

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CLARENDON

) THE THIRD JUDICIAL CIRCUIT

) CASE NO.: 2020-CP-43-00023

New Residential Mortgage, LLC,

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Plaintiff,

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vs.

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Todd S. Crawford, Tricia L. Crawford,
William T. Geddings, Jr., Jane U. Geddings,
and USAA Federal Savings Bank,

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Defendants.

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**ORDER DENYING DEFENDANTS
WILLIAM T. GEDDINGS AND JANE U.
GEDDINGS MOTION TO RECONSIDER**

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Nov 06 2020

SC Court of Appeals

Defendants' motion to reconsider is DENIED. This case arises out of a 2007 mortgage loan transaction on property located at 1051 Doral Drive, Manning, S.C. The Complaint alleges that the Defendant Todd Crawford executed and delivered to USAA Federal Savings Bank a promissory note and Defendants Todd and Tricia Crawford executed a mortgage on the property to secure the note. The mortgage was recorded on July 18, 2007. The mortgage was then assigned to Ditch Financial (formerly Green Tree Servicing, LLC), then to Plaintiff New Residential Mortgage, LLC. The Crawfords conveyed the property to Defendants William T. Geddings, Jr., and Jane U. Geddings by Quitclaim Deed executed August 25, 2018 and recorded at Book 1003, Page 2652 in the Office of the Clarendon County Register of Deeds.

The Geddings filed an Answer, Counterclaim, and Crossclaim against New Residential and USAA Federal Savings Bank.

In the Geddings' claim for damages under the South Carolina Unfair Trade Practices Act, they allege misconduct in the mortgage loan transaction between USAA and the Crawfords, including: attorney preference violations, engaging in the unauthorized practice of law by allowing the closing without the Crawfords being represented by a South Carolina attorney,

failing to timely bring a foreclosure action, attempting to foreclose an invalid lien, and failing to protect and preserve the property. The question before the court is therefore whether a subsequent purchaser who takes the property by quitclaim deed subject to a recorded mortgage, but does not assume the mortgage, can assert the borrower's defenses against the lender. This court holds they cannot.

When a grantee takes property subject to a mortgage, but does not assume the mortgage, he is not personally obligated to the mortgagee. The mortgagee cannot hold the grantee liable for payments on the debt, nor can he seek a deficiency judgment against the grantee if the property sells at foreclosure for less than the mortgage balance. See generally 101 ALR 281; 111 ALR 1114. In fact, in this case Plaintiff initially sought a deficiency judgment against Defendant Todd Crawford only (which Plaintiff later waived) and did not seek a deficiency against the Geddings.

Absent an assumption of the mortgage, personal liability on the debt remains with the Crawfords, and the Geddings cannot assert the Crawfords' defenses for them. As to the allegations of unfair trade practices pertaining to alleged irregularities in the mortgage loan transaction between USAA and the Crawfords, the Geddings lack standing to assert those defenses.

The Geddings also allege USAA and New Residential violated the UTPA by failing to communicate with them to resolve the lien on the property, and by improperly assigning the note and mortgage to Green Tree without notifying them. The court finds that the Geddings were not parties to the note and mortgage, and the mortgage companies therefore had no duty whatsoever to communicate with them regarding the Crawfords' debt.

As to the Geddings' claim for negligence, whether the alleged negligence occurred before or after the Crawfords quitclaimed the property to the Geddings, the mortgage companies owed no duty to preserve the property for the Geddings at any time. The provision in the mortgage which allows the mortgage company to protect and preserve the property is for the protection of the mortgagee's interest, and does not create a duty for them to safeguard the property for the borrower. Even if such a duty existed, the court finds the Geddings have no standing to assert any alleged negligence that occurred prior to their purchase of the property. Moreover, the court fails to see how the Geddings could have suffered any damages for deterioration of the property that occurred prior to their purchase of the property. If the property was in a state of neglect at the time the Geddings purchased the property, then the condition of the property would be readily apparent to any buyer and would be reflected in the purchase price. After the Geddings purchased the property, the mortgage company had no obligation to maintain the property for the Geddings' benefit.

This court's previous order dismissing the Geddings' causes of action for negligence and unfair trade practices is silent as to whether the dismissal was with prejudice. Pursuant to Skydive Myrtle Beach, Inc. v. Horry County, 426 S.C. 175, 826 S.E.2d 585 (2019), the dismissal is WITHOUT PREJUDICE and the Geddings have thirty (30) days from the date of this order to amend their pleadings.

IT IS SO ORDERED.

Kristi F. Curtis, Circuit Court Judge

This ____ day of _____, 2020.

_____, South Carolina



Clarendon Common Pleas

Case Caption: New Residential Mortgage Llc VS Todd S Crawford , defendant, et al

Case Number: 2020CP1400023

Type: Order/Amend

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762