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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
BAYVIEW LOAN SERVICING, LLC,
PLAINTIFF,
-VS-
SCOTT A. SCHLEDWITZ, ROXANNE J. SCHLEDWITZ AKA ROXANNE JOHNSON SCHLEDWITZ, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., (MERS) AS NOMINEE FOR TAYLOR, BEAN & WHITAKER MORTGAGE CORP., THE UNITED STATES OF AMERICA, BY AND THROUGH ITS AGENCY, THE INTERNAL REVENUE SERVICE AND THE SOUTH CAROLINA DEPARTMENT OF REVENUE,
DEFENDANTS.

COURT OF COMMON PLEAS

TRANSCRIPT OF TESTIMONY

RECEIVED
DEC 27 2013
SC Court of Appeals

(2012CP42-0899)

REFERENCE HELD: NOVEMBER 19, 2013.

BEFORE: HONORABLE GORDON G. COOPER,
MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

RILEY, POPE & LANEY, LLC,
BY: JAYME SHY, ESQUIRE
Attorneys for the Plaintiff.

Sarah Hollis, Court Reporter

FILED
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CLERK
SPARTANBURG COUNTY

1 THE COURT: We go on the record in the case of Bayview Loan Servicing, LLC, versus Scott
2 A. Schledwitz, Roxanne J. Schledwitz aka Roxanne Johnson Schledwitz, Mortgage
3 Electronic Registration Systems, Inc., (MERS) as nominee for Taylor, Bean &
4 Whitaker Mortgage Corp., The United States of America, by and through its agency, the Internal
5 Revenue Service and The South Carolina Department of Revenue. This is case number 2012-
6 0899. The Lis Pendens and Order of Reference have been filed with the Clerk. The appropriate
7 Affidavits have been filed with the Clerk. And the case has been properly referred. The
8 Plaintiff is represented by Ms. Shy. The latest document that I have got from the Defendant
9 who is pro se is a request for a continuance.

10 MS. SHY: Yes sir. And we are asking that you deny that. In reviewing the request for a
11 continuance it looks like it is mostly based upon a bankruptcy case. And I have a whole stack of
12 bankruptcy orders that we can go through and I think he also alleges that there has been no proper
13 assignment from Taylor, Bean & Whitaker to Bayview.

14 THE COURT: I think that I saw a copy of the recorded assignment attached to an Affidavit in
15 the file.

16 MS. SHY: Yes sir, there is. And the Schledwitzs are not in bankruptcy. They were dismissed
17 in 2011 for failure to make payments and I have printed out these bankruptcy orders. The
18 bankruptcy that is still active in Florida that is not where the Schledwitzs filed bankruptcy, that is
19 where Taylor, Bean & Whitaker has filed bankruptcy.

20 THE COURT: Right.

21 MS. SHY: And in that case the Schledwitz's attorney they filed a response and objection to the
22 Motion for Relief. And in that motion they state that the loan has been service released to
23 Bayview Loan Servicing. So they have admitted in the bankruptcy case that the mortgage had
24 been service transferred to Bayview by assignment.

25 THE COURT: Okay.

1 MS. SHY: And these I have in order and I have some notes that I can walk through some of
2 these with you..

3 THE COURT: All right The first thing then is the Order dismissing the bankruptcy case.

4 MS. SHY: Yes sir. And I can kind of go through if you will indulge me with these notes.

5 THE COURT: Yes, I would like for you to.,

6 MS. SHY: Okay. The Schledwitzs filed a Bankruptcy and an Adversary in South Carolina, I
7 believe in 2009. The Adversary was 2009- AP80164 and this was dismissed because Taylor,
8 Bean & Whitaker had a pending Chapter 11 bankruptcy down in Florida already and a copy of
9 that order is in the stack of papers that I handed up. The Bankruptcy which is 09BK00666 was
10 dismissed on May 26, 2011 for failure to make timely payments. A copy of that Order is also
11 handed up. The Florida bankruptcy is as we discussed but it actually Taylor, Bean and
12 Whitaker's Chapter 11, and the file number for that is 09BK07047. In that bankruptcy, Taylor
13 Bean & Whitaker dated August 31, 2009, there is an order transferring six portfolios to U. S.
14 Bank and two portfolios of Taylor, Bean & Whitaker to Bayview. And this includes thousands
15 of loans. A copy of the emergency joint motion and the Order of attached documents 44 and 76.

16 **MS. SHY INTRODUCES INTO EVIDENCE A COPY OF THE ORDER DISMISSING**
17 **CASE, U. S. BANKRUPTCY COURT, CASE NUMBER 07-00666-HB, WITH ORDER,**
18 **ORDER DISMISSING ADVERSARY WITHOUT PREJUDICE, AND THREE PAGES**
19 **CASE LOCATOR SHEETS ATTACHED, MARKED AS PLAINTIFF'S EXHIBIT**
20 **NUMBER 1.**

21 THE COURT; All right.

22 MS. SHY: The Schledwitzs filed a Motion for Relief from the Stay on January 27, 2010, which
23 was abated because they didn't pay the filing fee or serve the Motion properly. There is an
24 Order abating the Motion and that is Document 956. They refiled this Motion on February 2,
25 2010, that is Motion, Document 1002, Taylor, Bean & Whitaker Response and Objection to the

2013 NOV 20 AM 10:33
CLERK OF COURT
SARASOTA COUNTY
FLORIDA

1 Motion was filed on February 18, 2010 and that is document 1044. And we discussed the
2 Schledwitzs state that the loan had been service released to Bayview.

3 **MS. SHY INTRODUCES A COPY OF THE DEBTOR'S RESPONSE AND OBJECTION**
4 **TO MOTION FOR RELIEF FROM AUTOMATIC STAY FILED BY SCOTT ALLAN**
5 **SCHLEDWITZ AND ROXANE JOHNSON SCHLEDWITZ, MARKED AS**
6 **PLAINTIFF'S EXHIBIT NUMBER 2.**

7 **MS. SHY INTRODUCES A COPY OF THE OBJECTION TO RELIEF REQUESTED IN**
8 **DEBTORS' OMNIBUS OBJECTION, MARKED AS PLAINTIFF'S EXHIBIT NUMBER**
9 **3.**

10 THE COURT: All right.

11 MS. SHY: There is an Order denying their Motion for Relief from Stay and that is document
12 1125. They filed a proof of claim which Taylor, Bean & Whitaker then objected to. There is
13 an objection to the relief requested in Debtor's Omnibus Objection and that was filed and then
14 there was an Amended Order setting an Evidentiary Hearing and pre-trial scheduled after
15 September 11 and then there was a Notice of Hearing on the trial. However, at this point in the
16 Bankruptcy case our loan is out of it due to the order transferring the two portfolios to Bayview.
17 Our loan is included in that two Portfolios. So there is no longer even, Taylor, Bean & Whitaker
18 are involved in Taylor, Bean & Whitaker's Chapter 11. The Schledwitzs are still trying to file
19 stuff in Taylor, Bean & Whitaker's case but it has nothing to do with the loan, the subject loan.

20 **MS. SHY INTRODUCES A COPY OF THE ORDER DENYING MOTION FOR RELIEF**
21 **FROM STAY, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 4.**

22 **MS. SHY INTRODUCES A COPY OF THE MOTION FOR RELIEF OF AUTOMATIC**
23 **STAY, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 5.**

24 **MS. SHY INTRODUCES A COPY OF THE ORDER ABATING MOTION FOR RELIEF**
25 **FROM STAY, DATED JANUARY 28, 2010, MARKED AS PLAINTIFF'S EXHIBIT**

1 NUMBER 6.

2 MS. SHY INTRODUCES A COPY OF THE EMERGENCY JOINT MOTION OF U.S.

3 BANK NATIONAL ASSOCIATION, MARKED AS PLAINTIFF'S EXHIBIT NUMBER

4 7.

5 MS. SHY INTRODUCES A COPY OF THE AGREED ORDER APPROVING

6 PROCEDURE FOR TRANSFER OF RESIDENTIAL CONSUMER LOAN MORTGAGE

7 PORTFOLIOS, MARKED AS PLAINTIFF'S EXHIBIT NUMBER 8.

8 THE COURT: All right. So there is no question that this loan was transferred out pursuant to

9 the Bankruptcy Order?

10 MS. SHY: Yes sir, and the assignment of mortgage that Bayview now owns it and Bayview is

11 not in bankruptcy.

12 THE COURT: Okay. But this order was entered back in 2009.

13 MS. SHY: Which one, Your Honor.

14 THE COURT: This agreed Order from the Bankruptcy, the Transfer of Residential Consumer

15 Loan Mortgage Portfolios.

16 MS. SHY: Yes sir. The August 31, 2009, Order.

17 THE COURT: Right.

18 MS. SHY: Yes sir.

19 THE COURT; Okay. So there is no question Number 1, even though Taylor, Be is in

20 bankruptcy in Florida this particular loan was carved out, transferred out of the bankruptcy

21 pursuant to this Order and assigned to Bayview?

22 MS. SHY: Yes sir.

23 THE COURT: Okay. And that is basically what his whole ---

24 MS. SHY: Whole request for continuance was based on.

25 THE COURT: And I noticed in there somewhere he said that he was going to a hearing in

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
TAYLOR, BE

1 Jacksonville?

2 MS. SHY: Yes sir. And they are still filing stuff in the Chapter 11 Bankruptcy and the last
3 Order that we found was something about a hearing was filed back on October 31, 2011. And
4 going to hearing on the bankruptcy trial as of – we have on the docket of record of the
5 bankruptcy we could find no record of a trial. At one point it was set for March 8, 2012 but that
6 didn't occur and on the record there is no further scheduling of a trial. And I think that trial is
7 based upon they filed a proof of claim back in 2010.

8 THE COURT: All right. Then I am satisfied based on the documents that counsel for the
9 Plaintiff has handed up relating to the bankruptcy matters that the Defendants has set out in the
10 Request for a Continuance and other pleadings that the mortgage which serves as the basis for
11 this foreclosure was appropriately carved out of the bankruptcy of Taylor, Bean & Whitaker and
12 assigned to the Plaintiff herein. And the assignment is attached to the ---

13 MS. SHY: It is also attached to the Motion for Summary Judgment, Your Honor.

14 THE COURT: Okay. Maybe that is where I was.

15 MS. SHY: Yes sir.

16 THE COURT: I know that I read it.

17 MS. SHY: I can hand up a copy.

18 THE COURT; That is fine.

19 MS. SHY: The assignment of mortgage was recorded on March 26, 2012.

20 THE COURT: There it is. The Affidavit of Gary Locke. That is the one that I was looking
21 for.

22 MS. SHY: Yes sir.

23 THE COURT; All right. Then based on those findings and the Motion for the Continuance or
24 at least the basis for the Motion for a Continuance, I find there is no basis because the assignment
25 and the carve out is appropriate. If you are ready to proceed with the hearing?

CLERK
SPARTANBURG
2013 NOV 20 AM 10:32
CLERK - SPARTANBURG

1 MS. SHY: Yes sir.

2 THE COURT: And this is not owner occupied, is that correct?

3 MS. SHY: That is correct, Your Honor. The Schledwitzs live in Florida and we have filed a
4 Certification of Exemption. The property is vacant. We did begin this foreclosure case with a
5 Summons and Complaint which the Schledwitzs did timely file and serve an Answer.
6 Thereafter, the IRS also asserted an interest concerning the tax lien priority. We referred this
7 case on October 14, 2013. Along with that we have a Non-Military Affidavit, Order of
8 Reference and Notice of Default. We did file Summary Judgment on July 17, 2013. No
9 counter Affidavit has been filed. Attached to our Motion we have an Affidavit of the Business
10 Record Custodian of my Client setting forth the terms of the note and mortgage previously says
11 that the mortgage has been assigned. We did send out a Notice of Breach Letter that the terms
12 Have been complied with and sets forth that the debtors are in default on the loan and haven't
13 made a payment since December 1, 2008. And it sets forth the debt figures and I can go through
14 those one by one if you would like.

15 THE COURT: You don't have an Order with you?

16 MS. SHY: No sir. I didn't prepare the Order.

17 THE COURT: All right. That is fine.

18 MS. SHY: And then with the IRS lien we have a purchase money mortgage. We have talked to
19 the Assistant U. S. Attorney and given him a copy of the HUD and the loan closing. And he has
20 agreed that we do have priority based upon the case law in South Carolina his lien is junior to
21 ours, Your Honor.

22 THE COURT: But he still is asserting the 120 day right of redemption, correct, at the sale?

23 MS. SHY: Yes sir.

24 THE COURT; Okay. Will you go over the debt figures then for the record?

25 MS. SHY: Yes sir. The principal amount due as of the day of default, December 1, 2008, is

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2013 NOV 20 AM 10:32