

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

) C/A No. 2010-CP-42-4430

WELLS FARGO BANK, N.A.,
successor-by-merger to
Wachovia Bank, N.A.,

Plaintiff,

v.

Fallon Properties South Carolina, LLC,
Timothy R. Fallon, Susan C. Fallon,
Fallon Luminous Products Corporation,
GE Business Capital Corporation, formerly
Transamerica Business Capital Corporation,
and FSD Repurchase Solutions, LLC,
and South Carolina Department of Revenue,

Defendants.

**ORDER DENYING PETITION
FOR APPRAISAL**

FILED
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SPARTANBURG COUNTY
2014 DEC 15 PM 2:21
M. HOPE BLANCHARD

The matter before the court is the Petition for Order of Appraisal filed by the Defendants Timothy R. Fallon and Susan C. Fallon on or about April 4, 2014. The Petition was timely filed. The Plaintiff Wells Fargo Bank, N.A. ("Wells Fargo") served a Return to the Petition on April 16, 2014 asserting that the petitioners had signed a Waiver of Appraisal Rights, both in their individual capacities as guarantors and on behalf of the Borrower Fallon Properties South Carolina, LLC. A hearing was scheduled, canceled and ultimately rescheduled for December 11, 2014.

An application for an order of appraisal, and a waiver of appraisal rights, are governed by S.C. Code Section 29-3-680, which provides as follows:

- (A) In any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked, whether he has theretofore appeared in the action or not, may within thirty days after the sale of the mortgaged property apply by verified petition to the clerk of court in which the decree or order of sale was taken for an order of appraisal.

(B) Except in any real estate foreclosure proceeding relating to a dwelling place, as defined in Section 12-37-250, or to a consumer credit transaction, as defined in Section 37-1-301(11), a defendant against whom a personal judgment may be taken on a real estate secured transaction may waive the appraisal rights as provided by this section if the debtors, makers, borrowers, and/or guarantors are notified in writing before the transaction that a waiver of appraisal rights will be required and upon signing a statement during the transaction similar to the following:

"The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY."

This waiver may be in any document relating to the transaction; however, the required language must be on a page containing the signature of the person making the waiver and the capitalized sentence must be underlined, in capital letters, or disclosed in another prominent manner.

S.C. Code Ann. § 29-3-680.

Wells Fargo relies upon a Waiver of Appraisal Rights dated February 15, 2007 bearing the signatures of Timothy R. Fallon as sole member and sole manager of the borrower/mortgagor Fallon Properties South Carolina, LLC and of the guarantors Timothy R. Fallon and Susan C. Fallon. The Waiver of Appraisal Rights meets the requirements of Section 29-3-680(B) in that the language contained therein is the same as the sample statement contained in the statute, including the capitalization of the waiver language, and the signatures of the borrower and guarantor appear on the same page as the required language.


The petition does not assert that the foreclosure action relates to a dwelling place or to a consumer credit transaction such that a waiver would not be allowed under the statute. The only

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remaining issue is the requirement that the petitioners be "notified in writing before the transaction that a waiver of appraisal rights will be required..." Wells Fargo has provided ample evidence of such notice.

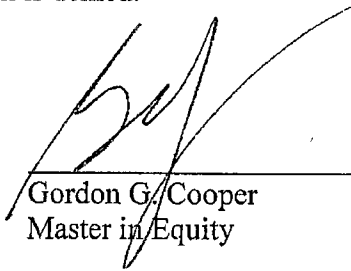
First, the Waiver of Appraisal Rights itself contains a statement whereby the borrower and guarantors "acknowledge[d] receipt of written notification before this transaction that signing of a waiver of appraisal rights would be required during this transaction". Second, Wells Fargo tendered the testimony of Ethan Burroughs, the Spartanburg Market President of Wells Fargo Bank, that Wachovia Bank's standard practice at the time was for the loan administration staff to generate a written notice that a waiver will be required, and to forward that notice to the loan officer who in turn sends the notice to the obligor. This notice is typically mailed to the borrower a week or so prior to closing. Mr. Burroughs testified that he did not have a specific recollection of sending the notice in connection with this loan, nor was there any document in the loan file confirming this. Mr. Burroughs testified that because the obligor is not required to sign this notice, Plaintiff does not retain a copy of it as part of the loan file. Tim Fallon testified that he did not receive any documents prior to receiving the loan closing package.

While there is a dispute in the testimony about whether pre-closing notice was given to the Petitioners in this case, the Court finds that documents provided in the loan closing package sent to Petitioners' attorney prior to closing fulfill the statutory requirement. In this transaction, the loan documents were prepared by Wachovia Bank and transmitted to the borrower's attorney by letter dated February 12, 2007 which was three days prior to the execution date of the documents. The Waiver of Appraisal Rights was one of the documents transmitted to the borrower's attorney. The delivery of the Waiver to the obligors' attorney was notice to the obligors that the waiver would be required as part of the mortgage loan transaction.

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Since Wells Fargo has demonstrated to the satisfaction of the court that it obtained a waiver of appraisal rights from the petitioners that comports with the requirements of the applicable statute, the court finds that the waiver should be given its effect and that the court must deny the Petition for Order of Appraisal.

It is therefore ORDERED, that the Petition for Order of Appraisal filed by the Defendants Timothy R. Fallon and Susan C. Fallon is denied.


Gordon G. Cooper
Master in Equity

December 15, 2014

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