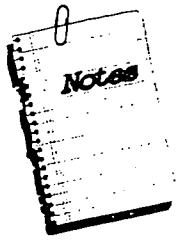
08



5/24/2016

RECEIVED

MAY 27 2016

SC Court of Appeals

To: SC Court of Appeals
From: Sandra Dennis
#2015-002258

On May 12th, 2016, I received a letter from the Court of Appeals, denying my appeal.
I had filed my appeal on October 29, 2015; 29 day after receipt of a "signed, filed and entered" copy of a Ruling by Judge Couch. My receipt date was 9/21/2015.
Prior to that date, I received an E-mail from my former attorney with a copy of a Ruling that was unsigned and had not been entered.

I am enclosing a copy of that E-mail, so that you might see what had been E-mailed to me.

I have read SC Rules and considered that according to those Rules; that only a signed filed & entered ruling was acceptable notice.

Yours truly,

Sandra Dennis
49 Riddel Street
Charleston, SC 29401

The South Carolina Court of Appeals

Bank of New York Mellon Trust Company, N.A., not in its individual capacity but solely as trustee on behalf of the FDIC 2013-NJ Asset Trust, Respondent,

v.

Sandra H. Dennis and Discover Bank, Defendants,

Of Whom Sandra H. Dennis is the Appellant.

Appellate Case No. 2015-002258

ORDER

Respondent has filed a motion to dismiss this appeal as untimely. Counsel for Appellant certified in an email to the Charleston County master-in-equity's office that he received written notice of entry of the underlying order on September 10, 2015. Appellant did not serve her notice of appeal from that underlying order until October 20, 2015. Pursuant to Rule 203(b)(1), SCACR, the "notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment." Here, Appellant served the notice of appeal more than thirty days after receipt of written notice of entry of the underlying order. Accordingly, this appeal is dismissed. *See Elam v. S. Carolina Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) ("The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."). The remittitur will be sent as required by Rule 221(b), SCACR.

FOR THE COURT

Fwd: BONY Mellon Trust Company, NA as Trustee v. Sandra Denni...

People

Charles Ailstock <cailstock@gmail.com> 07/31/15 at 3:15 PM
To Sandy Dennis

---------- Forwarded message ----------
From: **Couch, Roger L. Law Clerk (John Connell Jr.)** <rcouchlc@sccourts.org>
Date: Tuesday, July 28, 2015
Subject: BONY Mellon Trust Company, NA as Trustee v. Sandra Dennis (2014-CP-10-01905)
To: Magalie Creech <mcreech@finkellaw.com>, "Couch, Roger L." <rcouchj@sccourts.org>
Cc: Charles Ailstock <cailstock@gmail.com>, Dominique Biggers <dbiggers@finkellaw.com>

Ms. Creech,

Judge Couch is granting the Plaintiff's Protective Order and Summary Judgment motion. Please prepare an Order in this fashion. Submit a copy to opposing counsel and then to Judge Couch's chambers. Thank you.

Kind regards,

John

From: Magalie Creech [mailto:mcreech@finkellaw.com]
Sent: Friday, July 17, 2015 4:53 PM
To: Couch, Roger L.; Couch, Roger L. Law Clerk (John Connell Jr.)
Cc: 'Charles Ailstock'; Dominique Biggers
Subject: BONY Mellon Trust Company, NA as Trustee v. Sandra Dennis (2014-CP-10-01905)

Good afternoon, Judge Couch:

I represent the Plaintiff in the above-referenced foreclosure action, which is scheduled for several hearings before you on July 27, 2015 at 2:30. Attached is the *Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment*. The original is being sent for filing today.

Please do not hesitate to let us know if you require any additional materials for review of these matters.

Kind regards,

Magalie A. Creech, Esquire
Finkel Law Firm LLC
P.O. Box 41489
Charleston, SC 29423
Tel: (843) 577-5460
Fax: (843) 577-5135
Direct: (843) 576-6311
mcreech@finkellaw.com

** If you cannot reach me and require immediate assistance, please contact Dominique Biggers at dbiggers@finkellaw.com. If you cannot reach me and require immediate assistance from an attorney, please contact Andy Shook at ashook@finkellaw.com.*

Please consider your environmental responsibility before printing this e-mail. Stay Green.

NOTICE REQUIRED BY FEDERAL FAIR DEBT COLLECTION PRACTICES ACT: This firm collects debts for mortgage lenders and other creditors, and any information obtained will be used for that purpose. However, If you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt but only as an attempt to enforce a lien.

PRIORITY ★ MAIL ★

TRACKED ★ ★ ★ INSURED

UNITED STATES POSTAL SERVICE®

For Domestic Use Only

Label 107R, July 2013

UNITED STATES POSTAL SERVICE®

1024

29211

U.S. POSTAGE PAID
CHARLESTON, S
29401
MAY 25, 16
AMOUNT
$6.45
R2305K141335-16

To Hon. Lenny Abbot Katunga
Clerk of Court
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

RECEIVED
MAY 27 2016
SC Court of Appeals

Expected Delivery Day: 05/27/2016

USPS TRACKING NUMBER

9505 5117 6066 6146 0439 75

Hand Delivered Postage Paid

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-10-1905

The Bank of New York Mellon Trust Company, N.A, not in its individual capacity but solely as trustee on behalf of the FDIC 2013-N1 Asset Trust

PLAINTIFF(S)

Sandra H. Dennis; and Discover Bank

DEFENDANT(S)

Submitted by: Magalie A. Creech (SC Bar 78855)	Attorney for : ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge **Judge Code** **Date**

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON The Bank of New York Mellon Trust Company, N.A, not in its individual capacity but solely as trustee on behalf of the FDIC 2013-N1 Asset Trust, PLAINTIFF, vs. Sandra H. Dennis; and Discover Bank, DEFENDANTS.	IN THE COURT OF COMMON PLEAS CASE NO.: 2014-CP-10-1905 **ORDER GRANTING SUMMARY JUDGMENT TO PLAINTIFF AND DISMISSING DEFENDANT'S COUNTERCLAIMS**

THIS MATTER came before the Court upon the filing of The Bank of New York Mellon Trust Company, N.A, not in its individual capacity but solely as trustee on behalf of the FDIC 2013-N1 Asset Trust's ("Plaintiff") Motion for Summary Judgment on Defendant's Counterclaims and for Foreclosure against Sandra H. Dennis ("Defendant"). A hearing was held on July 27, 2015, at which counsel for the parties appeared. Based upon the oral arguments of counsel, submissions of the parties, applicable law, and absence of genuine issue as to any material fact, I find and conclude that Plaintiff's Motion for Summary Judgment is granted as set forth below:

FINDINGS OF FACT

1. Based upon the Certification of Compliance filed herein, I find the requirements of S.C. Supreme Court Administrative Order 2011-05-02-01 have been satisfied and the within captioned action is no longer stayed by the above-referenced order.

2. Pursuant to the S.C. Supreme Court Administrative Order 2009-05-22-01, the loan that is subject of this action held by a participant in the Home Affordable Modification Program ("HMP"); however, the loan is not subject to modification under the HMP because the unpaid principal balance is greater than $729,750.00.

3. On December 17, 2008, Defendant executed and delivered a promissory note ("Note") in the amount of $1,135,000.00 and a mortgage ("Mortgage") securing said note to Atlantic Bank and Trust.

4. The Mortgage constitutes a first lien on the subject property.

5. Pursuant to the terms of the Note, Defendant was to pay the principal balance of $1,135,000.00 plus interest thereon at an adjustable rate on November 10, 2010, and to make regular monthly payments of all accrued unpaid interest beginning January 5, 2009.

6. The subject loan was a refinance which satisfied two prior mortgages on the property and in which Defendant received $121,383.41 in cash.

7. Based upon the loan records and affidavit of Defendant, the purpose of the loan was to restructure Defendant's existing debt and pay off her credit card debt, with the primary source of repayment of the loan being a sale of the property.

8. The origination appraisal valued the property at $2,500,000.00 as of November 5, 2008, and at that time the property was listed for sale at $2,650,000.00.

9. At the closing for the loan on November 17, 2008, Defendant executed two (2) copies of a Notice of Right to Cancel pursuant to section 125 of the Truth in Lending Act ("TILA") 15 U.S.C. § 1602, *et. seq.*

10. Defendant defaulted on her payment obligations on July 6, 2010.

11. Thereafter, Atlantic Bank and Trust ("Failed Bank") was closed by the Office of Thrift Supervision on June 3, 2011, and the Federal Deposition Insurance Corporation ("FDIC") was named as receiver ("FDIC-Receiver").

12. The FDIC-Receiver published notice to the Failed Bank's creditors to present any claims against the FDIC-Receiver on or before September 7, 2011, pursuant to U.S.C. § 1821(d)(3)(B).

13. On June 17, 2011, the FDIC-Receiver provided Defendant written notice of its appointment as receiver of Atlantic Bank and Trust, advised Defendant of the FDIC-Receiver's status as the owner and holder of the Note and Mortgage, and provided formal demand notice of Defendant's default under the terms of the Note and Mortgage.

14. Defendant did not file a claim against the assets of the Failed Bank.

15. On September 30, 2013, the FDIC-Receiver sold the Note and Mortgage to Plaintiff.

16. The FDIC-Receiver negotiated the Note by indorsement in blank and transferred possession of the Note and Mortgage to Plaintiff, and a corresponding Assignment of Mortgage to Plaintiff was recorded in the Charleston County Register of Deeds Office.

17. Pursuant to the terms of the Note and Mortgage, Plaintiff notified Defendant of its intention to declare all sums due under the Note and Mortgage immediately payable as a result of Defendant's default in payments thereunder.

18. Plaintiff subsequently instituted a foreclosure action against Defendant, demanding a deficiency judgment.

19. All of Defendant's counterclaims are based upon the alleged acts and/or omissions of the Failed Bank.

20. On October 27, 2014, Defendant sent Plaintiff correspondence identified as a "notice of rescission" pursuant to the Truth in Lending Act.

CONCLUSIONS OF LAW

A. The Court lacks jurisdiction over Defendant's Counterclaims.

Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA") sets forth an administrative claims process in which creditors of a failed bank may file a claim against the FDIC as receiver for that institution within a limited period. The statute strictly limits federal and state courts' ability to adjudicate claims that are not first exhausted within FIRREA's administrative process. Because the Defendant's counterclaims fall under the purview of FIRREA and she did not present any claims to the FDIC within the statutory period, this Court lacks subject matter to adjudicate Defendant's counterclaims and they must be dismissed as a matter of law.

Congress enacted FIRREA "in the midst of the savings and loan insolvency crisis to enable the FDIC ... to expeditiously wind up the affairs of literally hundreds of failed financial institutions throughout the country." Westberg v. FDIC, 741 F. 3d 1301, 1303 (D.C. Cir. 2014). In order to efficiently resolve the numerous potential claims against a failed bank, avoid protracted litigation that would preclude the wind-ups, and ensure that the bank's assets could be transferred to willing buyers, the statute creates an administrative claims process under which the FDIC has authority to quickly resolve all claims against the assets of a failed bank that is placed in receivership under the FDIC or which arise from the conduct or omissions of the failed bank. See 12 U.S.C. § 1821(d)(3)–(13).

When liquidating a failed bank's assets, the FDIC must "promptly publish a notice to the depository institution's creditors to present their claims [to the FDIC] by a specified date in the notice[,]" otherwise known as a "claims bar date." 12 U.S.C. § 1821(d)(3)(B). FIRREA requires that the FDIC provide at least 90 days to allow claimants to file claims against the failing bank's assets. 12 U.S.C. § 1821(d)(3)(B)(i). The FDIC must also mail a similar notice directly to any creditor shown on the institution's books and any "claimant[s] not appearing on the institution's books" whose names and addresses the FDIC later discovers. 12 U.S.C. § 1821(d)(5)(A). Importantly, FIRREA does not allow waiver of the exhaustion requirement even for claimants to whom the FDIC failed to mail the required notice of the claims process and bar date. See Alkasabi v. Washington Mutual Bank, F.A., 31 F.Supp.3d 101 (D.C. Cir. 2014) (interpreting FIRREA to mean that the FDIC's failure to mail the notice required under 12 U.S.C. § 1821(d)(3)(C) did not relieve the mortgagor-claimant of the obligation to exhaust administrative remedies, because the statute does not provide for a waiver or exception under those circumstances); Freeman v. F.D.I.C., 56 F.3d 1394, 1402 (D.C. Cir. 1995); Intercontinental Travel Mktg., Inc. v. F.D.I.C., 45 F.3d 1278, 1285 (9th Cir. 1994); Meliezer v. Resolution Trust Company, 952 F.2d 879, 882-83 (5th Cir. 1992). When a timely claim is filed, section 1821(d)(5)(A)(i) requires the FDIC to either allow or disallow the claim within 180 days of the claim being filed. See 12 U.S.C. § 1821(d)(5)(A)(i); Intercontinental Travel Marketing, Inc. v. FDIC, 45 F.3d 1278, 1282 (9th Cir. 1994). If

a claimant files his or her claim after the claims bar date, the FDIC is not permitted to consider the claim under section 1821(d)(5)(A)(i); instead, FIRREA mandates that "claims filed after the [claims bar date] shall be disallowed and such disallowance shall be final." 12 U.S.C. § 1821(d)(5)(C)(i). The single exception to this bar on untimely claims provides that a claim filed after the claims bar date "*may* be considered *by the receiver* if ... the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; *and* ... such claim is filed in time to permit payment of such claim." 12 U.S.C. § 1821(d)(5)(C)(ii) (emphasis added).

FIRREA also specifies the limited circumstances under which federal courts may consider claims subject to the aforementioned administrative process. As an initial matter, FIRREA contains a broad jurisdiction stripping provision, which provides as follows:

> *Except as otherwise provided in this subsection, no court shall have jurisdiction over* [ ] any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the Corporation has been appointed receiver, [... or] any claim relating to any act or omission of such institution or the Corporation as receiver.

12 U.S.C. § 1821(d)(13)(D)(i)–(ii) (emphasis added). The "except as otherwise provided" language refers back to section 1821(d)(6), the provision for judicial review of timely claims that are disallowed or ignored. Westberg, 741 F. 3d at 1303. Specifically, that provision states that when the FDIC either disallows a claim or fails to make a decision on a claim within one hundred eighty (180) days, the claimant may then, and only then, file suit on the claims that were presented to the FDIC and disallowed or ignored. See 12 U.S.C. § 1821(d)(6) (authorizing judicial review when claims are either denied pursuant to section 1821(d)(5)(A)(i) or ignored for the 180 day period established in the same section). Such a suit must be brought within 60 days of either the FDIC's disallowance of a timely claim or after the 180 day decisional period passes, whichever is earlier, and must be filed in either the United States District Court for the District of Columbia or in the district where the failed institution had its principle place of business. See 12 U.S.C. § 1821(d)(6)(A).

Here, Defendant has asserted counterclaims for misrepresentation, intentional infliction of emotional distress, fraud in the inducement, and violations of Real Estate Settlement Procedures Act, South Carolina Unfair Trade Practices Act, the South Carolina Consumer Protection Code - all of which are based on the alleged acts or omissions of the original creditor and failed institution, Atlantic Bank and Trust. Those counterclaims seek monetary damages from Plaintiff, which therefore constitute a claim under FIRREA for which Defendant was required to present a claim during the claims period. See Nat'l Union Fire Ins. Co. v. City Sav., F.S.B., 28 F.3d 376, 386–87 (3d Cir.1994) (observing that FIRREA does not define "claim" or "creditor," and applying the Bankruptcy Code's definitions of those terms to interpret FIRREA (citing Office & Prof'l Emps. Int'l Union, Local 2 v. FDIC, 962 F.2d 63, 68 (D.C. Cir.

1992))); 11 U.S.C. § 101(5) (defining "claim" as "right to payment" or "right to an equitable remedy for breach of performance if such breach gives rise to a right to payment"); 11 U.S.C. § 101(10)(A) 11 U.S.C. § 101(10)(A) (defining "creditor" as an "entity that has a claim against the debtor").

It is not disputed that Defendant had actual notice of the appointment of the FDIC as Receiver for Atlantic Bank and Trust and failed to present any claim prior to the claims bar date of September 7, 2011. Furthermore, Defendant was a debtor, not creditor, on Atlantic Bank & Trust's books at the time the bank failed and went into receivership. Alkasabi, 31 F.Supp.3d at 108-109. Accordingly, Plaintiff was not a known, identifiable creditor on AB&T's books requiring mailed notice under 12 U.S.C. § 1821(d)(3)(C).

Nevertheless, the FDIC published notice of its appointment in 2011, and such constructive publication notice is sufficient for parties who were not known, identifiable creditors. See Tillman v. Resolution Trust Corp., 37 F.3d 1032, 1036 (4th Cir. 1994) (holding that publication in local newspapers precluded claimant's defense of lack of notice of receivership); Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 317, 70 S.Ct. 652, 94 L.Ed. 865 (1950) (holding that statutory notice by newspaper publication was sufficient, as a matter of due process, as to trust beneficiaries whose interests or whereabouts could not with due diligence be ascertained). At the very least, the Defendant was on inquiry notice of the administrative claims process. See Elmco Props., Inc. v. Second Nat'l Fed. Sav. Assoc., 94 F.3d 914, 921–22 (4th Cir. 1996) (a claimant "may not complain of its lack of formal notice if it actually knew enough about the situation to place it on 'inquiry notice' as to the details of the administrative process," and "a claimant's knowledge that a bank has entered receivership triggers such inquiry notice"). Here, Defendant had actual notice of Atlantic Bank & Trust's failure and the FDIC's appointment as receiver, and cannot avail herself of section 1821(d)(5)(C)(ii)'s exception. Accordingly, Defendant does not satisfy the late-filed claims exception under Section 1821(d)(5)(C)(ii) because she was aware of the FDIC's appointment as receiver and did not file a claim.

Therefore, the Court does not have jurisdiction to hear any of the Defendant's counterclaims. City Savings, 28 F.3d at 394. Accordingly, there is no genuine issue of material fact that Defendant's failure to exhaust her administrative remedies under FIRREA deprives this Court of jurisdiction over her claims and Plaintiff is entitled to summary judgment on Defendant's counterclaims as a matter of law.

B. Plaintiff is entitled to judgment on Defendant's affirmative defense of rescission.

Section 125 of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1607, *et seq.* provides consumers a statutory right to rescind certain types of mortgage loans. The right to rescind applies to open-end and closed-end loans secured by a lien on the consumer's principal dwelling (e.g., home equity lines of credit, some second mortgages, and refinances. See generally 12 C.F.R. §§ 1026.15, 1026.23. Consumers can rescind their loans until midnight of the third business day following the later of (1) loan consummation, (2) delivery of notice of the right to cancel, or (3) delivery of the material disclosures. 15 U.S.C.

§1635(a). A consumer exercises his right to rescind "by notifying the creditor, in accordance with the regulations of the [Consumer Financial Protection] Bureau, of his intention to do so." Id. The right to rescind expires three (3) years after consummation of the loan or upon sale of the home, whichever occurs first, notwithstanding a failure to provide the required disclosures to the consumer. Id. § 1635(f); Jesinoski v. Countrywide Home Loans, Inc., 135 S. Ct. 790, 792, 190 L. Ed. 2d 650 (2015). The only ambiguity that courts have found in this language is whether the loan can be rescinded by simply giving creditors notice within the three year window, or if filing of a lawsuit is necessary as well. Gilbert v. Residential Funding LLC, 678 F.3d 271, 277 (4th Cir. 2012).

When a consumer exercises a valid right of rescission under § 1635(a), the transaction is cancelled. The effect of cancellation is governed by 1635(b), which states that the consumer "is not liable for any finance or other charge, and any security interest given by the obligor... becomes void upon such a rescission." 15 U.S.C. §(b); 12 C.F.R. §§ 1026.15(d)(1), 10026.23(d)(1). Section 1635(b) also governs the processes of cancellation, which provides that within twenty (20) calendar days after receipt of a notice of rescission, the lender must return any money or property given in connection with the transaction and take all necessary action to reflect the termination of the security interest. 15 U.S.C. § 1635(b); 12 C.F.R. §§ 1026.15(d)(2), 1026.23(d)(2). When a lender has performed its obligations, the consumer must tender the money or the property to the lender or, if that is impracticable or inequitable, must tender the property's reasonable value. 15 U.S.C. §1635(b); 12 C.F.R. §§ 1026.15(d)(3), 1026.23(d)(3).

The loan was consummated on December 17, 2008, at which Defendant was provided with the required disclosures. Defendant's purported notice of rescission was served on October 27, 2014 – nearly three years *after* the three-year right of rescission had expired. There can be no excuse for this, because courts have construed the language of TILA to create a statute of repose, and not limitation. Jones v. Saxon Mortgage, Inc., 537 F.3d 320, 327 (4th Cir. 1998). Therefore, by failing to exercise her right to rescind within three years, Plaintiff has barred herself from the option of rescinding the contract, regardless of the actions of the Failed Bank. Any other result "would upset the economic best interests of the public as a whole." Id. Accordingly, Plaintiff is entitled to summary judgment on this claim.

C. Plaintiff is entitled to judgment on Defendant's affirmative defense of unclean hands.

Defendant claims that Plaintiff should be prevented from foreclosing on the Mortgage because the Failed Bank "habitually made loans in bad faith and in a grossly negligent manner." Additionally, Defendant alleges that the loan she executed with the Failed Bank was made in a manner which was "grossly negligent and predatory lending in the pursuit of growth." Defendant further claims that the Failed Bank presented her with terms at closing that were "more onerous" than the ones originally estimated as grounds for these allegations.

"A mortgage foreclosure is an action in equity." Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). "The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." First Union National Bank of South Carolina v. Soden, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998). "The expression 'clean hands' means a clean record with respect to the transaction with the defendants themselves and not with respect to others." Arnold v. City of Spartanburg, 201 S.C. 523, 532, 23 S.E.2d 735, 738 (1943). The rule must be understood to refer to some misconduct concerning the matter in litigation of which the opposing party can, in good conscience, complain in a court of equity. Id.

Defendant fails to allege sufficient facts to assert unclean hands as a defense. The defense of unfair hands requires a party to show that the plaintiff acted unfairly in regards to the specific matter that is before the court. The subject of the instant foreclosure action is the Defendant's failure to make payments as required by the terms of the Note and Mortgage she admits having executed. The Defendant has not alleged that Failed Bank in any way acted unfairly to prevent her from making the payments as required. To the contrary, the record shows that the bank repeatedly sent her default notices and offered loss mitigation opportunities.

Furthermore, Defendant cannot substantiate the contention that presenting her with allegedly "more onerous" terms than the ones originally estimated could be characterized as "unfair." Defendant was the one who approached Atlantic Bank and Trust seeking more time to sell her house and to consolidate her existing debt. The bank had no involvement in her present financial circumstances and in response to her loan request, gave her an opportunity to restructure her debt through a short term loan that she, and the bank, anticipated would be repaid through the sale of her house. Defendant was fully informed of the terms of the loan, voluntarily executed the Note and Mortgage, was represented by counsel at closing, and has failed to offer any evidence the loan instruments were the product of duress or coercion. Having admitted that she signed the Note and Mortgage, Defendant cannot now claim she did not agree to be bound by their terms. It is a basic legal tenet in South Carolina jurisprudence that a person cannot avoid the consequence of signing a document he did not read:

> A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it. A person signing a document is responsible for reading the document and making sure of its contents. Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it.

Regions Bank v. Schmauch, 345 S.C. 648, 663-64 582 S.E.2d 432, 440 (Ct. App. 2003).

In short, the Defendant has failed to point to any facts in the record showing the Failed Bank acted unfairly towards her in regards to her repayment of the loan. Instead, she has merely made

unsubstantiated, conclusory statements that the Failed Bank was in the business of making reckless loans, and therefore she should not have to abide by the terms of hers. For these reasons, the Defendant's affirmative defense of unclean hands is dismissed as without merit.

D. Plaintiff is entitled to the foreclosure.

Defendant admits that she executed the Note and Mortgage, understood and intended that the primary source of repayment of the loan was the sale of the property, and that she benefitted from the loan. The loan has been in default since July 6, 2010, the default has not been cured, Plaintiff provided notice of Defendant's default, and Plaintiff exercised its right to accelerate the loan and foreclose the mortgage.

"Once the debt and default have been established, the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment, or accord and satisfaction." U.S. Bank Trust Nat'l Ass'n v. Bell, 684 S.E.2d 199, 205 (Ct. App. 2008). As demonstrated by Defendant's own admissions and Plaintiff's testimony, the debt and default in this case are established. Further, Defendant has no valid defenses to the foreclosure because the debt is valid, unsatisfied, and in default. No issue of material fact exists regarding the obligation of Defendant to Plaintiff, and as such summary judgment is proper.

IT IS THEREFORE ORDERED THAT:

1. Plaintiff's Motion for Summary Judgment as to liability only on its foreclosure action against Defendant Sandra L. Dennis is granted.

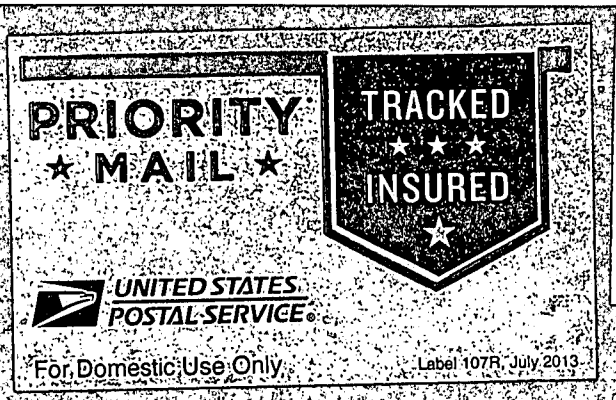
2. Judgment is hereby entered in favor of Plaintiff against Defendant's counterclaims and defenses.

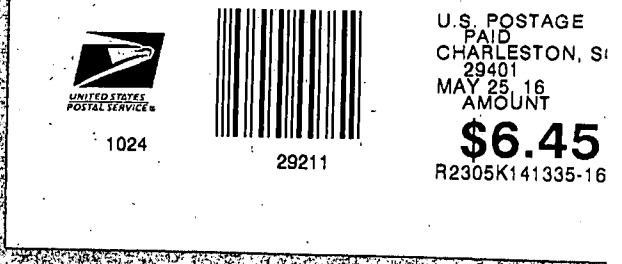
3. This matter shall be referred to the Charleston County Master in Equity, for a subsequent hearing to determine the amounts due and owing under the subject note and mortgage and Plaintiff's costs and expenses.

IT IS SO ORDERED.

_____
The Honorable Roger L. Couch
9th Judicial Circuit

Charleston, South Carolina
_____, 2015



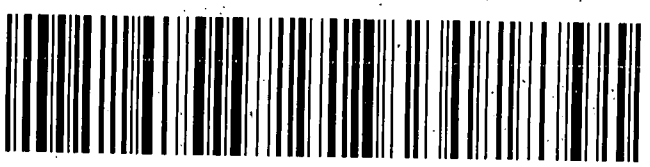


To Honorable Abbot K. Laing
Clerk of Court
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

RECEIVED
MAY 27 2016
SC Court of Appeals

Expected Delivery Day: 05/27/2016

USPS TRACKING NUMBER



9505 5117 6066 6146 0439 75

110 Rhodell Street Charleston, SC 29407