

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)
)
Deutsche Bank National Trust Company, as)
Trustee for GSAMP Trust 2002-HE,)
Mortgage Pass-Through Certificates, Series)
2002-HE;)

IN THE COURT OF COMMON PLEAS)
)
C/A No.: 2016-CP-37-00714)

Plaintiff,)

ORDER DENYING PLAINTIFF'S)
MOTIONS FOR RECONSIDERATION)
AND AWARDING ATTORNEY'S)

vs.)

Garvin Gibson, Fredericka Gibson, Regional)
Finance and National Finance Company;)

RECEIVED FEES

AUG 09 2019

Defendants.)

SC Court of Appeals

THIS MATTER CAME BEFORE ME by virtue of Plaintiff Deutsche Bank National Trust Company, as Trustee for GSAMP Trust 2002-HE, Mortgage Pass-Through Certificates, Series 2002-HE's (hereinafter "Plaintiff") Motion to Reconsider Final Order filed on October 1, 2018 (hereinafter referred to as "Motion 1"). Defendant Garvin Gibson (hereinafter "Gibson") filed his Memorandum of Law in Opposition to Plaintiff's Motion to Reconsider on November 26, 2018. A hearing was held on Plaintiff's motion on January 24, 2019. Present were Plaintiff's counsel, John B. Kelchner, and Defendant Gibson's counsel, James E. Sterling.

On March 18, 2019, Defendant Gibson, through counsel, filed an Affidavit of Attorney's Fees. Plaintiff then filed its Motion to Reconsider Award of Attorney's Fees on April 11, 2019 (hereinafter referred to as "Motion 2"). A hearing on Plaintiff's Motion to Reconsider Award of Attorney's Fees was held on April 25, 2019. Present were Plaintiff's counsel, John B. Kelchner, and Defendant Gibson's counsel, James E. Sterling.

After reviewing the relevant filings and hearing the oral arguments presented at the hearings, and for the reasons stated hereinbelow, Plaintiff's Motion to Reconsider Final Order filed

on October 1, 2018 and Plaintiff's Motion to Reconsider Award of Attorney's Fees filed on April 11, 2019 are DENIED. In addition, and pursuant to the terms of the Final Order in this case, Defendant is granted attorney's fees and costs as set forth hereinbelow.

I. The Administrative Order applies to the reinstatement agreement between the parties in this action.

Plaintiff argues that South Carolina Supreme Court Administrative Order 2011-05-02-01 (hereinafter the "Administrative Order") does not apply in this case because the reinstatement agreement reached by and between the Plaintiff and Gibson was done during the pendency of a prior foreclosure action, and the instant action was filed only after Gibson allegedly violated the that agreement. For the reasons set forth below, the Court rejects that argument.

Plaintiff filed this foreclosure action on February 19, 2013 and contemporaneously filed a Notice of Foreclosure Intervention pursuant to the terms of the Administrative Order. Plaintiff filed a Certification of Compliance with the Administrative Order on May 9, 2013. The Certification of Compliance states Gibson "does not qualify for loan modification or other means of loss mitigation, in accordance with any standards, rules or guidelines applicable to the mortgage loan, and the parties have been unable to reach any other agreement concerning the foreclosure process...." This statement has proven to be untrue.

As found by the Court in the Final Order filed on September 20, 2018, the Plaintiff and Gibson had, in fact, entered into an agreement to reinstate his mortgage loan and Gibson materially and substantially performed his obligations under that agreement. The Plaintiff, however, failed to comply with the terms of the Administrative Order in that it failed to produce a written memorandum of the reinstatement agreement, it created confusion around the amounts owed by Gibson and it failed to act in good faith toward Gibson in carrying out the terms of the agreement.

Through filing the Certification of Compliance, Plaintiff has acknowledged that the Administrative Order applies in this case. Plaintiff's argument that the Administrative Order does not apply to the reinstatement agreement in this case because it was reached as the result of a prior foreclosure action between the same parties and involving the same debt is inapposite. The Plaintiff certified to the Court that it had complied with the terms of the Administrative Order, when it in fact had not. The mandate from the Administrative Order, and the Court's sense of equity generally—that the Plaintiff act in good faith toward Gibson—is not compartmentalized within the caption of a single civil action. Accordingly, the Administrative Order applies, in this case, to the reinstatement agreement reached between Plaintiff and Gibson and Plaintiff violated the terms of the Administrative Order in failing to honor the terms of the reinstatement agreement, creating confusion regarding the amount necessary to reinstate the loan and in failing to engage in good faith with Gibson in its dealings related to the reinstatement agreement.

II. The relief granted by the Court is just and proper pursuant to the terms of the Administrative Order.

Plaintiff next argues that it complied with the requirements of the Administrative Order and the remedy fashioned by the Court was not proper. However, it is the view of the Court that (1) Plaintiff misapprehends the purpose and intent of the Administrative Order and (2) that the relief ordered was appropriate and warranted under the circumstances.

The purpose and intent of the Administrative Order was to give homeowners a fair opportunity to save their homes from foreclosure. At the time the Administrative Order was signed, and as indicated by the terms of the Administrative Order itself, a problem existed whereby a loan servicer would simultaneously pursue workout options with a homeowner and foreclosure of its mortgage, frustrating the purpose of the workout discussions and resulting in foreclosures that often were neither to the benefit of the homeowner, nor the mortgagee. The South Carolina

Supreme Court sought to ameliorate that problem through the Administrative Order. In contemplation of some parties failing to engage in the process outlined therein in good faith, the Supreme Court authorized trial judges to “impose such sanctions as it determines to be reasonable and just under the circumstances, including without limitation, the assessment of reasonable attorneys’ fees and costs against the culpable party.”

It is clear from the testimony and evidence submitted at trial that Plaintiff failed to engage in the foreclosure intervention process with Gibson in good faith. Through the relief granted in the Final Order, the Court sought to remedy that situation by putting Gibson in the position he would have been in had Plaintiff honored the reinstatement agreement it made with him and performed in good faith, both through ordering Plaintiff to accept Gibson’s payments, as it had agreed, over a reasonable time frame and by paying Gibson’s attorney’s fees that, but for Plaintiff’s lack of good faith, Gibson would not have incurred. For the Court to have enforced the terms of the reinstatement agreement without awarding Gibson’s attorney’s fees would have resulted in a hollow remedy.

The Court further finds that the amounts sought for attorney’s fees, costs and expenses, and the rates charged by Gibson’s attorney and the time spent on this case are reasonable under the circumstances. Accordingly, Plaintiff is ordered to pay Gibson’s attorney’s fees, costs and expenses in the amount of \$12,824.33. This award is in addition to the relief granted in the Final Order.

Accordingly, and for the reasons set forth herein, Plaintiff’s Motion is DENIED.

IT IS SO ORDERED.



Oconee Common Pleas

Case Caption: Deutsche Bank National Trust Company-Trustee VS Garvin Gibson ,
defendant, et al
Case Number: 2016CP3700714
Type: Master/Order/Other

And it is so ordered

s/ Steven C. Kirven, Master in Equity, #3081