

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
John Weible,)
Plaintiff,)
vs.)
Russell Self and Brandy Brunson,)
a/k/a Brandilyn Self,)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

C/A #: 2018-CP-43-02004
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ORDER DENYING MOTION TO RECONSIDER

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SC Court of Appeals

A Final Order for Foreclosure was entered in this matter on March 17, 2020. Defendants' Motion to Reconsider was timely filed on the same date. A Memorandum of Law in support of the Motion was filed on June 30, 2021 after substitution of counsel for Defendants. After thorough consideration of the Motion and memorandum, for the reasons set forth below, the Motion is Denied.

FACTS

On November 5, 2010 Defendants executed a note (Note #1) in favor of Plaintiff for \$115,000 with no interest and a term of 7 years. That note matured in December 2017 and is now due and payable in full. Said note was secured by a mortgage (Mortgage #1) in the amount of \$65,000 dated the same date of November 5, 2010, and another existing mortgage (Mortgage #2) in the amount of \$50,000 dated July 2, 2010. The underlying obligation was due and payable in December 2017, which was at least ten (10) months before the present action was filed. Accordingly, the Defendants seek to impose modification on a debt that has fully matured.

On July 3, 2014 Defendants executed another mortgage (Mortgage #3) securing existing debt of \$48,923.00 to the Plaintiff. The existing debt stemmed from a note (Note #2) Defendants executed in favor of Plaintiff dated May 25, 2011 for \$60,000 with an interest rate of 8% with a maturity date of 2 years, or June 2013. This debt has also fully matured.

An action for mortgage foreclosure was previously filed against Defendants on May 21, 2014. The parties reached a settlement agreement for loan modification at that time and as a result the action was dismissed by stipulation on July 14, 2014.

PROCEDURAL HISTORY

The instant foreclosure action was commenced on October 29, 2018 with Plaintiff's filing of a Lis Pendens, Summons and Complaint. Defendants filed an Acceptance of Foreclosure Intervention on November 13, 2018. An Affidavit of Non-Eligibility for loan modification was served February 5, 2019. An Affidavit of Default was filed on February 6, 2019. An Answer was filed on May 16, 2019. An Order referring this matter to Special Referee was filed on May 24, 2019. An Amended Answer was filed on June 27, 2019.

ADMINISTRATIVE ORDERS OF SOUTH CAROLINA SUPREME COURT

On May 22, 2009 the South Carolina Supreme Court issued its Administrative Order providing that all foreclosure actions filed after May 4, 2009 must contain a short, plain statement facts regarding applicability of Home Affordable Modification Program (HAMP). HAMP expired on December 31, 2016 and thus this Administrative Order 2009-05-22-01 has limited applicability and mortgage lenders must voluntarily offer loan modification to borrowers. The Complaint in his matter alleged in paragraph 10 that the mortgages are not subject to HAMP

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and are not insured by any federal agency (Fannie Mae or Freddie Mac). Further said paragraph of the Complaint alleges that Plaintiff does not participate in the HAMP program.

On May 2, 2011 the South Carolina Supreme Court issued its Administrative Order providing that foreclosure actions filed after May 9, 2011 shall include a notice of the Mortgagor's right to foreclosure intervention. It further provided that no foreclosure hearing could be held until compliance with the order. Upon certification of compliance with the above the foreclosure action could proceed. This Administrative Order is procedural in nature. The Administrative Order makes clear that failure to issue the Affidavit only works to stay the action, not as a dismissal. At the time of issuance of this Administrative Order, the HAMP was still in effect. However, as stated above the HAMP has expired, and thus the underlying purpose of the Administrative order has been impacted.

COMPLIANCE WITH ADMINISTRATIVE ORDER

The Plaintiff served his Affidavit of Non-Eligibility for loan modification on February 5, 2019 indicating that the loan was not eligible as the service (Plaintiff) had not executed an agreement under HAMP. The merits hearing in this matter was held on September 19, 2019 which was seven (7) months after Plaintiff served the Affidavit of Non-Eligibility for loan modification. The Defendants filed no counter affidavit as to contest eligibility for loan modification. In their Pro Se Answer filed May 16, 2019 the Defendants raised the issue of loan modification, stating they may be entitled to same under HAMP, which as set forth above had already expired. However, in the Amended Answer filed June 27, 2019 by counsel, the Defendants (or at least Defendant Brandilyn Self) abandoned their allegations as to potential loan modification under HAMP, obviously recognizing that HAMP had expired and offered them no

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relief. The only loan modification for borrowers available at this time is optional through lenders that voluntarily participate in same and Plaintiff does not so participate.

DEFENDANTS' DEFAULT

The Defendants first served responsive pleadings on May 26, 2019 after an Affidavit of Default was already filed three (3) months earlier, as well as the Affidavit of Non-Eligibility for loan modification. The Defendants did not file their Answer within 30 days of either Affidavit. They filed an Amended Answer on June 27, 2019 without having obtained relief from the entry of default by the Court. Notwithstanding same, the Plaintiff's claim was for an unliquidated amount and the Defendants' could be heard regarding the proper amount of damages. Default would only serve to prevent the Defendants from contesting the validity of the debt and Defendant Russell Self admitted in his testimony to being indebted to the Plaintiff, but rather only disputed the amount of such debt. Therefore, the entry of default did not prevent Defendants from contesting the debt at the merits hearing and offering their own evidence as to the amount due and owing to the Plaintiff. Defendant Brandy Brunson did not testify.

To obtain relief from entry of default, the Defendants must comply with *Rule 55, SCRPC* and show good cause. *Sundown Operating Co., Inc. v. Intedge Industries, Inc.*, 681 S.E.2d 885 (S.C. 2009) A defendant in default admits liability but not damages. *Wells Fargo Bank, N.A. v. Marion Ampitheatre, LLC*, 757 S.E.2d 557 (S.C.Ct.App. 2014) The Plaintiff submits that the Defendants have admitted the debt due to the Plaintiff and the only question is to the amount of the debt due and relief of foreclosure under the mortgages.

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TOTAL AMOUNT OWED TO THE PLAINTIFF

The Plaintiff testified that the debt due was \$179,444.39 as of the date of hearing. He had incurred \$3500.00 in attorney's fees and costs. In his testimony Defendant Russell Self indicated that he did not owe the Plaintiff the balance as stated. He admitted to non payment on the \$115,000 note, but said that the Plaintiff hindered his (Defendants') chance to refinance through Quicken Loans. Accordingly, he stopped paying. Defendant Russell Self did not provide any specific evidence of an amount or calculation different than what the Plaintiff testified to and as set forth in the Complaint. He submitted copies of the face page of checks made payable to the Plaintiff for the years 2014 through May, 2019. These checks do not indicate that each one has been negotiated and canceled.

Defendant Russell Self in his testimony admitted the loans from the Plaintiff. He admitted that he should repay the loans and that same should not be simply invalidated by the court. He only contested the amount due on the loan.


RULING

I find and conclude that the issues raised in the Motion do not warrant a change in the Order. The original hearing was postponed and then conducted and ruled upon and proper recognition given to those matters raised in the Amended Answer. Default in payment was not contested and no meaningful evidentiary challenge was as to the amount due.

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Therefore, the Motion to Reconsider is denied.

And it is so ordered.



Thomas E. Player, Jr.,
SPECIAL REFEREE

August ~~15~~ 2021