54

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

IN RE:

BRASOTA MORTGAGE COMPANY, INC.,

Debtor.

Case No: 8:05-bk-06215-KRM

J.B. VOL. 13
1498

BRASOTA MORTGAGE COMPANY, INC., et. al.,

Plaintiff,

VS.

TIMOTHY L. HATTAWAY et ux., et al.,

Defendants.

Adversary No. 05-829

SECOND AMENDED FINAL JUDGMENT

An Amended final judgment was entered in this matter on July 13, 2006. The order stated that the judgment amount was subject to additional claims for attorney fees. The parties have notified the court that they have reached a stipulation on the claim for additional attorney fees and costs in the amount of $22,713.85. Accordingly, the final judgment dated July 13, 2006 is hereby amended to reflect a total judgment amount of $315,950.06

DONE AND ORDERED in Tampa, Florida on this 20th day of July, 2006.

K. Rodney May
United States Bankruptcy Judge

56

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Plaintiff,

VS.

TIMOTHY L. HATTAWAY et ux., et al.,

Defendants.

Adversary No. 05-829

AMENDED FINAL JUDGMENT

THIS PROCEEDING came on for trial on June 22, 2006 on the Plaintiff's or Chapter 11 Trustee's claim for foreclosure and the defendants' claim of usury.

After hearing the evidence offered by both parties and hearing argument of counsel, the Court finds that the trustee is entitled to foreclosure and that the defendants' have failed to sufficiently prove the existence of usury. The subject note contains a savings clause expressing intent to charge no more than the maximum rate allowed by law and there is insufficient evidence of "corrupt intent" which is required to establish usury. Further, the court is not persuaded that

54

the case of *North American Mortgage Investors v. Cape San Blas Joint Venture*, 378 So.2d 287, 291 (Fla.1979) is controlling and/or compels a finding that the mortgage broker's fee involved in this matter must be construed as interest. Additionally, the fee was fully disclosed and the Hattaways agreed to pay it as consideration for obtaining the loan which they sought. While the bankruptcy petitions of the Debtors herein have been substantively consolidated, they were consolidated for purposes of this bankruptcy - which is irrelevant to the Court's analysis at the time the subject loan was entered into.

For these reasons and for the reasons stated in open Court and on the record at the conclusion of the trial, it is ORDERED AND ADJUDGED:

1. Final judgment is entered against the Hattaways on their claim and/or defenses of usury with respect to the loan and promissory note dated March 20, 2002.

2. Final judgment in the amount of $293,236.21 is entered in favor of the Trustee on his foreclosure claim with respect to the March 20, 2002 promissory note and mortgage executed by the Hattaways. The judgment amount is subject to additional claims for attorney fees.

3. Utilizing the sale procedures contained within Florida Statute §45.031, as expressly modified below, the

Trustee is authorized to proceed with a foreclosure sale of the property located at 4106 N. U.S. Highway 41, Palmetto Fl 34221, legally described as:

> Lots 15, 16, and 17 less State Road right-of way, Block 1 Palmetto Country Club Estates, as per plat thereof recorded in plat Book 4, page 68 of the Public Records of Manatee County Florida

Sale Procedure

(a) PUBLICATION -- The Trustee shall publish notice of the sale once a week for two (2) consecutive weeks in a newspaper of general circulation, as defined by Florida Statute Chapter 50, in Manatee County. The second publication shall be at least five (5) days before the sale. The notice shall contain:

(i) A description of the property to be sold.

(ii) The time and place of sale. (The 17th day of August 2006 at 9:30 a.m. Courtroom 9B, Sam M. Gibbons United States Courthouse, 801 N. Florida Avenue, Tampa, FL 33602).

(iii) A statement that the sale will be made pursuant to this order of final judgment.

(iv) The caption of this action.

(v) The name of the Trustee's representative conducting the sale.

(b) SALE -- At 9:30 a.m. on August 17, 2006, in the conference room adjacent to Courtroom 9B, 9th Floor, Sam M. Gibbons United States Courthouse, 801 N. Florida Avenue, Tampa, FL 33602, the Trustee shall announce the commencement

of the bidding process. The Trustee shall receive and record all bids for the subject property. When the high bidder has been determined, the Trustee shall record the name, address, and telephone number of the high bidder, together with the amount of the bid.

(c) PAYMENT -- Upon determination of the high bidder, the successful high bidder shall deliver to the Trustee a deposit, in the form of a cashiers or certified check payable to Gerard A. McHale, Jr., Chapter 11 Trustee for Brasota Mortgage Co., Inc., equal to at least five (5) percent of the final bid. Final remaining payment must be made within twenty-four (24) hours of the confirmation hearing. If final payment is not made within twenty-four (24) hours, the Trustee shall re-advertise the sale as provided above and shall pay all costs of the sale from the deposit. Any remaining funds shall be applied toward the judgment.

(d) CONFIRMATION HEARING -- This court will hold a sale confirmation hearing on August 17, 2006 at 11:00 a.m. at which time the court will be notified of the high bid and will hear any and all objections.

(e) CERTIFICATION OF SALE -- Unless otherwise directed at the sale confirmation hearing, the Trustee shall promptly file a certificate of sale, and serve a copy of it on each party to this action in substantially the following form:

The undersigned Trustee certifies that notice of public sale of the property described in the order or final judgment was published in _____, a newspaper circulated in _____ County, Florida, in the manner shown by the proof of publication attached, and on _____, _(year)_, the property was offered for public sale to the highest and best bidder for cash. The highest and best bid received for the property was submitted by _____, to whom the property was sold. The proceeds of the sale are retained for distribution in accordance with the order of final judgment.

_____
Gerard A. McHale, Jr.

Subscribed and sworn to before me this _____ day of _____ 2006 by Gerard A. McHale, Jr., Chapter 11 Trustee for Brasota Mortgagee, Co., Inc.

_____
Notary Public
Print name: _____
My commission expires:

(f) CERTIFICATE/JUDGMENT OF TITLE -- If no objections to the sale are sustained at the sale confirmation hearing, the court will enter judgment confirming the sale and divesting title to the property from Timothy L. Hattaway and Mary Lila Hattaway and vesting title in favor of the high bidder as authorized by Rule 70, Federal Rules of Civil Procedure and Rule 7070, Federal Rules of Bankruptcy Procedure. The judgment shall be in substantially the following form:

JUDGMENT OF TITLE

It is ordered and adjudged that Timothy L. Hattaway and Mary Lila Hattaway are hereby divested of legal title and _____ is hereby vested with legal title in fee

simple to a certain piece of land in Manatee County, State of Florida, described as follows, viz.:

4106 N US Highway 41, Palmetto, FL 34221

Lots 15, 16, and 17 less State Road right-of way, Block 1 Palmetto Country Club Estates, as per plat thereof recorded in plat Book 4, page 68 of the Public Records of Manatee County Florida

(g) RECORDING -- The certificate/judgment of title shall be recorded by the Trustee in the Public Records of Manatee County, Florida.

(h) RIGHT OF REDEMPTION - The Hattaways have through the Confirmation Hearing to pay the full amount of the judgment.

DONE AND ORDERED in Tampa, Florida on July 13 2006.

K. Rodney May
United States Bankruptcy Judge

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J.B. VOL. 13
1488

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
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IN RE:

BRASOTA MORTGAGE COMPANY, INC.,

Debtor.

Case No: 8:05-bk-06215-KRM

_____/

BRASOTA MORTGAGE COMPANY, INC., et. al.,

Plaintiff,

Adversary No. 05-829

VS.

TIMOTHY L. HATTAWAY et ux., et al.,

Defendants.

_____/

FINAL ~~JUDMENT~~ JUDGMENT

THIS PROCEEDING came on for trial on June 22, 2006 on the Plaintiff's or Chapter 11 Trustee's claim for foreclosure and the defendants' claim of usury.

After hearing the evidence offered by both parties and hearing argument of counsel, the Court finds that the trustee is entitled to foreclosure and that the defendants' have failed to sufficiently prove the existence of usury. The subject note contains a savings clause expressing intent to charge no more than the maximum rate allowed by law and there is insufficient evidence of "corrupt intent" which is required to establish usury. Further, the court is not persuaded that

the case of *North American Mortgage Investors v. Cape San Blas Joint Venture*, 378 So.2d 287, 291 (Fla.1979) is controlling and/or compels a finding that the mortgage broker's fee involved in this matter must be construed as interest. Additionally, the fee was fully disclosed and the Hattaways agreed to pay it as consideration for obtaining the loan which they sought. While the bankruptcy petitions of the Debtors herein have been substantively consolidated, they were consolidated for purposes of this bankruptcy - which is irrelevant to the Court's analysis at the time the subject loan was entered into.

For these reasons and for the reasons stated in open Court and on the record at the conclusion of the trial, it is ORDERED AND ADJUDGED:

1. Final judgment is entered against the Hattaways on their claim and/or defenses of usury with respect to the loan and promissory note dated March 20, 2002.

2. Final judgment in the amount of $293,236.21 is entered in favor of the Trustee on his foreclosure claim with respect to the March 20, 2002 promissory note and mortgage executed by the Hattaways. The judgment amount is subject to additional claims for attorney fees which will be considered by the court during a hearing scheduled for July 6, 2006 at 11:00 a.m.

3. Utilizing the sale procedures contained within Florida Statute §45.031, as expressly modified below, the Trustee is authorized to proceed with a foreclosure sale of the property located at 4106 N. U.S. Highway 41, Palmetto Fl 34221, legally described as:

> Lots 15, 16, and 17 less State Road right-of way, Block 1 Palmetto Country Club Estates, as per plat thereof recorded in plat Book 4, page 68 of the Public Records of Manatee County Florida

Sale Procedure

(a) PUBLICATION -- The Trustee shall publish notice of the sale once a week for two (2) consecutive weeks in a newspaper of general circulation, as defined by Florida Statute Chapter 50, in Manatee County. The second publication shall be at least five (5) days before the sale. The notice shall contain:

(i) A description of the property to be sold.

(ii) The time and place of sale. (The _____ day of _____,2006 at _____a.m./p.m., Courtroom 9B, Sam M. Gibbons United States Courthouse, 801 N. Florida Avenue, Tampa, FL 33602).

(iii) A statement that the sale will be made pursuant to this order of final judgment.

(iv) The caption of this action.

(v) The name of the Trustee's representative conducting the sale.

(b) SALE -- At _____ a.m./p.m. on _____, 2006, in the conference room adjacent to Courtroom 9B, 9th Floor, Sam M. Gibbons United States Courthouse, 801 N. Florida Avenue, Tampa, FL 33602, the Trustee shall announce the commencement of the bidding process. The Trustee shall receive and record all bids for the subject property. When the high bidder has been determined, the Trustee shall record the name, address, and telephone number of the high bidder, together with the amount of the bid.

(c) PAYMENT -- Upon determination of the high bidder, the successful high bidder shall deliver to the Trustee a deposit, in the form of a cashiers or certified check payable to Gerard A. McHale, Jr., Chapter 11 Trustee for Brasota Mortgage Co., Inc., equal to at least five (5) percent of the final bid. Final remaining payment must be made within twenty-four (24) hours of the confirmation hearing. If final payment is not made within twenty-four (24) hours, the Trustee shall re-advertise the sale as provided above and shall pay all costs of the sale from the deposit. Any remaining funds shall be applied toward the judgment.

(d) CONFIRMATION HEARING -- This court will hold a sale confirmation hearing on _____, 2006 at _____ a.m./p.m. at which time the court will be notified of the high bid and will hear any and all objections.

(e) CERTIFICATION OF SALE -- Unless otherwise directed at the sale confirmation hearing, the Trustee shall promptly file a certificate of sale, and serve a copy of it on each party to this action in substantially the following form:

> The undersigned Trustee certifies that notice of public sale of the property described in the order or final judgment was published in _____, a newspaper circulated in _____ County, Florida, in the manner shown by the proof of publication attached, and on _____, _(year)_, the property was offered for public sale to the highest and best bidder for cash. The highest and best bid received for the property was submitted by _____, to whom the property was sold. The proceeds of the sale are retained for distribution in accordance with the order of final judgment.
>
> _____
> Gerard A. McHale, Jr.

Subscribed and sworn to before me this _____ day of _____ 2006 by Gerard A. McHale, Jr., Chapter 11 Trustee for Brasota Mortgagee, Co., Inc.

_____
Notary Public
Print name: _____
My commission expires:

(f) CERTIFICATE/JUDGMENT OF TITLE -- If no objections to the sale are sustained at the sale confirmation hearing, the court will enter judgment confirming the sale and divesting title to the property from Timothy L. Hattaway and Mary Lila Hattaway and vesting title in favor of the high bidder as authorized by Rule 70, Federal Rules of Civil Procedure and

Rule 7070, Federal Rules of Bankruptcy Procedure. The judgment shall be in substantially the following form:

JUDGMENT OF TITLE

> It is ordered and adjudged that Timothy L. Hattaway and Mary Lila Hattaway are hereby divested of legal title and _____ is hereby vested with legal title in fee simple to a certain piece of land in Manatee County, State of Florida, described as follows, viz.:
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> 4106 N US Highway 41, Palmetto, FL 34221
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> Lots 15, 16, and 17 less State Road right-of way, Block 1 Palmetto Country Club Estates, as per plat thereof recorded in plat Book 4, page 68 of the Public Records of Manatee County Florida

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(h) RIGHT OF REDEMPTION - The Hattaways have through the Confirmation Hearing to pay the full amount of the judgment.

DONE AND ORDERED in Tampa, Florida on July 6 2006.

K. Rodney May
United States Bankruptcy Judge

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