

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 TD Bank, N.A., Successor by merger)
 to Carolina First Bank, N.A.,)
)
 Plaintiff,)
)
 v.)
)
 Sunil V. Lalla and Sharon W. Lalla,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT

**Order Granting Plaintiff's
 Motion to Alter or Amend
 and Foreclosure Judgment
 and Order of Sale**

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Plaintiff TD Bank, N.A., timely moved this Court to reconsider its Order dated May 10, 2013, in the above-captioned action. Having considered all the submissions before this Court, the evidence adduced at trial, and the arguments from counsel, this Court grants Plaintiff's motion. As set forth herein, this Court alters and amends its prior order thereby vacating it entirely and issues this Order and Judgment in favor of Plaintiff *in toto*.

Background

On March 8, 2011, Plaintiff commenced this foreclosure action seeking to foreclose upon and sale the mortgaged property and seeking a deficiency judgment against Defendant Sunil V. Lalla for the amounts owed under the note in addition to attorneys' fees and, costs. Plaintiff is the owner of the note executed by Defendant Sunil V. Lalla and that note it is secured by a mortgage executed by both Defendants in favor of Plaintiff on the property located at 744 S. Waccamaw Drive, Garden City, SC 29576. Both parties were represented by counsel and informed of the dates, times, and locations of all hearings in this action.

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As detailed herein, Plaintiff has the right to foreclosure and is entitled to a judgment against Defendant Sunil V. Lalla for any deficiency remaining following the foreclosure sale, and is entitled to attorneys' fees and costs under the terms of the note and mortgage.

Findings of Fact and Conclusions of Law

I. Plaintiff is the lawful holder of the note signed by Defendant Sunil V. Lalla.

Plaintiff sufficiently established that it is the holder of the note at issue in this action by providing a copy of the note and testimony regarding its merger with Carolina First Bank, Plaintiff's predecessor in interest, thereby evidencing the transfer of the interest in the note to Plaintiff.¹ Jason Bristol, a vice president of Plaintiff, testified without contradiction that Plaintiff is the holder of a note executed by Defendant Sunil V. Lalla in favor of Carolina First Bank. (Tr. at 20-22). Mr. Bristol also testified extensively regarding the circumstances by which Plaintiff became the holder of the note as a result of its merger with Carolina First Bank. (Tr. 11-21). In addition, Plaintiff submitted documentation from the Secretary of State's office regarding its merger with Carolina First.

As is the case here, where the note's original holder has merged into another bank, "all the rights, franchises and fiduciary and other interests of [the original holder] . . . shall be deemed to be transferred and vested in the resultant bank or trust company, without any deed or any other transfer." S.C. Code Ann. § 34-3-850(c). As the transferee, Plaintiff is entitled to commence this action on the note. *See* S.C. Code Ann. § 36-3-201(1) ("Transfer of an instrument vests in the transferee such rights as the transferor has therein. . . ."). Thus, Plaintiff,

¹ Through counsel, Defendants attempted to challenge Plaintiff's interest in the note by attacking the validity of the transfer of the note and interest in the subject property from Carolina First to Plaintiff. However, this Court concludes that Defendants lack standing to challenge the validity of the Note's transfer from Carolina First to Plaintiff. *See In re Kain*, 2012 WL 1098465.

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under the statutes cited herein, was successor to Carolina First and lawful holder of the note at issue in this case.

Further, Plaintiff placed a copy of the note before this Court and under the “best evidence rule,” this Court considered that copy of the note. Specifically, South Carolina Code § 19-5-610 provides that any “photographic, photostatic, microfilm, microcard, miniature photographic or other process which accurately reproduces or forms a durable medium” is “as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not.” S.C. Code Ann. § 19-5-610. Under South Carolina law, a copy of the note is competent evidence to establish the existence of the note. *See Bank of America, N.A. v. Draper, et. al.*, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013) (relying on the copy of the note to establish its existence). Hence, the copy of the note provided at trial was admissible and this Court has considered it in issuing this order.

Moreover, Defendants failed to attend the hearing before this Court and did not refute executing the note and mortgage via testimony or other competent evidence. Under South Carolina law, a defendant’s signature on a note “is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent.” Accordingly, as the trier of fact, this Court “must find the existence of [defendant’s signing the note] presumed unless and until evidence is introduced which would support a finding [that defendant had not signed the note].” *Id.* § 36-1-201(31)(defining “presumption” and “presumed”). No such evidence was provided. Plaintiff can enforce the note.

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II. Defendant Sunil V. Lalla has defaulted on the terms of the note.

This Court also considered the undisputed testimony and affidavits of Mr. Bristol, who testified regarding the terms and contents of Plaintiff's note and mortgage, and whose testimony unequivocally established by a preponderance of evidence all elements of Plaintiff's claim. Defendants failed to attend the foreclosure hearing before this Court and thus did not rebut, refute, or otherwise disprove any of the proof provided by Plaintiff with any similar or proper modicum of proof.

Mr. Bristol testified regarding Defendant Sunil V. Lalla's payment history on the note, the note's maturity, and that Dr. Lalla defaulted on the terms of the note. (Tr. at 32, 39). Mr. Bristol testified that Dr. Lalla has failed to pay \$740,267.44, plus additional costs of collection totaling \$25,584.50 that are now due and owing under the Note. (Tr. at 37-38, 39, 40). Plaintiff also introduced a payment history report and the subject mortgage, both of which corroborated Mr. Bristol's testimony concerning the principal balance, payment history, interest rate and maturity of the note. The evidence also reflected the default on the terms of the note. Moreover, Defendants admitted the validity of the mortgage in their Answer and the mortgage specifically set forth the principal balance, interest rate and maturity of the note on its face beyond the other testimony and evidence provided by Plaintiff.

Thus, through Mr. Bristol's testimony and the documentary evidence adduced, Plaintiff established each essential element its claim. *See Bank of America v. Draper, supra*. Defendants did not offer any evidence to the contrary. As a result, this Court finds that Defendant Sunil V. Lalla has defaulted on the terms of the note and Plaintiff is entitled to enforce the terms of the note and foreclosure on the subject property. Defendant Sunil V. Lalla has failed to pay

\$740,267.44 plus \$25,584.40 in costs. Thus, \$765,851.84 is lawfully owed to Plaintiff and judgment should be entered by the clerk in this amount.

III. Plaintiff is entitled to sale of the property and judgment.

Based on the above noted default of payment, it is further **Ordered** that:

At or before the time herein indicated, the mortgaged premises described hereinabove shall be sold by the Master in Equity or Designee at public auction, at the location, and upon the date and time set forth in the Notice of Sale, and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday, on the following terms, that is to say:

a. For cash: The Master in Equity or Designee will require a deposit of 5% on the amount of the bid in cash or equivalent (unless Plaintiff is the successful bidder) the same to be applied to the purchase price upon compliance with the bid. In case of non-compliance within the time specified in the Notice of Sale, the deposit will be forfeited and applied to the costs and Plaintiff's debt.

b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of \$12.43 per diem.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions and easements and restrictions of record, and any other senior encumbrances.

d. The Purchaser shall pay for the deed preparation and costs of recording the Deed and Deed Stamps.

If Plaintiff is the successful bidder at the sale for a sum not exceeding the amount of costs, expenses and the indebtedness due Plaintiff, Plaintiff may pay to the Court only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

A personal or deficiency judgment having been demanded, the bidding will remain open for thirty (30) days after the date of the sale, with the sale to be final upon that date. Further, the Court will, by advertisement according to law, give notice of the date, time, and place of such sale, and the terms thereof, and will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale. If the purchaser or purchasers at the sale should fail to comply with the terms thereof, then the Court may advertise the said premises for resale on the next, or some other subsequent sales days, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

Following the sale, the Court will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any *Guardian ad Litem* fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus shall be held pending further Order of this Court.

In the event the successful bidder is other than the Defendant in possession herein, the Sheriff, upon receipt of a Writ of Assistance or other order of ejectment, is authorized and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession. The Defendants named herein, and all persons whosoever claiming under Defendants be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof.

The property to be sold is described in Exhibit A of the mortgages, on file with the Georgetown County Register of Deeds, as follows:

All that certain piece, parcel or lot of land with improvements thereon, lying, being and situate at Garden City, Georgetown County, South Carolina, and being designated as Lot No. 19, Block 20, as shown on a revised map of a portion of Garden City, Georgetown County, South Carolina, made by S. D. Cox, Jr., dated October, 1946, and resurveyed August, 1948. Reference to said plat being craved as forming a part of this description. The said lot fronting 60 feet on Waccamaw Drive and extending back with a uniform depth 130 feet to Underwood Drive, all as shown on said map.

Said lot also being shown on that certain plat prepared for J. Randolph Mackey, Sr., Garden City – Georgetown County – South Carolina – dated August 7, 1998, and recorded in the Register of Deeds Office for Georgetown County in Plat Book 17 at Page 377.

Being the identical property conveyed to Sunil Lalla and Sharon Lalla by Deed of J. Randolph Mackey, Sr. and Jessie C. Mackey recorded May 24, 2005 in Deed Book 1651 at Page 16 in the Register of Deeds Office for Georgetown County, South Carolina.

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Pursuant to Section 29-3-650 of the Code of Laws of South Carolina, 1976, as amended, the Clerk of Court is hereby directed to immediately enter judgment against Sunil V. Lalla in the amount of \$765,851.84 due as of the date of the hearing, plus any subsequent necessary advanced and interest from the date of hearing through the date of compliance at the contract rate and thereafter, in the event of any deficiency, at the legal rate; and docket said judgment in the Clerk's office in the same manner as any other judgment. Upon the sale of the mortgaged premises, the Court shall credit upon the judgment the amount paid to the Plaintiff from the

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proceeds of the sale or, in the event the Plaintiff is the successful bidder, the amount of Plaintiff's bid.

All rights Defendants have in the subject property are extinguished and Plaintiff is the lawful owner of the property to be sold pursuant to this Order and Judgment. Defendants, in order to preclude the sale of this property will have to post a bond in the amount of \$250,000 should they desire to stay the pending sale consistent with the applicable provisions of Titles 18 and 29.

IV. Dismissal and judgment in favor of Plaintiff on any and all claims and defenses.

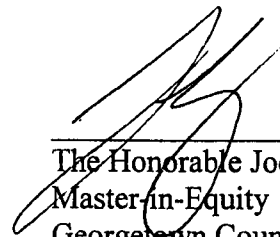
Defendants were represented by counsel in this action. Defendants were notified of the hearing in this matter. Defendants did not attend. Thus, Defendants offered no evidence or testimony as to Plaintiff's claims or their own claims or defenses. Hence, this Court rules in favor of Plaintiff on any and all claims and defenses Defendants had in this action and enters judgment in favor of Plaintiff on same.

Conclusion

Based on the above, Plaintiff is entitled to foreclosure on the subject property under the terms of the note and mortgage. The subject property is to be sold. Following the judicial sale, Plaintiff is entitled to a deficiency judgment under the terms of its note and mortgage for any amounts remaining unpaid to Plaintiff following the sale of the subject property. Plaintiff is also entitled to attorney's fees and costs in the amount of \$25,584.40 to be paid first out of the proceeds of the sale with the remainder being paid to the amounts due on the note. Defendant Sunil V. Lalla would be entitled to any surplus that remains following the sale and after payment of the fees and costs and application of the sale proceeds to the outstanding balance on the note.

Undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

IT IS SO ORDERED.



The Honorable Joe M. Crosby
Master-in-Equity
Georgetown County
405 Dozier Street
Georgetown, SC 29440

