

10/4/2017 11:38 AM Tara S. Green

IN THE FLORIDA COURT OF THE FOURTH
JUDICIAL CIRCUIT OF FLORIDA IN AND FOR
CLAY COUNTY
GENERAL JURISDICTION DIVISION
CASE NO: 2010-CA-000904

REVERSE MORTGAGE SOLUTIONS, INC.,
Plaintiff,

vs.

PATRICIA A. THORNTON; UNITED STATES
OF AMERICA, ACTING ON BEHALF OF THE
SECRETARY OF HOUSING AND URBAN
DEVELOPMENT; UNKNOWN TENANT #1
NKA SCOTT MCCOY; ANY AND ALL
UNKNOWN PARTIES CLAIMING BY,
THROUGH, UNDER, AND AGAINST THE
HEREIN NAMED INDIVIDUAL
DEFENDANT(S) WHO ARE NOT KNOWN TO
BE DEAD OR ALIVE, WHETHER SAID
UNKNOWN PARTIES MAY CLAIM AN
INTEREST AS SPOUSES, HEIRS, DEVISEES,
GRANTEES, OR OTHER CLAIMANTS,
Defendant(s).

/

IN REM FINAL JUDGMENT OF FORECLOSURE

This action was tried before the court at a Non-Jury Trial on June 8, 2017. On the evidence presented, **IT IS ADJUDGED** that Plaintiff's Final Judgment is **GRANTED** against all defendants listed by name: PATRICIA A. THORNTON; UNITED STATES OF AMERICA, ACTING ON BEHALF OF THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT; and UNKNOWN TENANT #1 NKA SCOTT MCCOY, and the Court finds:

1. The Court has jurisdiction over the parties and the subject matter of this action.
2. This action to foreclose a reverse mortgage was filed April 21, 2010, alleging a default due to the death of the borrower, TRAVIS E. THORNTON, on May 11, 2009.
3. Defendant, Patricia A. Thornton, filed her Answer and Affirmative Defenses on August 26, 2016. As affirmative defenses Defendant alleged Plaintiff could not establish standing and

Plaintiff has not shown a default under Paragraph 9(a) of the Mortgage as Defendant is a surviving spouse and thus a “Borrower,” therefore barring foreclosure.¹

4. A Non-Jury Trial was held on June 8, 2017. At Trial the Court heard arguments from counsel for Plaintiff and counsel for Defendant, testimony from Corrie Williams (Plaintiff’s representative), Angela Torres (Bank of America’s representative), and Patricia A. Thornton, Defendant.
5. Plaintiff presented testimony from qualified witnesses in support of its claims, establishing Plaintiff had standing, the loan was in default and the amounts due and owing. Said witnesses provided competent, substantial evidence in the form of properly authenticated business records in support of Plaintiff’s claim pursuant to Fla. Stat. §90.803(6)(a). See Clay County Land Trust v. JP Morgan Chase Bank, N.A., 152 So.3d 83 (Fla. 1st DCA 2014); King v. Auto Supply of Jupiter, Inc., 917 So.2d 1015 (Fla. 1st DCA 1006); and Wamco IIVIII, LTD., v. Integrated Electronic Environments, Inc., 903 So.2d 230 (Fla. 2d DCA 2005).
6. Bank of America was in possession of the original Note and entitled to enforce the Note when the action was filed. The original Note was sent to Plaintiff’s counsel, Ben-Ezra & Katz, P.A., who later became defunct and the original Note was lost.
7. Subsequently, the debt was transferred from Bank of America to Plaintiff. This fact was substantiated by live testimony, the Original Lost Note Affidavit and certified copies of the Assignments of Mortgage. See Exhibits 1, 3 and 4.
8. The Note did not become lost as a result of a transfer by person or a lawful seizure.
9. Both Bank of America and Plaintiff made reasonable efforts to discover the whereabouts of the original Note.
10. Plaintiff presented sufficient evidence through testimony, the Affidavit of Lost Note, and the Assignments of Mortgage, to establish it was legally entitled to enforce the Note as it directly acquired ownership from the entity entitled to enforce the Note when it was lost. See

¹ Defendant raised a third affirmative defense which would only be applicable if the debt was not in default. For the reasons articulated within this Final Judgment there is no need to address or discuss the third affirmative defense.

§ 673.3091, Fla. Stat. Ann.; Walton v. Deutsche Bank Nat. Trust Co., 201 So.3d 831, 833 (Fla. 1st DCA 2016).

11. Plaintiff established a default existed under Paragraph 9(a)(i) of the subject mortgage and was therefore entitled to foreclose.
12. Ms. Williams testified Travis E. Thornton signed the Note on January 27, 2005, and that Travis E. Thornton was the sole signatory identified on the Note. See Plaintiff's Exhibit 1.
13. Ms. Williams testified regarding multiple documents which formed a part of the overall reverse mortgage contract² which reflect that the Defendant, Patricia A. Thornton, was a "Non-Borrowing Resident" and not a Borrower.³ The evidence established the following:
 - A. The HUD VA Addendum to Uniform Residential Loan Application was signed by only Travis E. Thornton on January 27, 2005. Defendant Patricia A. Thornton's name does not appear in the section listing the borrower(s), nor did Defendant sign the loan application. See Exhibit 7.
 - B. Defendant, Patricia A. Thornton, signed an Ownership Interest Certification on January 27, 2005, as a "Non-Borrowing Resident." The Certification clearly states that if the borrowing spouse predeceases the non-borrowing spouse the reverse mortgage will become due and payable. See Exhibit 7.
 - C. The Adjustable Rate Home Equity Conversion Mortgage makes a singular reference to "Borrower." The Mortgage was signed by "TRAVIS E. THORNTON (Borrower)" and "PATRICIA A. THORNTON." See Exhibit 2.
14. In support of the second affirmative defense, defense counsel argued Defendant is a "borrower" since she signed the Mortgage and Plaintiff cannot foreclose until she is deceased or the residence is no longer her primary residence. In support of this position, defense counsel relied upon Smith v. Reverse Mortgage Solutions, Inc., 200 So.3d 221 (Fla. 3d DCA 2016) and Edwards v. Reverse Mortgage Solutions, Inc., 187 So.3d 895 (Fla. 3d DCA 2016). These cases are distinguishable from the instant case as the surviving spouses in Smith and

² See Citicorp Real Estate, Inc., v. Ameripalms 6B GP, Inc., 633 So.2d 47, 49 (Fla. 3d DCA 1994) (Two or more documents executed by the same parties, at or near the same time, and concerning the same transaction or subject matter are construed together as a single contract)

³ Nationstar Mortgage Company v. Levine, 216 So.3d 711 (Fla. 4th DCA 2017) (Courts allow parole evidence regarding identity, capacity, and the parties' relationship with one another)

Edwards signed the Mortgages as “Borrower,” and no additional closing documents were signed by the spouses as non-borrowers placing them on notice of the ability of the lender to foreclosure upon the death of the Note-signing Borrower.

15. Defendant failed to prove the Affirmative Defense through clear and convincing evidence. See Smith v. McEwen, 119 Fla. 588 (Fla. 1935); McGill v. Boulevard & Bay Land & Development Co., 100 Fla. 906 (Fla. 1930); Department of Revenue v. M.E. Rudd, 545 So.2d 369 (Fla. 1st DCA 1989). The documents and testimony clearly establish Defendant as non-borrowing resident and advised her in writing of the implications of her status as a non-borrowing resident.
16. **Amounts Due.** Plaintiff, REVERSE MORTGAGE SOLUTIONS, INC., whose address is c/o Reverse Mortgage Solutions, Inc., 14405 Walters Road, Suite 200, Houston, TX 77014, is due:

Principal	\$102,368.04
Interest to this date of judgment: October 2, 2017	\$1,822.53
MIP	\$23.84
Monthly Service Fee	\$30.00
Corporate Advances	\$27,201.40
Court Costs, now taxed:	
Service of Process:	\$65.00
Other:	\$660.35
Title Search and Examination: \$650.00	
Summons: \$10.35	
TOTAL SUM	\$132,171.16

That shall bear interest at a rate in accordance with section 55.03(3), Florida Statutes.

17. **Lien on Property.** Plaintiff holds a lien for the total sum superior to all claims or estates of defendants, on the following described property in Clay County, Florida:

THE SOUTH 129.45 FEET OF THE NORTH 260.43 FEET TO TRACT "A" BLACK CREEK HILLS, ACCORDING TO PLAT THEREOF RECORDED IN PLAT BOOK 7, PAGES 45 AND 46, PUBLIC RECORDS OF CLAY COUNTY, FLORIDA.

**Property Address: 2090 CORNELL ROAD, MIDDLEBURG, FL
32068**

18. Sale of Property. If the total sum with interest at the rate described in paragraph 1 and all costs accrued subsequent to this judgment are not paid, the Clerk of this Court shall sell the property at public sale on the 4th day of December, 2017, no sooner than 60 days from the of this judgment, to the highest bidder for cash, except as prescribed in paragraph 4, at the courthouse located at 825 NORTH ORANGE AVENUE, GREEN COVE SPRINGS, FL 32043 in Clay County, Florida, in accordance with section 45.031, Florida Statutes (2013), using the following method:

☒ www.clay.realforeclose.com beginning at 10:00 AM

19. Costs. Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the clerk if plaintiff is not the purchaser of the property for sale, provided, however, that the purchaser of the property for sale shall be responsible for the documentary stamps payable on the certificate of title. If plaintiff is the purchaser, the clerk shall credit plaintiff's bid with the total sum with interest and costs accruing subsequent to this judgment, or such part of it as is necessary to pay the bid in full.

20. Distribution of Proceeds. On filing the certificate of title the clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of plaintiff's costs; second, documentary stamps affixed to the certificate; third, plaintiff's attorneys' fees; fourth, the total sum due to plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 1 from this date to the date of the sale; and by retaining any remaining amount pending the further order of this court.

21. Right of Redemption/Right of Possession. On filing the certificate of sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the Notice of Lis Pendens shall be foreclosed of all estate or claim in the property, and defendant(s) right of

redemption as prescribed by section 45.0315, Florida Statutes (2013) shall be terminated, except as to claims or rights under chapter 718 or chapter 720, Florida Statutes, if any. Upon the filing of the certificate of title, the person named on the certificate of title shall be let into possession of the property.

22. The Court finds that the Plaintiff has proved the terms of the lost Note and its right to enforce the instrument(s) as required by Florida Statute 673.3091. Plaintiff holds harmless and shall indemnify them from any loss they may incur by reason of a claim by any other person to enforce the lost Note. Since adequate protection is therefore provided as required by Florida Statute Section 673.3091, judgment is hereby entered in favor of the Plaintiff as to its request to enforce the lost Note.

23. Jurisdiction is further reserved to enter Orders that are proper, including without limitation, writs of possession, and leave to file supplemental and amended pleadings and complaints to add omitted counts and/or parties who may possess an interest in the property and to resolve any disputes with respect to assessments and/or other amount allegedly due associations. The Judgment is in rem only. Plaintiff is not seeking a deficiency or money judgment against any defendant to this action.

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 THE FINAL JUDGMENT.

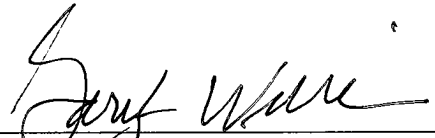
IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

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, 825 NORTH

ORANGE AVENUE, GREEN COVE SPRINGS, FL 32043, WITHIN 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.

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 JACKSONVILLE AREA LEGAL AID, 1107 MIDDLEBURG AVENUE, GREEN COVE SPRINGS, FL 32043, PHONE: (904) 284-841 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 CONTACT JACKSONVILLE AREA LEGAL AID FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

ORDERED at GREEN COVE SPRINGS, CLAY COUNTY, FLORIDA this 2nd
day of October, 2017.


HONORABLE PRESIDING JUDGE

COPIES FURNISHED TO:

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