THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2019-001732
Case No. 2017-CP-10-04445

RECEIVED
Oct 13 2020
SC Court of Appeals

Kathleen A. Grant; Dylan T. Grant; Devin D. Grant; and Andrea J. Grant, Appellants,

v.

Nationstar Mortgage, LLC Respondent.

APPELLANTS' FINAL REPLY BRIEF

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ARGUMENT

I. Countrywide's placement of a $625,000.00 mortgage on the Subject Property did not protect the innocent Remaindermen or take into account their interest.

Respondent argues that the innocent Remaindermen have somehow benefitted from the imposition of a $625,000 mortgage on their Property because taxes and homeowners insurance were paid out of escrow under the terms of the mortgage, and as a result, "it protected the property from being involuntarily sold at a tax sale." In making this argument, Nationstar seems to ignore that it is now trying to involuntarily sell the property at a foreclosure sale. (Trial Tr., R. p. 283, lines 12-17; p. 309, lines 4-9; p. 210, lines 18-21). In actuality, Nationstar's requirement that taxes and insurance be paid out of escrow is not designed to protect the innocent Remaindermen's interests in the Property, but rather to protect Nationstar's security interest under the unsanctioned mortgage.

In addition, obtaining a mortgage is not a precursor to paying property taxes. Nationstar seems to ignore that David Grant, as a life tenant, had both a moral and legal duty to pay taxes on the property regardless of whether it was mortgaged. See *Mcdavid v. Mcdavid*, 187 S.C. 127, 197 S.E. 204, 116 A.L.R. 1412 (1938), noting, "It is clear that it is both the moral and legal duty of the life tenant [in this case] to pay these taxes," and *Kirkham v. First Nat. Bank Of City Of N.Y.*, 149 S.C. 545, 147 S.E. 648 (1929), noting, that a life tenant is liable for taxes accruing during his life tenancy.

Nationstar also seems to disregard that by placing a $625,000.00 encumbrance on the property, it is not "preserving the property for the Grants", but rather acting in its own financial self-interest. Its speculation that encumbering the property by $625,000.00 somehow resulted in $500,000 increase in equity is pure fantasy. As the innocent Remaindermen testified, no mortgage proceeds were used maintain the property or provide necessary repairs. (Trial Tr., R.

p. 226, line 23 to p. 228, line 25; p. 246, line 16 to p. 247, line 17; p. 251, line 18 to p. 252, line 3; p. 252, line 23 to p. 254, line 18). Indeed, when David Grant died, the money was all gone and the house was left in terrible disrepair. (Stip. of Facts, R. p. 501; Trial Tr., R., p. 222, line 16; p. 224, lines 10-15). Nationstar's attempt to appear as some sort of altruistic entity favoring the interests of the innocent remaindermen is nothing short of disingenuous. By encumbering the property without any regard for the innocent Remaindermen's interests, Countrywide and Nationstar have demonstrated a "complete failure to exercise due diligence at the expense of third parties." *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421 at n.1, 746 S.E.d 35 at n.1 (2013).

Nationstar's contention that the payment of homeowners insurance out of escrowed mortgage funds was in keeping with Roberta's intent is also a complete fabrication. Roberta's Will specifically states, "I direct that my husband, David E. Grant, [...] shall not be required to carry any insurance on the life estate property." (Will, R. p. 431). Were Nationstar truly interested in looking at Roberta's intent, it would find that she explicitly instructed that David Grant did not have the authority to consume or retain any principle of the estate as his own, and that he did not have the authority to mortgage the Property unless it was in furtherance of his obligation to protect the Remaindermen after him. (Will, R. pp. 431-432).

CONCLUSION

For the foregoing reasons, as well as those stated in Appellants' Brief, Appellants respectfully submit that the trial court erred in finding that the Subject Mortgage is a valid encumbrance on the Property.

It was error for the circuit court to find that a valid mortgage exists because (1) Countrywide received notice that the life tenant and remaindermen's interests were subject to the terms of a Will, (2) Countrywide willfully ignored and failed to even review the Will, including

the express restrictions contained therein on the life tenant's ability to mortgage the Property, (3) Countrywide failed to make any inquiry as to the life tenant's *reason* for the mortgage so as to ascertain whether it was permissible, (4) the mortgage was not obtained for the benefit of the Remaindermen, (5) Countrywide failed to notify **any** of the innocent Remaindermen as to its placement of a $625,000.00 mortgage on the Property, (6) the entire $625,000.00 is gone and not a single dollar was obtained for nor went to the Remaindermen, (7) Nationstar purchased the mortgage after Countrywide went out of business, knowing that Countrywide had suffered a "black eye" due to its business practices, and (8) Nationstar is not without remedy because Countrywide obtained title insurance in case there was just such a mistake with the mortgage (i.e. the title insurance company "took the risk"), and (9) it is inequitable for Nationstar to attempt to enforce the mortgage against the innocent Remaindermen and foreclose on the Property, which would divest and disinherit them entirely.

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Respectfully submitted,

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APPELLANTS' RULE 211(b) CERTIFICATION

The undersigned certifies that the Final Brief of Appellants and Appellants' Final Reply Brief comply with Rule 211(b), SCACR.

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