

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON) FOR THE FOURTEENTH JUDICIAL
) CIRCUIT

Melissa Jean Marks,

Plaintiff,

vs.

Old South Mortgage Corporation,
John Does 1-100, Nationstar
Mortgage, LLC

Defendant.

CIVIL CASE NO.: 2012-CP-15-262

**ORDER DENYING PLAINTIFF'S
MOTION TO DISMISS DEFENDANT
AS INTERVENING PARTY**

2013 OCT -9 PM 1:19
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

This matter came before the Court on Plaintiff Melissa Jean Marks' ("Plaintiff") Motion to Dismiss Defendant Nationstar Mortgage, LLC ("Nationstar") with prejudice, for misjoinder pursuant to Rule 21 of the South Carolina Rules of Procedure. The Court finds the relief sought by Plaintiff is barred because it has already been raised and ruled on in this action, and therefore the Plaintiff's Motion to Dismiss is respectfully DENIED.

FACTUAL AND PROCEDURAL BACKGROUND

On or about April 6, 2012, Plaintiff filed this state court action naming only Old South Mortgage Corporation and John Does 1-100 and Fictitious Corporations 1-100. Nationstar was not named as a party. After learning about the state court action, on or about May 9, 2012, Nationstar filed a motion to modify the bankruptcy stay in order to intervene in the state court action. On or about May 14, 2012, after notice that Nationstar was seeking to intervene, but prior to the hearing in the bankruptcy court on Nationstar's motion to modify the bankruptcy stay and intervene, Plaintiff filed a Motion for Summary Judgment in the state court action.

The Bankruptcy Court issued an Order Modifying Stay, which stated:

It is not disputed by either the Debtor [Plaintiff] or the Movant [Nationstar] that Debtor is current on her post-petition payments to movant, and in fact, Debtor was current on the loan payments when the bankruptcy was filed. However, Movant would be prejudiced if Debtor were granted the relief she is seeking in the State Court Action unless Movant is allowed to intervene and assert its rights to the mortgage and underlying obligation in such action.

Order Modifying Stay at 2, In Re Marks, No. 11-02619-jw (Bankr. D.S.C. May 25, 2012), Doc. No. 24.

Following the Order issued by the Bankruptcy Court, Nationstar sought to intervene in the state court action. After a hearing, Nationstar's Motion to Intervene was granted. The Order granting Nationstar's Motion to Intervene found as follows:

I find that Nationstar may intervene as a matter of right because both prongs of Rule 24(a) are satisfied. Section 15-53-80 grants Nationstar an unconditional right to intervene because Plaintiff seeks declaratory judgment that could affect Nationstar's claim under the Note and Mortgage, which satisfies Rule 23(a)(1). Nationstar claims an interest in the action that is not being protected by any other named party as contemplated in Rule 23(a)(2), because Old South is a dissolved corporation and is not claiming any interest in the Note and Mortgage, and none of the other defendants have been served.

Despite Plaintiff's argument that allowing Nationstar to intervene would cause delay and expense as Old South consents to the relief Nationstar is seeking, and because John Does 1-100 and Fictitious Corporations 1-100 were not served with process, I find that no named party will be prejudiced by Nationstar's intervention in this case.

(Order Granting Nationstar Mortgage, LLC's Mot. To Intervene, Den. Mot. To Substitute Parties, & Granting Pl.'s Mot. To Continue Hr'g on Mot. for Summ. J. 2-3, Aug. 2, 2012).

Thereafter, Plaintiff filed a Motion to Compel Discovery and then filed a motion to Amend Complaint to add Fannie Mae as a defendant. Plaintiff's Motion to Amend was denied, after a hearing, because the court determined it would be futile to add Fannie Mae as a party for the following reasons: (1) Plaintiff lacked standing as a result of her Chapter 13 Bankruptcy filing; and (2) Nationstar is the proper party to enforce the note and mortgage, because it is the holder of the original note, endorsed in blank. (Order Den. Pl.'s Mot. for Leave to Amend

Compl. & Granting Pl.'s Mot. to Withdraw Mot. for Summ. J. 3-5, Feb. 27, 2013). Plaintiff then filed a Motion to Reconsider, which was denied. (Order Den. Pl.'s Mot. for Recons. of Leave to Amend Compl. and of Order Den. Pl.'s Mot. to Compel Answers to Interrogs. & Reqs. for Produc., Apr. 12, 2013).

DISCUSSION

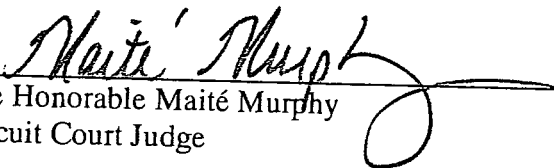
After hearing arguments of both parties and a careful review of the record, the Court finds that Plaintiff's Motion to Dismiss Nationstar should be denied because Nationstar properly intervened in this action and is a necessary party pursuant to Rules 19(1) and 20(a) of the South Carolina Rules of Civil Procedure. The orders of this Court and the Bankruptcy Court finding that Plaintiff has standing to defend this action represent the law of the case and should not be disturbed. Because Nationstar is the holder of the note and entitled to enforce the obligations thereunder, Nationstar has both standing to defend this action and has a right to remain in this action and defend its positions as it is "so situated that the disposition of the subject of the action in [its] absence may . . . as a practical matter impede [its] ability to protect that interest." Rule 19(a), SCRCP. Misjoinder is an appropriate remedy based upon the law of this case; Nationstar is a proper party to this action and should not be dismissed.

ORDER

Accordingly, and based upon the foregoing, it is

ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Dismiss Defendant in the above-captioned case is denied.

AND IT IS SO ORDERED.


The Honorable Maité Murphy
Circuit Court Judge

September 18, 2013