

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
US Bank)
)
Plaintiff,)
)
vs)
)
Anthony West; Janet West)
)
Defendant,)
)
)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2015-CP-02-00578

ORDER

A TRUE AND CORRECT COPY

Robert J. Stork

By Anita Knepper Date APR 30 2018
Deputy Clerk

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APR 30 2018
SC Court of Appeals

Plaintiff's Attorney: William Stork
Defendant: Pro Se Anthony West and Janet West
Court Reporter:

PROCEDURE

1. The Summons and Complaint, and Notice of Intervention were filed on March 6, 2015.
2. Defendants filed an Answer on April 16, 2015.
3. An Amended Answer was filed on May 1, 2015. — Exhibits
4. An Order of Reference was filed on May 31, 2017.
5. The Defendants filed an answer on June 30, 2017
6. The plaintiff filed a motion for Summary Judgment on December 29, 2017 along with a Memorandum in support of the motion.
7. The Defendant's filed a Memorandum in Opposition prior to the hearing.
8. The Hearing for the Summary Judgment motion was held on February 1, 2018.

Evidence Presented

The Plaintiff established that the property is located in Aiken County. Anthony J. West and Janet L. West executed a Note on December 26, 2003. The loan amount was \$81,000.00 and the per annum interest rate was 7.98%. The first payment was due on February 1, 2004.

The lender was Aames Funding Corporation DBA Aames Home Loan. On the same date, the Defendant's executed a Mortgage with Aames Funding Corporation DBA Aames Home Loan as the Mortgagee. There is no dispute about the real estate identified in the Mortgage. The mortgage was recorded on December 31, 2003 in Book 3431, Page 261. The Mortgage was assigned to U.S. Bank National Association as Trustee successor in interest Bank of America, National as Trustee, successor by merger to LaSalle Bank National Association as Trustee for Structured Asset Investment Loan Trust Mortgage Pass-Through Certificates, Series 2004-3. The Assignment was recorded on July 11, 2014 in Book 4512, Page 2376.

The Plaintiff presented the original Note that was stamped and returned. The Plaintiff also submitted copies of the Note, Mortgage, Assignment, Acceleration Letter dated June 5, 2014, Affidavit of Debt, and the Affidavit of William P. Stork related to the attorney fees and cost, and the bankruptcy records. Raymond Dufour was the attorney who handled the real estate closing. He appeared at the hearing to respond to the Defendant's subpoena duces tecum. He produced the records available from his file related to this transaction. Based on his affidavit, submitted by the Plaintiff, he supervised the title search, prepared the loan documents, recorded the necessary documents and disbursed the funds. The real estate closing took place on December 26, 2003. Mr. Dufour witnessed the Note and Mortgage being signed by Anthony J. West and Janet L. West.

The Defendant's Pro Se memorandum alleges fraud/misrepresentation in the appraised market value of the property. The Defendant's did not submit any affidavits. They did submit the following documents as exhibits.

A. Defendant's Exhibit 1: Uniform Residential Appraisal Report. The value by cost approach reflects a value of \$94,591.00

B. Defendant's Exhibit 2: Copies of various emails and letters. The letters reflect that in March 2012, the Defendants were advised that their loan would transferred from J.P. Morgan Chase Bank, N.A. to Ocwen Loan Servicing, N.A. Three weeks later, the Defendant's received another letter advising them that the loan would not be transferred. There was also a letter dated March 2, 2012 outlining the history of modification request, denials, loan forbearance plan history and the foreclosure history.

C. Defendant's Exhibits 3: This exhibit includes an Aiken County documents that identifies Mr. and Mrs. West as the mortgagors and Aames Funding Corporation and Aames Home Loan as the Mortgagees. It also included a California Secretary Of State document

about Aames Funding Corporation. The document states the corporation was "MERGED OUT". The exhibit also includes a letter/email from the Defendant's to the Aiken County Clerk Of Court.

D. Defendant's Exhibit 4: This exhibit contains copies of the documents produced by Raymond Dufour. It includes the following:

- 1.) Cover letter dated December 31, 2003 and copy of check to SRPFCU to pay off and existing loan after the closing.
- 2.) Copy of settlement sheet.
- 3.) Title Notes
- 4.) Deed whereby Janet L. West transferred her interest in the real estate to Anthony West and Janet L. West.
- 5.) Copy of Plat showing Parcel D-1.
- 6.) Utility Easement document
- 7.) Copy of the SRPFCU Mortgage first stamped "SATISFIED".
- 8.) First and last Page of the current mortgage.

Defendants produced no affidavits to support the claims of misrepresentation, fraud, RESPA violations, truth-in-lending claims or any violations of The Consumer Protection Code. The exhibits introduced at the hearing do not support those claims. The Defendants are correct that the appraisal they introduced reflects a value of \$94,591.00. The appraisal was performed by DW Newsome Appraisal Services. It appears the Defendants only rely on a value listed with the Aiken County records. However, the closing documents reveal that a prior lienholder, SRPFCU was paid \$58,714.11 to pay off the existing mortgage. This exceeds the value of the Defendants claim as to the true value of the property. The Defendants did not submit an affidavit from any individual to explain the value assigned by Aiken County.

Summary Judgment Standard

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v Fields*, 354 S.C. 58, 69, 580 S.E. 2d 433, 438 (2003) (quoting *George v Fabri*, 345 S.C. 440, 452, 548 S.E. 2d 868 874 (2001)). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56, SCRC.

In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Ld. at 122,708 S.E. 2d at 769*. When the burden of proof is by a preponderance of the evidence, a non-moving party need only present a scintilla of evidence to withstand a motion for summary judgment. *Hancock v Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E. 2d 801, 803 (2009). “A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” *David v McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E. 2d 1, 5 (2006). “Summary judgment should not be granted even when there is no disputes as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts.” *Brockbank v Best Capital Corp.*, 341 S.C. 372, 378, 534 S.E. 2d 688, 692 (2000).

“Under Rule 56 (e), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. *Baughman v Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E. 2d 537, 545 (1991). “This initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the nonmoving party’s case, and it is not necessary for the moving party to support its motion with affidavits or other similar materials negating the opponent’s claim *Id.* Once the moving party carries its initial burden, the opposing party must do more than rest upon the mere allegations or denials of his pleadings, but must, by affidavit or otherwise, set forth specific facts to show that there is a genuine issue for trial”. *Id.*; Rule 56 (e), SCRPC.

Conclusion

The Plaintiff has the burden to establish the existence of the debt and the mortgagor’s default. *U.S. Bank Trust Nat. 'l Ass'n v. Bell*, 385 S.C. 364, 684 S.E. 2d 199 (Ct. App. 2009). Once the moving party carries its initial burden, the opposing party must do more than rest upon the mere allegations or denials of his pleadings, but must, by affidavit or otherwise, set forth specific facts to show that there is a genuine issue for trial. *Baughman v. Am. Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E. 2d 537 (1991) *Rule 56 (e), SCRPC*. There is no dispute that Anthony J. West and Janet L. West executed a Note on December 26, 2003. The Mortgage was executed on the same date. The original lender was Aames Funding Corporation DBA Aames Home Loan. The mortgage was assigned to U.S. Bank National Association as Trustee successor in interest Bank of America, National as Trustee, successor by merger to LaSalle

Bank National Association as Trustee for Structured Asset Investment Loan Trust Mortgage Pass-Through Certificates, Series 2004-3. The Mortgage and the Assignment were recorded in the Aiken County RMC Office. "An assignee stands in the shoes of its assignor". *Twelfth RMA Partners, L.P. v. Nat'l safe corp.*, 335 S.C. 635, 518 S.E. 2d 44 (Ct. App. 1999)

The Plaintiff has established the debt and the default of payment. The Defendants have the burden of establishing a defense to the foreclosure. *U.S. Bank Trust Nat'l Ass'n v Bell*, 385 S.C. 364, 684 S.E. 2d 199 (Ct. App. 2009). The Defendants offered some exhibits but did not file any affidavits. Their main argument concerns the value assigned to the real estate with improvements provided by Aiken County in comparison to the value provided in the loan appraisal. The appraisal reflects a value of \$94,591.00. The Defendants allege the value of \$2,500.00 for the mobile home and \$1,800.00 for real estate. However, it is undisputed that SRPFCU received a payoff of \$58,714.11 on a prior mortgage. The payoff amount greatly exceeds the values relied on by the Defendant's in their memorandum. Again, no affidavits offering any explanation by Aiken County or from an independent appraiser were introduced.

Based on the pleadings, exhibits introduced memorandums and affidavits submitted, the Plaintiff has established that it is entitled to have the Motion for Summary Judgment granted. There are no genuine issues as to any material fact as to the Defendants Note, Mortgage, amount of debt and the breach of agreement. The Plaintiff will schedule a hearing for the purpose of establishing the current debt and to schedule a sales day.

IT IS SO ORDERED.

2018

Aiken, South Carolina

M. Anderson Griffith
Master-in-Equity

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP0200578**

US Bank		Anthony West; Janet West	
PLAINTIFF(S)		DEFENDANT(S)	
Submitted by:		Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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. See Page 2 for additional information.
- ACTION-DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 43(k), SCRPC (Settled);
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

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SC Court of Appeals

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: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the

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form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Master In Equity/M. Anderson Griffith **3076** **Date**
Judge Code

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

- Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Aiken Common Pleas

Case Caption: U S Bank National Association , plaintiff, et al VS Anthony J West ,
defendant, et al
Case Number: 2015CP0200578
Type: Master/Order/Form 4

AND IT IS SO ORDERED

s/M Anderson Griffith-3076