

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT

Mitchell D. Snider,) Civil Action No. 2013-CP-26-02135
)

Plaintiff,)

vs.)

CitiMortgage, Inc. and Kim Sprinkle)
Snider,)

Defendants.)

ORDER DENYING MOTION FOR RECONSIDERATION

RECEIVED
RECEIVED
JUN 3 5 2015
SSG Court of Appeals

BEFORE THE COURT is a Motion for Reconsideration (“Motion”) filed by Plaintiff Mitchell D. Snider (“Plaintiff”), which requests that the Court reconsider its Order granting summary judgment in favor of Defendant CitiMortgage, Inc. (“CitiMortgage”) as to all of the claims asserted by in the above-captioned matter. CitiMortgage submitted its Memorandum in Opposition to the Motion for Reconsideration on April 10, 2105. After considering the written submissions, the Court denies Plaintiff’s Motion and rules as follows:

PROCEDURAL BACKGROUND

1. Following completion of discovery in this matter, CitiMortgage moved for summary judgment on all six causes of action asserted against it by Plaintiff. This Court received briefing from the Parties, heard argument on November 19, 2014, and ultimately granted CitiMortgage’s Motion for Summary Judgment, in its entirety, by written Order dated February 23, 2015, and filed February 24, 2015 (the “Order”).

DSB
6/17/15

2. Plaintiff filed a Motion for Reconsideration of the Order on March 9, 2015, asking the Court to amend the Order to rule on one theory¹ underlying the rescission cause of action or, alternatively, to allow that theory to proceed to trial. Specifically, Plaintiff claims that the Order fails to address the fact that he did not sign the Loan Modification Agreement and, therefore, the Loan Modification Agreement should be rescinded.

3. CitiMortgage opposed the Motion arguing that the Order effectively addressed Plaintiff's lack of signing the Loan Modification Agreement and, alternatively, his lack of signing does not defeat summary judgment in its favor on the rescission cause of action. This Court agrees. As outlined herein, the Order evidences no misunderstanding by the Court and the Court effectively considered and ruled upon the arguments raised by Plaintiff.

FINDINGS & CONCLUSIONS

4. First, this Court notes that the Order acknowledges the fact that while Plaintiff was aware of the loan modification, he did not sign the Loan Modification Agreement and, in light of these undisputed facts, granted summary judgment in favor of CitiMortgage on all claims. (See Order at ¶¶ 8-11.) Based on the undisputed facts, including Plaintiff not signing the Loan Modification Agreement, this Court held that "summary judgment is proper on these facts with respect to Plaintiff's rescission claim." (*Id.* at ¶ 16.) Further, this Court found that "Plaintiff was aware of the loan modification review, aware that his signature would not be required for modification, and aware that he would remain liable for the underlying debt even in light of the resulting Loan

¹ Plaintiff did not seek reconsideration of the Court's ruling on the alternative theory underlying the rescission cause of action, *i.e.*, the unauthorized practice of law theory.

²
P.C.B.
9/20/15

Modification Agreement.” (*Id.* at ¶ 19.)² The Order granting summary judgment in favor of CitiMortgage on the rescission claim, and to all claims, was based on the same undisputed facts. (*See id.* at ¶¶ 21, THEREFORE.) Accordingly, this Court finds that the Order sufficiently addresses Plaintiff’s theory, rejects it, and reconsideration and amendment of the Order is not necessary.

5. Second, the Court has further reviewed Paragraph 10 of the Loan Modification Agreement and finds that the signature theory raised by Plaintiff should be denied for three additional reasons, which were raised and argued by the Parties: (a) federal guidelines render the Loan Modification Agreement enforceable; (b) under South Carolina law, CitiMortgage could excuse its own condition; and (c) Plaintiff is judicially estopped from challenging the enforceability of the Loan Modification Agreement for lack of signature.

(a) The signature exception relied upon by CitiMortgage is considered “standard industry practice” for purposes of federal law. Specifically, this Court refers to Congress’s enactment of certain “[r]esidential mortgage loan servicing standards” to be implemented by the Secretary of the Treasury and carried out by servicers as part of the Troubled Asset Relief Program. *See* 12 U.S.C. § 5219. In conjunction with the plan, the servicing contract between CitiMortgage and the third-party owner, Federal National Mortgage Association (“Fannie Mae”), incorporated public servicing guidelines and servicing announcements, including the Home Affordable Modification Program (“HAMP”) directives. These directives provide for a signature

² This Court notes that while this conclusion is found in the paragraph discussing the South Carolina Unfair Trade Practices Claim (“SCUTPA”), if the undisputed facts do not support a finding of unfair or deceptive conduct sufficient to invoke the SCUTPA, they similarly are not fraudulent or deceptive in order to support a rescission cause of action.

exception where a borrower and co-borrower are divorced and the co-borrower deeds the property to the borrower as part of the divorce proceedings. See Fannie Mae Single Family 2011 Servicing Guide, Part VII, Ch. 6, § 609.04.06; § 610.03. The directive provides:

In cases where a borrower and co-borrower are unmarried and either borrower or coborrower relinquish all rights to the property securing the mortgage loan through a recorded quitclaim deed, the non-occupying borrower that has relinquished property rights is not required to provide income documentation or to sign the HAMP documents but remains liable for the outstanding mortgage debt.

Id. at Part VII, Ch. 6, § 609.04.06. The Court notes that this exception has carried over to other loss mitigation options, including non-HAMP related modifications, short sales, and deeds-in-lieu. See *id.* at Part VII, Ch. 6, § 610.03. Because the signature exception is incorporated into the servicing contract between Fannie Mae and CitiMortgage, it constitutes “standard industry practice for purposes of all Federal and State laws.” 15 U.S.C. § 1639a(c). Based on the undisputed facts as found by this Court, Plaintiff’s signature argument does not serve as a basis for this Court to reconsider its Order granting summary judgment in favor of CitiMortgage on the rescission cause of action. (See Order at ¶¶ 5–11.)

(b) This Court further finds that the language of Paragraph 10, of the Loan Modification Agreement is for the benefit of CitiMortgage and, therefore, could be waived by CitiMortgage as a condition precedent under South Carolina law. See *Ehlke v. Nemeo Const. Co., Inc.*, 298 S.C. 477, 480, 381 S.E.2d 508 (Ct. App. 1989). This Court finds that CitiMortgage waived the condition outlined in Paragraph 10; namely, Plaintiff’s signature on the Loan Modification Agreement. For this additional


reason, the Court finds that summary judgment in favor of CitiMortgage on the rescission cause of action remains proper.

(c) Finally, the Court finds that judicial estoppel also applies to the undisputed facts before this Court. In South Carolina, judicial estoppel prevents a litigant from pursuing a position that is inconsistent with, or conflicts with, a position taken by the same litigant in a previous and related proceeding. In this case, the Court found that in an affidavit submitted to the Horry County Family Court, "Plaintiff acknowledged the existence of the loan modification review, the fact that his name may not be removed from the loan as part of the loan modification, and requested that he be allowed to make future monthly payments directly to CitiMortgage." (Order at ¶ 9.) Further, the Court found that the Horry County Family Court "granted Plaintiff the relief requested in his Affidavit." (*Id.* at ¶ 10.) In light of these undisputed facts, this Court finds Plaintiff is judicially estopped from seeking rescission of the Loan Modification Agreement. *See Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 252, 489 S.E.2d 472, 477 (1997).

6. For all of the foregoing reasons, this Court finds that the Order granting summary judgment in favor of CitiMortgage was proper, the Order does not require amendment, and Plaintiff's Motion for Reconsideration is denied.

THEREFORE, IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration is **DENIED**, in its entirety.

AND IT IS SO ORDERED, this 22 day of April, 2015.



The Honorable D. Craig Brown
Presiding Judge, 15th Judicial Circuit



STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT

Mitchell D. Snider,) Civil Action No. 2013-CP-26-02135
)

Plaintiff,)
)

vs.)

CitiMortgage, Inc. and Kim Sprinkle)
Snider,)
)

Defendant.)
)

CERTIFICATE OF SERVICE

RECEIVED

JUN 15 2015

SC Court of Appeals


I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, CitiMortgage, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

ORDER DENYING MOTION FOR
RECONSIDERATION SIGNED BY THE HONORABLE
D. CRAIG BROWN

Counsel Served:

Benjamin A. Baroody, Esquire
Bellamy Law Firm
P.O. Box 357
Myrtle Beach, SC 29578



Charlene Ruff
Administrative Assistant

April 29, 2015

HOWELL V. BELLAMY, JR.
EDWARD B. BOWERS, JR.*
BRADLEY D. KING
M. EDWIN HINDS, JR.
DAVID B. MILLER**
C. WINFIELD JOHNSON, III
DOUGLAS M. ZAYCEK
MARTIN C. DAWSEY*
ROBERT S. SHELTON**



THE
BELLAMY
LAW FIRM

1000 29TH AVENUE NORTH • P.O. BOX 357 • MYRTLE BEACH, SC 29577
TELEPHONE (843) 448-2400 • TELECOPIER (843) 448-3022
www.BellamyLaw.com

Writer's Direct Line: 843-916-7167
E-Mail: Bbaroody@BellamyLaw.com

June 11, 2015

HOWELL V. BELLAMY, III
ASHLEY P. MORRISON
GEORGE W. REDMAN, III ***
BENJAMIN A. BAROODY ** ***
PHILLIP H. ALBERGOTTI* ***
HAYES K. STANTON ** ***
KARA J. KEITH

RETIRED:
CLAUDE M. EPPS, JR.
JOHN E. COPELAND
DAVID R. GRAVELY
JILL F. GRIFFITH

RECEIVED

JUN 15 2015

SC Court of Appeals

* LLM TAXATION
** CERTIFIED MEDIATOR
*** LICENSED IN SC & NC

Honorable Jenny Abbott Kitchings
Clerk of Court
Court of Appeals
1015 Sumter Street - 2nd Floor
Columbia, South Carolina 29201

Re: Mitchell D. Snider v CitiMortgage, Inc. and Kim Sprinkle Snider
Civil Action No.: 2013-CP-26-02135
Appellate Case No.: 2015-001233
Our File No.: 24432.87961.39

Dear Ms. Kitchings:

Enclosed herewith please find two copies of the Order of the Honorable D. Craig Brown dated February 23, 2015, and filed with the Clerk of Court of Horry County on February 24, 2015 and the Order of the Honorable D. Craig Brown dated April 22, 2015, and filed with the Clerk of Court of Horry County on May 1, 2015 in connection with the above-referenced matter. I would kindly ask that these document be attached to the Notice of Appeal in Appellate Case No. 2015-001233.

With kindest regards, I am

Yours very truly,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.


Benjamin A. Baroody

BAB/dg
Enclosures as noted

cc: Client
Lindsey Headrick Altman, Esquire
Thad H. Westbrook, Esquire

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

**ATTORNEYS AT LAW
1000 29TH AVENUE NORTH**

**P.O. Box 357
MYRTLE BEACH, SOUTH CAROLINA 29578**

neopostTM
06/11/2015

US POSTAGE

FIRST-CLASS MAIL

\$02.08⁰⁰



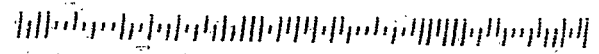
ZIP 29577
041L11219782



Antoin Kitchings
Clerk of Court
Court of Appeals
1015 Sumter Street - 2nd Floor
Columbia, South Carolina 29201

RECEIVED
JUN 15 2015
SC Court of Appeals

2920133749 0076



5