jurisdiction to make these awards against them. See Stearns Bank Nat. Ass'n v. Glenwood Falls, LP, 373 S.C. 331, 644 S.E.2d 793 (S.C.App. 2007).

CONCLUSIONS OF LAW

Based upon these findings of fact, I make the following conclusions of law:

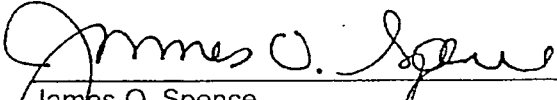
A. Service upon the Defendants of the initial pleadings was effective, and the Defendants' Motion to Vacate Judgment for that reason is DENIED;

B. The Defendants have made multiple appearances in the case, and the Defendants' Motion to Vacate Judgment for that reason is DENIED;

C. The Defendants are not under Loss Mitigation Review, and the Defendants' Motion to Vacate Judgment for that reason is DENIED;

~~D. The Plaintiff, Wells Fargo, N.A., is awarded attorneys' fees in the amount of \$1,600.00 and costs in the amount of \$1,332.50. The third party bidder, Skipper Properties, LLC, is awarded its attorney's fees in the amount of \$525.00. These fees and costs shall be an award against Pam Lauer and K & P Financial Consultants, LLC.~~

AND IT IS SO ORDERED.


James O. Spence
Master in Equity for Lexington County

Oct. 10, 2013.
Lexington, South Carolina.

Christine Tatum
Court Reporter
(706) 207-5482

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