

JUN 25 2014

ORIGINAL

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Wells Fargo Bank, N.A.,)
)
 Plaintiff,)
 vs.)
)
 Ronald R. Watkins and Ashland)
 Plantation Property Owners)
 Association, Inc.,)
 Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-10-6945

FILED
 2014 MAY 28 PM 3:25
 JULIE J. ARMSTRONG
 CLERK OF COURT

ORDER

Granting Summary Judgment
[Signature]

This matter came before the Court on April 21, 2014, for a hearing on Plaintiff's Motion for Summary Judgment. In support of the Motion, Plaintiff filed the Affidavit of Michael Dolan. Defendant Ronald R. Watkins filed an affidavit in opposition to the Motion. Having reviewed the motion, the affidavits, and other materials in the record, and having heard the arguments of counsel, I find and conclude as follows:

FINDINGS OF FACT

For the purpose of the pending Motion for Summary Judgment, the following facts are undisputed:

1. This is a mortgage foreclosure action arising out of two mortgage loans made to Defendant Ronald R. Watkins ("Watkins").
2. On June 15, 2007, Watkins executed a promissory note to World Savings Bank, FSB in the amount of \$398,000.00. Simultaneous with the execution of the note, Watkins granted World Savings Bank, FSB a first mortgage on property located at 2363 Rice Pond Road in Charleston County, South Carolina.

[Handwritten Signature]

3. Also on June 15, 2007, Watkins executed a promissory note to World Savings Bank, FSB in the amount of \$49,200.00. Simultaneous with the execution of the note, Watkins granted World Savings Bank, FSB a second mortgage on property located at 2363 Rice Pond Road in Charleston County, South Carolina.

4. The closing of the mortgage loans took place at a Wachovia Bank branch in Charleston, South Carolina. In connection with the transactions, a title company hired by the lender handled the issuance of the title insurance commitment, the title insurance policy, the recording of documents, and the disbursement of funds.

5. Watkins does not dispute that he signed the promissory notes and mortgages that are the subject of this action and admits that he received the loan proceeds from the transactions.

6. Plaintiff Wells Fargo Bank, N.A. is the successor by merger to World Savings, Bank, FSB.

7. Watkins does not dispute that he failed to make payments when due on both loans.

8. As a result of Watkins' failure to make payments when due on the loans, Plaintiff filed this action to foreclose the mortgages.

9. In response to the foreclosure complaint, Watkins filed an Answer and Counterclaim. Watkins' counterclaims were previously dismissed, but he has also asserted affirmative defenses related to the closing of the loans.

10. The primary affirmative defense asserted by Watkins is unclean hands. Specifically, Watkins' contends that the loan closings were "witness only" closings because a title company hired by the lender handled the issuance of the title insurance

commitment, the title insurance policy, the recording of documents, and the disbursement of funds.

11. Watkins asserts that because the issuance of the title insurance commitment, the title insurance policy, the recording of documents, and the disbursement of funds were not handled by an attorney licensed to practice in South Carolina, the promissory notes and mortgages that are the subject of this action are not enforceable.

CONCLUSIONS OF LAW

1. "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002), citing Rule 56(c), SCRPC.

2. Watkins' unclean hands defense is based on the holding of the South Carolina Court of Appeals in *Wachovia Bank v. Coffey*, 389 S.C. 68, 698 S.E.2d 244 (Ct. App. 2010). In that case, a mortgage lender was denied equitable relief because the underlying mortgage loan transaction was not supervised by a South Carolina attorney. In denying the equitable relief, the Court of Appeals stated that a lender who comes to court with unclean hands "is barred from seeking equitable relief." 698 S.E.2d at 248.

3. Since the *Coffey* decision in 2010, the South Carolina Supreme Court has issued two opinions in which it held that if a mortgage loan is closed without an attorney being present, the loan documents are enforceable, except with respect to any documents

recorded after August 8, 2011. *See, BAC Home Loan Servicing v. Kinder*, 398 S.C. 619, 731 S.E.2d 547 (2012); *Matrix Financial Services Corp. v. Frazer*, 394 S.C. 134, 714 S.E.2d 532 (2011).

4. In *Matrix Financial Services Corp.*, the lender hired a title company to perform the title search, prepare the documents, and close the loan – all without the supervision of an attorney licensed in South Carolina. The Supreme Court held that this constituted the unauthorized practice of law and held that “a lender may not enjoy the benefit of equitable remedies when that lender failed to have attorney supervision during the loan process as required by law.” However, the Court went on to state that this ruling applies only to “filing dates after the issuance of this opinion.” 714 S.E.2d at 535.

5. Thereafter, in *BAC Home Loan Servicing v. Kinder*, the Supreme Court reiterated that the holding in *Matrix Financial* is prospective only and that mortgages recorded prior to August 8, 2011 are enforceable, regardless of whether the closing was supervised by an attorney. 731 S.E.2d at 550.

6. Subsequent to its opinions in *Matrix Financial* and *BAC Home Loan Servicing*, the South Carolina Supreme Court reviewed the Court of Appeals’ decision in *Wachovia Bank v. Coffey*. The Supreme Court affirmed the result in the decision of the Court of Appeals on the grounds that an invalid mortgage is not enforceable, but did not reach the issue of the unclean hands defense. *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421, 746 S.E.2d 35 (2013).

7. The two mortgages that are the subject of this action were recorded on July 24, 2007. Therefore, based on the holdings in *Matrix Financial* and *BAC Home Loan*



Servicing, both of these mortgages are enforceable regardless of whether the closings were supervised by an attorney.

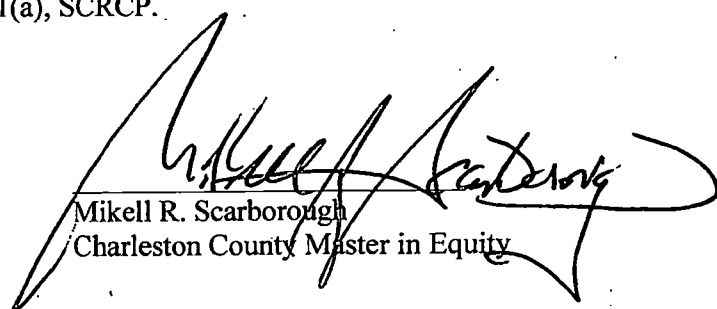
8. Based on the undisputed facts and the applicable case law cited above, I find and conclude that Watkins' unclean hands defense does not preclude the foreclosure of the mortgages that are the subject of this action.

9. Further, it is undisputed that Watkins failed to make payments when due on the loans. Therefore, I find that both loans are in default.

Therefore, based on the foregoing, I find that there is no genuine issue as to any material fact in the case, and Plaintiff's Motion for Summary Judgment should be GRANTED. Accordingly,

IT IS ORDERED that the mortgage loans that are the subject of this action are in default, and Plaintiff is entitled to foreclosure its mortgages; provided, however, that Plaintiff shall be required to establish the total debt due on the mortgage loans at a foreclosure hearing in accordance with Rule 71(a), SCRPC.

AND IT IS SO ORDERED.



Mikell R. Scarborough
Charleston County Master in Equity

Charleston, South Carolina

5/22, 2014