

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

CitiMortgage, Inc.,

PLAINTIFF,

vs.

Mary L. Moxley a/k/a Mary Moxley n/k/a Mary Richardson; Hudson & Keyse LLC; First Manufactured Housing Credit Corporation who acquired First Carolina Financial Corporation; and South Carolina Department of Motor Vehicles,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-02-0236

ORDER DENYING DEFENDANT MOXLEY'S
RULE 59(E), SCRPC MOTION FOR
RECONSIDERATION

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SC Court of Appeals

THIS MATTER came before the Court upon Motion of Mary L. Moxley a/k/a Mary Moxley n/k/a Mary Richardson ("Defendant") pursuant to Rule 59(e), SCRPC, for reconsideration of the Order entered herein on June 30, 2017 ("Order"). Specifically, Defendant's Motion contends it was error for the Court to conclude that: 1) Defendant executed the subject mortgage; and 2) that the mortgage is a valid lien. A hearing was held on August 22, 2017, at which counsel for all parties were present.

Based upon the arguments presented by the parties, I find that Defendant has failed to cite any fact or principal of law which the Court failed to consider in rendering its decision. At the hearing, Defendant argued that the trial testimony of John Ballentine raised purported issues of which she was unaware and thus not prepared to try. However, I find that Mr. Ballentine was properly identified by Plaintiff as a witness and that the parties had ample opportunity to complete discovery in this matter. This is evidenced in paragraph 6(d) of the Order, which provides that only partial summary judgment was granted to Plaintiff in September 2014 so that the parties could complete discovery as to the remaining issues for trial. The trial was held over two and a half years later. Therefore, I find this argument to be without merit.

Defendant also argued that the Court erred by failing to conclude that the mortgage was unenforceable. Defendant relied upon *Leasing Enterprise v. Livingston*, 294 S.C. 363 S.E.2d 410 (1947) in support of her proposition that the mortgage was invalid because it was not properly witnessed.

However, I find that *Livingston* addresses the recordability of the mortgage, and the question of whether the mortgage is valid and enforceable against Defendant is squarely addressed by *Smith v. Hawkins*, 254 S.C. 423, 175 S.E.2d 824 (1970). In *Smith*, the Supreme Court expressly held that a deed or mortgage without sufficient witnesses was valid between the parties to the instrument. Consequently, whether the mortgage was properly witnessed is irrelevant to the issue of its enforceability against Defendant. Therefore, this argument is without merit.

Finally, as the trier of fact, this Court determined that Defendant did execute the subject mortgage. In reaching this determination, the Court considered, *inter alia*, the discrepancies in Defendant's deposition and trial testimony. In light of the foregoing and the record before the Court, I find the evidence supports this finding of fact and that such finding falls well within the Court's authority. Therefore, Defendant's Motion is **DENIED**.

IT IS SO ORDERED.

M. Anderson Griffith
Aiken County Master in Equity

_____, 2017
Aiken, South Carolina



Aiken Common Pleas

Case Caption: CitiMortgage Inc VS Mary L Moxley , defendant, et al
Case Number: 2016CP0202033
Type: Master/Order/Other

AND IT IS SO ORDERED

s/M Anderson Griffith-3076

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