

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

U.S. Bank Trust NA as Trustee for Waterfall
Victoria Grantor Trust II, Series G
Plaintiff,

v.

Jamie Singleton and Indigo Pointe
Homeowners' Association,
Defendant(s).

FIRST JUDICIAL CIRCUIT
COURT OF COMMON PLEAS
IN THE EQUITY DIVISION

C/A No.: 2011-CP-18-00871

**ORDER GRANTING PLAINTIFF'S
MOTION TO AMEND IN PART AND
DENYING PLAINTIFF'S MOTION TO
AMEND IN PART THE ORDER DATED
12/12/2023**

RECEIVED

Jan 29 2024

SC Court of Appeals

Presiding Judge: James E. Chellis
Master in Equity, Dorchester County
Trial Conducted on

Monday, June 12, 2023

10:02 a.m. - 4:43 p.m.

Tuesday, June 13, 2023

10:08 a.m. - 4:41 p.m.

Wednesday, June 14, 2023

9:02 a.m. - 3:39 p.m.

APPEARANCES:

For the Plaintiff,

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And,

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On December 22, 2023, Plaintiff filed with this Court a Motion pursuant to SCRCP 59(e). On December 12, 2023, the Court issued an Order Denying Foreclosure and Granting Judgment on the Note ("12/12/23 Order"). Plaintiff request the Court to reconsider, alter, or amend certain findings of fact and conclusions of law, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, in this Order. The Motion is timely. The Motion raises certain errors made by this Court. This Order corrects those errors to extent addressed herein. If a specific issue raised by the Plaintiff's Motion is not addressed herein, the Court denies the Plaintiff's Motion as to those issues. If a specific issue addressed by the Motion is addressed in this Order, then the Motion is granted as to that limited purpose.

1. Paragraph 55, which states, "Neither party provided this Court with any specific documents pertaining to People's Choice Home Loans, Inc., bankruptcy proceedings[.]" is amended, as follows:

55. On July 12, 2023, Plaintiff's counsel forwarded to the Court, defendant's counsel and the Court Reporter, an email. Plaintiff attached to the email an Order referred to by Plaintiff's counsel during the trial at page 456:

3 MR. HAYES: I would also like, in the same
4 bankruptcy case, to take judicial notice of the
5 Order issued in the -- the case allowing
6 People's Choice to sell their assets -- to sell
7 or transfer of their assets.
8 THE COURT: I think you mentioned that yesterday.
9 MR. HAYES: Okay. I didn't know if I did or not,
10 Your Honor.
11 THE COURT: You know, to the extent it's in there,
12 I'm going to trust you. I have -- if you want
13 to submit the Order as part of the record, I'll
14 be glad to -- to have it made part of the
15 record since we've mentioned it.

The Order, dated April 19, 2007, is entitled, "ORDER RE DEBTORS' MOTION FOR ORDER (A) AUTHORIZING BULK SALE OF MORTGAGE LOANS OWNED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS; AND (B) AUTHORIZING DEBTORS TO SELL LOANS HELD BY OR FINANCED BY THIRD PARTY WAREHOUSE LENDERS UPON TERMS AND CONDITIONS TO BE NEGOTIATED AND FURTHER DISCLOSED." Paragraph 2 of this

Bankruptcy Order provides: “Debtors are authorized, but not required, to sell in one or more bulk sales in the ordinary course of business, mortgage loans owned by the debtors.” Further, paragraph 3 of the Bankruptcy Order provides, “the Debtors shall provide to the Committee and financial advisors a list of all loans being considered for sale under the terms of the order.” And further, paragraph 6 of the Bankruptcy Order orders, “The debtors shall provide an accounting to the Committee of all sales consummated.”

- A. Plaintiff fails to provide sufficient evidence that the Note was sold pursuant to this April 19, 2007 Bankruptcy Order.
- B. Plaintiff fails to produce sufficient evidence Note was within the provisions of the Bankruptcy Order that required the Debtor to “provide to the Committee and financial advisors a list of all loans being considered for sale under the terms of the order.”
- C. Plaintiff failed produce sufficient evidence that the Note was accounted for pursuant to the provisions of the order that “The debtors shall provide an accounting to the Committee of all sales consummated.”

2. Paragraph 332 of the Order, which states, “The Note does not provide for payment of attorney’s fees in the event the collection of the Note is placed in the hands of an attorney for collection. Hence, the Plaintiff has no right to the collection of attorneys’ fees on the Note[.]” is amended, as follows:

332. The Note specifically states: “If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys’ fees.” Hence, the Plaintiff shall have ten (10) days from the date of this Order to move before this Court for an award of its costs and expenses, including reasonable attorney’s fees as provided in the Note.

4. The Court strikes paragraph 297 of the Order.

5. The Court strikes Conclusion of Law XX. NOW THEREFORE, IT IS

ORDERED, ADJUDGED AND DECREED that Paragraph 55 of the 12/12/2024 Order is deleted, and, in its place, the following Finding of Fact is substituted:

55. On July 12, 2023, Plaintiff's counsel forwarded to the Court, defendant's counsel and the Court Reporter, an email. Plaintiff attached to the email an Order referred to by Plaintiff's counsel during the trial at page 456:

3 MR. HAYES: I would also like, in the same
 4 bankruptcy case, to take judicial notice of the
 5 Order issued in the -- the case allowing
 6 People's Choice to sell their assets -- to sell
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 8 THE COURT: I think you mentioned that yesterday.
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- A. Plaintiff fails to provide sufficient evidence that the Note was sold pursuant to this April 19, 2007 Bankruptcy Order.
- B. Plaintiff fails to produce sufficient evidence Note was within the provisions of the Bankruptcy Order that required the Debtor to "provide to the Committee and financial advisors a list of all loans being considered for sale under the terms of the order."

C. Plaintiff failed produce sufficient evidence that the Note was accounted for pursuant to the provisions of the order that "The debtors shall provide an accounting to the Committee of all sales consummated." AND, IT IS FURTHER,

ORDERED, ADJUDGED AND DECREED that Paragraph 332 in the 12/12/2023 Order is deleted, and in its place the following is substituted:

332. The Note specifically states: "If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees." Hence, the Plaintiff shall have ten (10) days from the date of this Order to move before this Court for an award of its costs and expenses, including reasonable attorney's fees as provided in the Note. AND, IT IS FURTHER,

ORDERED, ADJUDGED AND DECREED that Paragraph 297 of the 12/12/2023 Order is deleted. AND, IT IS FURTHER,

ORDERED, ADJUDGED AND DECREED that Conclusion of Law XX of the 12/12/2023 Order is deleted. AND, IT IS FURTHER,

ORDERED, ADJUDGED AND DECREED that all other issues not specifically addressed herein but raised by the Plaintiff in its December 22, 2023 Rule 59 (e) Motion to Alter or Amend are denied.

THUS, IT IS SO ORDERED!

Electronic signature of the Master-in-Equity follows on a separate page.



Dorchester Common Pleas

Case Caption: US Bank Trust N A , plaintiff, et al VS Jamie Singleton , defendant, et al
Case Number: 2011CP1800871
Type: Master/Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078