THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Mikell R. Scarborough, Charleston County Master in Equity
Civil Action No. 2010-CP-10-06945

RECEIVED
NOV 17 2014
SC Court of Appeals

Appellate Case No. 2014-001398

Wells Fargo Bank, N.A. . . . . Respondent,

v.

Ronald R. Watkins and Ashland Property Owners Association, Inc.,

Of Whom Ronald R. Watkins is . . . . . .Appellant.

INITIAL BRIEF OF RESPONDENT

Thomas E. Lydon
McAngus, Goudelock & Courie
1320 Main Street, 10th Floor
Post Office Box 12519
Columbia, South Carolina 29211
(803) 779-2300
Attorney for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rule

STATEMENT OF THE ISSUE ON APPEAL

Did the Master in Equity Err in Granting the Lender's Motion for Summary Judgment in a Foreclosure Action Where All Aspects of the Mortgage Loan Transaction Were Not Handled by a South Carolina Attorney?

STATEMENT OF THE CASE

This appeal arises out of a foreclosure action filed by Respondent Wells Fargo Bank against Appellant Ronald R. Watkins. In response to the foreclosure complaint, Appellant Watkins filed an Answer and Counterclaims. Wells Fargo then filed a Reply to the Answer and Counterclaims. After exchanging written discovery, Appellant Watkins filed a Motion for Summary Judgment. Wells Fargo then filed a Motion to Dismiss or for Summary Judgment with respect to Respondent's counterclaims, along with a Motion for Order of Reference.

The motions were argued before the Honorable Roger M. Young on September 6, 2011. On October 27, 2011, Judge Young entered an Order granting the motions filed by Wells Fargo and denying Appellant's motion for summary judgment. On November 15, 2011, Appellant filed a Notice of Appeal of Judge Young's Order.

On appeal, Respondent argued that Judge Young erred in dismissing his counterclaims and in denying his motion for summary judgment based on the affirmative defense of unclean hands. The South Carolina Court of Appeals affirmed Judge Young's Order dismissing the counterclaims and dismissed Respondent's appeal of the denial of his motion for summary judgment on the unclean hands defense. The case was then remitted to the lower court for further proceedings.

After the case was remitted to the lower court, Wells Fargo filed a Motion for Summary Judgment on its cause of action to foreclose the mortgage. The Motion was

heard by Judge Mikell R. Scarborough on April 21, 2014. On May 28, 2014, Judge Scarborough entered an Order granting the Motion for Summary Judgment. Appellant timely served the Notice for this appeal on June 20, 2014.

STATEMENT OF FACTS

On June 15, 2007, Appellant Ronald R. Watkins ("Borrower") entered into two mortgage loan transactions with World Savings Bank, FSB. Borrower executed a promissory note and first mortgage in the amount of $398,000, and a promissory note and second mortgage in the amount of $49,000. Both of the mortgages were recorded on July 24, 2007 (Complaint, ¶ 8). World Savings Bank was subsequently acquired by Wachovia Bank, N.A. Thereafter, Wachovia Bank merged with Well Fargo Bank, N.A. ("Wells Fargo"). Wells Fargo is now the owner and holder of the promissory notes and mortgages that are the subject of this action. (Complaint, ¶ 8).

The loans that are the subject of this foreclosure are secured by mortgages on a house located in Charleston County. (Complaint, ¶ 8). Borrower admits that he signed the promissory notes and mortgages that are the subject of these actions. (Answer and Counterclaim, ¶ 5). He also does not dispute that he received the loans in question (Transcript, p. 11, lines 17-21).

The loan closing took place in a Wachovia Bank branch in Charleston, South Carolina. (Watkins Affidavit, ¶ 3). For each loan, a title company hired by the lender handled the issuance of the title insurance commitment, the issuance of title insurance policy, the recording of documents, and the disbursement of funds. (Watkins Affidavit, ¶

4). An attorney admitted to practice in South Carolina was present at the closing, and the attorney witnessed and notarized Borrower's signatures on the mortgages.[1]

In September of 2009, Borrower stopped making the monthly payments due on the mortgage loans. (Affidavit of Michael Dolan, ¶ 5, 8). In 2010, Wells Fargo filed this action to foreclose the mortgages. In response to the foreclosure complaint, Borrower asserted affirmative defenses and counterclaims alleging that the loan documents were unenforceable because of the involvement of the title company in handling various aspects of the transaction.

It is important to note that Borrower does not dispute that he signed the promissory notes and mortgages. (Answer and Counterclaims, ¶ 5). He does not assert that he did not receive the proceeds from the loans. (Transcript, p. 4, lines 4-7). He does not assert that the proceeds from the loans were not properly disbursed. He does not deny that he failed to make payments when due on the loans. Instead, he simply wants the loans cancelled in their entirety because all aspects of the loan closings were not handled by a South Carolina attorney. (Transcript, p. 4, lines 6-15).

ARGUMENT

I. THE MASTER IN EQUITY PROPERLY GRANTED PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT BECAUSE THE DEFENSE OF UNCLEAN HANDS DOES NOT APPLY TO THIS FORECLOSURE ACTION.

A. Standard of Review

"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

[1] Borrower asserts in his Initial Brief that Wells Fargo stipulated that "the loans were closed as witness only closings." However, the Transcript of Hearing clearly states that the stipulation was solely for the purpose

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), SCRCP. For the purpose of the motion for summary judgment heard by the Master in Equity, Wells Fargo did not dispute the facts alleged by Borrower concerning the loan closing that is the subject of his affirmative defense of unclean hands. Therefore, there were no issues of fact, only questions of law on which summary judgment is appropriate.

B. The Master in Equity Correctly Ruled That the Affirmative Defense of Unclean Hands Does Not Prevent Wells Fargo from Foreclosing Its Mortgages.

For the purpose of the motions presented to the lower court, Wells Fargo agreed that the closings of the loans that are the subject of this action were "witness only" closings. (Transcript, p. 6, lines 14-25). That is, although an attorney was present at the closing, the attorney merely witnessed signatures and notarized the loan documents as necessary for them to be recordable in the office of the register of deeds. Other tasks related to the closing, such as the issuance of the title insurance commitment, the issuance of the title insurance policy, and the recording of documents were handled by a title company hired by the lender. Borrower contends that because these were witness only closings, Wells Fargo should be barred from enforcing the notes and mortgages.

In support of his argument, Borrower relies on the decision of the South Carolina Court of Appeals in *Wachovia Bank v. Coffey*, 398 S.C. 76, 698 S.E.2d 244 (Ct. App. 2010). However, the facts in *Coffey* are distinguishable from the present case. Moreover, the South Carolina Supreme Court has issued three opinions since *Coffey* which make it

---

of the hearing on the motion for summary judgment and in order to ensure that there is no issue of fact. (Transcript, p. 6, lines 19-22.)

clear that Wells Fargo is entitled to enforce the promissory notes and mortgages that are the subject of these foreclosure actions.

Wachovia Bank v. Coffey is distinguishable from the present case because the defendant homeowner in *Coffey* had not signed the mortgage that was the subject of the lawsuit, and the lender was seeking equitable relief against the homeowner based on theories of ratification, unjust enrichment, equitable lien, and equitable subordination. In the cases before this Court, Borrower admits that he signed the loan documents, and Wells Fargo is pursing standard mortgage foreclosure actions.

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 closings which occur 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).

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." This opinion was issued on August 8, 2011, and the mortgages that are the subject of this action were signed and recorded in 2007, more than four years before the deadline established in the *Matrix*

Financial opinion. More recently, in *BAC Home Loan Servicing v. Kinder,* the 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.

Finally, the Supreme Court also addressed the Court of Appeals' decision in *Coffey* in *Wachovia Bank, N.A. v. Coffey*, Op. No. 27282 (Sup. Ct. filed July 10, 2013). The Supreme Court noted that the issues presented were whether the fact that the mortgage loan closing took place without an attorney present resulted in the lender having unclean hands and whether, as a result, the lender was barred from pursing legal remedies. The Court affirmed the results of the Court of Appeals' holding in *Coffey*, but modified the analysis and reasoning. Specifically, the Supreme Court did not hold that the lender had unclean hands, but instead ruled that the lender simply could not foreclose on a mortgage that had not been signed by the owner of the property. Therefore, in its opinions in both *Matrix Financial* and *Coffey*, the Supreme Court declined to rule that a lender had unclean hands by virtue of the fact that an attorney was not present at the closing.

The Supreme Court's decisions in *Matrix Financial* and *Coffey* are consistent with its opinions and analysis in other cases involving the unauthorized practice of law. For example, in *Franklin v. Chavis*, 371 S.C. 527, 640 S.E.2d 87 (2007), the Court found that the preparation of a will by a nonlawyer constituted the unauthorized practice of law. However, the Court refused to void the will, holding that "it should not be invalidated simply because it was drafted by a nonlawyer." 371 S.C. at 535, 640 S.E.2d at ____.

Likewise, a properly executed promissory note and mortgage should not be invalidated simply because the transaction was not handled by an attorney.

CONCLUSION

The mortgages that are the subject of this action were recorded more than four years before August 8, 2011. Therefore, based on the South Carolina Supreme Court's holdings in *Matrix Financial*, *BAC Home Loan Servicing,* and *Wachovia v. Coffey*, the mortgages that are the subject of this foreclosure action are enforceable, regardless of whether all aspects of the mortgage loan transaction were handled by a South Carolina attorney. Accordingly, the Order Granting Summary Judgment to Wells Fargo should be affirmed.

McANGUS, GOUDELOCK & COURIE, L.L.C.

Thomas E. Lydon
1320 Main Street, 10th Floor
Post Office Box 12519
Columbia, South Carolina 29211
Attorney for Respondent Wells Fargo Bank, N.A.

November 17, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
NOV 17 2014
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Mikell R. Scarborough, Charleston County Master in Equity
Civil Action No. 2010-CP-10-06945

Appellate Case No. 2014-001398

Wells Fargo Bank, N.A. . . . . Respondent,

v.

Ronald R. Watkins and Ashland Property Owners Association, Inc.,

Of Whom Ronald R. Watkins is . . . . . .Appellant.

PROOF OF SERVICE

I hereby certify that I have this 17th day of November, 2014, served the Initial Brief of Respondent and Respondent's Designation of Matter to Be Included in the Record on Appeal by mail them, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

Brian M. Knowles, Esquire
Post Office Box 50201
Summerville, SC 29485

Thomas E. Lydon
McAngus, Goudelock & Courie, LLC
Post Office Box 12519
Columbia, SC 29211
Attorney for Appellant

mgc

Reply To
THOMAS E. LYDON
Direct Dial: (803) 227-2292
tlydon@mgclaw.com

RECEIVED
NOV 17 2014
SC Court of Appeals

November 17, 2014

Via Hand Delivery
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: Wells Fargo Bank, N.A. v. Ronald R. Watkins
Appellate Case No. 2014-001398

Dear Ms. Kitchings:

Enclosed for filing are the original and one copy of the following:

1. Initial Brief of Respondent;
2. Respondent's Designation of Matter to be Included in the Record on Appeal;
3. Proof of Service for Respondent's Initial Brief and Designation of Record.

By copy of this letter, I am serving copies of the Initial Brief of Respondent and Respondent's Designation of Record on the attorney for the appellant.

Sincerely,

Thomas E. Lydon

Enclosures

Cc: Brian M. Knowles, Esquire
Post Office Box 50201
Summerville, SC 29485