

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

SUNTRUST BANK, a Georgia state chartered
bank,

CASE NO.: 2010-CA-002984
DIVISION: MG

Plaintiff,

v.

JOHN M. CURTIS, individually, and GAIL W.
CURTIS, individually, jointly and severally,
and ALACHUA GATEWAY CENTER
SURFACEWATER MANAGEMENT
ASSOCIATION, INC., a Florida non-profit
corporation,

Defendants.

**FINAL ORDER DENYING SUNTRUST'S
RENEWED MOTION FOR A FINAL DEFICIENCY JUDGMENT**

THIS CAUSE came on for evidentiary hearing on Thursday, October 27, 2011, in Gainesville, Florida. Appearing at the hearing were Seldon J. Childers and Ryan Curtis, representing Defendants John M. Curtis and Gail W. Curtis (the "Defendants"); and John M. Brennan representing SunTrust Bank ("SunTrust"). At the hearing the Court took testimony, received evidence, and heard argument of counsel for the Defendants and SunTrust. Having received and carefully considered the testimony, the evidence presented, the record and the demeanor of witnesses, and being fully advised, the Court enters the following findings of fact and conclusions of law.

1. On September 27, 2010, a Final Summary Judgment (the "Final Judgment") of foreclosure was entered in favor of SunTrust against the Defendants, in the amount of \$4,523,094.62.

2. On October 29, 2010, a foreclosure sale of the real and personal property described in the Final Judgment (the "Property") was held. SunTrust was the successful bidder at the foreclosure sale, and November 9, 2010, the clerk issued a Certificate of Title to CRM

Florida Properties, LLC (an entity owned by SunTrust) to the subject real and personal property.

3. On August 15, 2011, SunTrust filed its *Renewed Motion for Deficiency Judgment* (the "Renewed Motion") against Defendants, and on October 27, 2011, this Court held an evidentiary hearing on the Renewed Motion where the parties presented evidence, testimony and made argument.

4. The testimony of the Defendants' appraiser, Don Emerson, was more credible than the testimony of the Plaintiff's appraiser. Therefore, the subject property, referred to by the parties as the Gateway property, is valued at \$4,250,000.00 as of October 29, 2010, which is the date of the foreclosure sale of that property.

5. The Defendants are entitled to offsets for two equitable considerations.

6. First, SunTrust had an opportunity to mitigate its damages but failed to do so when it refused to agree to release two acres in order to close a potential \$650,000.00 sale to Racetrak pursuant to an offer in July of 2010.

7. Pursuant to the equitable authority of this Court, the Defendants are entitled to an offset in an amount equal to \$650,000.00 (the amount of the offer) less \$361,702.00 (the value the Court determined for the two acres that would have been sold), or \$288,298.00.

8. Because the total of the value of the property plus the offset for SunTrust's failure to mitigate exceeds \$4,523,094.62, the amount of the judgment, there is no basis for a deficiency.

9. Additionally, on or about June 1, 2010, SunTrust and the Defendants entered into an agreement with terms as follows: The Defendants agreed not to contest SunTrust's foreclosure action so that SunTrust could avoid paying document stamps, and SunTrust agreed that it would not *enforce* the default rate of 24% interest against the Defendants.

10. The Court finds that the Defendants did not contest SunTrust's foreclosure. The Defendants did not file an answer. The Defendants did not file affidavits or any opposition to SunTrust's Motion for Summary Judgment. The Defendants did not file any motions or paper at all in the foreclosure case.

11. Therefore, SunTrust is not entitled, pursuant to the agreement between the parties, to enforce the default rate of interest.

12. SunTrust's requested deficiency includes several hundred thousand dollars of default interest, which SunTrust is not entitled to enforce, at least to the extent that this Court exercises its equitable authority to reduce any potential deficiency by the amount of default interest that was included in the amount of SunTrust's requested deficiency.

13. Combined, the value of the property plus the offset for SunTrust's failure to mitigate its damages plus the amount of the default interest claimed by SunTrust so exceed the amount of the Final Judgment that this Court denies the deficiency.

14. SunTrust's *Renewed Motion for a Final Deficiency Judgment* is hereby DENIED with prejudice.

DONE AND ORDERED at Gainesville, Alachua County, Florida on this 14 day of November, 2011.

ORIGINAL SIGNED BY
STANLEY H. GRIFFIS III
CIRCUIT JUDGE

STANLEY H. GRIFFIS, III, Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail on this 14 day of November, 2011 to:

John M. Brennan, Esq.
Gray Robinson, P.A.
P.O. Box 3068
Orlando, Florida 32802-3068

Ryan C. Curtis, Esq.
Curtis Law Firm, LLC
175 NW 138th Terrace, Suite 100
Jonesville, Florida 32669

Seldon J. Childers, Esq.
ChildersLaw LLC
1330 NW 6th Street, Suite C
Gainesville, Florida 32601

ORIGINAL SIGNED BY
ALEXIS HUFFMAN
JUDICIAL ASSISTANT

Alexis Huffman, Judicial Assistant