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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

DOCKET NO.: 2008-CP-32-03594

Deutsche Bank National Trust Company, as Trustee for Structured Asset Investment Loan Trust Mortgage Pass through Certificate Series 2004-1,

Plaintiff,

vs.

Steven E. Sharpe; Sherry L. Sharpe; The United States of America, acting by and through its agent, Internal Revenue Service; The State of South Carolina Department of Revenue,

Defendants.

(511784.7494 CSG)

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SC Court of Appeals

ORDER

This matter came before me at a hearing on February 8, 2016 on Defendants Steven E. Sharpe and Sherry L. Sharpe's ("Defendants") Motion for Reconsideration of Order Denying Motion to Vacate ("Motion for Reconsideration"). On or about August 4, 2015, Defendants filed a Motion to Vacate Order of Foreclosure ("60(b) Motion"). On November 24, 2015 an Order Denying Defendants' Motion to Vacate Order of Foreclosure was filed. Based on the argument of counsel and the evidence presented the court denies Defendants' Motion for Reconsideration of the Court's November 24, 2015 Order. ✓

In their Motion for Reconsideration the Defendants raise three arguments. First, the Defendants argue the Plaintiff is not entitled to enforce the Judgment of Foreclosure and Sale because the subject debt was discharged by an order of the Bankruptcy Court in February 2013 and this Court no longer has jurisdiction to enforce the Judgment of Foreclosure and Sale. Second, Defendants argue the Court failed to take into account Defendant Steven Sharpe's traumatic brain injury in 2010 when the Court ruled that Defendants failed to raise their allegations of fraud by the Plaintiff until years after the foreclosure hearing. Defendants argue ✓

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the brain injury prevented Defendant Steven Sharpe from discovering the alleged fraud. Finally, Defendants argue the Defendants rescinded the subject debt by filing a document in the Lexington County Clerk of Court's office in May 2009.

Plaintiff's counsel argued all of the Defendants' arguments are being raised for the first time in the Motion for Reconsideration and therefore are not proper and should be dismissed. Plaintiff's counsel argued that the bankruptcy discharge issue was not raised in the Defendants August 4, 2015 60(b) Motion, was not raised at the hearing on that motion and not addressed in the Court order dated November 24, 2015 denying the 60(b) Motion. In fact, Defendants bankruptcy discharge issue was directly addressed by the Court in an Order filed on August 28, 2013. Plaintiff's counsel also argued that Defendant Steven Sharpe's alleged traumatic brain injury and subsequent hospitalization as the reason why he couldn't investigate or discover the alleged fraud was not raised in the Defendants August 4, 2015 60(b) Motion and although the brain injury was mentioned at the hearing on his 60(b) Motion, it was not mentioned to raise this argument. Finally, Plaintiff's counsel argued that Defendants did not raise their rescission argument in their 60(b) Motion or at the hearing on the 60(b) Motion.

"[A] party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not." Stevens & Wilkinson of S. Carolina, Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014).

The Court denies the Defendants' Motion for Reconsideration. The Court finds that Defendants did not raise these issues in their 60(b) Motion and cannot raise these issues for the first time in their Motion for Reconsideration filed under Rule 59(e), SCRCF.

Additionally the Court finds that the Defendants' arguments lack merit and deny the motion for the below reasons.

Bankruptcy Discharge

This argument was already addressed in the Court's order filed August 28, 2013. When the Defendants received an order of discharge under Chapter 7 from the United States Bankruptcy Court on February 21, 2013 the Plaintiff did not lose its right to proceed *in rem* against the subject property. It is long settled law that a discharge in a Chapter 7 bankruptcy case does not eliminate a creditor's right to proceed *in rem* against property that a debtor pledged as security for a personal obligation. See Farrey v. Sanderfoot, 500 U.S. 291, 297 (1991) ("Ordinarily, liens and other secured interests survive bankruptcy. "). Also, under the Bankruptcy Code, in order for a bankruptcy debtor to eliminate a secured lien such as a mortgage, the debtor or bankruptcy trustee must take some affirmative action such as initiating an adversary proceeding to avoid the lien. Neither the Defendants nor the bankruptcy trustee took any affirmative action to avoid or eliminate Plaintiff's mortgage. Hence, the order granting discharge and closing the Bankruptcy case ended the bankruptcy and any protections under the automatic stay and Plaintiff has a right to pursue an *in rem* action against its security interest in Defendant's property passed through the bankruptcy action.

Brian Injury

Defendants presented no evidence that Defendant Steven Sharpe's alleged 2010 brain injury prevented him from discovering the alleged fraud he is claiming. Additionally, the record reflects there have been multiple times over many years that Defendant Steven Sharpe could have raised this alleged 2010 brain injury in the case when he repeatedly appeared in court both *pro se* and with counsel but he never raised the issue.

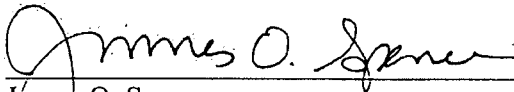
Rescission

Defendants acknowledged the subject debt in their Chapter 7 bankruptcy filing.

Defendants cannot make a sworn statement in federal court and then take a different position in state court. Defendants cannot make sworn statements acknowledging the mortgage debt in their prior Bankruptcy actions, including receiving the benefit of a Chapter 7 Discharge, and then argue an entirely different position in this case by claiming the debt has been rescinded.

Therefore, Defendants' Motion for Reconsideration is DENIED. Plaintiff shall contact the Court to proceed with her next stage of this foreclosure action, including scheduling a sale date for the property.

AND IT IS SO ORDERED.



James O. Spence
Master-in-Equity for Lexington County

March 4, 2016