

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SCBT, N.A.,

Plaintiff,

vs.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NOS.: 2011-CP-40-6317 and
2011-CP-40-6318

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MANUEL M. HOSKINS
C.C.P. & C.S.
RICHLAND COUNTY
FILED

RECEIVED ORDER

FEB 20 2018

SC Court of Appeals

This matter came before the Court at a hearing on February 1, 2017, on the following motions and petitions filed by Defendant Rhonda Meisner ("Meisner"):

- "Petition for Appraisal S.C. Code Ann. § 29-3-680 *et. seq.*" filed herein on July 31, 2012;
- "Motion for Application of Appraisal Statute; Determination of Deficiency Against Defendants; and Final Adjudication of Counterclaims" filed herein on July 1, 2016; and
- "Motion and Memorandum in Support of Amending the Counterclaims in the Two Above Entitled Cases" of Defendant Rhonda Meisner filed herein on August 19, 2016.

Sean M. Foerster, Esquire, appeared on behalf of Plaintiff SCBT, N.A., which is now known as South State Bank ("Plaintiff"). Glenn E. Bowens, Esquire, appeared on behalf of Defendant Sand Dollar 31, LLC. Meisner appeared *pro se*.

Relevant Facts

On May 16, 2012, the Court entered Judgments of Foreclosure and Sale in both of these cases.¹ On June 4, 2012, the subject properties were sold at a foreclosure sale. Because SCBT demanded deficiency judgments, the subject properties went to a second sale on July 5, 2012.

¹ Meisner appealed from both judgments. On December 3, 2014, the South Carolina Court of Appeals entered an Order affirming the Court on all issues raised in Meisner's appeal except for the award of attorney's fees to Plaintiff in both foreclosures. On July 23, 2015, the South Carolina Supreme Court denied Meisner's petition for a writ of certiorari.

On July 31, 2012, Meisner filed a "Petition for Appraisal S.C. Code Ann. § 29-3-680 *et. seq.*" in both actions in which she sought an order of appraisal under S.C. Code Ann. § 29-3-680 to 29-3-770 ("Appraisal Rights Statutes"). Meisner designated Angela Buckley of Certified Appraisal Services as her appraiser. Plaintiff stipulated that it does not oppose Meisner's application for an order of appraisal. Plaintiff timely designated Eugene Garvin, Jr., as its appraiser.

On August 8, 2012, the Court entered Orders of Deficiency against both defendants in both cases, of which the ones against Meisner were subject to the outcome of Meisner's application for an order of appraisal.

On September 6, 2012, Plaintiff filed a Motion to Vacate the Foreclosure Sale, but filed a withdrawal of the motion on July 10, 2014, before it was ever heard or ruled on by the Court. Despite the motion withdrawal, Meisner claims that Plaintiff should be judicially estopped from taking a position as to the value of the property that differs from the position as to value it took in the motion. She therefore argues that an order for appraisal is no longer necessary.

On August 19, 2016, Meisner filed a motion seeking leave to amend her pleadings to assert a new counterclaim against Plaintiff for abuse of process.

Conclusions of Law

The Court finds and concludes as follows:

1. Appraisal Rights

Because Plaintiff withdrew its Motion to Vacate Foreclosure Sale before it was heard, the Court rejects Meisner's argument that Plaintiff should be judicially estopped from taking a position as to the value of the property that differs from its position stated in that motion. Therefore, the amount of the deficiency against Meisner in both of these cases shall be determined in accordance with S.C. Code Ann. §§ 29-3-680 to 29-3-770.

Accordingly, S.C. Code Ann. § 29-3-720 requires the appraisers designated by the parties to "proceed to view and value the mortgaged property and all or a majority thereof shall make a sworn return within thirty days from their appointment of the true value of the property as of the date of sale, taking into consideration sale value, cost and replacement value of improvements, income production and all other proper elements which, in their discretion, enter into the determination of true value." Thereafter, Meisner and Plaintiff shall inform the Court of the

consensus reached by these two appraisers as to the values of the subject properties as of the date of the foreclosure sales.

2. Amendment of Pleadings

Leave to amend pleadings shall be freely given when justice so requires and does not prejudice any other party. Rule 15(a), SCRPC. However, Meisner cites to no case law showing where a party was permitted to amend the pleadings five years after the entry of the final judgment. Such an amendment would be prejudicial to Plaintiff.

NOW, THEREFORE, it is ordered that:

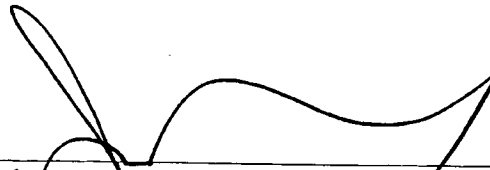
1. The "Motion and Memorandum in Support of Amending the Counterclaims in the Two Above Entitled Cases" of Defendant Rhonda Meisner filed herein on August 19, 2016, is denied;

2. Within 30 days of the entry of this order, the appraisers designated by the parties, Angela Buckley and Eugene Garvin, Jr., shall convene to agree on an opinion as to the value of the subject properties as of July 5, 2012, and shall inform the parties of their opinion;

3. The parties shall thereafter immediately provide the Court with the opinion of the appraisers; and

4. In the event that the appraisers cannot agree on the values of the subject properties as of July 5, 2012, the Court shall hold a follow-up hearing to determine how next to proceed in the appraisal process.

AND IT IS SO ORDERED.



Joseph M. Strickland
Master in Equity for Richland County

July 25, 2017