

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Case No. 2013-CP-10-5329

JP Morgan Chase Bank, National)
Association,)
Plaintiff,)

v.)

Delilah Starr Acheson a/k/a Delilah S.)
Acheson a/k/a Starr D. Acheson,)
individually, as Legal Heir and Personal)
Representative of the Estate of Joseph)
L. Acheson a/k/a Joseph Lynn Acheson,)
Sr., Deceased, Amber Mae Acheson)
Reed, Joseph Lynn Acheson, Jr., Jacob)
Lee Acheson, and Daniel Alexander)
Acheson, as Legal Heirs or Devisees of)
the Estate of Joseph L. Acheson a/k/a)
Joseph Lynn Acheson, Sr., Deceased,)
Ronald Lee Dowell, Ruth C. Dowell,)
and Charleston County Revenue)
Collections,)

Defendants.)

ORDER

RECEIVED
JAN 06 2016
SC Court of Appeals
JULIE ARMSTRONG
CLERK OF COURT
2015 OCT -9 PM 2:55
FILED

This matter came before me for a hearing on September 1, 2015, on Defendants' (all except for Charleston County Revenue Collections) Motion for Summary Judgment. Defendants' motion was supported by the Affidavits of Delilah Starr Acheson, Ronald Dowell and Ruth Dowell. Plaintiff presented no Affidavits opposing this motion so that the only evidence presented is that submitted by Defendants. After considering the arguments of counsel for Plaintiff and Defendants, I have determined that Defendants' Motion for Summary Judgment should be granted.

P. No. 1/1

FACTS

I find the following facts taken from the uncontradicted Affidavits submitted.

In 2008, Ronald and Ruth Dowell, along with their daughter, Delilah Starr Acheson and her husband, Joseph Acheson, owned a house located at 201 E. Huron, Folly Beach, South Carolina. Mr. Acheson applied for a loan from Quicken Loans. In order to secure the loan, all four owners were required to sign a mortgage on the Folly Beach property.

On April 24, 2008, Jean Kellogg, who introduced herself as the closing agent for Quicken Loans, came to the Dowells' house in Gastonia, North Carolina, where Mr. and Mrs. Dowell and Mr. and Mrs. Acheson were present. She had a large stack of documents that she got the four owners to sign. After they had signed everything, Ms. Kellogg gave them a bound document containing the "2008 Mortgage Documents." In that document was an uncompleted form, entitled "Closing Attorney's Statement." That document was to be completed by the attorney closing the loan. There was no attorney present at the loan closing and that document was not signed. Even though Ms. Kellogg was the only person present at the loan closing other than the mortgagors, the documents that the Defendants signed were witnessed by another person who was not present. There is no evidence that a lawyer was supervising the loan closing or had anything to do with the loan closing or the documents prepared although the loan documents implied that an attorney was supervising the loan closing.

The first page of the bound document was a letter from Nathan Kyle, Client Care Specialist for Quicken Loans, to Mr. Acheson. In that letter, Mr. Kyle said nothing about having a lawyer close the loan and, instead, stated that "[a]t the scheduled closing

KMOOJ/2

meeting, the closing agent will open their package and review all of the documents with you....” Ms. Kellogg did open the package and told the Defendants where they should sign.

Attached to the Plaintiff's Memorandum Opposing Summary Judgment as Exhibit A are three (3) documents allegedly signed by an attorney. The first document states that he “conducted a closing ... by telephone conference call” and the third stated that he “reviewed and explained to the Borrower(s) the terms and provisions of the Note and Mortgage.” According to the only admissible evidence, the affidavits of the Defendants, these claims are not true.

Quicken Loans subsequently transferred the loan and mortgage to the Plaintiff. Mr. Acheson made all of the required loan payments until his death on August 15, 2010. Mrs. Acheson promptly notified the Plaintiff of Mr. Acheson's death and faxed a copy of the death certificate and her husband's will. Plaintiff did not file a claim with Mr. Acheson's estate, which has been handled and closed in both South Carolina and North Carolina.

Although Mrs. Acheson continued to make the loan payments, Plaintiff refused to talk to her, because she was not the “borrower.” Because Plaintiff would not deal with Mrs. Acheson and allow her to either assume or refinance the loan, Mrs. Acheson stopped making the payments in 2013, and this action was filed on September 11, 2013. Mrs. Acheson has tried to resolve the matter with Plaintiff ever since the filing of the action. The Defendants answered and asserted the affirmative defense of unclean hands in their Affirmative Defenses Nos. 4 and 8.

KNOT 3

LEGAL CONCLUSIONS

Defendants moved for summary judgment, because the Plaintiff had unclean hands, because there was no attorney present at the closing of the loan and mortgage that are the subject of this action, the lender, Plaintiff knew of the requirement that a lawyer be involved and actively misrepresented that a lawyer was involved and the Plaintiff has failed and refused to allow the Defendants to refinance or assume the loan and, instead, have sought foreclosure on this property.

As the South Carolina Court of Appeals has stated:

As early as 1987, lending institutions doing business in South Carolina were on notice that they could not prepare legal documents in connection with a mortgage loan without review by an independent attorney and that loan closings had to be supervised by an attorney.

Wachovia Bank, N.A. v. Coffey, 389 S.C. 68, 698 S.E.2d 244 (S.C. App. 2010). In State v. Buyers Service Co., Inc., 292 S.C. 426, 433, 357 S.E.2d 15, 19 (1987), the South Carolina Supreme Court specifically held that “instructing clients in the manner in which to execute legal documents is itself the practice of law and requires a legal knowledge of statutes and case law.” In that case, the Court discussed case law from other jurisdictions where lay persons may conduct closings but held that “real estate and mortgage loan closings should be conducted only under the supervision of attorneys, who have the ability to furnish their clients legal advice should the need arise and fall under the regulatory rules of this court.” 292 S.C. at 434; 357 S.E.2d at 19.

There was no lawyer present at the closing, and the Plaintiff presented no admissible evidence that the documents were prepared by a South Carolina lawyer, reviewed by a South Carolina lawyer or even that a South Carolina lawyer was

RM08/4

supervising the loan closing from afar. Instead, Plaintiff's counsel attached documents purported to be signed by a lawyer who closed the loan "by telephone." The Affidavits of Defendants clearly deny that any lawyer was involved in the closing. In addition, the Plaintiff's predecessor in interest falsified that a second witness was present. There is no question that Plaintiff knew that it had to have two witnesses and a lawyer closing the loan as set forth in its loan document and as evidenced by the false documents attached as Exhibit A to Plaintiff's Memorandum but elected to go forward with the loan closing without a required witness or a lawyer having anything to do with it other than to apparently sign three documents that he had closed the loan. In addition, Plaintiff has acted in bad faith since the death of Mr. Acheson by failing to deal with Mrs. Acheson or to allow her to assume or refinance the loan.


Plaintiff argued that the cases, Matrix Financial Services Corporation v. Frazer, 394 S.C. 134, 714 S.E.2d 532 (2011), and BAC Home Loans Servicing, L.P. v. Kinder, 398 S.C. 619, 731 S.E.2d 547 (2012), controlled in this case, because those cases held that voiding a real estate mortgage secured through the unauthorized practice of law were prospective only from the date of the Matrix opinion. This matter is distinguishable from those cases in that the Plaintiff's predecessor in interest clearly knew that closing a loan without a lawyer was the unauthorized practice of law, provided loan documents that stated that there was a closing attorney who "closed the above mortgage on April 24, 2008" and who "[p]rior to the execution of the Note and Mortgage by the Borrower(s), [] reviewed and explained to the Borrower(s) the terms and provisions of the Note and Mortgage..." See Acheson Affidavit, Exhibit A.

KMOJ / 5

Plaintiff and Plaintiff's predecessor in interest have unclean hands in this mortgage closing in not having a lawyer close the loan, in falsely claiming to have a second witness at the closing, in fraudulently claiming that a lawyer had closed the loan and in refusing and failing to deal with Mrs. Acheson in good faith when she attempted to refinance or assume the loan. As the Supreme Court stated in Matrix, "[l]enders cannot ignore established laws of this state and yet expect this Court to overlook their unlawful disregard." In the present case, not only did the Plaintiff lender ignore this state's legal requirement that a lawyer conduct the loan closing, it further ignored the laws of this State by failing to have a second witness present and then falsifying a witness and in fraudulently claiming in its loan documents that a lawyer had closed the loan. This case differs from a simple loan closing case where the lender did not have a lawyer present at the loan closing, because the lender went above and beyond that failure by falsifying the mortgage document and fraudulently claiming that a lawyer had closed the loan and subsequently dealing with Mrs. Acheson in bad faith.

IT IS, THEREFORE, ORDERED that Defendant's Motion for Summary Judgment should be granted due to the multiple illegal, fraudulent and bad faith actions of the Plaintiff's predecessor in interest in closing this loan.

AND IT IS SO ORDERED.


R. MARKLEY DENNIS, JR.
CIRCUIT COURT JUDGE

October 7, 2015
Charleston, SC

KMOA/6

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

21



MICHAEL J. ANZELMO
PO BOX 11070
COLUMBIA SC 29211-1070

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Defnt's mot for sum judg should be granted etc

CASE NO: 2013CP1005329

JPMorgan Chase Bank National Association VS Delilah Starr Acheson , defendant, et al

This judgment was entered on the 09th day of October, 2015, and notice mailed first class on Monday, October 12, 2015, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

74



MICHAEL J. ANZELMO
PO BOX 11070
COLUMBIA SC 29211-1070

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Plntff's mot for reconsideration is denied

CASE NO: 2013CP1005329

JPMorgan Chase Bank National Association VS Delilah Starr Acheson , defendant, et al

This judgment was entered on the 30th day of November, 2015, and notice mailed first class on Wednesday, December 02, 2015, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.