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SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH (10TH) JUDICIAL CIRCUIT

James E. Allen and Diane F. Allen,)
)
) Plaintiffs,)
 vs)
)
Bry Tye Moats Construction Co., LLC)
and Russell T. Moats,)
)
) Defendants.)
_____)

**MASTER'S REPORT AND
JUDGEMENT OF FORECLOSURE
AND SALE**

C/A No.: 2019-CP-04-00744

PURSUANT TO Rule 53 South Carolina Rules of Civil Procedure, the above-entitled matter was referred by Order to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the cause.

PURSUANT to said Order of Reference, dated March 12, 2020, a hearing was held, attended by David J. Brousseau, attorney for the Plaintiffs and Andrew R. Hart, attorney for the Defendants, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT

F-1. An amended Lis Pendens and amended Summons and Complaint were filed on April 17, 2019.

F-2. A Second Amended Lis Pendens was filed on July 22, 2019.

F-3. Defendants accepted service of the Lis Pendens, Summons and Complaint, Notice, Certificate of Exemption from ADR, and the Fair Debt Collection Notice and filed an Answer through their attorney of record.

F-4. According to the Attorney's Certification of Exemption from Administrative Order of the Chief Justice of the South Carolina Supreme Court dated May 2, 2011, and other affidavit(s) introduced at hearing, or otherwise filed herein, it appears that the Defendants are not entitled to intervention pursuant to said Order.

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F-5. Plaintiffs also filed a Certification of Compliance with the Coronavirus Aid, Relief, and Economic Security Act stating the subject mortgage is not "Federally Back Mortgage Loan" as defined by § 4022(a)(2) of said Act.

F-6. On or around September 30, 2016, Defendant, Bry Tye Moats Construction Co., LLC (hereinafter Defendant or Moats Construction) was indebted to Plaintiffs in the sum of One Hundred Forty-Five Thousand and 00/100 Dollars (\$145,000.00), and, as evidence of said indebtedness, executed and delivered to Plaintiffs a promissory note in writing under the terms of which Defendant promised to pay to Plaintiffs the sum of One Hundred Forty-Five Thousand and 00/100 Dollars (\$145,000.00), payable in one hundred eighty (180) equal monthly payments of One Thousand One Hundred Forty-Six and 65/100 Dollars (\$1,146.65), beginning October 1, 2016 together with interest at five percent (5.00%) per annum with each succeeding monthly installment being due on the same day of each month thereafter until the entire remaining balance of principal and accrued interest is paid in full.

F-7. To secure the sums due under the note described above in Paragraph 4, Defendant Moats Construction did, on September 30, 2016, make, execute, and deliver to Plaintiffs a certain mortgage covering the following described property:

All those two certain lots of land situate, lying, and being in Rock Mills Township, County of Anderson, State of South Carolina, and in School District No. 5, said lots lying on the Southern side of Galloping Ghost Drive and being designated as Lot Nos. 4 and 5 on the plat of Lake Front made by Carolina Engineers & Surveying Co., dated April 19, 1964, of record in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 55 at Page 135; being shown on resurvey thereof by Applewhite & Applewhite Surveying Associates, Curtis M. Applewhite, S.C. R.L.S. #4194, under date of October 9, 1998, and being duly of record in the aforesaid Register's Office in Plat Slide 940 at Page 5-B, and having the metes and bounds, courses and distances as upon said plat appear, being incorporated herein by reference thereto.

This being the same property conveyed unto Bry Tye Moats Construction Company LLC by deed of James E. Allen and Diane F. Allen, dated September 30, 2016, recorded September 30, 2016 in the Office of the Register of Deeds for Anderson County, South Carolina in Book 12518 at Page 265.

532 Galloping Ghost Road, Anderson, SC 29625
TMS#: 049-03-01-004

F-8. Said mortgage was duly recorded on September 30, 2016 in the Office of the Register of Deeds for Anderson County, South Carolina in Book 12518 at Page 268.

F-9. The above referenced mortgage in paragraph (3) provided that Defendant, Moats Construction would pay "all taxes, assessments and other charges" levied against the subject property.

F-10. The above referenced mortgage also provided in paragraph four (4) that Defendant, Moats Construction would keep the improvements on the subject property insured, which policy would contain a mortgagee clause in favor of Plaintiffs/Mortgagee.

F-11. The above referenced mortgage also provided in paragraph sixteen (16) that upon default of any of the covenants or agreements by the Defendant Moats Construction, Plaintiff could declare all sums secured by the mortgage to be immediately due and payable without demand and foreclosure of the mortgage by judicial proceeding, and also provided Plaintiffs would be entitled to collect all expenses of collection, including a reasonable attorney's fee for Plaintiff's attorneys.

F-12. The note described in paragraph four (4) above was specific as to the payment amount and due date of monthly payments thereunder, as well as specific as to the imposition of a 5% late penalty if any payment was not received within ten (10) calendar days of any due date. From the testimony provided and Exhibits introduced at hearing, I find that Defendant Moats Construction's payments were erratic and unpredictable from inception of the loan, resulting in Defendant, Moats Construction being habitually late on its payments due under the note to Plaintiffs. I also find that payments under the note stopped with the November, 2018 payment, and Defendant, Moats Construction is in default under said note and mortgage as of December 1, 2018. I further find that Plaintiff's as owners and holders of said mortgage are entitled to foreclosure of said mortgage.

F-13. The subject mortgage also provided that the Defendant Moats Construction would keep the subject property insured subsequent to the September 30, 2016 closing. I find that, although repeated demand was made upon the Defendant, Moats Construction by Plaintiffs and

Plaintiff's attorneys to Defendant that it obtain insurance on the subject property with Plaintiffs name as mortgagee or additional insured, Defendant failed to obtain insurance until March 1, 2020, some three and a half (3½) years after closing. I find this to be an unreasonable time to gain coverage, and, therefore, a default under the terms of the subject mortgage, and Plaintiff's should be reimbursed for insurance premiums paid until March 1, 2020.

F-14. I further find that Defendant, Moats Construction failed to pay the Ad Valorem taxes in a timely manner pursuant to the provisions of the subject mortgage which failure to pay constitutes a default under said mortgage, and that Plaintiffs should be reimbursed for taxes paid.

F-15. The balance due on said Note is the sum of the One Hundred Thirty Thousand Ninety-Two and 00/100 Dollars as of December 1, 2018 together with 5.00% interest from November 1, 2018, any advances, for taxes and insurance, and the cost of this action together with attorney's fees.

F-16. I find the sum of \$5,000 is a reasonable fee to be allowed as attorney's fees for Plaintiff's attorneys for their services performed and anticipated to be performed until final adjudication of the within action, under the terms of the note and mortgage, and as set out in the Plaintiff's Attorney Affidavit entered herein.

F-17. The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of collection, including an attorney's fee, secured by the Note and Mortgage, is as follows:

a)	Principal due as of December 1, 2018	\$130,092.00
b)	Interest due at 5.00% per annum from November 1, 2018 through May 27, 2021 (\$17.82 per day for 936 days)	\$ 16,679.52
c)	Late Fees	\$ 718.36
d)	Insurance Premiums	\$ 4,182.26
	2016-2017: \$877.95	
	2017-2018: \$1,073.29	
	2018-2019: \$1,104.65	

	2019-2020: \$1,104.65	
e)	2018 Ad Valorem Taxes	\$ 3,708.73
f)	2019 Ad Valorem Taxes	\$ 3,424.11
g)	2020 Ad Valorem Taxes	\$ 3,424.11
h)	Attorney's Fees	\$ 5,000.00
i)	Cost prior to hearing	\$ 360.54

Total Debt due under notes and secured by mortgage
including interest to date shown \$167,589.63

F-18. The Plaintiffs are seeking the usual foreclosure of the Mortgage and have in the Complaint, or thereafter, expressly waived the right to a personal or Deficiency Judgment.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

C-1. The owner of the subject property is not entitled to Intervention as provided in the Administrative Order of the Chief Justice of the South Carolina Supreme Court dated May 2, 2011.

C-2. Plaintiffs should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

C-3. The Mortgaged Property should be sold at public auction after due advertisement. The sale shall be made subject to taxes and assessments that are due on the date of sale. That after making the required deposit the successful bidder at the sale should be required to pay interest at the rate set forth in the obligation described in the Complaint from the date of sale to the date of compliance.

C-4. The proceeds arising from such sale should be applied, first, to the costs and disbursements of this action, and next, to the payment and discharge of the amount of Plaintiffs' debt and interest or so much thereof as the proceeds will pay, and any surplus should be held pending further order of this Court.

NOW, ON MOTION OF PLAINTIFF'S ATTORNEY, M. P. Sherard, Jr., of McIntosh, Sherard, Sullivan & Brousseau, Attorneys:

IT IS ORDERED, ADJUDGED AND DECREED:

O-1. That there is due to the Plaintiffs on the obligation and Mortgage set forth in the Complaint the sum of One Hundred Sixty-Seven Thousand Five-Hundred Fifty-Nine and 63/100 Dollars (\$167559.63) representing the total debt due Plaintiffs as set out in Paragraph F-17 supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

O-2. The amount due in the preceding paragraph (the "Total Debt" as set forth in Paragraph F-13 Supra and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiffs and shall bear interest thereafter at the rate of 5.00% per annum.

O-3. That the Defendants liable for the aforesaid mortgage debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiffs, or Plaintiffs' attorney the amount of Plaintiffs' debt as aforesaid, together with the costs and disbursements of this action.

O-4. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the Master in Equity for Anderson County, SC at public auction in Courtroom Number Two on the Third Floor of the Courthouse for Anderson County, in the City of Anderson, County of Anderson, State of South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

a) FOR CASH: The Master for Anderson County, South Carolina will require a deposit of five (5%) percent of the amount of the bid (in cash or equivalent) same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within twenty (20) days same to be forfeited and applied to the costs and Plaintiff's debt.

b) Interest on the balance of the bid shall be paid to the day of compliance at the rate of 5.00% per annum.

c) The sales shall be subject to taxes and assessments, existing easements, and easements and restrictions of record.

d) Purchaser to pay for deed stamps and costs of recording the deed.

O-5. If Plaintiffs are the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiffs in full, Plaintiffs may pay to the undersigned Master for Anderson County, South Carolina only the amount of the costs and expenses crediting the balance of the bid on Plaintiffs' indebtedness.

O-6. Personal or deficiency judgment being waived the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

O-7. That the Master in Equity for Anderson County, South Carolina, will by advertisement according to law, give notice of the time and place of such sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiffs, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser or Purchasers should fail to comply with the terms thereof within twenty (20) days after date of sale, then the undersigned Master may advertise the said premises for sale on the next or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

O-8. That the Master for Anderson County, South Carolina do apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian ad Litem fee or fees of attorneys appointed under order of Court;

NEXT: To the payment to the Plaintiffs or Plaintiffs' attorney, of the amount of Plaintiffs' debt and interest or so much thereof as the purchase money will pay.

NEXT: Any surplus will be held pending further Order of this Court.

O-9. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the Defendant(s) in possession herein, the Sheriff of Anderson County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or

his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

O-10. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant(s) named herein, and all persons whomsoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

O-11. IT IS FURTHER ORDERED that the deed of conveyance made pursuant to said sale shall contain the names of the first-named Plaintiffs and the first-named Defendants and the Defendant(s) who were the titleholder(s) of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee, and the Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

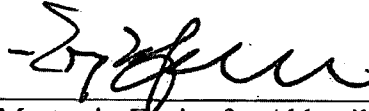
O-12. The Master in Equity for Anderson County, South Carolina will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of an Order of Ejectment.

O-13. The following is a description of the premises herein ordered to be sold:

ALL those two certain lots of land situate, lying, and being in Rock Mills Township, County of Anderson, State of South Carolina, and in School District No. 5, said lots lying on the Southern side of Galloping Ghost Drive and being designated as Lot Nos. 4 and 5 on the plat of Lake Front made by Carolina Engineers & Surveying Co., dated April 19, 1964, of record in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 55 at Page 135; being shown on resurvey thereof by Applewhite & Applewhite Surveying Associates, Curtis M. Applewhite, S.C. R.L.S. #4194, under date of October 9, 1998, and being duly of record in the aforesaid Register's Office in Plat Slide 940 at Page 5-B, and having the metes and bounds, courses and distances as upon said plat appear, being incorporated herein by reference thereto.

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Master-in-Equity for Abbeville County

July 21, 2021