

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS)
NINTH JUDICIAL CIRCUIT)

C/A NO.: 2010-CP-10-1074)

BAYVIEW LOAN SERVICING, INC,)
Plaintiff)

v.)

ORDER

PATRICK ODEN, SUZANNE ODEN,)
AND HICKORY HILL PLANTATION)
COMMUNITY ASSOCIATION)
Defendants)

RECEIVED
JAN 25 2018
SC Court of Appeals

A hearing was held before me on May 10, 2017 wherein Magalie Creech was present representing U.S. Bank Trust, N.A. and Paul Doolittle was present representing the Oden Defendants. Two motions filed by Ms. Creech were ruled on by the Court at this hearing. Namely, a Motion to Substitute U.S. Bank Trust N.A. for Bayview Loan Servicing, Inc as Plaintiff and a Motion for Relief from Judgment or Order.

FILED
2017 JUL 18 PM 3:08
JULIE ANASTROPO
CLERK OF COURT

As an initial matter, this matter was initially filed in 2010. I ruled in December of 2014 ordering Bayview to return the partial insurance proceeds at issue to the Oden Defendants and gave them thirty (30) days to do the same. I also ruled if such was not done then the case would be dismissed and the equitable remedy of foreclosure would no longer be available. Bayview failed to comply with said Order and as such, I held another hearing and issued an Order in January of 2015 declaring that the equitable remedy of foreclosure was no longer available and dismissed the case. In August of 2016 (over 1 1/2 years later) Bayview finally tendered the partial insurance proceeds to the Oden Defendants. In January 2017 Bayview assigned their promissory note and mortgage interest to U.S. Bank Trust. In April of 2017 U.S. Bank Trust filed the motions which are the subject of this Order and referenced above.



First, it should be noted the order ending the case was issued in January of 2015 and no motion to reconsider was ever filed. Further, since it is a closed case having been dismissed over

2 years prior to the filing of the instant motions, which are the subject of this Order, it is inappropriate to file a motion to substitute in this closed case. As such, this motion is DENIED.

Second, as to the motion to for relief from judgment, the movants rely on Rule 60(b)5 which provides for relief when “[I]t is no longer equitable that the judgment shall have prospective application.” In the instant case, the Order at issue does not have prospective application. The standard for prospective application is whether the Order at issue is executory or involves the supervision of changing conduct or conditions by the court. Saro Investments v. Ocean Holiday Partnership, 314 S.C. 116, 441 S.E. 2d 835 (Ct. App. 1994). The Order at issue is not executory nor does it involved supervision of changing conduct or conditions. All other rules cited by the movant are inapplicable to the instant case. As such, this motion is DENIED.

WHEREFORE, having fully considered the motions presented, all arguments by counsel, the record in this case and the applicable pleadings, it is hereby,

ORDERED, ADJUDGED, AND DECREED that both Motions are respectfully DENIED and US Bank Trust is Ordered to pay Paul Doolittle the sum of Five Hundred Dollars (\$500.00) in attorney fees for time spent in opposing these motions.

AND IT IS SO ORDERED.

Charleston, SC
Dated: May 7/12 2017


The Honorable Mike B. Scarborough
Master in Equity