

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-40-7878

ROYALS PORTFOLIO, LLC, an assignee of Bank of America, N.A., formerly known as NationsBank, N.A., which is Successor by Merger to NCNB South Carolina,

Plaintiff,

v.

CHARLIE KELLY; and
DOROTHY SIMPSON,

Defendants.

ORDER DENYING
DEFENDANTS' MOTION TO STAY
FORECLOSURE ACTION

RECEIVED

FEB 23 2015

SC Court of Appeals

FILED
2015 JAN 26 AM 11:40
CHARLIE W. MCBRIDE
C.C.P. & G.S.

This foreclosure action case came before the Court for a merits hearing on September 10, 2014. Both the Plaintiff, Royals Portfolio, LLC ("Royals") and the Defendants presented evidence by way of testimony and written documents. At the conclusion of the hearing, Defendants made the subject motion to stay the case for further loss mitigation efforts under the South Carolina Supreme Court Administrative Order 2011-05-02-01 (the "Administrative Order"). After the conclusion of the hearing, Royals submitted the Affidavit of Robert Eisman in opposition to the Defendants' motion to stay. The Court notified the parties in a conference call on December 15, 2014, that it was excluding the Affidavit of Robert Eisman over the objection of Royals and would not consider it in reaching a decision on this issue. Therefore, the Court considered only the documents filed in this case, the testimony presented and documents introduced at the hearing. Based upon the findings set forth more fully below the Court hereby denies the Defendants' motion to stay the foreclosure proceeding further.

FINDINGS OF FACT

It is undisputed that the loan and mortgage that give rise to this foreclosure action originated as a commercial loan to Pinewood Care Home, Inc. by Bank of America or its predecessors. *See* Complaint, para. 5 (asserting this foreclosure involves “commercial loans”) and Answer, para. 5 (admitting). The loan was assigned to Royals, who now holds the note and mortgage over the subject property. The subject property is a house located in the Eastover area in Richland County. Testimony was read into the record from Defendant Dorothy Simpson’s deposition that she is “self-employed” and uses the house to take care of two elderly veterans. Testimony was also given that Ms. Simpson and Defendant Charlie Kelly currently reside at the subject property.

Defendants have moved for the case to be stayed for further “foreclosure intervention” pursuant to the Administrative Order. In the Administrative Order the South Carolina Supreme Court made it clear that the Home Affordable Modification Program (“HMP”) “is only applicable to such loans if the lender or servicer has agreed to participate in the HMP. Not all lenders or servicers have so agreed.” Royals, the mortgagee in the present case, has not agreed to participate in the HMP and is therefore not subject to its requirements. Therefore, it is apparent that the Administrative Order was not intended to apply to Royals in the present action.

Despite the apparent inapplicability to lenders (like Royals) who do not participate in HMP, the Administrative Order created confusion as to whom it applies. The Administrative Order provided certain terms and conditions that would apply to “all mortgage foreclosure proceedings concerning Owner-Occupied dwellings in this State.” Those requirements, if applicable to Royals, required only that Royals serve on the mortgagor a notice of the mortgagor’s right to foreclosure intervention, if any, and certify that the mortgagee has complied with the requirements of the Administrative Order before proceeding with a foreclosure hearing. Because Royals does not participate in HMP, Defendants had

no rights to foreclosure intervention. Despite the fact that Royals has not participated in HMP and Defendants had no rights to foreclosure intervention, the record reflects that Royals fully discharged its duties, if any, under the Administrative Order. *See* Counsel's Certification Regarding Compliance with South Carolina Supreme Court Administrative Order 2011-05-02-01 and the HMP, which was filed of record in this case on January 10, 2014.

Defendants motion to stay relies exclusively on the testimony at the foreclosure hearing of William Buland that the loan modification process was declined by Royals because this was a "commercial loan." However, regardless of Mr. Buland's testimony, the Certificate of Compliance (filed with the Court) satisfies the requirements of the Administrative Order.

CONCLUSIONS OF LAW

It appears that the Administrative Order was not intended to apply to this loan because it is a commercial loan that is not guaranteed by Fannie Mae or Freddie Mac, and Royals is an assignee of the loan that has not chosen to participate in HMP.

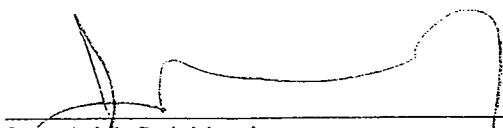
Nevertheless, Royals fully complied with the requirements, if any, imposed upon it by the Administrative Order and HMP. *See* Certificate of Compliance filed herein.

THEREFORE, IT IS HEREBY ORDERED that the Defendants motion at the conclusion of the merits hearing to stay the foreclosure proceedings until additional "loss mitigation efforts are complete" is hereby denied.

IT IS HEREBY FURTHER ORDERED that the Court will issue its ruling on the merits of the foreclosure hearing in a separate order.

IT IS SO ORDERED.

January 26, 2015
Columbia, South Carolina



Joseph M. Strickland
Master-In-Equity for Richland County