THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SUMTER COUNTY

Court of Common Pleas

Thomas E. Player, Jr., Special Referee

Appellants Case No. 2022-000601

John Weible .....Respondent,

v.

Russell Self and Brandy Brunson ..... Appellants.

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF THE CASE

This appeal is of a foreclosure action of Defendants'/Appellants' residential real property, commenced by the Plaintiff/Respondent John Weible by the filing of a Lis Pendens, Summons, and Complaint on October 29, 2018, in the Sumter County Court of Common Pleas, and served on the Defendants. Plaintiff did not file or serve a Notice of Right to Request Foreclosure Intervention, required in all residential foreclosure actions in South Carolina. In spite of not being given that notice, the Defendant timely requested foreclosure intervention on November 13, 2018. By letter dated February 5, 2019, Plaintiff mailed to Defendants an Affidavit on Non-Eligibility under the Home Affordable Modification Program, denying the Defendants' request for foreclosure intervention.

The next day, on February 6, 2019, Plaintiff submitted an Affidavit of Default. On February 8, 2019, an Order of Default and Reference was entered. The Defendants filed a pro se Answer on May 16, 2019. The Defendants then retained counsel who on May 23, 2019, filed a Motion to Strike Affidavit of Default, Require Compliance with Administrative Order and Require Plaintiff to accept Reinstatement. On May 24, 2019, Plaintiff filed another Motion and Order of Default and Reference, referring the matter to Thomas E. Player, Jr. as Special Referee. Defendants then filed an Amended Answer on June 27, 2019.

Thereafter, on September 18, 2019, Defendants filed a Memorandum of Law in support of Defendants' Motion to Dismiss Plaintiff's Affidavit of Default. A hearing was held before the Special Referee on September 19, 2019. At that time, Defendant argued her Motion, and then the Referee took testimony. On October 3, 2019, Defendants' counsel submitted another Memorandum in support of her previously submitted Motion to Strike.

The Special Referee issued his Order on March 17, 2020, denying Defendants' Motion and granting judgment to the Plaintiff in the amount of $177,949.39. On that same day, Defendants' counsel filed a Rule 59 Motion asking the Special Referee to reconsider his decision.

Thereafter, in June 2020, Defendants retained new counsel (the undersigned). The Rule 59 Motion to Reconsider was scheduled for hearing on July 14, 2020 but was postponed because Defendants' new counsel became hospitalized on July 13, as a result of Covid-19. After counsel's recovery, counsel for Defendants and for Plaintiff attempted to negotiate a settlement whereby counsel, with Defendants, calculated a balance due of about $24,000.00. Settlement efforts were unsuccessful. The Rule 59 Motion hearing was then scheduled for June 10, 2021. At that time the Special Referee requested that Defendants submit a memorandum outlining their position. Such a Memorandum was prepared and filed June 30, 2020.

In August 2021, Mr. Player as Special Referee notified the parties of his intent to deny the Motion for Reconsideration and allow the foreclosure to proceed. However, the Order was not filed by the Clerk of Court in the foreclosure case until January 10, 2022. Because the Order of Foreclosure and Sale had been entered on March 17, 2020, and the sale scheduled for the October 2021 sales day, Defendant Brandy Brunson filed a Chapter 13 bankruptcy prior to the scheduled foreclosure sale. Debtor filed a bankruptcy plan proposing to pay to Plaintiff through the Bankruptcy the sum of about $24,000.00 which is the amount that she had calculated as being due. Plaintiff then filed a Proof of Claim in Bankruptcy Court based on the $177,943.39 judgment granted by the Special Referee. Debtor, Brunson filed an objection to that claim. Bankruptcy hearings were thereafter held on January 10, 2022 and February 9, 2022.

Plaintiff had filed the August 18, 2021, Order on January 10, 2022, without obtaining relief from the Automatic Stay. With the permission of the Bankruptcy Court, on January 20, 2022, Defendants' counsel filed a protective Rule 59 Motion seeking clarification of the prior Order.

At that February 9, 2022 hearing, the bankruptcy judge took testimony from both parties as to the amount of the debt. After that hearing, the bankruptcy judge determined in his March 30, 2022 Order that instead of making a ruling on the amount of the debt, he would deny Debtor's objection pursuant to the "Rooker-Feldman doctrine, which divests this Court of jurisdiction since the Debtor is in essence seeking review by this Court of the State Court Order" D.C. Ct. of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fid. Tr. Co., 263 U.S. 413 (1923). He did not overturn the findings of the Special Referee, but lifted the automatic stay. Thereafter, the Special Referee denied the January 20, 2022, Motion.

This Appeal followed. After the Appeal was filed, the Plaintiff, John Weible, passed away. The undersigned is informed that an estate may have been commenced for Mr. Weible.

The Court of Appeals then requested that each party submit a brief as to the appealability of the case. By a letter of July 29, 2022, the Court notified the parties that the appeal could proceed. Appellants requested and were granted an extension in which to file the initial brief and designation of matter.

STANDARD OF REVIEW

A foreclosure case is an action in equity (South Carolina Foreclosure Law Manual, Fourth Edition, 2021, SC Bar, page 2) tried by the judge without a jury pursuant to an order of reference. In a foreclosure case, any Appeal is made directly from the Order of a Master in Equity or Special Referee directly to the Appellate Court, which can make findings of fact in

accordance with its own view of the preponderance of the evidence. Peoples Federal Sav. & Loan Ass'n v. Edwards, 286 S.C. 475, 334 S.E. 2d 290 (Ct. App. 1985).

FACTS

Russell Self and Brandi Brunson purchased a home located at 790 Torrey Pines Drive in Sumter, South Carolina. Thereafter, they contacted John Weible, an individual they had known for many years, about making a loan to them. Mr. Weible made them a loan, taking back a Note and Mortgage on their residential dwelling house. Thereafter followed additional loans with additional Notes and Mortgages.

Mr. Self and Ms. Brunson eventually became delinquent, and Weible commenced a foreclosure action. However, Plaintiff did not comply with the requirements of the Supreme Court Administrative Order 2011-05-02-01. Defendants filed a Request for Foreclosure Intervention, and Plaintiff denied same. Instead of sending to Defendants a notice of their right to file an answer within thirty days, Plaintiff filed an Affidavit of Default and a obtained an Order of Default and Reference two days later. Defendants eventually filed a Pro Se Answer, and a few days after that, Defendants retained counsel who filed a Motion to Strike including to set aside Default. Plaintiff then filed a new Affidavit of Default and Order of Reference to refer the matter to Thomas E. Player, Jr. as Special Referee.

Defendants thereafter filed an Amended Answer and later on September 18, 2019, filed a Memorandum in support of the Motion to Strike. A hearing was held on September 19, 2019, on the Motion. The Special Referee took the Motion under advisement, and then at the request of Plaintiff's attorney, began to receive testimony. On March 17, 2020, the Special Referee entered an Order denying Defendant's Motion and granting judgment of foreclosure and sale, finding the

amount due was $177,949.39. Defendant's counsel filed a Motion for reconsideration that same day.

After substitution of counsel, and delay caused in part by Defendant's new counsel being hospitalized with Covid, a new hearing on Defendant's Motion for Reconsideration was held on June 10, 2021. At that time, the Special Referee requested a memorandum from Defendant's counsel setting forth Defendant's position. Such a Memorandum was entered on June 30, 2021.

Later the Special Referee notified the attorneys of his intent to deny the Motion but an Order that was signed on about August 18, 2021 was not timely entered. Defendants retained counsel to file an appeal from the Order once it was entered. As the result of the judgment of foreclosure entered on March 17, 2020, the property was advertised for sale at public auction for the October 2021 sales date, and the Defendant, Brandi Brunson, filed a Chapter 13 bankruptcy to stop the foreclosure sale. She submitted a bankruptcy plan to pay to Mr. Weible about $24, 000.00, being the amount she believed was really due to him.

After a proof of claim had been filed in the bankruptcy case by Plaintiff, Brunson through counsel filed an objection to the claim. While a bankruptcy hearing on that claim was pending, Plaintiff submitted to the court an argument that no appeal was taken and none can now be taken and submitted a copy of the August 18, 2021, Order showing the Order had been filed by the Sumter Clerk of Court in the wrong case. That incorrect filing failed to give Defendants notice of the actual filing of the Order. Debtor's counsel filed a response pointing out the error and stating that because of the Automatic Stay of the bankruptcy court, the Order could not now be filed. However, Plaintiff's counsel contacted the Sumter County Clerk of Court office to have the Order filed in the correct case in State Court anyway on January 10, 2022. Debtor's counsel was given permission by the Bankruptcy Court at the hearing scheduled the next day to make a filing

in State Court to protect the right of appeal and Defendants therefore filed a Motion seeking clarification of the August 16, 2021 Order. A hearing was scheduled by the Bankruptcy Court for February 9, 2022, so that each party could present evidence of the amount of debt.

The Bankruptcy Court issued its Order on March 30, 2022, and in that order lifted the Automatic Stay to allow the parties to proceed with this appeal in State Court. The Special Referee entered his Order denying the Defendant's Motion for Reconsideration on April 26, and this appeal followed.

ARGUMENTS

I DID THE SPECIAL REFEREE COMMIT ERROR IN FAILING TO REQUIRE PLAINTIFF TO COMPLY WITH THE SUPREME COURT ADMINISTRATIVE ORDER 2011-05-02-01?

In an effort to provide some relief and protection for consumers, especially in regard to their residential dwelling homes, legislation began to be enacted in about 2008 or 2009 in response to what was labeled as the mortgage crisis. In that time period, when the economy began to suffer, the number of mortgage foreclosure cases began to drastically increase throughout the United States and including in South Carolina. Legislatures, including the United States Congress, began passing laws, such as the Frank-Dodd Act, trying to offer to consumers some protections, including to allow them to make requests for loan modifications, etc., instead of simply losing their homes as a result of mortgage foreclosures.

The South Carolina Supreme Court is the highest Court in this state. When it issues an Order, that Order usually is the final law of the case. On some occasions, the South Carolina Supreme Court has issued Administrative Orders to provide guidance regarding the practice of law.

As a result of that mortgage crisis that began in late 2008 and going forward, our Supreme Court issued a temporary Restraining Order on May 4, 2009 (2009-05-04-01) preventing the foreclosure sale of certain properties that were affected by the Home Affordable Modification Program. On May 22, 2009, that temporary Order was rescinded, and the South Carolina Supreme Court entered Order 2009-05-22-01, providing guidance to attorneys for the foreclosure process. That Order was designed to try to offer some protection to homeowners regarding the foreclosure of their residential dwelling house. That May 22, 2009 order issued by the South Carolina Supreme Court directed that the Home Affordable Modification Program (HAMP) should be applied to protect eligible South Carolina Homeowners. It required that foreclosure complaints add language alleging the applicability of HAMP to the case, and also a separate affidavit regarding the applicability of HAMP to the case. South Carolina Foreclosure Law Manuel, Second Edition (2009; SC Bar.) p 30-31.

Our South Carolina Supreme Court issued the Administrative Orders described above to govern foreclosures and offer some protections to consumers. Those efforts culminated in the South Carolina Supreme Court issuing an Administrative Order on May 2, 2011, as Supreme Court Order 2011-05-02-01, and filed as Re: Mortgage Foreclosure Actions in 396 S.C. 209, 720 S.E. 2d 908, (2011), imposing on foreclosing attorneys, when requested, a duty to serve as a point of contact for the mortgage lender/servicer in all lost mitigation reviews and other matters which the Court termed as "foreclosure intervention," and providing a comprehensive guide for Plaintiff's attorneys to follow in the conduct of mortgage foreclosure cases involving owner occupied residential real estate.

That South Carolina Supreme Court Administrative Order 2011-05-02-01 hereafter also referred to as the 2011 Administrative Order, included language in that Order as follows:

"The terms and conditions of this order shall apply to all mortgage foreclosure proceedings concerning Owner-Occupied dwellings in this State." It also set forth that "No foreclosure hearing or foreclosure sale may be held in the foreclosure action until the Mortgagee's attorney certifies the following:", which can be summarized as follows: a) The "Mortgagor has been served with a notice of the Mortgagor's right to foreclosure intervention"; b) the Mortgagee has "examined all documents and records required to be submitted by the Mortgagor to evaluate eligibility for foreclosure invention"; c) "the Mortgagor has been afforded a full and fair opportunity to submit any other information ..." ; d) "that after completion of the foreclosure intervention process, the Mortgagor does not qualify ..." ; and, e) "notice of the denial of the loan modification or other means of loss mitigation has been served on the Mortgagor ... provided that such notice shall also state that the Mortgagor has 30 days from the date of mailing of notice of denial of relief to file and serve an answer or other response to the Mortgagee's summons and complaint," 396 S.C. at 212.

The 2011 Administrative Order thus required Plaintiffs' counsel to serve with the summons, Lis Pendens, and complaint, a separate document notifying Defendants of a notice of right to request foreclosure intervention. This would include loan modifications and other cure remedies for homeowners trying to protect their homes from foreclosure. If, after a review by the mortgage lender, foreclosure intervention was not an available option to the homeowner, then the foreclosing attorney would certify to the homeowner that foreclosure intervention was not an option, and also provide the homeowner with a notice of right to file an Answer to the Summons and Foreclosure Complaint within 30 days. The Plaintiff's attorney must then make a certification to the Court that all of this had been done.

In the case being appealed, the 2011 Supreme Court Administrative Order was not complied with by the Plaintiff in several of its requirements. First, Plaintiff did not provide the notice to the Defendants of the right of Defendants to request foreclosure intervention. However, Defendants requested foreclosure intervention soon after receiving the Foreclosure Summons, Lis Pendens and Complaint. **R. p. ___.** In their request for intervention, Defendants made reference to the 2011 Supreme Court Administrative Order. **R. p.____.**

Plaintiff mailed to Defendants an Affidavit of Non-Eligibility under Home Affordable Modification Program, **R. p. ___**, and filed same on that date with the court. However, the Plaintiff did not give to the Defendants Notice of Right to request a Loan Modification as required by the South Carolina Supreme Court by its Administrative Order 2011-05-02-01 filed in 2011 applicable to all foreclosure cases involving Owner-occupied dwellings in South Carolina.

About two months after the request for intervention, on February 5, 2019, Plaintiff notified Defendants by an Affidavit that there was no Right to Foreclosure Intervention under HAMP **R. p. ____**. On the next day, Plaintiff filed an Affidavit of Default **R. p. ____.** Two days later, on February 8, 2019, Plaintiff obtained an Order of Default and Reference **R. p. ___.** HAMP had previously expired on December 3, 2016, and Defendants had raised that issue in their Memorandum of Law filed September 18, 2019 **R. p___.** Second, Defendants were never provided by Plaintiff the required notice that, after denial of foreclosure intervention, Defendants then had 30 days in which to answer the Complaint, in spite of Defendants having made reference to the 2011 Order in their request for intervention. Third, because the Plaintiff failed to provide to the Defendants the proper notice of the right to file an Answer to the complaint,

Plaintiff was not entitled to ask the court to hold the Defendants in default. Because of this, the Order of Default was incorrectly entered into by the court.

The Defendants eventually did file a pro se Answer, **R. p____** but after the untimely entry of the Order of Default. The Defendants then retained counsel to represent them. Their attorney filed a Motion to Strike **R. p ___** seeking to remove the default and to require Plaintiff to comply with the Supreme Court 2011 Administrative Order, and later the Defendants filed an Amended Answer. **R. p ___.** On September 18, 2019, Defendant's counsel filed a memorandum in support of her motion **R. p ___.**

A hearing was held before the Special Referee on September 19, 2019, at the request of Plaintiff's counsel. At that hearing, the Special Referee heard arguments regarding the Defendant's motion, (TR #1, p 12, line 6-p. 20, line 12) and took the matter under advisement. However, the Special Referee then took testimony in the case without making a ruling on the motion regarding the impact of the 2011 Supreme Court Order or on the issue of Default.

The testimony showed that Plaintiff was at least somewhat prepared, but the Defendants were woefully unprepared, because the hearing for testimony to be received apparently had not been anticipated by the Defendants for that hearing date. TR #1 p. 20, lines 13-24. TR #3, p. 26 line 14-22, and p 99, line 24-p.102, line 2.

Therefore, the Special Referee committed error in failing to require Plaintiff to comply with the Supreme Court 2011 Administrative Order in handling the foreclosure case, and committed error by conducting a hearing on the merits without Plaintiff filing the required certificate of compliance.

The Special Referee ultimately ruled in his Order filed March 17, 2020, **R. p. ___,** that the Defendants failed to move to set aside the Default, ignoring the Motion to Strike, and thus

committing error, and by his Order granted Plaintiff judgment of foreclosure and sale. Defendants' counsel that same day of March 17, 2020 filed a Rule 59 Motion seeking for the Special Referee to reconsider his Order. **R. p. ___.**

It is respectfully submitted that the 2011 Supreme Court Administrative Order was designed to protect consumers and their residential homes in mortgage foreclosure cases by providing to those consumers certain protections such as notice of the right to request foreclosure intervention. The right to request foreclosure intervention did not mean that the Plaintiff mortgage company was required to provide foreclosure intervention, but was to check to see if the Plaintiff offered remedies that might be available to the Defendants, other than foreclosure. This is generally useful when the lender is a national lender or a financial institution, but this Order is applicable to all mortgage lenders. Re: Mortgage Foreclosure Actions, 396 S.C. at 212, 720 S.E. 2d 908 (2011).

In this case, the lender was a private citizen, John Weible, who apparently was not registered as a mortgage lender, as is set forth in Defendant's Memorandum of Law supporting the motion to strike. **R. p. ___.** Apparently, Mr. Weible had a thriving mortgage loan business, with "55 years of making loans, I've got 15 boxes of records of paid out loans." TR #3, p 52, lines 5-7. However, the 2011 Administrative Order set forth that the Order applied to all foreclosure cases involving owner-occupied residential property. 396 S.C. at 211. Thus Mr. Weible would have been required to at least explore the possibility of foreclosure intervention before saying that there was none available. In the event that he has no mechanism established for granting foreclosure intervention, he was still required to give the notice of right to request the same. H failed to give that notice.

Once the foreclosure intervention was denied, then Mr. Weible was required, through his attorney, pursuant to the 2011 Supreme Court Administrative Order, to provide notice to the Defendants that they now had 30 days in which to answer the Complaint. The attorney would then be required to certify to the Court that the notice had been provided, as set forth in that Administrative Order.

Plaintiff did none of these things. He did not notify Defendants of their right to request foreclosure intervention. He did not notify the Defendants of their right to answer the Complaint within 30 days of foreclosure intervention being denied. He did not send the required certification of compliance with the 2011 Administrative Order to the Court. Each of these three items were detailed as requirements for Plaintiff to do as part of the foreclosure case pursuant to that 2011 Order. Instead, Plaintiff's counsel immediately filed an Affidavit of Default and obtained an Order of Default and Reference within three days of providing to Defendants the Notice that the Defendants' request for Foreclosure Intervention had been denied. The Special Referee ignored those deficiencies by Plaintiff, which deficiencies were properly raised by Defendants' counsel, thus committing error.

In addition, the March 17, 2020 Order, did not deal with the issues raised by Defendants in the Motion to Strike and Memorandum in support, other than the issues of foreclosure intervention and default. For the Special Referee not to address those other issues constitutes error.

Further, a reading of the 2011 Administrative Order by the Special Referee would have indicated to the Special Referee that he should have set aside the Order of Default, even without Defendants' motion, because of the failures of the Plaintiff to comply with that 2011 Order, but the Special Referee, failed to do so, thus committing error.

In the Memorandum that was filed with the Court on June 30, 2021, **R. p____** and provided to the Special Referee, Defendants asserted that any Court action that took place subsequent to the failure of the Plaintiff to provide the required notices pursuant to the 2011 Supreme Court Administrative Order should have been considered a Nullity. Memorandum, p.6. **R. p___.** The 2011 Administrative Order states that "no foreclosure hearing or foreclosure sale may be held in the foreclosure action until the Mortgagee's attorney certifies...", that the items a-e as set forth in the Order have been performed. 396 S.C. at 312. Not only did Plaintiff fail to perform all five required steps, Plaintiff failed to file or serve the required Attorney certification. The Special Referee should have required the Plaintiff to provide notice to the Defendants that they had a right to file an Answer within 30 days, and required the Plaintiff to make the required certification before the case could proceed to a hearing. The Special Referee recognized that this was a requirement (TR#1 p14, line 22-25), but he still failed to do so, and then conducted the hearing with taking of testimony. This failure to require Plaintiff to meet these requirements regarding residential mortgage foreclosures constituted error.

The Special Referee disagreed with the arguments raised in the Rule 59 motion and two supporting memoranda, and with the arguments set forth in the June 30, 2021 Memorandum, stating that Defendants failed to file a Motion to set aside the Default, continuing to ignore the May 23, 2019 Motion to Strike and supporting September 18, 2019 and October 3, 2019 Memorandum. Memorandum. He also left the Order of Default and Reference in place as shown in his Order filed January 10, 2022. **R. p. ___.**

Appellants submit that the Affidavit of Default was improperly and untimely filed, and that both Orders of Default were improperly obtained. While it is submitted that the Defendants properly sought to set aside the default in their Motion to Strike, **R. p. ___,** if in fact the

Defendants had failed to move to set aside the default order, based on the requirements of the Supreme Court 2011 Administrative Order, Defendants submit that the Special Referee should have set aside the order of default on his own motion. The failure of the Special Referee to do so constituted error.

Further, the Defendants did request that the Default be set aside in the Motion to Strike. **R. p. ___**. The Special Referee continued to hold Defendants in default and seemed to believe that if Defendants were in default, they could not raise other issues regarding the case, TR #1, p 12, line 6-23, except for the amount of debt. That placed the Defendants and their counsel at a disadvantage in trying to overturn the Order of March 17, 2020, **R. p. ___**, that the Special Referee had entered. This constituted error by the Special Referee.

In addition, after the February 8, 2019, Order of Default and Reference had been entered, the Defendants did file a pro se Answer to the Complaint. After that answer had been filed, the Plaintiff filed a second Motion for Default and Reference, the result of which referred the case to Mr. Player. **R. p. ___.**

The Defendants retained counsel who filed a Motion to Strike and later an Amended Answer. That Motion made reference to the Order of Default and Reference being filed in spite of Plaintiff's noncompliance with the requirements of the 2011 Supreme Court Order. Finally, the Plaintiff's counsel had included with the February 8, 2019, Order of Default, an Order of Reference referring the case to the Master of Equity. However, after the Defendant's had filed their pro se Answer, the attorney for the Plaintiff obtained a new Order of Default and Reference referring the case to Mr. Player, as Special Referee, as the acting Master had resigned.

At the time the second Order of Default and of Reference was entered, the Defendant had filed an Answer in the case. Technically, the Defendants were not in default when Plaintiff

submitted the second Motion and Order of Default and Reference on May 24, 2019, and Plaintiff still had not complied with the 2011 Administrative Order. Thus, the correctness of the Court entering this May 24, 2019 Order of Default and Reference is in question as is whether Mr. Player was correctly appointed as Special Referee for this case.

The Special Referee therefore had four reasons to consider setting aside the Orders of Default and Reference as follows:

1) Plaintiff had failed to give Defendants the required notice of their right to answer the complaint within 30 days after denying foreclosure intervention;

2) The February 8, 2019 Order of Default and Reference was entered before the Defendants' time to answer the complaint within 30 days had run, per the 2011 Supreme Court Order.

3) The Defendants' counsel had requested in the Motion to Strike that the Order of Default and Reference be set aside because of Plaintiff's failure to comply with South Carolina law, including the 2011 Supreme Court Order, and

4) The Defendants had filed a pro se answer before the second Order of Default and Reference was entered.

However, the Special Referee failed to set aside the Default for any of those reasons, which constituted error. Each one of those reasons was sufficient for the Special Referee to set aside the Default. Later, the Special Referee addressed the Default in his Order dated March 17, 2020, by stating that "modification is not available...this issue is resolved in compliance with Administrative Order 2011-05-02-01 and Defendants remain in default and have failed to seek relief from same as provided in the Rules of Civil Procedure" **R. p.___**. (Order, p. 2 and 3). The

Special Referee specifically declined to set aside the Order of Default. Plaintiff's then counsel filed a Rule 59 Motion asking the Special Referee to reconsider his Order. **R. p. ___.**

A problem with all of this is that the Order of March 17, 2020, was improperly entered. The Special Referee lacked jurisdiction because the Order of Reference referring the case to him was improperly entered as it was included with the improperly entered Order of Default. The Order of Reference referring the case to the Master in Equity was issued on February 8, 2019, subsequent to the Plaintiff's failure to comply with the 2011 Supreme Court Administrative Order by Plaintiff's failure 1) to give notice of right to request foreclosure intervention, 2) to give notice of right to file an answer within 30 days, and 3) failure to file a certificate of compliance. At the time, Sumter had a temporary Master in Equity, appointed after the death of Master in Equity, Richard Booth. A new Master had not yet been appointed.

Therefore, on May 24, 2019, a new Order of Default and Reference was entered appointing Mr. Player as Special Referee. By that time, Defendants had filed their pro se answer and were not in default at the time the second Motion and Order of Default and Reference was entered. As a party having made an appearance by having filed an answer, Defendants should have been contacted about the May 24, 2019 Motion and Order, but were not. Therefore, because both Orders of Default were improperly entered, and because Plaintiff failed to submit the required certification, it is submitted by Appellants that the entire foreclosure case, including the taking of testimony at the hearing on September 19, 2019, was conducted in error as set forth in the June 30, 2021 Memorandum. **R. p. ___** . Memorandum, p. 6. For the Special Referee to fail to set aside the default and conduct the hearing on the merits constituted error.

More importantly, to that point in the case, the Plaintiff had failed to comply with the 2011 Supreme Court Administrative Order that set forth the methodology by which a mortgage

foreclosure of a Defendants' personal residence should proceed. The Plaintiff had failed to comply with that Ordered methodology as follows:

A) Plaintiff had failed to provide to Defendants a separate document advising Defendants of the Notice of Right to Request Foreclosure Intervention.

B) The Plaintiff provided to Defendants a Denial of Foreclosure Intervention, under the expired HAMP, but Plaintiff failed to provide to Defendants a Notice of Right by the Defendants to have 30 days in which to now answer the complaint.

C) Plaintiff entered an Affidavit of Default the day after sending a denial of the right to foreclosure intervention, and obtained the Order of Default and Reference, instead of providing to Defendants the required Notice of Right to Answer within 30 days.

D) Plaintiff failed to certify to the Court that Plaintiff had complied with the 2011 Supreme Court Administrative Order.

The Special Referee proceeded with the case in spite of all these failures by the Plaintiff to comply with the required foreclosure procedure, and in spite of the language in the 2011 Administrative Order that stated that the case could not proceed until those steps had been done. For the Special Referee to proceed with the case constituted error.

In spite of the Motion to Strike filed by the Defendants seeking to set aside the Order of Default and to require compliance by Plaintiff with the 2011 Administrative Order, the Special Referee failed to set aside the Order of Default and Reference, citing that Defendants had failed to properly request same, and then reaffirmed that Defendants in fact were in Default. A Rule 59 Motion asking the Court to reconsider that Order was filed the same day as the Court entered the Order of March 17, 2020. After a substitution of counsel, a hearing on that Motion was

scheduled for July 14, 2020, but new counsel was hospitalized with Covid the day before that hearing.

Thereafter the parties entered into settlement negotiations but were unable to reach a settlement. The motion for hearing on the Rule 59 Motion was rescheduled for June 10, 2021, and at that time the Special Referee asked for a Memorandum of Law from the attorney for the Defendants setting forth Defendants' position. Such as Memorandum of Law was prepared and filed on June 30, 2021. **R. p.___.**

In spite of that Memorandum of Law, and in spite of all of the errors committed by the Plaintiff in handling of the foreclosure action in disregard of South Carolina law as set forth in the 2011 Supreme Court Administrative Order, the Special Referee affirmed his prior Order by a new Order dated August 18, 2021, but not entered by the Clerk until January 10, 2022. This decision by the Special Referee constituted error.

This is especially grievous based on the testimony provided by Defendants in the February 9, 2022 hearing in Bankruptcy Court. When the Defendants were prepared to testify, they set forth in great detail the number and amount of payments or credits that they had paid to the Plaintiff. In that hearing, Plaintiff acknowledged Defendants had made substantial payments to him totaling more than $25,000.00 TR #3 p24, line 3-7 but with interest only reduced the amount of debt by about $10,000.00. The Plaintiff did not acknowledge any of the additional payments made by Defendants nor acknowledge any of the services provided by the Defendants. The total amount of payments and other credits that Defendants claimed to have made or to have earned was $157,105.81. Def Exh #12, **R. p___.** This amount was supported by Appellants testimony (TR #3 p. 83, line 7-p. 124, line 3.) and the Exhibits submitted at the February 9, 2022 hearing. **R. p. ___-___.**

At the hearing held on September 19, 2019, the Plaintiff did acknowledge some payments of $505.40 provided by the Defendants, TR#1, p. 37, lines 20-22, which he claimed reduced a mortgage debt of $48,000.00 to $38, 327.00. TR #1, p.37, lines 24-25, but Plaintiff did not credit any other payments or services provided by Defendants. At that 2019 hearing, the Defendants were not prepared to testify at what they expected to be a hearing on the Motion to Strike. TR #1 p. 20, lines 13-24; TR #3, p. 26, lines 14-22, and p. 99, line 24-p. 102, line 2.

Because of Plaintiff's failure to comply with South Carolina residential mortgage foreclosure procedures as set out in the 2011 Administrative Order, the Special Referee should not have taken testimony. For him to do so constituted error.

The amount of the debt is in controversy, and the difference is substantial. Mr. Weibel alleged that the amount owed was $179,832.00, but offered no accounting records to support that amount. TR#1 p. 39, lines 13-22. The Special Referee in his March 17, 2020 Order granted judgment in the amount of $177, 949.39 and ordered sale of the property. **R. p___.** The Defendants testified that the balance due to Plaintiff should have been reduced by giving Defendants all of the credits and payments that she testified they were entitled to. TR #3 p. 83, line 7- p. 124, line 3 and set forth on Defendants Exhibit 12, **R. p ___.** That balance due was also summarized in a closing statement to the Bankruptcy Court to be between $40,000.00 and $56,000.00 (TR#3, p. 127, line 4-p. 129, line 5) after adding interest. In addition, Defendants cited an equitable position and requested that attorney's fees that had been incurred by Defendants in the amount of $16,000.00 in trying to get Plaintiff to comply with South Carolina foreclosure law be awarded to Defendants. (TR #3, p. 129, line 6- p. 131, line 23).

The difference in the amounts alleged to be due by each of the parties, together with the errors committed by the Plaintiff in prosecuting the foreclosure case not in compliance with of

the Supreme Court 2011 Administrative Order, which errors were allowed by the Special Referee, are reasons why this appeal has been made.

The actual amount of debt could have and should have been determined by the finder of fact, but only after the case had been properly brought by Plaintiff in compliance with South Carolina law, and had been properly referred to a judge or special referee. That could only be done if Plaintiff had complied with the requirements of the 2011 Supreme Court Administrative Order. Orders of the Supreme Court are intended to be complied with. The Plaintiff throughout this case totally disregarded that 2011 Order. For the Special Referee to find an amount due and order a foreclosure sale without compliance by the Plaintiff with the requirements regarding a South Carolina residential mortgage foreclosure, as set forth by our Supreme Court in its 2011 Administrative Order, constitutes error.

For the reasons set forth herein, it is respectfully submitted that for the Special Referee to fail to set aside the orders of default and require Plaintiff to handle and prosecute the foreclosure case in accordance with the requirements of South Carolina law, including the requirements set forth in the Order of the Supreme Court as set out in its Administrative Order 2011-05-02-01, and as otherwise set forth above, constitutes error.

II. DID THE SPECIAL REFEREE COMMIT ERROR IN FAILING TO SET ASIDE THE ORDER OF DEFAULT AND REFERENCE ENTERED ON FEBRUARY 8, 2019, OR THE SECOND ORDER OF DEFAULT AND REFERENCE ENTERED ON MAY 24, 2019?

After the Plaintiff filed and served the Summons, Lis Pendens, and Complaint, **R. p. ___,** the Defendant requested foreclosure intervention, even though the Plaintiff failed to provide the Notice of Defendants' right to do so as required by South Carolina Supreme Court Administrative Rule 2011-05-02-01. Plaintiff on February 5, 2019, filed and served an Affidavit

of Non-eligibility under the Home Affordable Modification Program, **R. p. ___**, but on the next day, February 6, 2019, filed an Affidavit of Default **R. p. ___**, and followed that with a Motion and Order for Default and Reference that was filed by the Court on February 8, 2019. **R. p. ___**. At this point, the Plaintiff had failed to follow the requirements of the 2011 Supreme Court Administrative Order governing residential foreclosure cases by not filing or serving the Notice of Right to Foreclosure Intervention, and by not providing to the Defendants the required notice that they had 30 days in which to answer the Complaint after intervention was denied by Plaintiff on February 5, 2019.

On May 23, 2022, Defendants filed a Motion to Strike, **R. p____** which included seeking for the Court to "confirm that Defendant is not in default her request for foreclosure intervention tolled the time for answering the complaint and the deadline for answering has not been reactivated due to Plaintiff's failure to make any certification as required by the Administrative Order." In the prayer the Defendant asked "the Court to issue an Order:..2. Striking the affidavit of default Plaintiff filed;"

The case to that point had not complied with the Supreme Court Order governing foreclosures of the residential property of South Carolina citizens. The Special Referee should have set aside the Default and accepted the Defendant's Answer as timely. Failure of the Special Referee to do so constituted error.

In addition, prior to the Motion to Strike, the Defendants filed a Pro Se Answer on May 16, 2019. In spite of that Answer being filed, the Plaintiff filed another Motion for Default and Reference on May 24, 2019. An Order of Default and Reference referring the case to Mr. Player was then entered without the answering Defendants receiving notice of the motion.

In the hearing on the Motion held on September 19, 2019, Plaintiff made reference to the May 24, 2019, Order of Default and Reference. TR #1 p 10, line 24-25.

Mr. Player was thus faced with two Orders of Default and Reference and a Motion to Strike the Default made by the Defendants. The second Order of Default was entered after an Answer had been filed.

The motion to strike filed by Defendants on May 23, 2019, was a motion seeking to set aside the order of default that had been improperly entered on February 8, 2019. Defendants later filed two memoranda in support of their motion. The Special Referee seemed not to acknowledge that he had been asked to set aside the default. Order March 17, 2019, p 3, paragraph 6. The decision as to whether a default should be set aside is governed by Rule 55 (c) SCRCP which provides that, "For good cause shown the Court may set aside an entry of default..." Courts have held that "This section is liberally construed to promote justice and dispose of cases on the merits." Dixon v. Besco Engineering, Inc., 320 S.C. 174, 463 S.E. 2d 636, 638 (Ct. App.1995).

In this case, Plaintiff clearly showed good cause by Plaintiff failing to comply with South Carolina foreclosure practice, as set forth in the 2011 Supreme Court Administrative Order. The two Orders of Default were both entered in spite of language set forth in the 2011 Administrative Order that requires Plaintiff to follow certain steps in the residential foreclosure action. Those steps had not been followed. In addition, the second Order was entered eight days after the Defendants had filed an Answer. No effort had been made by the Plaintiff to strike the Answer or otherwise deal with the Answer, and the answering Defendants were not contacted in regard to the motion of default or reference.

For the Special Referee to not have vacated the Default and not to have allowed the Defendants to answer the summons and complaint and then not allow Defendants to fully participate in the case, constitutes error.

III. DID THE SPECIAL REFEREE COMMIT ERROR IN AT FIRST ENTERING AND THEN FAILING TO RECONSIDER AND SET ASIDE THE ORDER ENTERED ON MARCH 17, 2020, THE ORDER DATED AUGUST 16, 2021, AND ENTERED JANUARY 10, 2022, AND THE ORDER OF APRIL 26, 2022?

After Plaintiff filed his Affidavit of Default and obtained an Order of Default and Reference, Defendants retained counsel who filed a Motion to Strike on May 23, 2019. **R. p. ___.** The Defendants on September 18, 2019 filed a Memorandum in support **R. p.____,** and then after a hearing on September 19, 2019, on October 3, 2019, filed a second Memorandum of Law in Support of Defendants' Motion to Dismiss Plaintiff's Affidavit of Default **R. p.____** That Motion also sought to Require Compliance with Administrative Order and Require Plaintiff to Accept Reinstatement.

The standard for granting relief from an entry of Default under Rule 55 (c) SCRCP is "good cause shown," which requires the movant to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. In that Memorandum, Defendants pointed out, among other things, that the February 5, 2019 Affidavit of Non-eligibility dealt with the HAMP program that had ended on December 31, 2016. Therefore, HAMP would not apply to Defendants. In addition, the motion pointed out that Plaintiff had failed to comply with the 2011 Administrative Order, including the failure to tell Defendants that they had 30 days in which to answer the complaint.

In her Memorandum of Law in support of Defendants Motion to Strike Plaintiff's Affidavit of Default, which Memorandum was filed September 18, 2019, the Defendants raised

the issue that Plaintiff is not a licensed Mortgage Lender. Plaintiff admitted to the great volume of loans that he made over a 55-year period. TR #3. P 52, line 1-7. The memorandum also asserted that Plaintiff prevented Defendants from obtaining another loan that would result in a payoff of the Plaintiff mortgages, TR #1. P. 60, line 18-25 and Defendant's Exhibit #13, and that Plaintiff had engaged in unfair trade practices. None of those issues were addressed by the Special Referee. His failure to address those matters constitute error. In addition, the Memorandum described in detail stating that Plaintiff had failed to comply with guidelines for foreclosure intervention and that no hearing could be held until the Plaintiff had complied with the requirements of the 2011 Administrative Order, and holding that hearing constituted error.

In spite of all of this information being set out for the Special Referee, the Special Referee held the hearing by receiving testimony on September 19, 2019, and issued an Order on March 17, 2020 basically denying the Defendants' position and granting judgment of foreclosure and sale in favor of Plaintiff. For the Special Referee not to consider these issues raised by Defendants constituted error.

The Special Referee throughout his orders stated that Defendants failed to move set aside default. As set forth above, the Defendants submit that the Special Referee could have and should have set aside Default on his own Motion even if the Defendants did not so move because of the failure of the Plaintiff to comply with the 2011 Administrative Order.

For example, in the March 17, 2020 Order, the Special Referee said in paragraph 6 that, "No relief from the entry of default was obtained prior to these filings of responsive pleadings. The Defendants argue that they are not in default in this foreclosure action as the same is stayed by the requirements of Administrative Order 2011-05-02-01... In any event I find that Plaintiff does not participate in loan modification, nor is he required to do so... Defendants remain in

default and have failed to seek relief from same as provided in the Rules of Civil Procedure" (Order p. 2 & 3) The Special Referee further states on page 11 in paragraph 14, "The Court notes that the Plaintiff has complied with the requirements of the Supreme Court's Administrative Order regarding the Home Affordable Modification Program and this property is not subject to Modification. Plaintiff has also given Defendants a Notice of Right Cure as required by the Consumer protection Code." **R. ____.**

This shows that the Special Referee would not lift the default, even when faced with Plaintiff's failure to comply with the Administrative Order. The language as quoted from the Order indicates that the Special Referee was ignoring the requirements of the 2011 Supreme Court Administrative Order. For him to do so constitutes error and the Order should have been set aside. Failure of the Special Referee to set aside the Order after the Motion was duly and properly made by the Defendants constituted error.

The Special Referee then issued a new Order on August 18, 2021 but not filed in the foreclosure case until January 10, 2022. **R. p. ___.** In that Order he denied Defendants' Motion stating that: "On May 2, 2011 the South Carolina Supreme Court issued its Administrative Order providing that foreclosure actions filed after May 9, 2011 shall include a notice of the Mortgagor's right to foreclosure intervention. It further provided that no foreclosure hearing could be held until compliance with the order. Upon certification of compliance with the above the foreclosure action could proceed." Order, p. 3. In spite of this acknowledgment of the requirements of the 2011 Administrative Order, the Special Referee failed to require Plaintiff to have submitted the required notice of right to request foreclosure intervention and not just the allegation in the complaint that HAMP does not apply, failed to require Plaintiff to give Defendants 30 days written notice of the right to answer, and the Special Referee ignored the

requirement that the certification of compliance with the 2011 Administrative Order was required before the foreclosure action could proceed, and certainly before a hearing could be held. Each of these failures by the Special Referee constituted error.

Then the Special Referee continued by stating that "This Administrative Order is procedural in nature. The Administrative Order makes clear that failure to issue the Affidavit only works to stay the action, not as a dismissal...HAMP has expired, and thus the underlying purpose of the Administrative Order has been impacted." Order, p 3. These statements show a possible belief by the Special Referee that the end of HAMP in 2016 meant that the 2011 Administrative Order may be have lost its need to be followed, by stating it has been "impacted." Although the Administrative Order may be procedural in nature, the Special Referee did not require the Plaintiff to follow the procedures as set forth in that Administrative Order, which constitutes error.

For the Special Referee to excuse the failures by Plaintiff to comply with residential foreclosure procedures constitutes error, and thus the August 18, 2021 Order should be set aside.

Finally, the Defendants filed a protective motion pursuant to Rule 59 **(R. p. ___)** because the August 18, 2021 Order was filed in the state court action without Plaintiff obtaining relief in the Bankruptcy Court from the Automatic Stay. Filing the order was in spite of language set forth by the Defendants (debtor) in that Debtor's Response to Creditor's Return **R. p. ____** (paragraph 8) filed January 6, 2022, in that bankruptcy proceeding stating that the order could not be filed at this time because of the Automatic Stay. Plaintiff filed the Order anyway, requiring Defendants to file a motion on January 20, 2022, **R. p.___** after having obtained permission from the Bankruptcy Court to do so.

In that Motion, the Defendants requested that the Special Referee explain how the "underlying purpose of the 2011 Administrative Order had been impacted." The Defendants again reiterated the failure of Plaintiff to comply with the provisions of the 2011 Administrative Order such that any actions beginning with the filing of the Affidavit of Default in February 2019 would have been a nullity. Then the Defendants sought other relief.

The Special Referee then entered his Order denying the Motion on April 26, 2022, again affirming the August 18, 2021 Order, which affirmed the March 17, 2020 Order.

Because of the reasons set forth above, Appellants submit that these Orders by the Special Referee did not require the Plaintiff to comply with the 2011 Supreme Court Administrative Order, and thus the issuance of each of these Orders, constitutes error and the failure of the Special Referee to alter or amend each of these Orders pursuant to Rule 59 (e), SCRCP, constitutes errors.

IV. IF PLAINTIFF DID NOT PROPERLY PROSECUTE THE FORECLOSURE CASE IN COMPLIANCE WITH SOUTH CAROLINA LAW, SHOULD APPELLANTS BE RESPONSIBLE TO PAY FOR PLAINTIFF'S ATTORNEYS FEES AND COSTS?

The mortgages given by Appellants to Respondent each contained language to grant to the mortgagee reasonable attorney's fees in the event of a default by the mortgagor. Such language is generally provided in almost all real estate mortgages.

In this case, the Appellants became delinquent with the loans and Plaintiff retained counsel to file a foreclosure action. Foreclosure pleadings were filed and served, but Plaintiff did not comply with the mandates of Supreme Court Administrative Order 2011-05-02-01, and thus failed to provide the Defendants all of the notices and safeguards that the Order required.

That 2011 Supreme Court Order stated in part that "No foreclosure hearing or foreclosure sale may be held in the foreclosure action until the Mortgagee's attorney", 396 S.C. at 212, files a certification that includes the following:

A. The mortgagor has been served with a Notice of the Mortgagor's Right to Foreclosure Intervention and

B. Notice of denial of foreclosure intervention or other means of loss mitigation has been served on the Mortgagor, which notice shall also state that the mortgagor has 30 days from the date of mailing of the notice of denial of foreclosure intervention to file and serve an answer or other response to the Mortgagee's summons and complaint.

The failure of the Plaintiff to comply with this Administrative Order occurred at the very beginning of the case. When he filed his Summons, Lis Pendens and Complaint, the Plaintiff did not include the required Notice of Right to Request Foreclosure Intervention. The Appellant's position is that the Plaintiff's case was defective from the initial filing and service of the incomplete initial pleadings. All of Plaintiff's actions in the foreclosure case beginning with that filing and service of the initial pleadings were improper in that Plaintiff failed to safeguard Defendants' rights as provided for in that 2011 Administrative Order. Plaintiff failed to properly handle the foreclosure action. Thus, the attorney's fees and costs allowed to the Plaintiff by the Special Referee, and/or claimed by Plaintiff for services thereafter, should be denied to Plaintiff. This is because it is not equitable for the Defendants to have to pay attorney's fees and costs for the erroneous handling of the lawsuit by the Plaintiff against the Defendants.

A Master in Equity is a member of the Equity Court which is a division of the Circuit Court. S.C. Code Ann.14-11-15 (2017). When "cause can be shown, the presiding circuit court judge, upon agreement of the parties, may appoint a special referee in any case who as to the

case has all the powers of a master-in-equity." S.C. Code Ann. 14-11-60 (2017). The Special Referee is "a member of the South Carolina Bar to whom a matter has been referred." Rule 53 (a), SCRCP. "A Court sitting in Equity ensures that the Plaintiff has done everything that ought to have been done to secure an action and justify the matter of the controversy before granting relief." Corbus v. Alaska Treadwell Gold Mining Co., 187 U. S. 455 (1903). South Carolina Equity: A Practitioner's Guide, S.C. Bar (2010) page 27-28. The Special Referee had the duty to ensure that the Plaintiff has done everything that ought to have been done.

In connection with this action, the Plaintiff has proceeded with unclean hands in that he has failed to comply with the requirements of residential foreclosure practice as set forth in Administrative Order 2011-05-02-01, in regard to the matter that is the subject of this litigation, and which failure was to the prejudice of the Defendants. "If a party has unclean hands, the party is precluded from recovering in equity." Anderson v. Buonforte 365 S.C. 482, 493, 617 S. E. 2d 750 (2005). In this case, the unclean hands of the Plaintiff in failing to comply with the required residential law procedures should prevent Plaintiff from recovering attorney's fees and costs. Therefore, Appellants submit that Plaintiff should not be entitled to attorney's fees and costs and any balance otherwise due by Defendants to Plaintiff should be reduced by the amount of those fees and costs.

V. IN THE EVENT THE COURT OF APPEALS DETERMINES THAT THE ISSUES RAISED BY THE APPELLANT CONSTITUTE ERROR, SHOULD THE COURT OF APPEALS DISMISS THE CASE, REMAND THE CASE OR REVIEW THE RECORD AND MAKE IT'S OWN FINDINGS?

If the Court of Appeals determines that the case as presented by the Plaintiff has failed to comply with procedures for a South Carolina residential foreclosure case pursuant to the

Supreme Court Order 2011-05-02-01, the Appellants believe that the Court of Appeals has three options by which to handle the case as follows:

1) The Court of Appeals can dismiss the case.

2) The Court of Appeals can remand the case to the Special Referee with instructions for him to lift the default, require Plaintiff to comply with residential foreclosure procedures, and allow the Defendants to answer and then proceed with the case, or

3) The Court of Appeals can review the evidence presented in the case and make its own findings as to the balance due.

In the event that the Court of Appeals determines that the failure of the Plaintiff to comply with the Supreme Court 2011 Administrative Order and that the errors alleged to have been committed by the Special Referee were in fact errors, the Court of Appeals has the right to consider the evidence and try to make the correct decision in the case, by making findings of fact with its own view of the preponderance of the evidence. Peoples Federal Sav. & Loan Ass'n v. Edwards, 286 S.C. 475, 334 S.E. 2d 290 (Ct. App. 1985).

Because a foreclosure case is a case in equity heard by a judge or special referee without a jury, the Court of Appeals has a right to make findings of fact in accord with its own view of the available evidence. Houck v. Rivers, 316 S.C. 414, 418, 450 S.E.2d 106, 109 (Ct. App. 1994).

In the hearing held on September 19, 2019, the Defendants expected the hearing was being held to only argue the Motion filed by their counsel to strike the default and to require Plaintiff to comply with the 2011 Administrative Order. The Special Referee took those issues under advisement, but instead of then adjourning the hearing, upon request of Plaintiff's counsel, the Referee began to take evidence. TR#1, p. 20, line 13-25. The Defendants did not expect to

have to testify at that hearing. TR #3, page 53 line 18-p 55, line 4. The plaintiff testified that the balance due was $179,832.00. TR #1, p 39, line 9-P. 40, line 4. The Defendant, Russell Self then testified and stated that he knew that the balance asserted by Mr. Weible was not correct and that there were a number of payments and credits that the Defendants were entitled to, but that he did not have that information available. TR #1, p 68, line 8-24 and TR #3 p. 53, line 18-p 55, line 4. This is evidence that the Defendants were unprepared for a hearing on the merits on September 19, 2019. Additional evidence of how unprepared Defendants were on September 19, 2019, is shown when comparing the testimony of Mr. Self on March 19, 2019 with the testimony that he and his wife provided on February 9, 2022. TR #3, p. 70, line 13-p. 73, line 10; p. 83, line 7-p. 119, line 17.

If the Court of Appeals determines that some or all of the issues raised by Appellants constitute error, then Appellants submit that if the Court of Appeal were to decide from its own review of the evidence what is the actual balance that is due, that would result in judicial economy and, by the Court of Appeals setting the amount, would allow the parties to try to resolve their issues.

At the hearing before the Bankruptcy Judge on February 9, 2022, the Plaintiff again gave testimony that was mostly consistent with the testimony that he was provided on September 19, 2019. However, the testimony of both Russell Self and Brandy Brunson (also known as Brandy Self) was much different. This is because they were actually prepared for the February 9, 2022 hearing and provided evidence of what they believed would constitute credits and payments made by them that the Plaintiff had failed to give them credit for. TR #3, p. 83, line 7-p. 119, line 17. The information establishing those payments and credits is provided and supported by the testimony set forth in the record from the February 9, 2022 hearing, and by the exhibits presented

at that hearing and made a part of this record. Defendant Exhibits 1-13. **R. p. ____.** That testimony indicated that the payments and credits made by the Defendants that were not accounted for by Mr. Weible totaled $157,105.81, and that the balance due as of September 19, 2019 would in fact be not more than $20,843.58 (Defendant's Exhibit #12), However, Appellant Brunson at that bankruptcy court hearing recognized that a check of $9,095.94 (Exhibit 9) was used for a roof repair, and that several checks written in later 2018 and 2019 may not have cleared her bank for an additional credit of up to $6,570.20, so that the balance alleged by Mr. Weible of $179,832.00 or found by the Special Referee to be due in the amount of $174, 449.39 as of September 19, 2019, (March 17, 2020 Order, paragraph 17, page 6) should be reduced by $141,439.67.

Therefore, in the event that the court determines that the grounds for appeal as set forth herein constitute error, then it is respectfully submitted that the Court of Appeals can decide the case denovo in order to determine the amount of debt.

CONCLUSION

Plaintiff commenced a mortgage foreclosure action to foreclose several mortgages given by Defendants/Appellants to the Plaintiff. The mortgage foreclosure action was commenced in October 2018.

The South Carolina Supreme Court has issued its 2011 Administrative Order 2011-05-02-01 to govern residential foreclosure actions. RE Mortgage Foreclosure Actions, Number 2011-05-02-01, 396 S.C. 209, 720 S.E. 2d 908 (2011). Pursuant to that Administrative Order, Plaintiff had to provide certain notices as safeguards to the Defendants, which Plaintiff failed to do. Plaintiff failed to provide (1) the Notice of Right to Request Foreclosure Intervention, and (2)

Notice of the right of Defendants to have 30 days to answer the complaint after Plaintiff had denied the Right to Foreclosure Intervention. In addition, Plaintiff failed to comply with the 2011 Administrative Order as follows: (3) Plaintiff entered a Motion for Default contrary to the provisions of that Administrative Order by entering the Default before giving the Notice that the Defendant's had 30 days to file the Answer which failure was to Defendants great prejudice, and (4) Plaintiff had failed to make the required certification to the Court that Plaintiff had complied with the requirements of the Administrative Order.

All of these deficiencies have been raised by Defendants' counsel, but the Special Referee did not require Plaintiff to comply with that 2011 Supreme Court Administrative Order and the Special Referee failed to set aside the Default, both of which constituted error.

The Special Referee held a hearing on the Motion to Strike raised by Defendants seeking to require Plaintiff to comply with the Order, and to set aside the default, but then held a hearing on the merits immediately following the hearing on the Motion without ruling on that Motion. That hearing was held in spite of the plain language of the Administrative Order saying that such a hearing could not be held. Thereafter, the Special Referee entered his Order granting foreclosure and sale to the Plaintiff for the amount close to that alleged to be due by the Plaintiff. Efforts to convince the Special Referee that he had committed error have been unsuccessful. In an effort to save their house, the Defendant filed a Chapter 13 bankruptcy and at a bankruptcy hearing held February 9, 2022, Defendants were able to provide testimony as to the number of payments made by Defendants to the Plaintiff that Defendants allege and that Plaintiff admitted that Plaintiff had failed to account or give credit for in the foreclosure case.

Therefore, Appellants request that the Court of Appeals grant relief to the Appellants as follows:

a) Either dismiss Plaintiffs' case or remand the case instructing the Special Referee to require Plaintiff to comply with the requirements of the 2011 Supreme Court Administrative Order, and lift the default.

b) In any event, Appellants request that the attorney's fees and costs charged by the Plaintiff should be abated and not charged to the Appellants as most of those charges have been incurred by Plaintiff as a result of Defendants trying to get Plaintiff to comply with South Carolina foreclosure procedures as set forth in that 2011 Administrative Order.

c) Further, Defendants' have incurred attorney's fees in trying to require the Plaintiff to comply with the Administrative Order, and pursuant to equity, those fees should either be awarded to Defendants or applied as an offset to any amount due to the Plaintiff, and

d) As an alternative to dismissing or remanding the case, the Appellants request that the Court of Appeals find a balance due on this mortgage debt pursuant to its power to do so, and direct the lower court to issue its order in accord with those findings.

RESPECTFULLY SUBMITTED:

October 5, 2022
Sumter, SC

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Thomas E. Player, Jr., Special Referee

Case No. 2022-000601

John Weible .....Respondent,

v.

Russell Self and Brandy Brunson ..... Appellants.

PROOF OF SERVICE

I certify that I have served the Initial Brief and Designation of Matter on John Weible by depositing a copy of it in the United States Mail, postage prepaid, on October 5, 2022, addressed to his attorney of record, Michael M. Jordan, 10 Law Range, Sumter, South Carolina, 29150.

October 5, 2022

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October 5, 2022

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

IN RE: John Weible, Respondent vs Russell Self and Brandy Brunson, Appellants
Case No: 2022-000601

Dear Ms. Kitchings:

There are enclosed and presented to you for filing the Initial Brief, the Designation of Matter and Proof of Service for the Appellants. Also enclosed is a copy of the cover page of each of those items with a postage paid envelope for you to acknowledge receipt of the documents and have filed same.

Thank you for having granted the extension of time for these documents to be filed.

By copy of this letter we are serving the Initial Brief, Designation of Matter, and Proof of Service on Mr. Jordan, attorney for Respondent.

Yours very truly,

A. Paul Weissenstein, Jr.

APW,jr/jab
Enclosure

Cc: Michael Jordan

Columbia P&DC 290

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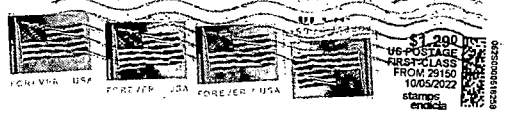

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