

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Arthur H. Whisnant, Jr.,)
)
Plaintiffs,)
)
vs.)
)
Amos Financial, LLC, assignee of the)
National Bank of South Carolina,)
)
)
Defendant.)
)
)
_____)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2020-CP-40-02248

ORDER

This matter was before me by way of a Motion to Dismiss pursuant to South Carolina Rules of Civil Procedure Rule 12(b)(6) filed by the Defendant. I held a hearing on October 15, 2020 and have reviewed the documents on file herewith.

Defendant, Amos Financial, LLC (hereinafter “Amos”), initiated a foreclosure action against Austin Scott Johnson (hereinafter “Johnson”), South Carolina Department of Revenue, Internal Revenue of Service and Plaintiff, Arthur H. Whisnant, Jr. (hereinafter “Whisnant”) in Case Number 2019-CP-40-2290. Whisnant filed a counterclaim in this case based on breach of contract accompanied by fraudulent intent. Amos filed a motion for summary judgment as to the counterclaim. A final order was executed and filed in this case on February 13, 2020 dismissing the foreclosure action with prejudice and granting Amos’s motion for summary judgment.

The foreclosure action was filed due to the non-payment of a promissory note executed by Whisnant. In order to secure payment of the promissory note, Johnson executed a mortgage to The National Bank of South Carolina. The mortgage covered real property located in

Richland County. The National Bank of South Carolina assigned the Note and Mortgage to Amos.

At the time the promissory note and mortgage were executed, Johnson was the only person on title to the property. On November 25, 2008, Johnson conveyed the property to Whisnant by deed recorded on November 28, 2008 in Book 1478 at Page 1723 in the Register of Deeds Office for Richland County. Then on January 12, 2009, Whisnant conveyed the Property back to Johnson by deed recorded on January 13, 2009 in Book 1487 at Page 540 in the Register of Deeds Office for Richland County.

On September 12, 2019, Johnson conveyed the property to Amos by deed recorded on September 26, 2019 in Book 2431 at Page 3629 in the Register of Deeds Office for Richland County.

Plaintiff, Arthur H. Whisnant, Jr., filed this action claiming that he has an equitable interest in the property that was conveyed to Amos; that Amos did not have foreclosure authority; to reconsider the order dismissing his counterclaim in the foreclosure action; and that a Motion to Dismiss should not have been granted. Whisnant requests that the foreclosure action be reinstated.

Motion to Dismiss –Rule 12(b)(6), SCRPC

In deciding whether to grant a motion to dismiss pursuant to Rule 12(b)(6) for failure to state a cause of action, "the court looks only at the complaint and, taking the facts alleged as true and construing all reasonable inferences and doubts in plaintiff's favor, asks whether the complaint would entitle the plaintiff to relief under any theory." *Farmer v. CAGC Ins. Co.*, 424 S.C. 579, 588, 819 S.E.2d 142, 147 (Ct. App. 2018), *reh'g denied* (Oct. 18, 2018), *cert. dismissed* (Apr. 25, 2019).

In the instant case, the Plaintiff's complaint fails to state any valid claim for relief. The relief requested in the Plaintiff's complaint was previously litigated in the foreclosure action (Case Number 2019-CP-40-2290) and is barred by the doctrine of *res judicata*. "Under the doctrine of *res judicata*, a final judgment on the merits in a prior action will preclude the parties and their privies from re-litigating any issues actually litigated or those that might have been litigated in the first action." *Town of Sullivan's Island v. Felger*, 318 S.C. 340, 341, 457 S.E.2d 626, 629 (Ct. App. 1995) (citing *Griggs v. Griggs*, 214 S.C. 177, 51 S.E.2d 622 (1949); *Foran v. USAA Casualty Ins. Co.*, 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993)). "*Res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999).

To establish *res judicata*, the defendant must prove three elements: (1) the identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *Catawba Indian Nation v. State*, 407 S.C. 526, 538, 756 S.E.2d 900, 907 (2014); *Sealy v. Dodge*, 289 S.C. 543, 545, 347 S.E.2d 504, 505 (1986). In the instant case, all three elements needed to prove *res judicata* are met.

1. Identity of the Parties.

The parties in the current action are identical to the parties in the foreclosure action.

2. Identity of the Subject Matter.

The subject matter in the current action is in reference to the promissory note, mortgage and property referenced in the foreclosure action. The subject matter in the current action is identical to the foreclosure action.

3. Adjudication on the Former Suit.

The foreclosure action was adjudicated on the merits because it was dismissed with prejudice and furthermore Amos's motion for summary judgment was granted disposing of Whisnant's counterclaim. A case that is dismissed "with prejudice" indicates an adjudication on the merits and, pursuant to *res judicata*, prohibits subsequent litigation to the same extent as if the action had been tried to a final adjudication. *Nunnery v. Brantley Const. Co.*, 289 S.C. 205, 209, 345 S.E.2d 740, 743 (Ct. App. 1986).

Amos's motion for summary judgment was granted in the foreclosure action which disposed of Whisnant's counterclaim. The granting of Amos's summary judgment resulted in a final judgment on the merits of the foreclosure action and ended the litigation.

Since all three elements needed to establish *res judicata* have been met, the claims for relief set forth in Plaintiff's complaint are barred. Therefore, Defendant's Motion to Dismiss is granted and the Plaintiff's complaint is dismissed.

NOW, THEREFORE, IT IS HEREBY ORDERED that Defendant's Motion to Dismiss pursuant to Rule 12(b)(6), SCRCF, is granted and all claims for relief set forth in Plaintiff's complaint against Defendant are hereby dismissed.

The Honorable Robert E. Hood

Columbia, South Carolina
_____, 2020



Richland Common Pleas

Case Caption: Arthur H Whisnant Jr vs Amos Financial LLC , defendant, et al

Case Number: 2020CP4002248

Type: Order/Dismissal

So Ordered

s/ R.E. Hood #2164