

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Deutsche Bank National Trust Company as
Indenture Trustee for Mortgage Trust 2004-
1,

PLAINTIFF,

vs.

Joseph F. Deboskey; and SunTrust Bank,

DEFENDANTS.

IN THE COURT OF

CASE NO.: 2011-CP-04-3316

JUN - 3 2015

**ORDER DENYING
DEFENDANT JOSEPH F. DEBOSKEY'S
MOTION FOR RELIEF
FROM JUDGMENT**

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SC Court of Appeals

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This matter came before the Court for a hearing on May 12, 2013 on a Motion for Relief from Judgment and Dismissal of Action filed by Defendant Joseph F. Deboskey ("Deboskey" or "Defendant"). Deboskey was represented by attorney Marshall P. Sherard, Jr. Plaintiff Deutsche Bank National Trust Company ("Deutsche Bank" or "Plaintiff") was represented by attorney Sean A. O'Connor. For the reasons set forth herein, Deboskey's motion is denied.

I. PROCEDURAL HISTORY

This is an action for foreclosure on real property. The monthly payments due on the subject note and mortgage have been in default since May 1, 2011. The Summons, Lis Pendens, Complaint, and Notice of Foreclosure Intervention were filed November 10, 2011. Defendant was served November 14, 2011. Plaintiff served Defendant a Denial of Foreclosure Intervention pursuant to S.C. Supreme Court Administrative Order 2011-05-02-01 on January 18, 2012, due to Defendant's failure to respond to the Notice of Foreclosure Intervention within thirty days. Thereafter, Defendant served Plaintiff a Motion for More Definite Statement pursuant to Rule 12(e), SCRPC on February 3, 2012, which was denied at a hearing held on May 11, 2012. A

Certification of Compliance with S.C. Supreme Court Administrative Order 2011-05-02-01 was filed on February 21, 2012.

Pursuant to Order entered on June 11, 2012, the matter was referred to the Master in Equity for Anderson County. Plaintiff filed an Affidavit of Non-military Service and Default for Defendant on August 13, 2012, based on his failure to serve an Answer to the Complaint. An Order and Judgment of Foreclosure and Sale was entered on September 17, 2012. Defendant filed the instant Motion on October 23, 2013.

II. STANDARD

A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief. Bowers v. Bowers, 304 S.C. 65, 67 403 S.E.2d 127, 129 (Ct. App. 1991). Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge. Coleman v. Dunlap, 306 S.C. 491, 494 413 S.E.2d 15, 17 (1992). Rule 60, SCRPC, is entitled "Relief from Judgment or Order," and subsection (b) states in pertinent part as follows:

- (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
 - (1) mistake, inadvertence, surprise, or excusable neglect;
 - (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
 - (3) fraud, misrepresentation, or other misconduct of an adverse party;
 - (4) the judgment is void;
 - (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.



The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken.

Rule 60(b), SCRCP. (Emphasis added).

III. FINDINGS AND CONCLUSIONS OF LAW

The Court finds as a threshold matter that Defendant's Motion is procedurally defective on two grounds. First, it fails to cite any rule of civil procedure upon which the Motion is purportedly based; second, the Motion was made more than one year after the final judgment was entered on September 17, 2012. Because a request for relief from a final judgment or order must be made upon motion pursuant to Rule 60, SCRCP, Defendant's motion should be denied. Furthermore, the Motion must be denied because it violates the express one-year deadline within which a party must make a Motion pursuant to Rules 60(b)(1), (2), and (3) SCRCP.¹

Significantly, Defendant's Motion is devoid of *any* allegations which would warrant relief from judgment pursuant to Rule 60, SCRCP and its subparts. Instead, Defendant's Motion appears to be based on a request for equitable relief pursuant to the S.C. Supreme Court Administrative Order 2011-05-02-01 ("Administrative Order"). However, Defendant did not respond to the Denial of Foreclosure Intervention or otherwise object to the Certification of Compliance with the Administrative Order filed on February 21, 2012. The Administrative Order does not provide a defaulting party with any additional mechanism through which relief from entry of judgment can be obtained, or otherwise alter the South Carolina Rules of Civil Procedure. The time for Defendant to object to or otherwise challenge Plaintiff's compliance with the Administrative Order has long passed, and there is simply no basis under Rule 60, SCRCP to set aside the judgment. Because Defendant has not cited, and cannot cite, any of the


¹ Defendant's Motion does not allege that the judgment is void; therefore Rule 60(b)(4) would not serve as possible grounds for the motion. Similarly, Defendant Motion does not allege any of the Rule 60(b)(5), SCRCP grounds for relief are applicable.

Rule 60(b) grounds for relief, nor has he alleged that the judgment is void, the instant Motion must be dismissed as untimely.

III. CONCLUSION

Defendant Motion is procedurally defective, as it was filed outside the applicable one-year deadline after entry of final judgment. Accordingly the Motion must be, and is hereby, denied. Further, even if it had been timely filed, the Motion fails as a matter of law because the S.C. Administrative Order of 2011 does not provide Defendant any additional grounds upon which to seek relief from the judgment in this action. Accordingly the Motion must be, and is hereby, denied.

IT IS SO ORDERED!



Ellis B. Drew, Jr.
Master-in-Equity
County of Anderson

, 2015

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