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SC Court of Appeals
IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
Case No. 2013-CP-33-0306
APPEALS
PROJECT - 1 AM 10:14
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STATE OF SOUTH CAROLINA
COUNTY OF MARION

Anderson Brothers Bank,
Plaintiff,

vs.

Dazarhea Monique Parson, a/k/a Dazarhea D.
Parson, a/k/a Dazarhea Monique Daniels
Parson, A. Tyrone Parson, Jr. a/k/a Arnold
Tyrone Parson, Jr., et al.,

Defendants.

**ORDER DENYING DEFENDANTS'
PETITION FOR RELIEF FROM VOID
JUDGMENT 60(b)(4) AND CHALLENGE
OF JURISDICTION**

THIS MATTER COMES BEFORE THE COURT upon Defendants' *Petition for Relief from Void Judgment 60(b)(4) & Challenge of Jurisdiction* (the "Petition"), filed on or about June 4, 2018. In the Petition, Defendants seek to vacate "the void foreclosure (default) judgment and order for sale." The Court conducted a hearing on the Petition on August 20, 2018, before the Honorable Thomas A. Russo. Present at the hearing were Suzanne Taylor Graham Grigg, Esq., attorney for Plaintiff Anderson Brother Bank ("ABB"), and Defendants, Dazarhea Monique Parson and A. Tyrone Parson, Jr.

Based on the Petition, the pleadings, the public record including prior state and federal court case dockets, and the arguments made by the parties at the hearing, the Court hereby denies the Petition because it was not filed within a reasonable time period as required by Rule 60(b), SCRPC, and no conflict of interest exists, as alleged by Defendants.

BACKGROUND

1. The facts stated herein are gathered from the public record, specifically from the case dockets in (a) Marion County Court of Common Pleas Case No. 2013-CP-33-00306 (the

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BOOK No. 2013 PAGE 33-00306

Christy M. Gray
CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

"Foreclosure Action"); (b) S.C. Court of Appeals Case No. 2013-001824; (c) S.C. Supreme Court Case No. 2015-000761; (d) S.C. Court of Appeals Case No. 2015-002230; (e) S.C. Supreme Court Case No. 2016-001441; and (f) U.S. District Court for the District of South Carolina Case No. 4:17-cv-00708-RBH-KDW. The Court hereby takes judicial notice of the public record filings in these six cases. See S.C. R. Evid. 201; *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

2. In the Foreclosure Action, which was initially filed in 2013, the Honorable Haigh Porter entered that certain *Special Referee's Judgment of Foreclosure and Sale* (the "Foreclosure Order"), wherein the trial court adjudicated the Foreclosure Action in favor of ABB and ordered, in relevant part, that the property located at 3456 Quail Roost Road in Mullins (the "Subject Property") be sold at public auction. Defendants were present at the hearing conducted by the Honorable Haigh Porter.

3. Pursuant to the Foreclosure Order, the Subject Property was sold at public auction to ABB on September 10, 2013. At the foreclosure sale, F.R.V. Bidding, Inc. ("ERV"), which is a company that routinely submits bids on behalf of lenders at foreclosure sales, entered a bid on behalf of ABB. An employee of ERV, Mrs. Betsy Porter, the wife of the Honorable Haigh Porter, submitted the successful bid.

4. Defendants appealed the Foreclosure Order to the South Carolina Court of Appeals on August 28, 2013, but failed to obtain a satisfactory bond. Due to such failure, the foreclosure sale proceeded. The appeal raised some of the very same issues raised in the Petition. On December 15, 2014, the Court of Appeals dismissed that appeal with rehearing denied on March 12, 2015.

5. Defendants then petitioned the South Carolina Supreme Court for a writ of certiorari, and the Supreme Court denied certiorari on May 7, 2015.

6. During the pendency of the above-referenced appeals, ABB filed that certain Petition for Writ of Assistance in the Foreclosure Action on March 28, 2014, seeking an order from the trial court requiring the removal of Defendants, along with their personal property, from the Subject Property so that ABB could be put in peaceable possession of the Subject Property it owns in fee simple. Pursuant to that certain Rule to Show Cause filed in the Foreclosure Action on March 28, 2014, the trial court set a hearing on the Petition for Writ of Assistance for April 30, 2014.

7. Pursuant to that certain Order Granting Writ of Assistance filed in the Foreclosure Action on January 5, 2015, the trial court concluded that ABB was entitled to an order commanding the Sheriff's Department to eject and remove Defendants and their personal property from the Subject Property.

8. After the Supreme Court denied certiorari on May 7, 2015, as mentioned above, the trial court filed an additional Writ of Assistance in the Foreclosure Action on September 25, 2015, to provide the Marion County Sheriff's Department with a more recent order, wherein the trial court directed the Sheriff's Department to eject Defendants and deliver possession to ABB.

9. The Writ of Assistance was executed and Defendants were ultimately removed from the Subject Property. The Deed remains in the name of the Plaintiff, ABB.

10. Defendants filed another meritless appeal, this time of the Writ of Assistance, with the South Carolina Court of Appeals on October 30, 2015, which the Court of Appeals dismissed on January 13, 2016, and denied rehearing on June 10, 2016. Defendants filed a writ of certiorari with the South Carolina Supreme Court on July 8, 2016, which the Supreme Court denied on March 24, 2017.

11. Since 2016, Defendants have filed numerous petitions, injunctions, etc. in this Court seeking to void the Foreclosure Order, to no avail.

DISCUSSION

12. Pursuant to Rule 60(b), SCRPC, “[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceedings for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Rule 60(b) goes on to say that such motion shall be made within a *reasonable time*, and for reasons (1), (2) or (3) above, not more than one year after entry of the judgment.

13. The Court denies Defendants’ Petition for two reasons. First, there is no legal or factual basis for the Court to find that the judgment is void under Rule 60(b)(4), SCRPC, which appears to be the sole basis for the Defendants’ Petition. “The definition of ‘void’ under the rule only encompasses judgments from courts which failed to provide proper due process or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction.” *McDaniel v. U.S. Fidelity & Guaranty Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996). The judgment obtained by ABB in this case is valid and binding in all respects under South Carolina law; the Circuit Court had jurisdiction over the foreclosure action, as the Subject Property is located in Marion County, and there is no evidence of a lack of due process afforded to Defendants. As the record reflects, Defendants were served and present at the hearing in the Foreclosure Action.

14. Defendants further argue that a conflict of interest exists because Judge Porter's wife submitted a bid at the foreclosure sale. As Mrs. Porter was employed with ERV, both at that time and as of date of this Order, that ground is baseless.

15. Second, the Court denies Defendants' Petition because it was not made within a reasonable time under Rule 60(b), SCRPC. In *McDaniel v. U.S. Fidelity and Guaranty Co.*, the South Carolina Court of Appeals held that "[w]hether or not McDaniel made his Rule 60 motion within a reasonable time is a matter addressed to the trial judge's sound discretion," and "[t]he special referee's decision that McDaniel's motion was untimely after nearly four years is not an abuse of discretion." *McDaniel*, 324 S.C. at 644, 478 S.E.2d at 871. Further, in *Edwards v. Edwards*, the South Carolina Court of Appeals found that the trial court did not abuse its discretion in finding a party's Rule 60(b) motion made eighteen (18) months after entry of the final order was not made within a reasonable time. *Edwards v. Edwards*, No. 2011-UP-047, 2011 WL 11733062, at *1 (S.C. Ct. App. Feb. 4, 2011). See also *Perry v. Heirs at Law of Gadsden*, 357 S.C. 42, 48, 590 S.E.2d 502, 505 (Ct. App. 2003) (finding four years was unreasonable period of time).

16. The Foreclosure Order was entered on August 5, 2013, approximately four and a half years prior to the filing of the Petition. This time period does not comply with the "reasonable time" requirement set forth in Rule 60(b).

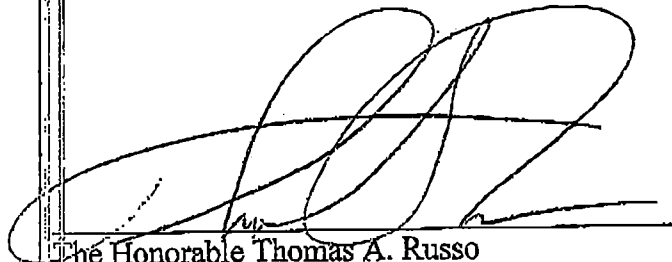
17. For the foregoing reasons, the Defendants' Petition must be denied.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants' Petition for Relief from Void Judgment 60(b)(4) and Challenge of Jurisdiction is hereby DENIED;

AND IT IS SO ORDERED.

[signature page to follow]

9/27, 2018
Florence, South Carolina



The Honorable Thomas A. Russo
Circuit Court Judge

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