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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Diamond Assets, LLC,)
)
Plaintiff,)
)
vs.)
)
Diane F. Candela,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DEC 04 2015

SC Court of Appeals

Civil Action No. 2015-CP-40-01819

JANET B. C.C.P.
J. M. BRIDE

2015 SEP 30 PM 3:41

RICHLAND COUNTY
FILED

ORDER ON MOTION TO
STRIKE JURY DEMAND AND
REFER TO MASTER
AND MOTION TO DISMISS

Date of Hearing: September 18, 2015
Presiding Judge: G. Thomas Cooper
Plaintiff's Attorney: Brian Dumas
Defendant's Attorney: Andrew S. Radeker
Court Reporter: Elizabeth Harris

This matter comes before the Court this 18th day of September, 2015 pursuant to Plaintiff's Motions to Strike Jury Demand and Refer to Master in addition to Plaintiff's Motion to Dismiss. Present in Court at this time are Plaintiff along with counsel, Brian Dumas. Defendant is not present but is represented by counsel. Andrew Radeker.

Prior to the commencement of the hearing the Court was notified that by consent of counsel for both parties, Plaintiff was withdrawing without prejudice his Motion to Strike Jury Demand and Refer to Master. Additionally, counsel for the parties notified the Court that they had agreed that as to the Motion to Dismiss, Defendant would be granted time to amend her defenses and counterclaims so as to specifically plead facts sufficient to support those defenses and counterclaims. Defendant has requested, and Plaintiff has agreed that the amended Answer and Counterclaims will be due 15 days after the date of this Order.

This agreement, however, did not cover Plaintiff's Motion to Dismiss as to Defendant's defense of failure to comply with Supreme Court Administrative Order 20111-05-02-01 which the

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parties put before the Court for a decision today. Plaintiff has also submitted to the Court his Notice of Failure to Participate in Foreclosure Intervention filed this date which alleges that the Defendant has failed to exercise any rights under the foreclosure intervention notice served upon her and is his certification that the mortgagor has failed, refused, or voluntarily elected not to participate in any foreclosure intervention process thus allowing this matter to proceed under the Administrative Order.

The Court has reviewed Plaintiff's Notice of Failure to Participate in Foreclosure Intervention filed today and its attachments thereto, those being a filed Affidavit of Personal Service of Process filed with this Court April 14, 2015 reflecting personal service of process of, *inter alia* "...Foreclosure Intervention Form" and that the same "...was personally served upon Diane F. Candela at the subject address". The Notice filed today also includes a copy of the form so served.

Defendant maintains that the form as served is insufficient under the Administrative Order 2011-05-02-01 and is instead a "response form" that is insufficient under the Administrative Order. Both parties concede there is no set form for the notice of foreclosure intervention rights as mandated by Supreme Court Administrative Order 2011-05-02-01.

This Court's review of both the Administrative Order and the form in question makes it clear to this Court that the form in question which was served upon the Defendant on April 7, 2015 along with the other pleadings in this matter stated the form was being served in compliance with Supreme Court Administrative Order 2011-05-02-01, asked whether or not the owner occupied the land, asked whether or not the party was interested in certain remedies for loss mitigation including reinstatement, loan modification payoff or deed in lieu, left contact information as to Plaintiff's counsel, and plainly stated in all capital letters "FAILURE TO RESPOND WITHIN

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THIRTY (30) DAYS WILL BE CONSTRUED AS A FAILURE TO REQUEST FORECLOSURE INTERVENTION".

This Court finds and concludes that the form as served upon the Defendant in this case is legally sufficient under the Administrative Order, complies with the mandates imposed by that Administrative Order and that as a result of the service of the same and Defendant's failure to return the form evidencing any desire to participate in foreclosure intervention, Plaintiff's counsel's filing constitutes sufficient compliance with the Administrative Order for this matter to continue to proceed. As a result of what this Court finds is clear compliance by Plaintiff with the mandates of Supreme Court Administrative Order 2011-05-02-01, the Defendant's defense alleging failure to comply with the Administrative Order shall be and hereby is dismissed.

AND IT IS SO ORDERED.



G. Thomas Cooper, Judge
Court of Common Pleas, Richland County

Columbia, South Carolina
September 5^o, 2015

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