

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE)
COMMISSION,)

Plaintiff,)

v.)

BILLY WAYNE McCLINTOCK)
individually, and dba MSC HOLDINGS,)
DIANNE ALEXANDER aka LINDA)
DIANNE ALEXANDER,)

Defendants,)

MSC HOLDINGS USA, LLC, MSC)
HOLDINGS, INC., MSC GA)
HOLDINGS, LLC,)

Relief Defendants.)

CIVIL ACTION FILE
NO. 1:12-CV-04028-SCJ

AMENDED FINAL JUDGMENT AGAINST DEFENDANTS

On October 28, 2015, this Court entered a Final Judgment against Defendants Alexander and McClintock [Doc. No. 70]. Now before the Court is Receiver's Substituted Motion to Amend and Modify the Final Judgment against the Defendants entered on October 28, 2015.

WHEREAS it appears that:

- 1) Defendant Diane Alexander is the owner of real property located at **2697 Middlecreek Way, Cumming, County of Forsyth, Georgia;**¹ and
- 2) Defendant Billy Wayne McClintock is the owner of real property located at **5915 Braden Run, Bradenton, County of Manatee, Florida** (collectively, the “Unencumbered Property”).²

WHEREAS it further appears that:

Defendant Diane Alexander granted title to the property located at **2335 Rebel Road, Cumming, County of Forsyth, Georgia** (the “Rebel Road Property”),³ to

¹ All that tract or parcel of land lying and being in Land Lots 283 and 294 of the 2nd District, 1st Section, Forsyth County, Georgia, being Unit 2697, Building 25, Wellstone Middlecreek, a Condominium, Phase One, (formerly known as Wellstone at Lanier), as per plat recorded in Condominium Plat Book C02, pages 272-275; being revised at Condominium Plat Book C04, pages 51-59, Forsyth County records, with property being further described by Floor Plans recorded in Floor Plan Book FP2, pages 88-90, and subject to Declaration of Condominium for Wellstone Middlecreek, a Condominium, Phase One, recorded in Deed Book 4858, page 260, Forsyth County records, as amended. Said plat, plans and Declaration, together with any amendments thereto, being incorporated herein by reference.

² Lot 1, Block 3, BRADEN WOODS SUBDIVISION, PHASE I, as per Plat thereof recorded in Plat Book 21, Pages 5 through 10, Public Records of Manatee County, Florida. Parcel Identification Number: 19015.2250/6

³ All that tract or parcel of land lying and being in Land Lot 41 of the 14th District and 1st Section of Forsyth County, Georgia, being 0.28 acres as shown on plat of property for Floyd D. Switzer, prepared by Clyde N. Mize, Registered Surveyor No. 1625, dated January 24, 1979 and revised June 24, 1981, recorded in Plat Book 17, page 117, Forsyth County Records and being more particularly described according to said plat as follows:

TO ARRIVE AT THE TRUE POINT OF BEGINNING, begin at the Southeast corner of Land Lot 41, which corner is marked by a U.S. Corps of Engineers' iron pin; thence run North 16 degrees 26 minutes 41 seconds West a distance of 103.61 feet to a point in the centerline of Rebel Road; thence along said centerline South 77 degrees 15 minutes 04 seconds West 37.02 feet and North 89 degrees 17 minutes 55 seconds West 38.98 feet to the TRUE POINT OF BEGINNING; thence running North 37 degrees 50 minutes 35 seconds West 17.00 feet, more or less, to an iron pin; thence continuing North 37 degrees 50 minutes 35 seconds West 144.13 feet to an iron pin; thence

the predecessor of HSBC Bank USA, National Association, as Trustee for Sequoia Mortgage Trust 2007-3 (“HSBC”) pursuant to a Security Deed, which was recorded on October 17, 2003, in the Real Property records of Forsyth County at Deed Book 3077, Page 488-507 (the “Security Deed”) to secure a mortgage loan (the “Loan”), that HSBC currently holds the Security Deed, and that Specialized Loan Servicing, LLC (“SLS”) is the servicer of the Loan.

IT IS HEREBY ORDERED AND ADJUDGED that the October 28, 2015 Final Judgment against the Defendants [Doc. No. 70] is hereby amended and modified, as follows, pursuant to Fed. R. Civ. P. 59(e):

- 1) Fee simple title in the Unencumbered Properties is hereby transferred to the Receiver, pursuant to Fed. R. Civ. P. 70(b);

The Receiver is authorized to take immediate possession of the Unencumbered Property (except that the Receiver will not take possession of the Middlecreek Way property until March 1, 2016) and any other unencumbered property of the Receivership Defendants, wherever located,

South 67 degrees 52 minutes 38 seconds West 14.48 feet to an iron pin found; thence North 36 degrees 12 minutes, 29 seconds West 37.25 feet to an iron pin on the U.S. Government Line; thence South 41 degrees, 57 minutes, 54 seconds West along said U.S. Government Line 76.92 feet to a 1/2” pipe; thence South 49 degrees 30 minutes 56 seconds East 143.29 feet to a 3/4” pipe; thence continuing South 49 degrees 30 minutes 56 seconds East 16.74 feet, more or less, to the centerline of Rebel Road; thence along said centerline North 77 degrees 49 minutes 04 seconds East 45.00 feet and South 89 degrees 17 minutes 56 seconds East 20.0 feet to the TRUE POINT OF BEGINNING.

including but not limited to all ownership and leasehold interests and fixtures contained therein. Upon receiving actual notice of this judgment, all persons other than law enforcement officials acting within the course and scope of their official duties, are (without the express written permission of the Receiver) prohibited from: (a) entering such premises; (b) removing anything from such premises; or, (c) destroying, concealing or erasing anything on such premises. The Defendants are ordered and directed to turn over all keys to all locks of the Unencumbered Properties to the Receiver, not to change the locks in any manner, nor to have duplicate keys made, nor shall they have keys in their possession for these properties.

And upon the request of the Receiver, the United States Marshal Service, in any judicial district, is hereby ordered to assist the Receiver in carrying out his duties to take possession, custody and control of the Unencumbered Properties, and all possessions and property located therein, and removing any person from said property, including the Defendants, to allow the Receiver to take lawful control, possession, and ownership of said real property including taking possession and control of said real property.

- 2) The Receiver is hereby authorized to sell the Unencumbered Properties at private sale, pursuant to 28 U.S.C. § 2001(b), with the Defendants

receiving a credit against their outstanding judgments from the proceeds of any such sale of these real properties (less the costs, fees, commissions, and the satisfaction of all security interests);

- 3) Defendant Alexander's interest in the Rebel Road Property is hereby transferred to the Receiver, with such interest being and remaining subject to the Security Deed;
- 4) The Receiver is hereby authorized to conduct a private sale of the Rebel Road Property, provided that the Rebel Road Property shall not be sold for an amount less than that necessary to satisfy in full every obligation secured by the Security Deed, including, without limitation, the unpaid principal, interest, charges, taxes, insurance, negative escrow balance, attorneys' fees and every other amount provided under the Loan, the Note and the Security Deed ("Amounts Owed"), as those terms and documents are described in the Declaration of Daniel Leon and attachments thereto [Doc No. 53-2, *et seq.*] (the "Loan Documents"). The Receiver is hereby relieved of any obligation to appoint appraisers and/or to confirm the sale pursuant to 28 U.S.C. § 2001(b)⁴. All Amounts Owed at the time the sale

⁴ See *SEC v. Billion Coupons, Inc.*, Civil Action File No. 09-00068-JMS-LEK, 2009 WL 2143531, * 3-4 (July 13, 2009, D. Haw.) (finding "good cause for the district court to exercise its discretion and permit Receiver to sell personal and real property ... other than as provided by federal statute, including 28 U.S.C. §§ 2001, 2004").


of the Rebel Road Property is consummated shall be paid to HSBC Bank USA, National Association, as Trustee for Sequoia Mortgage Trust 2007-3, or its designee, from the proceeds of the sale before any other distribution of those proceeds. Alexander shall receive a credit against her outstanding judgment from the net proceeds of such sale following payment of the Amounts Owed;

- 5) In the event the Receiver has not sold the Rebel Road Property within nine (9) months of the date of this order, the Receiver and HSBC and SLS shall meet and confer. If they are unable to reach a resolution, the Court shall again consider a request by HSBC and SLS to lift the stay of this Court and to foreclose. The Court's order shall not modify or amend the Loan or any of the Loan Documents, and all rights and obligations pursuant to the Loan and Loan Documents shall remain in full force and effect; and
- 6) For the sale of real property, the Receiver is authorized to retain the services of a licensed real estate broker to sell the real property and require the broker to list the real property in the appropriate multiple listing service and to advertise it. The Receiver is further authorized to submit the necessary filings with this Court in compliance with the provisions of 28 U.S.C. § 2001(b) for confirmation of each sale of real property, except as to the Rebel Road Property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over this matter for all purposes, including implementing and enforcing the terms of this Final Judgment, and may order other and further relief that this Court deems appropriate under the circumstances.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there is no just reason for delay, and the Clerk is directed to enter this Amended Final Judgment against Defendants McClintock and Alexander pursuant to the terms and in the specific amounts of this Amended Final Judgment and Order, pursuant to the terms of the Orders previously entered in this Court against these Defendants.

IT IS SO ORDERED, this 20th day of May, 2016.



HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE