

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT)	CASE NO: 2011-CP-07-0340
)	
TD BANK, N.A., SUCCESSOR BY)	
MERGER TO CAROLINA FIRST)	
BANK,)	
)	
Plaintiff,)	
)	
v.)	ORDER DENYING DEFENDANTS'
)	MOTION TO VACATE DEFICIENCY
)	JUDGMENT
WILBERT ROLLER JR., BETTY V.)	
ROLLER AND JAMES WILLIAMS)	
)	
Defendants.)	
)	

This matter comes before the Court on Defendants' August 29, 2018 Motion to Vacate Demand for Deficiency ("Motion to Vacate"). The Court held a hearing on this matter on October 1, 2018. After consideration of the briefs filed by the parties and oral argument presented at the hearing, the Court hereby denies the Motion to Vacate.

PROCEDURAL BACKGROUND

This is a foreclosure action concerning Beaufort County TMS # R610-031-000-0002-0000 (the "Subject Property"). The Plaintiff sought to foreclosure on a 2007 mortgage given by the Defendants to secure a loan made to the Plaintiff. By order dated July 3, 2014, the Court entered an order of foreclosure to satisfy the debt. The foreclosure order established the Defendants' debt at \$2,563,396.24, ordered the sale of the subject property, and specifically provided that the Plaintiff did not waive its right to deficiency judgment. The Court then entered a Consent Order to Supplement and Amend Judgment, filed on May 25, 2016, which increased the total judgment to \$2,924,228.70. The Subject Property was sold at public auction, as

reflected in the Master's Report on Sale, filed on August 29, 2016, which confirmed the sale of the Subject Property for \$421,000 to a third party bidder.

The Defendants requested an order of appraisal pursuant to S.C. Code Ann. § 29-3-680. The Court entered a Consent Order for Appraisal on June 29, 2017. The appointed appraisal board filed a return on July 27, 2018, in which the board established the value of the Subject Property as \$900,000.

On August 29, 2018, the Defendants filed their Motion to Vacate. In the Motion to Vacate, the Defendants requested that the Court vacate the deficiency judgment in its entirety because the Plaintiff had not provided an appraisal from the original 2007 loan to the Defendants and because the Plaintiff allegedly received T.A.R.P. funds. The Defendants did not specify whether the Motion to Vacate was filed under Rule 60, SCRCP, as an appeal of the appraisal rights return, or under some other procedural theory.

LEGAL DISCUSSION

The Motion to Vacate must be denied under any theory presented by the Defendants. As an initial matter, there is no evidence that the Defendants ever requested an appraisal from the Plaintiff, by way of discovery or otherwise, prior to the appraisal board's return. It is not clear whether an appraisal even exists.

1. The Defendants' request to appeal the the return of the appraisal board is time-barred.

To the extent the Motion to Vacate may be construed as an appeal of the appraisal board return, it is time-barred. S.C. Code § 29-3-750 provides that "[t]he petitioner or the judgment creditor may appeal from the return of the appraisers upon notice stating the ground of such appeal served upon the other party *within ten days after notice of the filing of the return.*" The Return was electronically filed and delivered to counsel for Mr. and Mrs. Roller on July 27,

2018. The Motion to Vacate was not filed until August 29, 2018. Therefore, the appeal is untimely and the determination of the appraisal board is final. The return of the appraisal board is a judgment of this Court as set forth in S.C. Code § 29-3-740.

2. The Defendants cannot prove a fraud on the Court.

To the extent the Defendants seek to vacate any judgment based on fraud on the Court, they have failed to prove that the Plaintiff committed a fraud on the Court. The standard for vacating a judgment is a high bar:

[N]ot every fraud is sufficient to move a court of equity to grant relief from a judgment. Generally speaking, in order to secure equitable relief, it must appear that the fraud was extrinsic or collateral to the question examined and determined in the action in which the judgment was rendered; intrinsic fraud is not sufficient for equitable relief. In 31 Am. Jur., *Judgments*, Section 655, page 232, it is stated: "Equitable relief from a judgment is denied in cases of intrinsic fraud, on the theory that an issue which has been tried and passed upon in the original action should not be retried in an action for equitable relief against the judgment, and that otherwise litigation would be interminable; relief is granted for extrinsic fraud on the theory that by reason of the fraud preventing a party from fully exhibiting and trying his case, there never has been a real contest before the court of the subject matter of the action.

Bryan v. Bryan, 220 S.C. 164, 167-168, 66 S.E.2d 609, 610 (1951). There is no evidence of fraud by the Plaintiff, and certainly no evidence that the Plaintiff prevented the Defendants from presenting their case.

The Defendants argue that the Plaintiff never produced the pre-loan appraisal. First, the Defendants never requested this information. Second, this is wholly irrelevant to any question in the case. S.C. Code Ann. § 29-3-720 requires that the appraisal board alone determine the value of the property as of the *date of sale*. There is no evidence that the appraisal board requested any appraisals conducted at the time of the 2007, nor would they have any reason to do so – the sale occurred in 2016. Therefore, pre-loan appraisals have no bearing on the valuation of the property for purposes of reduction of the deficiency judgment.

The Defendants also argue the Plaintiffs did not provide information concerning the receipt of T.A.R.P. funds. First, that information was not requested in discovery, and not raised at trial. Defense counsel did not request this information until after the deadline to appeal the appraisal rights determination had passed. Second, it is irrelevant:

Absent grounds to set aside the decree of foreclosure, there is no discretion to cut off the right to a deficiency after sale where (1) the complaint in the foreclosure action asks for personal judgment, (2) the amount of the debt is fixed in the foreclosure decree, and (3) the sale is insufficient to satisfy the entire debt.

Am. Gen. Fin. Servs. v. Brown, 376 S.C. 580, 658 S.E.2d 99 (2008). Even if the Plaintiff received T.A.R.P. funds (and there is no evidence in the record that it did), there is no provision in South Carolina law which permits the Court to set off a deficiency judgment for funds received. Indeed, all that is required is that the Plaintiff request a deficiency judgment in the complaint, and the sale funds are insufficient to satisfy the debt. Those elements are satisfied here.

3. The Court does not have discretion to vacate the judgment.

South Carolina law is clear: the Court does not have the discretion to vacate the deficiency judgment awarded to the Plaintiff based on equitable principles. *Am. Gen. Fin. Servs. v. Brown*, 376 S.C. 580, 658 S.E.2d 99 (2008). In *Brown*, the trial court refused to enter a deficiency judgment because doing so “would not be equitable.” *Id.* The Supreme Court of South Carolina held that a Master-in-Equity does not have the discretion to deny a deficiency judgment unless the creditor expressly waived the claim for a deficiency. *Id.* at 583, 658 S.E.2d at 100. The Plaintiff did not waive its right to the deficiency judgment, so this Court has no discretion to refuse the request for a deficiency or vacate the judgment.

CONCLUSION

For the reasons set forth below, the Court denies Defendants' Motion to Vacate. Further, the Court credits the \$900,000 value assigned by the appraisal board and reduces the deficiency judgment against the Defendants to \$2,566,334.12 as of August 30, 3018. The deficiency judgment will continue to accrue interest at the statutory rate after that date.

October __, 2018
Beaufort, South Carolina

Marvin Dukes, Beaufort County Master in
Equity



Beaufort Common Pleas

Case Caption: Carolina First Bank , plaintiff, et al VS Wilbert Roller Jr , defendant,
et al

Case Number: 2011CP0700340

Type: Master/Order/Deficiency Judgment and Form 4

So Ordered:

s/Marvin H. Dukes III #3069

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-07-00340

Carolina First Bank, et al.

Wilbert Roller Jr., et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for : Plaintiff Defendant
or
 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.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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:

This came before me December 4th, 2018 on Defendants' Motion for Reconsideration, filed November 2nd, 2018. After hearing from parties and further review of the file, I hereby deny the motion.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC 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)
N/A	N/A	\$N/A
		\$
		\$
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 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.**

Circuit Court Judge

3069

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Matthew Tillman

Thomas R. Goldstein

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

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