

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-07838

Ditech Financial LLC,

Plaintiff,

v.

Kevin G. Snyder and Kevin G. Snyder,
individually and as Personal Representative of
the Estate of Mary Snyder,

Defendants.

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SC Court of Appeals

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JULIE J. ARMSTRONG
CLERK OF COURT

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

This matter comes before the Court on Plaintiff, Ditech Financial LLC's ("Plaintiff") Motion for Summary Judgment; Defendants, Kevin G. Snyder and Kevin G. Snyder, individually and as Personal Representative of the Estate of Mary Snyder ("Defendants") Motion for Partial Summary Judgment; and Defendants' Motion to Compel. Having reviewed the pleadings and motions, as well as the briefs, affidavit, and other materials submitted by the parties, having heard the arguments of counsel, and being otherwise fully informed and advised, the Court makes the following Findings of Fact, Conclusions of Law, and Order:

1. This action involves the foreclosure of a 2005 mortgage loan obtained by Defendant Kevin G. Snyder. Plaintiff filed the instant foreclosure action, seeking to foreclose the lien of its mortgage following Defendant's default on the loan. Defendants have answered and filed counterclaims for Civil Compensatory Contempt, Breach of Contract, Unfair Trade Practices, and Quiet Title.

2. Plaintiff's predecessor in interest filed this action on September 23, 2010. On December 20, 2012, Plaintiff's counsel filed a Notice of Foreclosure Intervention, including



proof of service of the notice on Defendants, notifying Defendants of their right to be considered for foreclosure intervention alternatives pursuant to South Carolina Supreme Court Administrative Order 2011-05-02-01 ("Administrative Order").

3. On April 8, 2013, Plaintiff's counsel filed a certificate of compliance with the Administrative Order ("Certificate of Compliance"), certifying that Defendants had been served with notice of their right to foreclosure intervention but had failed to submit required documents to be reviewed for loss mitigation alternatives, and were therefore denied for loss mitigation.

4. Subsequent to the filing of the Certificate of Compliance, Defendants retained their present counsel, and the parties thereafter agreed to continue loss mitigation efforts.

5. The servicing of the loan was transferred to Plaintiff effective June 1, 2013.

6. On December 23, 2014, Plaintiff offered Defendants a trial period plan for a modification contemplating modified terms similar to those in the original loan, but extending the amortization term of the loan. On March 4, 2015, Defendants rejected the terms of the offered trial period plan. On March 25, 2015, Plaintiff sent a letter to Defendants' counsel providing information on its methodology for determining the trial period plan.

7. Defendants were again evaluated by Plaintiff for a modification in 2017 but on May 11, 2017, Plaintiff determined that Defendants were ineligible for a modification. Defendants appealed from the determination of ineligibility and were again denied.

8. On February 11, Plaintiff and its affiliates filed a Petition for Bankruptcy under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York under Case No. 19-10412 (JLG). Plaintiff has presented an order from the Bankruptcy Court dated February 13, 2019 granting limited relief from the automatic stay imposed by 11 U.S.C. § 362(a). As a result of the bankruptcy filing and the February 13, 2019



order, it is undisputed by the parties that Defendants' counterclaims for Breach of Contract and Unfair Trade Practices are stayed, but that Defendants' counterclaim for Quiet Title is not stayed. Defendants' counterclaim for Civil Compensatory Contempt is stayed to the extent it seeks a monetary award, but is not stayed to the extent it seeks only to defend, unwind, enjoin or preclude the foreclosure, and does not seek a monetary award.

9. The Court finds that this action was pending on May 9, 2011, and is subject to the provisions of the Administrative Order regarding such actions. The Court finds that Plaintiff has acted in good faith and has complied with the provisions of the Administrative Order, but the parties have been unable to reach agreement on any foreclosure intervention process. The Court therefore finds that the provisions of the Administrative Order have been satisfied, and that the Court is empowered to adjudicate the foreclosure dispute.

10. To the extent that Defendants have pled a cause of action for Civil Compensatory Contempt, there is no disputed issue of material fact with respect to Plaintiff's compliance with the terms of the Administrative Order, and summary judgment is proper as to the non-stayed portions of Defendants' claim for Civil Compensatory Contempt.

11. The Court finds that at this stage of the proceeding, there are disputed issues of material fact precluding a determination of Plaintiff's standing to enforce the Note and Mortgage. Additionally, there are disputed issues of material fact as to the proper amount of any judgment that may be granted in Plaintiff's favor. Accordingly, summary judgment is properly denied at this time as to Plaintiff's foreclosure claim or Defendant's counterclaim for Quiet Title.

12. The Court finds that Defendants cannot raise a defense to foreclosure on the basis of alleged noncompliance with S.C. Code § 37-10-102 ("Attorney Preference Statute") as to

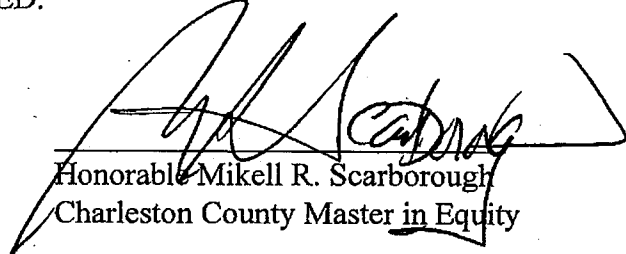
Mary Snyder, because Mary Snyder was not a "borrower" within the meaning of the statute, and the Court therefore strikes this defense.

IT IS THEREFORE ORDERED AND ADJUDGED:

- A. Plaintiff's Motion for Summary Judgment is GRANTED as to the non-stayed portions of Defendants' counterclaim for Civil Compensatory Contempt.
- B. Plaintiff's Motion for Summary Judgment is DENIED as to Plaintiff's foreclosure claim and Defendants' counterclaim for Quiet Title, and these claims will be determined at the trial of this matter scheduled for April 1, 2019.
- C. The Court strikes Defendants' affirmative defense alleging violation of the Attorney Preference Statute.
- D. Defendants' Motion for Partial Summary Judgment is DENIED.
- E. Defendants' Motion to Compel is DENIED.

IT IS SO ORDERED.

March 27, 2019
Charleston, South Carolina


Honorable Mikell R. Scarborough
Charleston County Master in Equity