

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. RE-11-618

TDW-Cum-12/6/2013

SUNTRUST MORTGAGE INC.,

Plaintiffs

v.

SCOTT STEVENS, et al,

Defendants

ORDER

STATE OF MAINE
Cumberland, ss. Clerk's Office

FEB 06 2013

RECEIVED

The above-captioned mortgage foreclosure case was tried before the court on January 25, 2013.

Defendants Scott Stevens and Linda Taylor (formerly Linda Stevens) appeared at the trial although they had not previously filed answers or otherwise appeared. At trial they did not dispute that they were in default and that SunTrust Mortgage Inc. was entitled to a judgment of foreclosure.¹ They did, however, argue that they should not be found liable for additional interest and costs necessitated by the fact that, through no fault of theirs, SunTrust dismissed a prior foreclosure action before filing this one.

The court files reflect that SunTrust first commenced a foreclosure action on May 18, 2010. SunTrust v. Stevens, RE-10-271 (originally filed in District Court as RE-10-211). SunTrust served Mr. Stevens, who states that he had moved out of the subject property in order to allow for a foreclosure or short sale sometime during the fall of 2010.

¹ In addition, SunTrust offered evidence that established that it was the owner and holder of the note, that it was the holder of the mortgage, and that all of the applicable notice provisions had been followed. Where Mr. Stevens and Ms. Taylor did not dispute that they had probably received the notice of default and did not object to foreclosure on that ground, the court permitted SunTrust to provide business records confirming proof of mailing after trial.

SunTrust did not serve Ms. Taylor. An initial motion for an extension of time to file a return of service on Ms. Taylor was granted, but she was not served.

SunTrust filed a motion for a special assignment on May 23, 2011 and the case was specially assigned for trial on July 7, 2011. On May 26, 2011, counsel for SunTrust filed a further motion for an extension of time to file a return of service on Ms. Taylor and a motion to serve her by publication. Justice Mills denied those motions on June 28, 2011, noting that the file reflected that no attempt had been made to serve Ms. Taylor since September 2010. Indeed, paperwork from the sheriff in RE-10-271 shows that the sheriff had a Chebeague Island address and a phone number for Ms. Taylor in September 2010, but no follow-up was apparently made by counsel for SunTrust.

In the wake of the denial of the motions relating to service on Ms. Taylor, SunTrust moved to dismiss without prejudice, and that motion was granted on July 7, 2011.

The file in RE-10-271 does not show that defendants offered to consent to foreclosure or that they agreed to provide a deed in lieu of foreclosure. However, the file does demonstrate that if SunTrust had been diligent in serving Ms. Taylor, it could have obtained a judgment of foreclosure on July 7, 2011. This second action and all of the costs and expenses associated with the second action would have been unnecessary and a 2011 judgment would have spared Mr. Stevens and Ms. Taylor liability for 18 months worth of interest.


Accordingly, the court will enter a foreclosure judgment after deducting the following: (1) \$ 9,639.25 from the interest figure in SunTrust's proposed judgment; and (2) all \$ 9,005.73 in the property preservation fees sought.²

² All of these were incurred after July 7, 2011.

The entry shall be:

The Clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: February 5, 2013



Thomas D. Warren
Justice, Superior Court

SUNTRUST MORTGAGE INC VS SCOTT W STEVENS ET AL
CASE #:PORSC-RE-2011-00618

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