

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2014-CP-40-2063

U.S. Bank, National Association, as trustee for
the Holders of the Banc of America Funding
Corporation, 2008-FTI Trust, Mortgage pass
Through Certificates, Series 2008-FTI,

Plaintiff,

v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner; Bank of America, N.A.; and SCBT

Defendants

Motion to Alter and Amend Pursuant to
SCRCP Rule 59-e and Motion for Relief of
Judgment pursuant to SCRCP Rule 60(b)

RICHLAND COUNTY
FILED
2014 JUN 30 PM 4:35
JEANNETTE W. MCNEIL
C.C.P. & G.S.

TO: TERESA D. VAN VLAKE ESQ., MAGALIE ARCURE ATTORNEYS FOR U.S. BANK TRUSTEE (CAPTIONED ABOVE); JAKE S. BARKER AND JACKIE BROWN OF GRAYBILL, LANSCH AND VINZANI, LLC ATTORNEYS FOR DEFENDANT BANK OF AMERICA, N.A. EDWARD GRIMSLEY OF GRIMSLEY LAW FIRM FOR SCBT.

Defendant, Rhonda Meisner, respectfully submits this motion to alter and amend the Judgment of the Honorable DeAndrea G. Benjamin in the above mentioned case from the Motion to Dismiss hearing of June 10, 2014.

(1) The Court did not rule on the oral motion made by the Plaintiff that the Court did not have subject matter or personal jurisdiction pursuant to the defects in the assignments from co-Defendant Bank of America, NA to the purported Plaintiff as named above.

(2) The Plaintiff respectfully requests a review of the decision that pursuant to SCRCP Rule 12(b)(8) the above mentioned predecessor in title and servicing Bank of America, NA had already defaulted in a previous action and therefore, the above suit was inappropriately filed.

because both suits were attempting to foreclose on the same property.

(3) The SCRCP specifically allows for equitable payment of the first mortgage and that therefore once the filing by SCBT was initiated, the above named Plaintiff stood in the shoes of Bank of America, NA as a "assumer of" the mortgage and note.

BACKGROUND

The Plaintiff, U.S. Bank as trustee (full caption above) (hereinafter "Trustee") is the purported trustee of the owner of the note and mortgage that Rhonda Meisner ("hereinafter Meisner") originally given to Bank of America, N.A. (hereinafter "Bank of America") for the premises located at 406 Koon Store Road. The co-Defendant, Meisner was in dispute with Bank of America regarding the 2012 requirement of opening an escrow account associated with the mortgage and the payment of Richland County Taxes by both Bank of America and Meisner. Bank of America refused to request a refund from Richland County and "re-fund" the newly imposed escrow account. Prior to the resolution of the dispute ; Bank of America sold and or transferred the servicing rights to Nationstar Bank (hereinafter "Nationstar").

In the instant case, 2014-CP-40-2063 the Trustee , the presumed manager for the owner and holder of the note and first mortgage has initiated a lawsuit when the former originator and servicer, Bank of America has already defaulted by not answering timely in a previously filed suit no 2013-CP-40-7144 that was initiated by SCBT (hereinafter "SCBT"). Meisner timely responded to 2013-CP-40-7144 and specifically made affirmative counterclaims to the Plaintiff (SCBT) and the co-defendants (**See Record of Case for 2013-40-CP-7144** Meisners' answer to amended complaint) and repeated below:

[a] declaratory judgment pursuant to S.C.R.C.P 57 and S.C. Code Ann. §§15-53-10 through 15-15-140 to determine a question in actual controversy between or among the parties as to their respective rights and liabilities under a Note AND Mortgage pertaining to real property located at 406 Koon Store Road and more particularly described in the Plaintiff's Complaint, which is incorporated by reference and to determine the respective rights and obligations of the parties with respect to the amount of any deficiency judgment due and owing, and to determine the appraisal rights of the Defendant, Rhonda Meisner.

Additionally, Meisner pled her Statutory appraisal rights pursuant to S.C. Code Ann. § 29-3-680 because SCBT had demanded a deficiency in the previously filed suit and attempted to add

additional leins to the suit not available by law. SCBT subsequently changed their position to a suit on a note; **however Bank of America, NA still maintains it has an ownership interest in the note and mortgage of the present action via filings with this Court.**

Hearing held on June 10, 2014 before the Honorable DeAndrea Benjamin

During the hearing on June 10, Ms. Meisner made an oral motion pursuant to SCRPC Rule 30(b)(1)(2) that the Plaintiff lacked standing due to improper mortgage assignments and therefore the Court lacked jurisdiction over the subject matter and the Defendant, Rhonda Meisner due to the irregularities in the transfers of the mortgage and note; the Court did not rule on this oral motion. The assignments of the note and mortgage were made as EXHIBITS during the hearing. The lack of standing, as a matter of law requires dismissal without prejudice of the action. Specifically, the affidavit notarizing the transfer conflicted with the actual date of the assignment making the notarization of assignment void under South Carolina law. (Both the mortgage assignment and note was entered into evidence. As a matter of law, Bank of America, NA still maintains ownership of the note and mortgage without correction of the faulty assignment. Logically speaking, if the assignment was "notarized" for an **individual** on a date different than the transfer; this assignment would no doubt be fraudulent under the Statute of Frauds. This interpretation of a different standard of proof elicits an equal protection analysis of the 14th amendment to the United States Constitution. Additionally, the allowance of a transfer of property without standing to pursue the action would be a deprivation of private property without due process. Quite obviously, South Carolina law does not allow notarization of a previous assignment occurring on a different day than the notarization of the event. (See the actual documents submitted as EXHIBIT #1 AND EXHIBIT #2) into evidence at the June 10, 2014 hearing.) Importantly, in Bank of America, NA responses the previously filed lawsuit, they

claimed an ownership interest. At the hearing, representative of the Plaintiff acknowledged receipt of the answer by Ms. Meisner to the lawsuit which according to Court documents also alleged a lack of standing.

Previous arguments are referenced below:

Notice of U.S. Bank via Lis Pendens filed by SCBT.

The Plaintiff (SCBT) in 2013-40-CP-7144 filed a Lis Pendens in November of 2013 and referenced the specific address (406 Koon Store Road Columbia, SC) along with the tax map number TMS# 12100-04-23. While the attorneys representing U.S. Bank is located in North Charleston, the Lis Pendens associated with Richland County properties are online and can be accessed through the internet. While the predecessor in servicing rights and the original creditor Bank of America, N.A. was not noticed in the November 26, 2013 filing, prior to initiating the filing in March of 2014, the attorneys representing U.S. Bank were on notice via the public records. Additionally, on February 19, 2014 the Grimsley law firm filed an amended Lis pendens and named U.S. Bank's predecessor in servicing and original creditor Bank of America, N.A. and again specifically noted the address of the property and the associated Tax Map # of TMS #12100-04-23, so the attorneys were further notified of the litigation and could have contacted the Grimsley law firm or their colleagues at Bank of America, N.A. and apparently did so in reviewing the transfers in and out of Bank of America, N.A.

Default Status of Bank of America, N.A.

The Co-Defendant Bank of America was served via its agent of SCBT's amended Complaint in February of 2014. Bank of America, N.A. did not respond to SCBT's lawsuit captioned 2013-40-CP-7144 until April 4, 2014 which was not within the 30 days allowed by the South Carolina Rules of Civil Procedure and as such is a default Defendant. Ms. Meisner timely responded to the lawsuit and

specifically requested a Declaratory Judgment involving **all of the parties** associated with the case and their respective rights and obligations.

Bank of America, N.A. in their late answer of the Amended Complaint, **specifically asserts that it has an interest in the subject property at ¶8 of their answer and filed a certificate of service for the amended complaint on the same day as the assignment was notarized for the transfer in assignment which purportedly happened the day before in Nevada and California;** therefore making the Plaintiff U.S. Bank's lawsuit captioned 2014-CP-40-2063 duplicate and not allowed under the South Carolina Rules of Civil Procedure and the Defendant Rhonda Meisner requests the Court issue an order dismissing 2014-CP-40-2063 as duplicative and awarding Ms. Meisner fees and costs and crediting any attorney fees submitted by Finkel law firm to Ms. Meisner's verified debt as a sanction for the filing of duplicative suits when they were on notice of the filings via the public records. **EXHIBIT #1** Corporate Assignment of Mortgage (assignee U.S. Bank assignor Bank of America dated April 2, 2014 but witnessed April 3, 2014) **EXHIBIT #2** Assignment of mortgage dated March 14, 2014 **EXHIBIT #3** Original mortgage given to Bank of America, N.A. dated 2003 (which was not satisfied properly) **EXHIBIT #4** Mortgage dated September 19, 2005.

Importantly, Bank of America, N.A. was the owner of the mortgage in February when SCBT first noticed their amended Complaint and during the time Bank of America, N.A. did not timely respond pursuant to the South Carolina Rules of Civil Procedure. While SCBT can voluntarily dismiss their claims against Bank of America, N.A. in Case # 2013-7144, SCBT cannot dismiss the timely counter claims against Bank of America, N.A. in the form a Declaratory judgment request. The Supreme Court discussed the importance of proper recording practices in *National Bank of Newberry v. Livingston*. 155 S.C. 264 284, 152 S.E. 410, 417-419 (1930).

Additionally, because SCBT has requested to amend their Complaint and change from a foreclosure action to the legal action of a suit on the note and triable by jury it would be manifestly unfair to have two separate actions pending with the same entities as contemplated by the rules.

Judicial economy also favors dismissing this suit as untimely and duplicative and requiring U.S. Bank to be held liable as the assumer of Bank of America's default with regard to the earlier filed suit.

Currently, both U.S. Bank and Bank of America, N.A. claim ownership of the same mortgage and note an issue that has recently gained nationwide focus with regard to securitized trusts.

Because affirmative counter claims have been raised and Bank of America, N.A. is in default their untimely counterclaims and defenses are also outside of the Court's jurisdiction according to case law and the S.C. rules of Civil procedure. By law it's successor U.S. Bank is also in default of the previously filed action and it would be extremely prejudicial to allow U.S. Bank to attempt to circumvent the Judicial process to redeem or cure Bank of America, N.A.'s default status simply by filing a new lawsuit. For this and all of the above reasons including the oral argument of lack of standing and as a result lack of subject matter jurisdiction over the subject and the Defendant; the Defendant and Cross Plaintiff respectfully requests the Court to enter an order of dismissal pursuant to 12 (b)(1),(2),(8) of 2014-CP-40-2063 and award Ms. Meisner costs, expenses and all other such remedies as the Court finds appropriate under the frivolous proceedings statute.

Respectfully submitted:



Rhonda Meisner, Defendant
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June 30, 2014

RECEIVED

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SC Court of Appeals

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND
 U.S. Bank, National Association, as trustee for the
 Holders of The Banc of America Funding
 Corporation, 2008-FT1 Trust, Mortgage Pass-
 Through Certificates, Series 2008-FT1,
 PLAINTIFF,
 vs.
 Rhonda Lewis Meisner a/k/a Rhonda L. Meisner;
 Bank of America, N.A.; and SCBT,
 DEFENDANTS.

IN THE COURT OF COMMON PLEAS
 CASE NO.: 2014-CP-40-2063

**ORDER DENYING DEFENDANT'S
 MOTION TO DISMISS**

2014 JUN 27 PM 1:59
 JEANNETTE W. MCGRIDE
 C.C.P. & G.S.
 RICHLAND COUNTY
 FILED

THIS MATTER came before the Court upon the filing of Defendant Rhonda Lewis Meisner a/k/a Rhonda L. Meisner's Motion to Dismiss ("Motion") pursuant to Rule 12(b)(8), SCRCP. A hearing was held on June 10, 2014, and attended by counsel for the Plaintiff and the Defendant, *pro se*. Based upon the arguments and the memoranda submitted by the parties, I find, conclude and order that Defendant's Motion is denied based upon the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff brings the instant action for foreclosure of real property located in Richland County, pursuant to S.C. Code 15-7-10(3). The Lis Pendens, Summons, Complaint, and Notice Foreclosure Intervention were filed on March 31, 2014.
2. On April 25, 2014, Plaintiff filed a Certification of Exemption from S.C. Supreme Court Administrative Order 2011-05-02-01, on the grounds the real property that is the subject of this foreclosure is not an "owner-occupied dwelling" as defined in the Administrative Order.
3. Defendant filed a Motion to Dismiss on May 6, 2014, asserting Rules 12(b)(8) and (9), SCRCP¹ as the stated grounds therefor. On or about May 15, 2014, Defendant served an Answer and Counterclaim on the Plaintiff.

¹ The Court notes that the South Carolina Rules of Civil Procedure do not contain a Rule 12(b)(9). Therefore this order only addresses the motion as it pertains to Rule 12(b)(8), SCRCP.

4. Plaintiff possesses a first lien, purchase money mortgage on the subject property given by Defendant Meisner to Bank of America N.A., its successors or assigns, dated August 13, 2003, and recorded in the Richland County Register of Deeds Office on August 18, 2003 in Book 838 at Page 2632, in the amount of \$61,516.00.

5. By virtue of an Assignment of Mortgage dated April 3, 2013 and recorded May 2, 2014 in Book 1943 at Page 1234, South Carolina Bank and Trust, NA assigned the subject mortgage to U.S. Bank, National Association, as trustee for the Holders of The Banc of America Funding Corporation, 2008-FT1 Trust, Mortgage Pass-Through Certificates, Series 2008-FT1, the present lienholder and Plaintiff herein.

6. Defendant South Carolina Bank & Trust ("SCBT") is named as a party to this action by virtue of a mortgage given by Defendant Meisner to South Carolina Bank and Trust, NA, dated November 27, 2007, and recorded December 18, 2007, in Book 1384 at Page 3706, in the amount of \$50,000.00. The interest of this Defendant, if any, is junior and subordinate to Plaintiff's purchase money mortgage.

7. The Motion alleges that Plaintiff's predecessor in interest, Bank of America N.A. failed to answer a separate action commenced by Defendant SCBT to foreclose its second mortgage lien on the property that is the subject of this action. For this reason, Defendant seeks a dismissal of Plaintiff's foreclosure action pursuant to Rule 12(b)(8).

CONCLUSIONS OF LAW

8. In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. See Rule 12(b)(8), SCRPC.

9. South Carolina narrowly interprets Rule 12(b)(8), such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under this Rule. See Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524; quoting Beatty v. Liberty Mut. Ins. Group, 893 N.E.2d 1079, 1084 (Ind. App. Ct. 2008) (applying 12(b)(8) dismissal "where the parties, subject matter, and remedies are precisely the same, and it also applies when they are only substantially the same.")

10. Plaintiff holds a first lien, purchase money mortgage on the subject property. See Compl. ¶ 9. The foreclosure of SCBT's second lien would have no effect upon the validity or existence of Plaintiff's lien, and therefore Plaintiff is not a necessary party to the SCBT foreclosure. In fact, Plaintiff's predecessor in interest was voluntarily dismissed as a party to that action on April 24, 2014. As a result, Plaintiff's failure to respond to the SCBT foreclosure action is simply not basis for dismissal of this action under Rule 12(b)(8).

11. Defendant's default under the terms of the note and mortgage assigned to Plaintiff is entirely unrelated to her performance under the terms of the Defendant's loan agreement with SCBT.

12. Because the loan agreements between Plaintiff and Defendant, and SCBT and Defendant are wholly independent and distinct from one another, Plaintiff's Motion is denied.

IT IS THEREFORE ORDERED THAT Defendant's Motion to Dismiss pursuant to Rule 12(b)(8), SCRPC is denied.

IT IS SO ORDERED.



The Honorable DeAndrea G. Benjamin

Columbia, South Carolina

Date: 6-27-14