

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SCBT, N.A.,

vs.

Sand Dollar 31, LLC; Rhonda Meisner,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NOS.: 2011-CP-40-06317 and
2011-CP-40-06318

RECEIVED

FEB 20 2018

Plaintiff **SC Court of Appeals**

ORDER DENYING MOTION TO ALTER
OR AMEND AND
ENTERING DEFICIENCY JUDGMENTS

FILED
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CLERK OF COURT
SOUTH CAROLINA

These cases came before the Court at a hearing on October 5, 2017, on the following matters:

- The "Motion to Alter or Amend Pursuant to S.C.R.C.P. Rule 59(e) and Motion to Hold Actions Items in Abeyance Until Court Can Evaluate the Appraisal Evidence" filed by Defendant Rhonda Meisner ("Meisner") herein on August 8, 2017;
- The reasonableness of the attorney's fees awards in the Judgments of Foreclosure and Sale entered in both cases, which issue had been previously taken under advisement but never ruled upon after hearings on the issue on July 27, 2016, and on February 1, 2017; and
- The report of the appraisers required by the Order entered on July 27, 2017, for purposes of establishing the deficiency judgment amounts to be entered against Meisner in accordance with the Appraisal Rights Statutes (S.C. Code Ann § 29-3-680 *et seq.*).

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 ("Sand Dollar 31"). Meisner appeared *pro se*.

The Court also takes this opportunity to vacate an administrative dismissal entered in both cases on September 12, 2017.

Relevant Facts

The facts relevant to the matters before the Court at this time are as follows:

1. Motion to Alter or Amend.

Meisner's motion to alter or amend asks the Court to reconsider its Order entered on July 27, 2017, denying her motion to amend her answer to add counterclaims and ordering an appraisal of the properties at issue in these two foreclosure actions for purposes of determining the deficiency judgment amounts to be entered against her.

As grounds for her motion, Meisner contends:

- Plaintiff should be judicially estopped from taking a position as to the value of the properties that differs from the position stated in Plaintiff's Motion to Vacate Foreclosure Sale filed on September 6, 2012, but which motion Plaintiff withdrew on July 10, 2014;
- Plaintiff did not timely designate its appraiser, Eugene Garvin. While Meisner cannot refute that Plaintiff designated its appraiser by letter to the Court dated August 17, 2012, she contends this designation is ineffective because it is outside of the court records;
- The Court never ruled on Meisner's declaratory judgment counterclaim to determine the rights and obligations of Meisner under the notes, mortgages, and guaranty agreements in both cases; and
- The Court never ruled on the issue of whether Meisner signed the guaranty agreements for the mortgage loans at issue in her individual capacity.

2. Attorney's Fee Awards.

On May 16, 2012, the Court entered Judgments of Foreclosure and Sale in both of these cases. In civil action # 2011-CP-40-6317, the Court awarded Plaintiff \$6,000 in attorney's fees. In civil action # 2011-CP-40-63118, the Court awarded Plaintiff \$8,000 in attorney's fees.

Meisner appealed from both judgments. On December 3, 2014, the South Carolina Court of Appeals entered an opinion affirming the Court on all issues raised in Meisner's appeal except for the award of attorney's fees to Plaintiff in both foreclosures, stating in the opinion, "[W]e remand this case so the master can award reasonable attorney's fees."

On July 27, 2016, per the instruction from the Court of Appeals, the Court held a remand hearing to award reasonable attorney's fees in both cases. At the hearing, Plaintiff's counsel submitted to the Court the following affidavits¹:

- For civil action # 2011-CP-40-6317, an Affidavit of Attorney's Fees signed by Teri K. Stomski seeking an award of \$6,000 in attorney's fees to Plaintiff, and an Affidavit of Sean M. Foerster authenticating certain billing records of Plaintiff's counsel showing that Plaintiff incurred over \$6,000 in attorney's fees through the date of the second foreclosure sale and almost \$16,000 in attorney's fees through the date that Meisner filed her appeal;
- For civil action # 2011-CP-40-6318, an Affidavit of Attorney's Fees signed by Teri K. Stomski seeking an award of \$8,000 in attorney's fees to Plaintiff, and an Affidavit of Sean M. Foerster authenticating certain billing records of Plaintiff's counsel showing that Plaintiff incurred over \$9,000 in attorney's fees through the date of the second foreclosure sale and over \$18,000 in attorney's fees through the date that Meisner filed her appeal.

The Court took the issue of attorney's fees under advisement at the conclusion of the remand hearing to give Meisner time to file her objections to the affidavits supplied by Plaintiff's counsel.

On August 19, 2016, Meisner filed an "Objection to Attorney's Fees Affidavit Submitted at the July 27, 2016 Hearing," complaining of the content and timing of the affidavits supplied by Plaintiff's counsel.

On February 1, 2017, the Court again heard arguments from the parties concerning the reasonableness of the attorney's fee amounts awarded in both cases, and again took the issue under advisement.

3. Return of Appraisers.

On May 16, 2012, the Court entered Judgments of Foreclosure and Sale in both of these cases in the following amounts: \$63,734.92 in civil action # 2011-CP-40-6317 and \$43,220.45 in civil action # 2011-CP-40-6318.

¹ Both sets of affidavits were filed in their respective cases on November 23, 2016.

On June 4, 2012, the subject properties were sold at a foreclosure sale. Because Plaintiff demanded deficiency judgments in both cases, the subject properties went to a second sale on July 5, 2012.

In civil action # 2011-CP-40-6317, the property at 4824 Linden Street, Columbia, South Carolina 29203, sold at the second sale to SCORE LLC for \$25,001.00.

In civil action # 2011-CP-40-6318, the property at 8391 Winnsboro Road, Blythewood, SC, sold at the second sale to SCORE LLC for \$10,501.00.

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"). While this petition purported to be on behalf of both Meisner and Sand Dollar 31, it was signed and filed by only Meisner, who was not a licensed attorney. It was not signed or filed by Glenn E. Bowens, Esquire, counsel of record for Sand Dollar 31 at the time.

By Order entered herein on July 27, 2017, the Court granted Meisner's "Petition for Appraisal S.C. Code Ann. § 29-3-680 *et. seq.*" in both actions. The Court ordered Plaintiff's designated appraiser, Eugene Garvin, and Meisner's designated appraiser, Angela Buckley, to convene and try to agree on the value of the two properties at issue in these foreclosure actions as of the time of the second foreclosure sale, and for the parties to then provide the Court with a copy of the appraisers' opinions. The Court further ordered that if the appraisers could not agree on the values of the two properties, it would hold a follow-up hearing on the matter and decide how to proceed with the appraisal process.

By letter dated September 1, 2017, Plaintiff's counsel submitted to the Court a letter from Eugene Garvin dated August 30, 2017, which purported to set forth the opinions of both appraisers as to the value of the two properties. Also enclosed with Mr. Garvin's letter were his appraisal reports for both properties. According to Mr. Garvin's letter, the appraisers' opinions as to the value of each property as of the time of the second foreclosure sale are as follows:

- For civil action # 2011-CP-40-6317 concerning the property at 4824 Linden Street, Mr. Garvin determined the property to be worth \$25,000 "as is." Ms. Buckley determined the property to be worth \$31,000 "subject to" repairs in the amount of \$12,080, or \$18,920 "as is."

- For civil action # 2011-CP-40-6318 concerning the property at 8391 Winnsboro Road, Mr. Garvin determined the property to be worth \$16,000 “as is.” Ms. Buckley determined the property to be worth \$20,000 “subject to” repairs in the amount of \$4,530, or \$15,470 “as is.”

Neither Meisner nor Ms. Buckley ever submitted any documents to the Court to support or refute Ms. Buckley’s value of the two properties as set forth in Mr. Garvin’s letter.

4. Administrative Dismissal.

During Richland County’s recent transition to the electronic case management system, it was discovered that the records of the South Carolina Court Administration inaccurately showed several thousand closed cases as still pending with this Court due to a computer glitch. In response, the Court entered an Omnibus Order of Dismissal Without Prejudice on September 12, 2017, that dismissed several thousand cases. These two cases were inadvertently affected by the Omnibus Order, and the Clerk of Court entered administrative dismissals in the public index of each case on September 12, 2017.

Conclusions of Law

The Court finds and concludes as follows:

1. Meisner’s motion to alter or amend is denied.

The Court declines to alter or amend its Order entered on July 27, 2017, because the order is not controlled by an error of law or based on factual conclusions without evidentiary support.

“A party *may* wish to file such a motion [under Rule 59(e)] when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” *Elam v. S.C. DOT*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). “There is nothing inherently unfair in allowing a party one final chance not only to call the court’s attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument.” *Id.* at 22, 602 S.E.2d at 779.

With respect to Meisner’s judicial estoppel argument, the Court did not misunderstand or fail to fully consider Meisner’s previous arguments on this issue. The Plaintiff is not bound by any position taken in its Motion to Vacate Foreclosure Sale since the motion was voluntarily withdrawn before being ruled upon.

With respect to the timeliness of Plaintiff's designation of its appraiser, the Court finds no error in its prior order. "[W]ithin ten days after service of a copy of the order upon the judgment creditor or his attorney of record he shall designate to the clerk another appraiser..." S.C. Code Ann. § 29-3-710 (emphasis added). Plaintiff designated its appraiser by letter to the Court dated August 17, 2012—five years prior to the Order of July 27, 2017. Further, it is clear on the face of the Order of July 27, 2017, that Plaintiff had already designated its appraiser before the entry of that order. Therefore, Plaintiff's designation of its appraiser was timely as it was made well before ten days after service of a copy of the Order of July 27, 2017.

With respect to Meisner's declaratory judgment counterclaim concerning her obligations under the loan documents and whether Meisner signed the guaranty agreements in her individual capacity, these issues have been fully adjudicated. The Judgments of Foreclosure and Sale entered in both of these cases on May 16, 2012, concluded that Meisner was personally liable for the mortgage debt in each case based on her signing the guaranty agreements for each loan and accordingly entered personal judgments against her. The Court of Appeals affirmed the Judgments of Foreclosure and Sale on that issue. Meisner's motion with respect to this issue is therefore untimely.

For these reasons, the Court denies Meisner's "Motion to Alter or Amend Pursuant to S.C.R.C.P. Rule 59(e) and Motion to Hold Actions Items in Abeyance Until Court Can Evaluate the Appraisal Evidence."

2. The prior attorney's fee awards were reasonable.

The award of attorney's fees set forth in the Judgments of Foreclosure and Sale entered in each case on May 16, 2012, are hereby affirmed.

"Where there is a contract, the award of attorney's fees is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown." *United States Bank Tr. Nat'l Ass'n v. Bell*, 385 S.C. 364, 379-80, 684 S.E.2d 199, 207 (Ct. App. 2009). "There are six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained." *Blumberg v. Nealco*, 427 S.E.2d 659, 660 (S.C. 1993).

The Court of Appeals charged this Court to “award reasonable attorney’s fees.” Based on the affidavits of Teri K. Stomski and Sean M. Foerster supplied by Plaintiff’s counsel for each case, the Court confirms its previous awards of reasonable attorney’s fees set forth in the Judgments of Foreclosure and Sale in each case. The Court finds that the fees awarded are reasonable in relation to the services performed and anticipated to be performed until final adjudication of these actions. The fees are likewise reasonable based on the time that Plaintiff’s counsel necessarily devoted to the representation of Plaintiff during the several year course of these proceedings. The services of Plaintiff’s counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in these particular cases also support the fees awarded. The fees awarded are reasonable given the professional standing of Plaintiff’s counsel and their experience in handling foreclosure matters. The fees awarded are also reasonable in light of the fees customarily awarded by this Court for similar services in this locality. Finally, the efforts of Plaintiff’s counsel have had the beneficial result of a successful foreclosure of the mortgages in these two cases, which further justifies the fee awards.

3. Deficiency judgments shall be entered based on S.C. Code Ann. § 29-3-740.

The Court adopts the opinion letter from Eugene Garvin dated August 30, 2017, with the reports attached thereto, as the Return of Appraisers and hereby enters deficiency judgments in both cases against Meisner in accordance with S.C. Code Ann. § 29-3-740.

“The board of appraisers as so constituted shall 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.” S.C. Code Ann. § 29-3-720.

“The return of the appraisers shall be filed and recorded by the clerk as a judgment of the court and be subject to appeal as hereinafter provided.” S.C. Code Ann. § 29-3-740.

“If the value returned after deduction therefrom of the amount of the price at which the property was sold under direction of the court be equal to or exceed the amount of the deficiency remaining upon the judgment after application of the net proceeds of sale the judgment shall be thereupon extinguished and cancelled of record by the clerk and if such returned value, after

deduction of the amount of the sale price, be less than the deficiency the latter shall be abated and deemed paid, pro tanto, and be thereafter enforceable for only the remainder..." *Id.*

For civil action # 2011-CP-40-6317 concerning the property at 4824 Linden Street, Mr. Garvin determined the "as is" value of the property to be \$25,000. Ms. Buckley determined the "as is" value of the property to be \$18,920.² Because both valuations are lower than the \$25,001 sale price at the second foreclosure sale, the deficiency judgment entered against Meisner in civil action # 2011-CP-40-6317 shall be determined based on that foreclosure sale price. After deducting the \$25,001 foreclosure sale price from the foreclosure judgment amount of \$63,734.92, there remains a deficiency owed by Meisner in the amount of \$38,733.92 in civil action # 2011-CP-40-6317.

For civil action # 2011-CP-40-6318 concerning the property at 8391 Winnsboro Road, Mr. Garvin determined the "as is" value of the property to be \$16,000 and Ms. Buckley determined the "as is" value of the property to be \$15,470.³ Both valuations are higher than the \$10,501.00 sale price at the second foreclosure sale. To the benefit of Meisner, and because neither Meisner nor Ms. Buckley ever submitted any documents to the Court to support Ms. Buckley's valuation of this property as required by the Order of July 27, 2017, the deficiency judgment entered against Meisner in civil action # 2011-CP-40-6318 shall be determined based on Mr. Garvin's valuation of \$16,000. After deducting the \$16,000 appraisal value from the foreclosure judgment amount of \$43,220.45, there remains a deficiency owed by Meisner in the amount of \$27,220.45 in civil action # 2011-CP-40-6318.

With respect to Sand Dollar 31, the Court finds that it failed to timely petition for an order of appraisal. "In any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked, whether he has theretofore appeared in the action or not, may within thirty days after the sale of the mortgaged property apply by verified petition to the

² The Court declines to adopt Ms. Buckley's valuation of \$31,000 "subject to" repairs in the amount of \$12,080 because there is no evidence before the Court that such repairs had been made to the subject property as of the date of the second foreclosure sale and neither Meisner nor Ms. Buckley ever submitted any documents to the Court as required by the Order of July 27, 2017, to support this valuation.

³ The Court declines to adopt Ms. Buckley's valuation of \$20,000 "subject to" repairs in the amount of \$4,530 because there is no evidence before the Court that such repairs had been made to the subject property as of the date of the second foreclosure sale and neither Meisner nor Ms. Buckley ever submitted any documents to the Court as required by the Order of July 27, 2017, to support this valuation.

clerk of court in which the decree or order of sale was taken for an order of appraisal.” S.C. Code Ann. § 29-3-680(A).

Meisner’s “Petition for Appraisal S.C. Code Ann. § 29-3-680 *et. seq.*” filed on July 31, 2012, was ineffectual as to Sand Dollar 31 because Meisner, a non-lawyer, was prohibited by law from representing this entity. *Renaissance Enters., Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 651-53, 515 S.E.2d 257, 258-59 (1999)(“We now hold a non-lawyer cannot represent a corporation in circuit or appellate courts ...a corporation may appear pro se only in magistrate’s court.”). Therefore, the deficiency judgment amounts to be entered against Sand Dollar 31 in both cases shall be based on the difference between the total judgment amount listed in each Judgment of Foreclosure and Sale and the second foreclosure sale price of each property.

After deducting the \$25,001 foreclosure sale price from the foreclosure judgment amount of \$63,734.92 in civil action # 2011-CP-40-6317, there remains a deficiency owed by Sand Dollar 31 in the amount of \$38,733.92 in that action. After deducting the \$10,501 foreclosure sale price from the foreclosure judgment amount of \$43,220.45 in civil action # 2011-CP-40-6318, there remains a deficiency owed by Sand Dollar 31 in the amount of \$32,719.45 in that action.

4. The administrative dismissals of these two cases are vacated.

Because these two cases still had pending issues to resolve at the time of the Omnibus Order of Dismissal Without Prejudice on September 12, 2017, they should not have been administratively dismissed. The Court therefore vacates the administrative dismissals of these two cases.

NOW, THEREFORE, it is ordered that:

1. The administrative dismissals entered in both cases on September 12, 2017, are vacated;
2. The “Motion to Alter or Amend Pursuant to S.C.R.C.P. Rule 59(e) and Motion to Hold Actions Items in Abeyance Until Court Can Evaluate the Appraisal Evidence” of Defendant Rhonda Meisner filed herein on August 8, 2017, is denied;
3. The award of attorney’s fees set forth in the Judgments of Foreclosure and Sale entered in each case on May 16, 2012, are hereby affirmed in the amounts of \$6,000 in civil action # 2011-CP-40-6317 and \$8,000 in civil action # 2011-CP-40-6318;

4. The total judgment amounts set forth in the Judgments of Foreclosure and Sale entered in each on May 16, 2012, are hereby affirmed in the amounts of \$63,734.92 in civil action # 2011-CP-40-6317 and \$43,220.45 in civil action # 2011-CP-40-6318, plus interest as set forth in those judgments;

5. The opinion letter from Eugene Garvin dated August 30, 2017, shall be filed and treated as the Return of Appraisers;

6. For civil action # 2011-CP-40-6317, deficiency judgment is entered against Defendant Rhonda Meisner in the amount of \$38,733.92 plus interest at the legal rate for judgments;

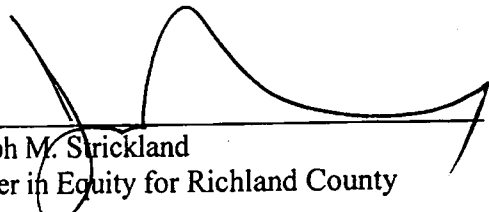
7. For civil action # 2011-CP-40-6318, deficiency judgment is entered against Defendant Rhonda Meisner in the amount of \$27,220.45 plus interest at the legal rate for judgments;

8. For civil action # 2011-CP-40-6317, deficiency judgment is entered against Defendant Sand Dollar 31, LLC, in the amount of \$38,733.92 plus interest at the legal rate for judgments;

9. For civil action # 2011-CP-40-6318, deficiency judgment is entered against Defendant Sand Dollar 31, LLC, in the amount of \$32,719.45 plus interest at the legal rate for judgments; and

10. This case is ended.

AND IT IS SO ORDERED.



Joseph M. Strickland
Master in Equity for Richland County

December 18, 2017

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January 17, 2018

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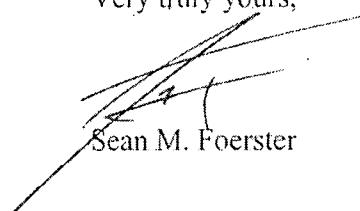
Rhonda Meisner
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Re: *SCBT, N.A. vs. Sand Dollar 31, LLC; Rhonda Meisner*
Civil Action # 2011-CP-40-6317 and 2011-CP-40-6318
Our File # 16555.79

Dear Sir and Madam:

Please find enclosed a filed copy of the Order Denying Motion to Alter or Amend and Entering Deficiency Judgments in the above referenced matter, which I hereby serve upon you.

Very truly yours,


Sean M. Foerster

/te
Enclosure

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