

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-10-6219

Wachovia Mortgage, FSB successor in
Interest to Wachovia Mortgage
Corporation,)
)
)
)

Plaintiff,)

vs.)

Carla C. Singletary, John G. Singletary,
Jr. and Wachovia Bank, National
Association,)
)
)
)

Defendants.)

FILED
2013 DEC -5 AM 11:17
JULIE A. ARISTRONG
CLERK OF COURT
BY _____

**ORDER TO LIFT STAY AND
REINSTATE FORECLOSURE**

THIS MATTER CAME BEFORE THE COURT upon Plaintiff's motion to lift the stay entered by this Court on March 3, 2011, and to reinstate the foreclosure action. Present before the Court were Howell Morrison, Esq., Stafford McQuillin, Esq. and Robert Davis, Esq. for the Plaintiff. The Defendant, John Singletary, appeared *pro se*.

At the hearing Defendant Singletary argued this Court lacks jurisdiction to hear the motion as the case is pending in federal court. After discussion, this Court requested additional information in order to ascertain the jurisdictional status of this case. Plaintiff has provided the Court with a supplement to its motion with accompanying exhibits. In addition, Defendant Singletary has provided the Court with additional information. The Court has now reviewed all of this information and makes the following findings of fact and conclusions of law.

It is apparent that the 2009 state court action was never removed to federal court by the Defendant. Defendant argues that removal was accomplished pursuant to 28 U.S.C. §1441. The procedure for removal is set forth in 28 U.S.C. §1446. Section (a) requires the Defendant to file in the district court its notice of removal and the grounds therefore. A review of the documents filed in the U.S. District Court docket entry list shows no notice of removal.

Instead, Defendant Singletary commenced his own civil action by the filing of a summons and complaint. This new case was given federal case number 2:11-CV-000484-001. This matter has been pending in the federal court since March 1, 2011. The most recent order entered in that case, on December 3, 2013, dismissed Defendant's request for a petition for rehearing *en banc* before the U.S. Fourth Circuit Court of Appeals. The federal action raised civil rights, state court, and federal statutory causes of actions against the Plaintiff Wells Fargo. It appears that the pursuit of these claims in the federal system has now been exhausted.

→ Furthermore, 28 U.S.C. §1446 (b) provides that removal of a civil action shall be filed within 30 days after receipt of the initial pleading in this matter. Clearly, this was not done as the notice of removal came only after the decree of foreclosure was entered on December 29, 2010. In fact, the notice of removal filed with the Clerk of Court of Common Pleas was entered on the day after the foreclosure sale date scheduled for March 1, 2011. No notice of removal was ever filed with the U.S. District Court.

Nowhere in the federal action does the Court address the merits of the state court foreclosure action. Therefore, this Court concludes that jurisdiction remains with the state court as it never left the state court. Defendants' attempts to remove the case, pursuant to federal procedure, were not properly accomplished and therefore those efforts are a nullity. There is no need to remand this case to state court as this case never left the state court.

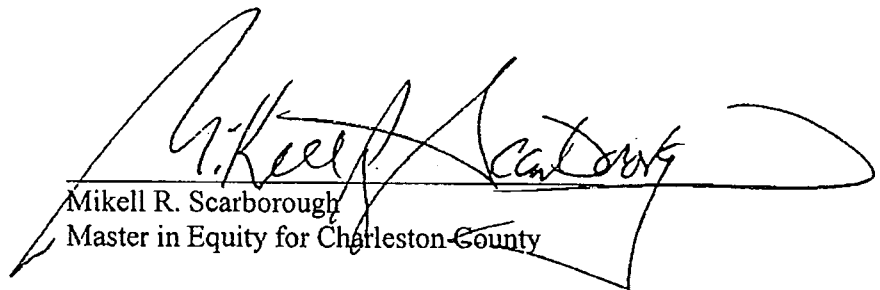
IT IS THEREFORE ORDERED that this Court has both subject matter and personal jurisdiction over the Defendants.

IT IS FURTHERED ORDERED that this Court's order of judgment and foreclosure remains in full force and effect.

IT IS FURTHERED ORDERED that this Court hereby lifts the stay previously entered in this action.

IT IS FURTHERED ORDERED that this property shall be reset for the foreclosure auction sale scheduled for February 4, 2014.

IT IS SO ORDERED!



Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, South Carolina

Date: December 5, 2013

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



www3.charlestoncounty.org



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JOHN G SINGLETARY JR
4321 WATERVIEW CIR
NORTH CHARLESTON SC 29418-5731

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Master Order-defnt's request for costs is denied &

CASE NO: 2013CP1002275

Wells Fargo Bank NA VS John G Singletary Jr

This judgment was entered on the 04th day of December, 2013, and a copy mailed first class on Thursday, December 05, 2013, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.