

COURT OF THE SHAKOPEE MDEWAKANTON
SIOUX COMMUNITY

FILED MAR 06 2012

COUNTY OF SCOTT

STATE OF MINNESOTA
LYNN K. McDONALD
CLERK OF COURT

In re the matter of

Viking Savings Bank, formerly Viking
Savings Association, F.A.,

Petitioner (Judgment Creditor),

v.

Court File No. 697-11

Mary M. Brooks,

Respondent (Judgment Debtor).

Findings of fact, Conclusions of Law, and Order

Under Rule 34 of our Rules of Civil Procedure, the Petitioner, Viking Savings Bank, formerly Viking Savings Association, F.A. ("Viking"), seeks full faith and credit for a judgment that it obtained, in the Minnesota District Court for Otter Tail County, against the Respondent Mary M. Brooks. The Court heard evidence on Viking's petition on December 1, 2011. During the hearing, Viking was represented by Kristine Kroenke, Esq., of the Fabyanske, Westra, Hart & Thomson, P.A. law firm; Ms. Brooks appeared *pro se*. Following the hearing, Viking submitted proposed Findings of Fact, Conclusions of Law, and a proposed Order for Judgment; and Ms. Brooks submitted a letter for the Court's review and consideration. Having now considered the evidence presented during the hearing, the Court makes the following Findings of Fact, Conclusions of Law, and enters the following Order:

FINDINGS OF FACT

1. Mary M. Brooks is a member of the Shakopee Mdewakanton Sioux Community.
2. Ms. Brooks' principal residence is located on the Reservation of the Shakopee Mdewakanton Sioux Community, at 13700 Thunderbird Circle, Shakopee, MN 55379-9616.

3. In August, 2007, Ms. Brooks obtained a loan from Viking in the principal amount of \$1,315,000.00 for the purpose of purchasing a house located at 15815 – 485th Avenue, Parkers Prairie, MN 56361 (“the Property”).
4. The Property is located in Otter Tail County, Minnesota. The Property is not Indian Country, as that term is defined in 18 U.S.C. §1151 (2006); title to the Property is and was not held in trust by the United States for Ms. Brooks; nor is or was title to the Property restricted against alienation.
5. The Property is not Ms. Brooks’ principal residence.
6. The Property is not agricultural property.
7. The loan for the purchase of the Property was secured by a mortgage and a promissory note.
8. In 2010, Ms. Brooks stopped making payments on the loan, thereby creating a default under the mortgage and the note.
9. When Ms. Brooks stopped making mortgage payments on the Property, Viking sent Ms. Brooks a Notice of Default, as required by paragraph 22 of the mortgage. The notice, sent on August 19, 2010, notified Ms. Brooks that she was in default and informed her of the acts she needed to undertake to prevent foreclosure on the Property. The notice was sent to Ms. Brooks’ address at 13700 Thunderbird Circle, in Shakopee, Minnesota, which was the designated address that Ms. Brooks had provided to Viking. Ms. Brooks did not respond to the notice.
10. More than thirty days after Viking provided Ms. Brooks with the aforesaid notice of default, Viking commenced legal action in the Minnesota District Court for Otter Tail County (Court File No. 56-CV-10-3157) (“the Action”), seeking to foreclose the mortgage.
11. Ms. Brooks was served with Viking’s Complaint in the Action on November 18, 2010, but she did not answer the Complaint or otherwise appear in the Action.
12. Ms. Brooks was sent pre-foreclosure counseling notices and a notice of mediation pursuant to Minn. Stat. Chapter 583, the Farmer Lender Mediation Act.
13. A notice of *Lis Pendens* with respect to the Property and the Action was filed in the records of the Otter Tail County Recorder’s Office on December 6, 2010.
14. Viking moved for a default judgment, scheduling a hearing on December 16, 2010, at 1:30 p.m.. Viking served the notices for the default judgment along with its default judgment motion papers on Ms Brooks on December 10, 2010.
15. The default judgment hearing occurred on December 16, 2010, as scheduled in the notices. Ms. Brooks did not appear at the default judgment hearing.

16. Viking appeared at the default judgment hearing, at which the Minnesota District Court for Otter Tail County took testimony, and at which Viking's witnesses affirmed the allegations in the Complaint.
17. At the conclusion of the December 16, 2010 hearing, a default judgment was entered against Ms. Brooks, by the Minnesota District Court for Otter Tail County, in the amount of \$1,338,892.24, together with interest, which was the amount sought by Viking, and which constitutes the amount owed on the Mortgage with interest accrued through December 16, 2010, and with allowed costs and disbursements.
18. A typographical error in the December 16, 2010 Order was corrected by an Amended Order, issued on January 25, 2011. Judgment was entered by the Minnesota District Court for Otter Tail County on January 26, 2011.
19. Ms. Brooks was served with a copy of the Amended Order, the Amended Judgment; a Notice of Filing of Order, and a Notice of Entry, on January 31, 2011.
20. With the monetary judgment, the Minnesota District Court for Otter Tail County also ordered a Sheriff's sale of the Property.
21. The Otter Tail County Sheriff gave notice of the Sheriff's sale, which notice stated that the sale was scheduled for March 3, 2011, at 10:00 a.m..
22. The notice of Sheriff's sale was provided in conformance with the requirements of Minn. Stat. §550.18. The notice listed Ms. Brooks as the debtor, the amount of the judgment, the mortgage and its recording information, the legal description of the property, and the fact that the proceeds from the sale would be applied to the judgment. The Otter Tail County Sheriff posted a copy of the notice in three public places in Otter Tail County: the Parkers Prairie City Hall, the Parkers Prairie Post Office, and the Parkers Prairie Midwest Bank. The notice was also published for six weeks in a legal newspaper in Otter Tail County.
23. Ms. Brooks was personally served with the Notice of Sheriff's Sale Under Judgment, along with three other notices: "Help for Homeowners in Foreclosure"; "Foreclosure: Advice to Tenants"; and a Notice of Redemption Rights, on January 3, 2011.
24. The Otter Tail County Sheriff conducted a Sheriff's sale on March 3, 2011, at 10:00 a.m., in accordance with the notices provided, to sell the Property. Ms. Brooks did not appear at the Sheriff's sale. Viking was the highest bidder at the Sheriff's sale, and purchased the Property for \$525,000, which was the appraised value of the property.
25. Viking moved to confirm the Sheriff's sale, and to include the costs incurred for the required notices and filing fees in the Sheriff's sale.

26. Viking mailed the Sheriff's Report of Sale and the motion to confirm the sale to Ms. Brooks at her address in Shakopee, and at the address of the Property, on March 4, 2011. The Notice of Motion served upon Ms. Brooks stated that the motion to confirm the Sheriff's sale would occur on March 18, 2011, at 1:30 p.m., at the Otter Tail County Courthouse.
27. The hearing to confirm the Sheriff's sale was scheduled for and occurred on March 18, 2011, at the noticed location. Ms. Brooks did not appear at the hearing. At the hearing, the Minnesota District Court for Otter Tail County concluded that the sale had been conducted by the Sheriff in accordance with applicable law. The District Court therefore approved the Sheriff's Report of Sale, confirmed the sale, and entered a Deficiency Judgment in favor of Viking and against Ms. Brooks in the amount of \$830,205.71.
28. Subsequent to the entry of the Deficiency Judgment against Ms. Brooks, Viking collected some payments toward the judgment. The balance of the judgment at the time of the hearing before the undersigned was \$787,633.07.
29. Viking filed a Summons and Petition, pursuant to Rule 34 of this Court's Rules of Civil Procedure, on May 23, 2011, and served Ms. Brooks with those documents on May 25, 2011.
30. With its Petition, Viking served and filed a certified copy of its judgment from the Action, together with an Affidavit of Identification of Judgment Creditor, and its Affidavit of Identification of Judgment Debtor.
31. Viking also filed and served an Affidavit of Gary Syverson, and an Affidavit of Shari Laven, together with exhibits from the proceedings before the Minnesota District Court for Otter Tail County.
32. Viking paid the required filing fee to this Court
33. On June 24, 2011, Viking filed the original Affidavit of Service with this Court, demonstrating that Ms. Brooks had been personally served with the Summons, Petition, and accompanying Affidavits.
34. In her December 14, 2011 letter to the Court, Ms. Brooks alleged that Viking had sold certain items of her personal property without having the legal authority to do so, and at a price that was manifestly inconsistent with the items' value; but no evidence was offered to the Court, during the December 1, 2011 hearing, with respect to the sales that Ms. Brooks' letter discusses.

CONCLUSIONS OF LAW

1. Viking's Summons and Petition in this matter were filed and served in accordance with Rule 34 of this Court's Rules of Civil Procedure.
2. Rule 34 of this Court's Rules of Civil Procedure provides that, if a Petition is properly filed and served, this Court shall enter an order enforcing a foreign judgment if there are no substantial questions with respect to the jurisdiction of the foreign court or with the regularity of the foreign court's proceedings.
3. Jurisdiction over the Action was governed by Minn. Stat. §542.02, which provides that actions for the foreclosure of a mortgage "shall be tried in the county where such real estate or some part thereof is situated."
4. The Minnesota District Court for Otter Tail County had personal jurisdiction over Ms. Brooks and subject matter jurisdiction over the foreclosure action.
5. Minnesota Statutes §47.20, subd. 8, which provides for a thirty-day default notice for a conventional loan of \$100,000 or less was not applicable in the Action, because Ms. Brooks' loan exceeded \$100,000. Ms. Brooks was nevertheless provided with more than thirty days notice of her default before Viking commenced the Action. Proper notice was also provided in accordance with the terms of her mortgage.
6. Minnesota Statutes §§580.021 and 580.0222 contain requirements to provide pre-foreclosure notice and foreclosure prevention counseling notices to a mortgagor as well as a notice to an authorized counseling agency. Because the Property is not Ms. Brooks' principal place of residence, these notices were not required in the Action. Ms. Brooks was nevertheless provided with these notices.
7. Minnesota Statutes, Chapter 583, the Farmer Lender Mediation Act, requires that prior to enforcement of debts against agricultural property, including foreclosures, the mortgagor must be given a Notice of Mediation. Because the Property is not agricultural property, this notice was not required in the Action. Ms. Brooks was nevertheless personally served with this notice.
8. Ms. Brooks was personally and properly served with the Summons and Complain in the Action on November 18, 2010.
9. Minnesota Statutes §§582.041 and 582.042 provide additional notice requirement in a foreclosure action for homestead property, and when agricultural property contains separate tracts. Because the Property was not agricultural property or homestead

property, these notices were not required in the Action. Nevertheless, these notices were served upon Ms. Brooks with the Summons and Complaint in the Action.

10. Ms. Brooks did not answer the Complaint or otherwise appear in the Action, within the twenty day period established by Minnesota Rules of Civil Procedure 12.01, or at any time.
11. Under Rules 5 and 55 of the Minnesota Rules of Civil Procedure, if a defaulting party has not appeared in a proceeding, a notice of a default motion need not be served on the defaulting party. Nonetheless, Viking served Ms. Brooks with its default motion papers and informed her that the motion hearing was scheduled for December 16, 2010, at 1:30 p.m..
12. The entry of default judgment against Ms. Brooks in the Action was regular and in accordance with Minnesota law and the Minnesota Rules of Civil Procedure.
13. The January 26, 2011 Amendment to the Judgment of the Minnesota District Court for Otter Tail County, to correct a typographical error in the December 16, 2010 Judgment, did not affect the validity of the Judgment against Ms. Brooks.
14. The Sheriff's sale of the Property, and the subsequent confirmation of that sale by the Minnesota District Court for Otter Tail County, conformed with the law of the State of Minnesota.
15. Ms. Brooks had ample notice of the Action, of the subsequent Sheriff's sale, and of the subsequent confirmation of that sale by the Minnesota District Court for Otter Tail County, and she chose not to participate in the Action or to seek relief or mitigation in any other forum.
16. There is no substantial question that the proceedings in the Minnesota District Court for Otter Tail County were regular and in accordance with Minnesota law and the Minnesota Rules of Civil Procedure.
17. The Court cannot form any conclusion with respect to the appropriateness of the sale by Viking of Mr. Brooks' property; however, any amount owing by Ms. Brooks should be reduced by the amount that a fair sale of her seized property should have brought.
18. The Judgment of the Minnesota District Court for Otter Tail County, as that Judgment has been reduced by any amounts received by Viking from Ms. Brooks or her estate, and as it should have been reduced by the sale of Ms. Brooks' property at a fair price, will be given full faith and credit by this Court.

ORDER

The Petitioner's Judgment of the Minnesota District Court for Otter Tail County against the Respondent will be enforced by this Court.

Dated: March 6, 2012

A handwritten signature in black ink, appearing to read "John E. Jacobson", written over a horizontal line.

John E. Jacobson, Judge
Shakopee Mdewakanton Sioux Community
Tribal Court