

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 16-2008-CA-015413-XXXX-MA
DIVISION: ~~CVB~~ FC F

BANK OF AMERICA, N.A., a nationally chartered banking association,

Plaintiff,

v.

CHARLOTTE GERRY, D.M.D., P.A., d/b/a Agape Family Dentistry, a Florida corporation; CHARLOTTE GERRY, an individual; FAMILY AND COSMETIC DENTISTRY OF NORTH FLORIDA, P.A., an administratively dissolved Florida corporation; JOHN P. CRAIG, D.M.D., an individual; and UNITARIAN UNIVERSALIST CHURCH OF JACKSONVILLE, INC.,

FILED
JUL 28 2011
Jim Fuller
CLERK CIRCUIT COURT

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Defendants.

SUMMARY FINAL JUDGMENT OF FORECLOSURE IN FAVOR OF PLAINTIFF

AND VACATING SATISFACTION OF MORTGAGE *ABO*

This matter comes before the Court for hearing July 28, 2011, on Plaintiff Bank of America, N.A.'s ("BOA") Motion for Summary Judgment as to Counts I, VI and VII of the Amended Complaint filed on June 23, 2011 (the "Motion for Summary Judgment"). The Court, having reviewed the relevant pleadings, affidavits and other record evidence, hearing the argument of counsel and being otherwise fully advised in the premises, **FINDS** as follows:

1. Through its Motion for Summary Judgment, Plaintiff only seeks summary judgment as to the rescission of the erroneous Satisfaction of Mortgage filed by the BOA (Count I) and the foreclosure of the real property encumbered by the 2004 Mortgage and the 2005 Mortgage executed by Defendant Charlotte Gerry, D.M.D., P.A., d/b/a Agape Family Dentistry

("Agape") (Counts VI and VII).¹

2. Service of process has been duly and regularly obtained upon all defendants and the Court has jurisdiction over each defendant and over the subject matter of this action.

3. BOA's Amended Complaint incorporates by exhibit the written lending contracts between the parties.

4. Defendants Gerry and Agape admitted all of the relevant allegations of the Amended Complaint supporting the BOA's causes of action under Count I (action for recession of satisfaction of mortgage), Count VI (action to foreclose 2004 mortgage), and Count VII (action to foreclose 2005 mortgage) and did not assert any affirmative defenses relating to these counts.

5. Unitarian Universalist Church of Jacksonville, Inc. ("UUC") failed to serve any response to the Complaint or the Amended Complaint and defaults were entered by the Clerk of Court against UUC on January 15, 2009, and May 26, 2011, respectively.

6. John P. Craig, DMD ("Craig") and Family and Cosmetic Dentistry of North Florida, P.A. ("F&CD") do not dispute their status as junior and inferior lienors and do not dispute BOA's cause of action for rescission of the erroneously filed Satisfaction of Mortgage. The only affirmative defense asserted by Craig and F&CD relates to their right to share in any excess proceeds from the judicial sale of the mortgaged property.

7. As to Count I of the Amended Complaint, it is without dispute that on May 13, 2010, BOA erroneously completed the Satisfaction of Mortgage and that on June 6, 2010, the erroneous Satisfaction of Mortgage was filed by BOA in the Official Public Records of Duval

¹ At the hearing on BOA's Motion for Summary Judgment, BOA voluntarily dismissed the remaining counts of its Amended Complaint, including Count II (action on credit line note against Charlotte Gerry ("Gerry")), Count III (action on March 2004 Note against Agape), Count IV (action on November 2004 Note against Agape), Count V (action on 2005 Note against Agape), and Count VIII (action on March 2004 Guaranty against Gerry).

County, Florida. It is further undisputed that Agape did not, and has not, satisfied its obligations under the March 2004 Note that was secured by the 2004 Mortgage when the mortgage was erroneously released. It is undisputed that the terms of the March 2004 Note and the 2004 Mortgage have not been fulfilled and, but for BOA's mistake, the 2004 Mortgage would still be in full force and effect. Finally, it is without dispute that no third party has relied upon the erroneous Satisfaction of Mortgage to its detriment.

8. The mortgages BOA seeks to foreclose in Counts VI and VII of the Amended Complaint are:

- a. The March 12, 2004 mortgage executed by Agape encumbering the mortgaged property in favor of BOA and recorded in the Official Records Book 11739, Page 2116, of the Public Records of Duval, County Florida (the "2004 Mortgage") as set forth in Count VI of the Amended Complaint.
 - b. The December 1, 2005 mortgage executed by Agape encumbering the mortgaged property in favor of BOA and recorded in the Official Records Book 12936, Page 435, of the Public Records of Duval, County Florida (the "2005 Mortgage") as set forth in Count VII of the Amended Complaint.
 - c. The mortgaged property includes, but is not limited to: (i) that certain parcel of real property located at 7505 Arlington Expressway, Jacksonville, Duval County, as described by metes and bounds in Exhibit A to the 2004 Mortgage (the "Land"); (ii) all buildings, improvements, and fixtures then or later constructed or located, in whole or in part, on the Land (the "Improvements"); and (iii) all easements, rights of way and appurtenances to the Land
9. BOA owns and holds the 2004 Mortgage, the 2005 Mortgage, the March 2004

Note and the 2005 Note.

10. Agape is in default under the 2004 Mortgage, the 2005 Mortgage, the March 2004 Note and the 2005 Note.

11. BOA made written demand upon Agape by letter dated August 28, 2008, for payment of the past due amounts then owed to BOA. Agape has failed and refused to pay pursuant to BOA's demand letters.

12. Agape is the present owner of the mortgaged property.

13. BOA has been required to retain the undersigned attorneys to represent it in this action and has agreed to pay said attorneys a reasonable fee for their services for which Agape is responsible pursuant to the terms of the 2004 Mortgage and 2005 Mortgage.

Based on the foregoing findings, the Court concludes that: 1) there are no genuine issues of material fact to be resolved at trial and 2) that the Bank is entitled to judgment as a matter of law. Accordingly, it is **ORDERED and ADJUDGED**:

14. The law and equities in this action are in favor of BOA. BOA is entitled to rescission, *nunc pro tunc*, of the Satisfaction of Mortgage erroneously filed by BOA in the official records of Duval County, Florida, Book 15263, Page 2038, on June 6, 2010, and as a result, the reinstatement of the 2004 Mortgage. BOA is further entitled to foreclosure of its interest in the real property described in the 2004 Mortgage and 2005 Mortgage.

15. The 2004 Mortgage and the 2005 Mortgage constitute a valid first lien upon the real property therein described, which lien is superior in dignity to any right, title, interest, claim or estate of the Defendants in or to said property.

16. Agape is adjudged to be in default under the 2004 Mortgage and the 2005 Mortgage.

17. As of June 17, 2011, Defendant Agape is liable to the BOA for the following sums due and owing under the 2004 Mortgage, the 2005 Mortgage, the March 2004 Note, and the 2005 Note as follows:

Principal on the March 2004 Note	\$118,130.60
Interest on the March 2004 Note (accruing at \$28.72 /day)	\$13,572.39
Expenses on the March 2004 Note	\$3,550.20
Principal on the 2005 Note	\$36,682.41
Interest on the 2005 Note (accruing at \$7.91/day)	\$3,468.20
Expenses on the 2005 Note	\$866.86
Total	\$176,270.66

18. Due to the bankruptcy proceedings of Agape in the case styled *In re Charlotte Gerry DMD, P.A.*, Case No.: 3:10-bk-05955 pending in the United States Bankruptcy Court, in and for the Middle District of Florida, Jacksonville Division, the amounts determined in paragraph 17 are for the sole purpose of establishing the amount of BOA's credit bid to be used at the foreclosure sale of the mortgaged property. The amount determined in paragraph 17 is not intended to be used to establish any executable judgment amount against Agape.

19. BOA holds a valid and enforceable lien for the total sum set forth in Paragraph 17 above and that lien is superior to any claims, interests, or estates of any of the Defendants, including Charlotte Gerry, Family and Cosmetic Dentistry of North Florida, P.A., John P. Craig, D.M.D., and Unitarian Universalist Church of Jacksonville, Inc., any party claiming though any of the Defendants, or as to any third party claiming after the Notice of Lis Pendens and the Amended Notice of Lis Pendens filed in this action and in the official public records for Duval

County, Florida, on November 21, 2008, and May 25, 2011, respectively, and therefore BOA is entitled to foreclosure on the mortgaged property. BOA's lien in and upon the real property is prior, paramount and superior to all rights, claims, lien interests, leases, encumbrances and equities of any of the Defendants and all persons claiming by, through or under it, and the property will be sold free and clear of any claims whatsoever by any of the Defendants.

20. If the total sums set forth in Paragraph 17 above, together with interest thereon at the rate of six percent (6%) and all costs of this action accruing subsequent to this judgment are not paid, the Clerk of this Court shall sell the mortgaged property at a public sale to the highest bidder for cash, except as set forth hereinafter, on Sept. 28, 2011 at 11:00 a.m. at www.duval.realforeclose.com, in accordance with Chapter 45, Florida Statutes.

21. IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS FINAL JUDGMENT.

22. IF YOU ARE A SUBORDINATE LIEN HOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN SIXTY (60) DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

23. If any of the mortgaged property qualified for the homestead tax exemption in the most recent approved tax roll, and IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH

YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, DUVAL COUNTY COURTHOUSE, WITHIN TEN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

24. IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT THE LEGAL AID OFFICE(S) NAMED BELOW TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO GO TO A LEGAL AID OFFICE FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

Jacksonville Area Legal Aid
126 W. Adams Street
Jacksonville, FL 32202-3849
Phone: (904) 356-8371
Fax: (904) 356-8285

Three Rivers Legal Services, Inc.
126 W. Adams Street, Suite 101
Jacksonville, FL 32202
Phone: (904) 394-7450
Fax: (904) 294-7459

25. BOA shall advance all subsequent costs of this action, and shall be reimbursed for them by the Clerk if BOA is not the purchaser of the mortgaged property at the sale. If BOA is the purchaser, the Clerk shall credit BOA's bid with the total sum with interest as described

herein and costs accruing subsequent to this judgment or such part of it as is necessary to pay the bid in full.

26. On filing the Certificate of Title with respect to the mortgaged property, the Clerk shall distribute the proceeds of the sales, so far as they are sufficient, by paying: first, all of BOA's costs; second, documentary stamps affixed to the Certificate; third, the BOA's attorneys' fees; fourth, the total sum due to BOA, less the items paid, plus interest at the rate prescribed by law from this date to the date of the sale to BOA; and shall retain any amount remaining pending the further order of this Court. Any amounts so retained are to be distributed to the Defendants as determined by order of this Court.

27. The successful bidder and purchaser at the foreclosure sale of the mortgaged property being foreclosed herein shall pay, in addition to the amount bid, any documentary stamps and Clerk's fees, including registry fees, relating to the issuance of the Certificate of Title to be issued by the Clerk to the successful bidder and purchaser. At the time of the sale the successful high bidder(s) shall post with the Clerk a deposit equal to five percent (5%) of the final bid. The deposit shall be applied to the sale price at the time of payment. If final payment is not made within the prescribed period, the Clerk shall re-advertise the sale as provided in this section, and pay all costs of the sale from the deposit. Any remaining funds shall be applied toward the judgment.

28. On filing the Certificate of Sale with respect to the mortgaged property, Defendants, and all persons claiming by, through, under, or against them since the filing of the Notice of Lis Pendens and the Amended Notice of Lis Pendens in this action are foreclosed of all estate, interest or claim in the mortgaged property. On filing the Certificate of Title, the purchaser or purchasers at the sale shall be let into possession of the mortgaged property, and the

Clerk of the Circuit Court is hereby ordered to issue a Writ of Possession upon demand by the purchaser or purchasers.

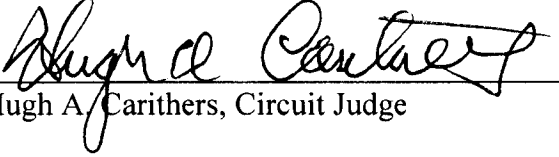
29. The Court hereby authorizes BOA to assign its bid rights under this Judgment to a third party by the filing of a written assignment of bid with the Clerk of the Court prior to the issuance of the Certificate of Title without further order of the Court.

30. Upon a sale being had in accordance with Chapter 45 of the Florida Statutes and upon the Clerk filing the Certificate of Sale, the sale shall stand confirmed and the Defendants and all persons claiming by, through, under or against them shall be forever barred and foreclosed of any equity or right of redemption whatsoever in and to the property, and the purchaser at the sale shall be let into possession of the property, further, any and all persons whatsoever claiming against the subject property by virtue of any liens or other interests unrecorded as of the date of the filing of the Notice of Lis Pendens and the Amended Notice of Lis Pendens in the above-captioned action with the Clerk of this Court shall be forever barred from asserting any such liens or other interests and any such liens or other interests shall be discharged forever in accordance with the Florida Statutes.

31. The Court retains jurisdiction over this action to enter such further orders as may be necessary and proper, including the amount of the award of attorneys' fees and costs in favor of BOA.

DONE, ORDERED, AND ADJUDGED in chambers at Jacksonville, Duval County,

Florida on this 28 day of July, 2011.


Hugh A. Carithers, Circuit Judge

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Unitarian Universalist Church of Jacksonville, Inc.
c/o Registered Agent Melody Shacter
426 Orange Bluff Ave
Jacksonville Florida 32211

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Exhibit A (Legal Description)

All that certain parcel of land lying and being situated in the County of DUVAL, State of FL, to-wit:

A PORTION OF FARM 24, ALDERMAN FARMS, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, PAGE 90, OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE, COMMENCE AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY RIGHT OF WAY LINE OF ALDERMAN ROAD, (A 60.00 FOOT RIGHT OF WAY), AS SHOWN ON SAID PLAT OF ALDERMAN FARMS, WITH NORTHERLY RIGHT OF WAY LINE OF THE JACKSONVILLE EXPRESSWAY (ARLINGTON EXPRESSWAY) AND RUN NORTH 89 DEGREES, 39 MINUTES 50 SECONDS EAST ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 150.0 FEET TO A POINT FOR THE POINT OF BEGINNING. FROM THE POINT OF BEGINNING THUS DESCRIBED, CONTINUE NORTH 89 DEGREES 39 MINUTES 50 SECONDS EAST, AND ALONG SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 111.62 FEET TO A POINT; RUN THENCE NORTH 0 DEGREES 20 MINUTES 10 SECONDS WEST, A DISTANCE OF 182.23 FEET TO A POINT IN THE SOUTHEASTERLY RIGHT OF WAY LINE OF SAID ALDERMAN ROAD; RUN THENCE SOUTH 54 DEGREES 48 MINUTES 20 SECONDS WEST, ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 136.03 FEET TO A POINT; RUN THENCE SOUTH 0 DEGREES 20 MINUTES 10 SECONDS EAST, A DISTANCE OF 104.47 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THE SOUTHERLY ONE-HALF (1/2) OF ALDERMAN ROAD AS CLOSED BY CITY ORDINANCE 69-97-81; WHICH LIES ADJACENT TO THE ABOVE DESCRIBED PROPERTY.