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JAN 19 2017

SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Nationstar Mortgage, L.L.C.,

PLAINTIFF,

vs.

Brenda Reddix-Small a/k/a Brenda Reddix; Milton Small a/k/a Melton A. Small; The United States of America acting by and through its agency the Internal Revenue Service; and The South Carolina Department of Revenue,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2013-CP-40-3211

ORDER DENYING DEFENDANTS' MOTION TO COMPEL, GRANTING PLAINTIFF'S MOTION TO QUASH AND REAFFIRMING ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

9:05 NOV 17 AM 8:53
CLERK OF COURT
RICHLAND COUNTY

This matter came before the Court upon multiple motions of the parties: first, the motion of Brenda Reddix-Small a/k/a Brenda Reddix and Milton Small a/k/a Melton A. Small ("Defendants") seeking to compel discovery from Nationstar Mortgage, LLC ("Plaintiff"); second, the Plaintiff's Motion to Quash the Notices of Deposition and Subpoenas served by Defendants; and third, a re-hearing of the Plaintiff's Motion for Summary Judgment originally heard and granted April 26, 2016. Present at the hearing held on Monday, October 31, 2016 were Defendants, counsel for the Defendants and counsel for Nationstar Mortgage, LLC ("Plaintiff"). As further set forth herein, the prior order granting Plaintiff's Motion for Summary Judgment is reaffirmed and Defendants Motions are denied as follows:

1. **Defendants Motion to Compel is denied.**

Defendants contend that they are entitled to further discovery on the parties' loss mitigation efforts, and seek to conduct a 30(b)(6) deposition to ascertain the Plaintiff's rationale in denying their requests for a loan modification. The record reflects that Plaintiff responded to Defendants' written discovery and made proper objections as to relevance. This Court finds that because Defendants raised no affirmative defenses or counterclaims and Plaintiff has already satisfied its burden to foreclose the subject mortgage lien, the discovery sought by Defendants is not reasonably calculated to lead to the discovery of admissible evidence under Rule 26, SCRPC. Therefore, the Motion to Compel is denied.

2. **Plaintiff's Motion to Quash is granted.**

The subpoenas to individual employees and/or former employees of the Plaintiff are improper on the grounds that Plaintiff is a private corporation. The proper vehicle to seek a deposition of the Plaintiff, as a corporate entity, is pursuant to Rule 30(b)(6), SCRPC. As set forth previously, the intended 30(b)(6) deposition testimony and related subpoenas served by Defendants seek information related to the various reviews and denials of Defendant's modification requests. The foregoing is not reasonably calculated to lead to the discovery of admissible evidence regarding the sole cause of action for foreclosure before the Court. Therefore, Defendants' Notices of Deposition and various subpoenas must be quashed.

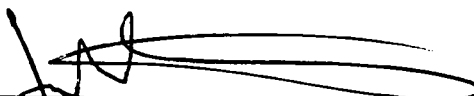
3. **The Order Granting Plaintiff's Motion for Summary Judgment is reaffirmed.**

The only elements Plaintiff must and has already established are the existence of the debt and the mortgagors' default on that debt. See *U.S. Bank Trust National Association v. Bell*, 385 S.C. 364, 684 S.E.2d 199 (Ct. App. 2009). Defendants have offered affidavits in opposition to the Motion for Summary Judgment, and argued that the loan was orally modified which allegedly cured any default. I find that none of the foregoing creates any issue of material fact because Defendants admitted execution of the note and mortgage and their default thereunder in their Answer herein. As such, Defendants are bound by their pleadings and factual assertions. See *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276 (Ct. App. 2005); *Globe v. Rutgers Fire Ins. Co.*, 189 S.C. 91 (1938); *Parker v. Simmons*, 191 S.E. 169 (1931); *Hodge v. Atlantic Coast & Lumber Corp.*, 90 S.C. 229 (1911).

Furthermore, Defendants have not asserted any counterclaims or affirmative defenses in their answer filed August 12, 2013. "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 National Association v. Bell*, 684 S.E.2d (citing *Bandy v. Bandy*, 187 S.C. 410, 413, 197 S.E. 396, 397 (1938) (holding the burden was on defendant in mortgage foreclosure suit to establish her defense that mortgage and note secured

thereby were without valuable consideration by preponderance of evidence)). Defendants have waived any affirmative defenses by not asserting them in their responsive pleading, and have not raised any claims against Plaintiff. See Rule 8, SCRPC. See also *Earthscapes Unlimited Inc. v. Ulbrich*, 390 S.C. 609 (2010) (finding party cannot benefit from an affirmative defense it never pleaded). Thus, the prior order Granting Plaintiff's Motion for Summary Judgment is reaffirmed.

THEREFORE, Defendants Motion to Compel is **DENIED**, Plaintiff's Motion to Quash is **GRANTED**, and the Order Granting Plaintiff's Motion for Summary Judgment is **REAFFIRMED**. The subject property is to be sold at public auction in January 3, 2016. Plaintiff is to provide Defendants with a Notice of Sale, and updated payoff and reinstatement quotes


The Honorable Joseph M. Strickland
Master in Equity for Richland County

November 17, 2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS
Nationstar Mortgage, LLC,
PLAINTIFF

FORM 4
JUDGMENT IN A CIVIL CASE

C/A NO: 2013-CP-40-3211

Brenda Reddix-Small a/k/a Brenda Reddix; Milton
Smalls a/k/a Melton A. Smalls; *et al.*

DEFENDANTS.

Submitted by: **FINKEL LAW FIRM LLC**
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.

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: _____

2016 NOV 17 AM 8:53
CLERK OF COURT
RICHLAND COUNTY

RICHLAND COUNTY
FILED

Brenda Reddix- Smalls
7609 Yorkhouse Road
Columbia, SC 29223

RECEIVED

JAN 19 2017

SC Court of Appeals

January 19, 2017

Ms. Jenny Abbott Kitchings, Clerk
The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Nationstar, LLC v. Brenda Reddix-Smalls
Appellate Case No. 2016-002575

Dear Ms. Kitchings:

Please find enclosed a copy of the order being appeal in the above referenced case.

Sincerely,

A handwritten signature in cursive script that reads "Brenda Reddix-Smalls".

Brenda Reddix-Smalls