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STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

Plaintiff,

v.

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;

Defendant(s).

(011784-07494)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 08-CP-32-3594

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APR 21 2016

SC Court of Appeals

ORDER DENYING DEFENDANTS' MOTION
TO VACATE ORDER OF FORECLOSURE

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This matter came before the Court on September 30, 2015 for a hearing upon Defendants Steven Sharpe and Sherry Sharpe's ("Defendants") Motion Pursuant to Rule 60 to Vacate Order of Foreclosure. In attendance at the hearing were counsel for the Plaintiff, H. Guyton Murrell, and counsel for Defendants, Douglas Kotti. After reviewing the law, the record in this case, the records related to the Defendants' previous Bankruptcy filings, Defendants' Motion, and considering arguments from both counsel, the Defendants' Motion is DENIED.

This is a foreclosure action as to certain real property located in Lexington County. The Summons and Complaint were filed on August 29, 2008 and personally served on Defendants Steven Sharpe and Sherry Sharpe on September 2, 2008. Defendants did not file an answer or responsive pleading and an Affidavit of Default as to Defendants Steven Sharpe and Sherry Sharpe was filed on December 10, 2008. The case was referred to the Lexington County Master in Equity and scheduled for hearing on March 23, 2009. Defendants appeared at the hearing and stated to the Court that they were attempting loss mitigation with the lender. The Court entered

Judgment granting foreclosure on March 30, 2009 but delayed the scheduled foreclosure sale to June 1, 2009 to permit the parties additional time to discuss loss mitigation. The South Carolina Supreme Court subsequently issued an Administrative Order on May 22, 2009 which stayed pending foreclosure actions, including this case.

Pursuant to the terms of the May 22, 2009 Administrative Order, Plaintiff filed and served an affidavit that the loan was not eligible for modification under the Home Affordable Modification Program. Defendants did not file a counter-affidavit within ten days as provided by the Administrative Order. A supplemental foreclosure hearing was scheduled for May 3, 2010. Defendants attended the supplemental hearing and stated that they were again in loss mitigation talks with the lender. A Supplemental Order of Foreclosure was filed on May 12, 2010 and the property was scheduled for June 7, 2010 foreclosure sale but subsequently canceled at Plaintiff's request to permit further loss mitigation efforts.

The case was scheduled for a second supplemental foreclosure hearing on October 18, 2010. Defendant Steven Sharpe attended the hearing and stated he had defaulted on a loss mitigation plan due to an injury but was attempting further loss mitigation efforts. The second Supplemental Foreclosure Order was filed on October 20, 2010 with the foreclosure sale scheduled for December 6, 2010. The December 6, 2010 foreclosure sale was canceled to permit time for further loss mitigation efforts. The property was re-scheduled for a January 4, 2011 sale. The January 4, 2011 foreclosure sale was canceled at Plaintiff's request based on a statement by Defendant Steven Sharpe that he would pay off the mortgage debt. Defendants did not pay off the mortgage debt and the property was re-scheduled for a February 7, 2011 foreclosure sale. Defendants filed a Motion to Dismiss on January 21, 2011. A hearing on the Motion to Dismiss was held on February 2, 2011. Defendants filed a Chapter 13 Bankruptcy on

February 4, 2011. The February 7, 2011 foreclosure sale was canceled due to the automatic stay of the U.S. Bankruptcy Court. An Order denying the Motion to Dismiss was filed on February 9, 2011.

The Chapter 13 Bankruptcy filed by Defendants was dismissed by the U.S. Bankruptcy Court by Order filed March 21, 2011. Pursuant to a second Administrative Order issued by the South Carolina Supreme Court on May 2, 2011, Defendants were provided an opportunity to engage in foreclosure intervention. Pursuant to the terms of the second Administrative Order, an Attorney Certification that the mortgagors did not qualify for foreclosure intervention options was served and filed on October 7, 2011.

A third supplemental foreclosure hearing was scheduled for May 7, 2012. Defendants filed a Motion to Dismiss and Exercise Constitutional Rights and Motion for Jury Trial on May 7, 2012. Due to the pending Motion, the hearing scheduled for May 7, 2012 as continued. Plaintiff filed a Motion for Third Supplemental Foreclosure Order on June 19, 2012. A hearing on all pending motions was held on August 2, 2012. Immediately prior to the hearing, Defendant Steven Sharpe filed a Rule 60 motion seeking relief from the Judgment of Foreclosure filed March 30, 2009. By Order filed August 7, 2012, the Court denied Defendant Steven Sharpe's motions. A Third Supplemental Order of Foreclosure was filed on August 7, 2012 and the property was scheduled for an October 1, 2012 foreclosure sale.

The October 1, 2012 foreclosure sale was canceled due to a Chapter 7 Bankruptcy filed by Defendants on September 17, 2012. Plaintiff received relief from the automatic stay by Order of the U.S. Bankruptcy Court issued November 30, 2012. Defendants received a Chapter 7 discharge by Order entered February 21, 2013.

A Fourth Supplemental Foreclosure hearing was scheduled for June 24, 2013. Attorney Douglas Kotti filed a Notice of Appearance on behalf of Defendant Steven Sharpe on June 23, 2013. A Fourth Supplemental Order of Foreclosure was filed on June 27, 2013 and the property was scheduled for an August 5, 2013 foreclosure sale. On August 2, 2013, Defendant Steven Sharpe's attorney filed a Motion to Dismiss the Foreclosure Action and for Temporary Restraining Order Staying Judicial Sale on behalf of Defendants. The pending foreclosure sale was canceled and a hearing on the Motion was held on August 5, 2013. The Motion was denied by Order filed August 28, 2013 and the property was scheduled for an October 7, 2013 sale.

The October 7, 2013 foreclosure sale was canceled due to Defendant Steven Sharpe filing a second Chapter 13 Bankruptcy on October 3, 2013. The Chapter 13 Bankruptcy was dismissed on November 5, 2013. A Fifth Supplemental Foreclosure hearing was scheduled for June 2, 2014. The hearing was attended by attorney Andrew Montgomery on behalf of the Plaintiff and Defendants' attorney Douglas Kotti. A Fifth Supplemental Order of Foreclosure was filed on June 11, 2014 and the property was scheduled for a July 7, 2014 foreclosure sale. Defendant Steven Sharpe filed a third Chapter 13 Bankruptcy case on July 3, 2014 and the foreclosure sale was canceled. The Bankruptcy case was deemed a bad faith filing by the United States Bankruptcy Court and was dismissed on September 11, 2014.

The property was scheduled for a February 2, 2015 sale but the sale was subsequently canceled. A Supplemental Foreclosure Hearing was scheduled for May 18, 2015 but was continued at the request of Defendants' attorney due to illness. The Supplemental Foreclosure Hearing was then scheduled for July 6, 2015 but cancelled at the request of Defendants' attorney due to a scheduling conflict. The Supplemental Foreclosure Hearing was rescheduled for August

4, 2015. The Supplemental Foreclosure Hearing was continued due to Defendants' attorney, ✓
filing this motion on August 4, 2015 to vacate the foreclosure order pursuant to Rule 60.

FINDINGS

In their motion, Defendants have moved to vacate the Order of Foreclosure entered in ✓
this matter on March 30, 2009 pursuant to SCRCP Rule 60(b)(3) and (5). Rule 60(b) provides
for relief from judgment or order under the following circumstances:

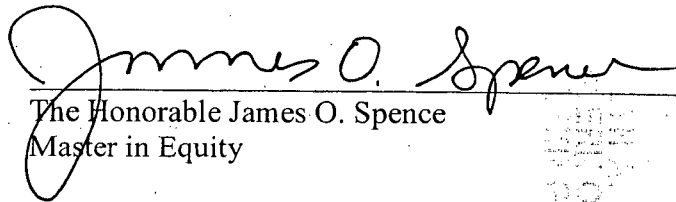
(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, ✓
etc. On motion and upon such terms as are just, the court may relieve a party or his legal
representative from a final judgment, order, or proceeding for the following reasons:

- (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 Court has reviewed the record and pleadings in this matter, as well as the record in ✓
Defendants' prior Bankruptcy cases. It is clear to the Court this is not a case where Rule 60
applies under any type of analysis, and the Court finds the factors set forth by Rule 60 have not
been met. The record reflects there have been multiple times when the claims now being raised
in this motion could have been raised over the past five years when Defendant Steven Sharpe
repeatedly appeared in court both pro se and with counsel.


Under the case law pertaining to Rule 60 motions, "discoverable evidence" is not when an individual decides to conduct discovery, it is when the evidence is discoverable. In this case, Defendants chose not to answer and dispute these issues after all the years of prior hearings and subsequent Bankruptcies. Defendants chose to wait until this point in the matter to raise these issues.

Further, 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 the subsequent state court foreclosure action. This is not how the court system is supposed to work and it will not occur nor will it be condoned in this court. The Court finds the doctrine of judicial estoppel is applicable in this matter. The Motion to Vacate the Foreclosure Order pursuant to Rule 60 SCRPC is Denied.


The Honorable James O. Spence
Master in Equity

Lexington, South Carolina
Nov. 27, 2015

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