

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Aug 25 2022

SC Court of Appeals

APPEAL FROM MARION COUNTY
COURT OF COMMON PLEAS

Honorable W. Haigh Porter, Special Referee

CASE NO. 2018-CP-33-00653
APPELLATE CASE NO. 2020-000139

Ex Parte Beullah Belin and James Belin, Appellants,

In Re Wilmington Savings Fund Society, FSB, as trustee of Stanwich
Mortgage Loan Trust A, Plaintiff.

v.

Bertha Dunham a/k/a Bertha E. Dunham and Ernest L. Dunham,Defendant(s),

Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage
Loan Trust A, Respondents.

PETITION FOR REHEARING AND ORAL ARGUMENT

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PETITION FOR REHEARING AND ORAL ARGUMENT

TO THE HONORABLE SOUTH CAROLINA COURT OF APPEALS:

Appellants, Beullah Belin and James Belin, respectfully petition this Court to rehear this appeal, pursuant to Rule 221 SCACR. Specifically, the Belins request that the Court

reconsider its decision, which was filed on August 10, 2022, dismissing the Motion to Intervene, and the Belins further request that its appeal be determined on the merits. Appellants submit that the Court has overlooked or misapprehended the following primary points:

I. THE SPECIAL REFEREE FAILED TO MAKE THE REQUIRED FINDINGS THAT THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT WAS COMPLIED WITH PRIOR TO ORDERING THE PROPERTY BE FORECLOSED.

As an initial matter, the Order of Judgment of foreclosure and sale decree established that the foreclosing lender was serviced by a servicer who participated in the home affordable modification program (HAMP). R at 4. The jurisdiction of a court over the subject matter of a proceeding is fundamental. *Anderson v. Anderson*, 299 S.C. 110, 115, [382 S.E.2d 897, 900](#) (1989). "Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court." *Id.* It is well-settled that issues related to subject matter jurisdiction may be raised at any time, including for the first time on appeal in this Court. *Carter v. State*, 329 S.C. 355, 495 S.E.2d 773 (1998); *State v. Funderburk*, 259 S.C. 256, [191 S.E.2d 520](#) (1972). Furthermore, "[t]he acts of a court with respect to a matter as to which it has no jurisdiction are void." *Funderburk*, 259 S.C. at 261, 191 S.E.2d at 522.

Implied conflict preemption requires this court to examine whether the special referee order of foreclosure complied with federal law. The Supremacy Clause in Article VI of the United States Constitution establishes the principle of federal preemption:

This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made . . . under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. art. VI, cl. 2.

“A federal law may either expressly or impliedly preempt a state law. Congress may expressly preempt state law through specific language clearly stating its intent. On the other hand, implied preemption occurs through “field preemption” or “implied conflict preemption.” Implied

conflict preemption occurs in one of two ways — either where compliance with both federal and state regulations is physically impossible or where the state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 85 L.Ed. 581(1941). It is this latter type of implied conflict preemption, sometimes called “obstacle” or “frustration-of-purpose” preemption, which is implicated in the present case.

Priester v. Cromer, 401 S.C. 38, 736 S.E.2d 249 (2012)

Here, Appellants assert that the Dodd–Frank Wall Street Reform and Consumer Protection Act impliedly preempts the state law of foreclosure in South Carolina. See PUB. L. No. 111-203, 124 STAT. As such, Dodd–Frank Wall Street Reform and Consumer Protection Act must be complied with in every foreclosure matter where the Act is applicable. The Act applies to foreclosures of residential real estate mortgages who are insured by Fannie Mae or Freddie Mac. *See* 12 U.S.C. 5220

“To the extent that the Federal property manager holds, owns, or controls mortgages, mortgage backed securities, and other assets secured by residential real estate, including multifamily housing, the Federal property manager shall implement a plan that seeks to maximize assistance for homeowners and use its authority to encourage the servicers of the underlying mortgages, and considering net present value to the taxpayer, to take advantage of the HOPE for Homeowners Program under [section 1715z-23](#) of this title or other available programs to minimize foreclosures.”

Here, The Dodd–Frank Wall Street Reform and Consumer Protection Act required that Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A comply with federal mandates prior to accomplishing the foreclosure. However, the special referee failed to address the HOPE program or other assistance cited in the Dodd-Frank Act. Moreover, the

Belins are tenants on the property and as such, they are also entitled to protections under the Act. *See* 12 U.S.C. 5202

The Belins have an interest relating to the Property which is the subject of the present action as established by the The Dodd–Frank Wall Street Reform and Consumer Protection Act. *Id.* “A party has standing if the party has a personal stake in the subject matter of a lawsuit and is a ‘real party in interest. A real party in interest is one who has a real, actual, material, or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action.” Kiawah Resort Assocs., L.P. v. Kiawah Island Cmty. Ass'n, Inc., 421 S.C. 538, 552, 808 S.E.2d 521, 528 (Ct. App. 2017) (internal citations omitted). At a minimum, the Belins would be tenants on the property and their status as tenants provide protection under Dodd-Frank. The Protecting Tenants at Foreclosure Act of 2009 (PTFA) was applicable to this action. *See* 12 U.S.C. 5201 note, 12 U.S.C. 5220 note, and 42 U.S.C 1437f note. A quick history establishes the necessary connection between it and the Dodd-Frank Act. The PTFA protects tenants from evictions resulting from foreclosure on the properties they occupy. The PTFA took effect on May 20, 2009 and was scheduled to expire on December 31, 2012. The Dodd–Frank Wall Street Reform and Consumer Protection Act extended the expiration date to December 31, 2014. The Economic Growth, Regulatory Relief, and Consumer Protection Act (Economic Growth Act) repealed the PTFA’s sunset date as of 30 days after the Economic Growth Act’s enactment. As a result, the PTFA is in effect permanently as of June 23, 2018. *See* 12 U.S.C. 5220. Importantly, federal law requires a lender who is a holder of federally back securities to have a process to assist persons in foreclosure. Moreover, the lender has availability to federal funds to modify, forbear, or refinance a loan in foreclosure. *See id.* and 12 U.S.C. 5220a. The Dodd–Frank Wall Street Reform and Consumer Protection Act required that the Belins receive notice of the foreclosure sale and may have provided the Dunham’s federal assistance for a loan modification or refinance. None of the above was done nor findings made in the Order of foreclosure. R. at 3.

This foreclosure action lacked findings of fact to ensure that Wilmington Savings Fund fully complied with Dodd-Frank. 12 U.S.C. 5220 requires the foreclosing bank to make findings of fact about whether the Dodd–Frank Wall Street Reform and Consumer Protection

Act applies and if notice was given to the party being foreclosed and any known tenant in possession. Here, the order of sale and record lack the required finding of whether Dodd–Frank Wall Street Reform and Consumer Protection Act was complied with. A review of the order of sale fails to establish that the Special Referee made any such findings. R. at 3. Further, while there were findings, in paragraph 13 of the appealed order that there were no HAMP issues, there were no such findings regarding HOPE, HARP or the Dodd-Frank Consumer Protection Act were complied with. *See* R. at 4. The above is an error of federal law and require this matter be remanded for further findings of fact that the Dodd-Frank Act was complied with.

In conclusion, as the Dodd-Frank Act was not complied with coupled with the fact that “[i]ntervention should be liberally granted, particularly where judicial economy will be promoted by the declaration of rights of all parties who may be affected.” *Berkeley Elec. Coop., Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 394 S.E.2d at 714 (1990), this matter should be remanded. Based upon the above, the Appellant requests that the Court allow for a rehearing of this matter, including oral arguments, and seek an Order remanding this case to the Special Referee to receive testimony from the Wilmington Savings Fund Society to ensure its compliance with Dodd-Frank.

August 25, 2022

/s Paul B. Ferrara, III

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v.

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Loan Trust A, Respondents.

CERTIFICATE OF SERVICE

I, the undersigned counsel, hereby certify that I have served the Petition for Rehearing to respondent's attorney of record, Peter Balthazor, Esq., by email to peteb@rplfirm.com on August 25, 2022.

Respectfully submitted this 25th day of August 2022.

/s Paul B. Ferrara, III _____
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SC Court of Appeals

*Paul B. Ferrara, III**
*Janel K. Ferrara**

**(also Admitted in N.C.)*

August 25, 2022

SENT VIA ELECTRONIC TRANSMISSION
TO THE COURT'S ONE DRIVE ONLY

The Honorable Jenny Abott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Ex Parte Beaulah and James Belin (Wilmington Savings
Fund Society v. Bertha Dunham)
Appellate Case No: 2020-000139
Our File No.: 19-561

Dear Ms. Kitchings:

Please find the enclosed Petition for Rehearing along with proof of service regarding the same. I have mailed a \$50 check to the Court which represents the filing fee for the petition for rehearing.

Thank you,

FERRARA LAW FIRM, PLLC



Paul B. Ferrara, III

Enclosures: as stated

Cc: Peter M. Balthazor, Esq.