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Oct 14 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE 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 A WRIT OF CERTIORARI

/s/ Paul B. Ferrara, III
Paul B. Ferrara, III
SC Bar No. 70511
8887 Old University Blvd.
North Charleston, SC 29406
T: (843) 569-5511/ F: (843) 569-5411
paul@ferraralawfirm.net
Attorney for Appellant

Other Counsel of Record:
Peter Balthazor, Esq.
Riles Pope & Laney, LLC
PO Box 11412
Columbia, SC 29405

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Cases

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Berkeley Elec. Coop., Inc. v. Town of Mt. Pleasant

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421 S.C. 538, 552, 808 S.E.2d 521, 528 (Ct. App. 2017)..... 2

CERTIFICATE OF COUNSEL

Counsel for Petitioners certifies that the Petition for Rehearing was filed on August 25, 2022, and finally ruled on by the Court of Appeals on September 22, 2022.

QUESTION PRESENTED

- I. WAS THE SPECIAL REFEREE AUTHORIZED TO ORDER THE FORECLOSURE SALE, WITHOUT FINDINGS OF FACT THAT THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT WAS COMPLIED WITH, PRIOR TO ISSUING AN ORDER OF FORECLOSURE?

INTRODUCTION

The Dodd-Frank Wall Street Reform Act required the referee ensure that it was complied with prior to ordering the foreclosure sale. The South Carolina Court of Appeals erred in affirming the special referee's order of sale and should have instead remanded the case back for findings of fact.

STATEMENT OF THE CASE

This case came before the Honorable W. Haigh Porter on October 29, 2019, to hear the motion to Intervene filed by Beullah and James Belin who live on a mobile home on the Defendants' property. The action is for the foreclosure of the property, located in Marion County, South Carolina. The foreclosure arises out of a Mortgage that was executed on April 13, 2006, whereby the Defendants promised to pay to the Plaintiffs the sum of \$36,970.54, with the initial interest rate of 10.63% per year. The Mortgage was recorded in the Register of Deeds Office for Marion County in Book 819 at Page 146. The Mortgage was then assigned to Citifinancial Servicing, LLC by assignment recorded on December 21, 2017, in Book 401 at Page 5, and the Mortgage was assigned to Plaintiff by assignment recorded on December 21, 2017, in Book 401 at Page 6. On September 20, 2018, the Plaintiff filed its Lis Pendens, Summons, and Complaint for foreclosure. By Order filed March 12, 2019, this matter was referred to the Honorable W. Haigh Porter as Special Referee. On April 25, 2019, a Special Referee's Order of Judgment of Foreclosure and Sale Decree was filed with a Notice of Sale of the subject property. The property was subsequently sold at public action, which is recorded with the Marion County ROD's office on August 28, 2019, in Book 466 at Page 309. On October 25, 2019, the Belins filed a Motion to Intervene and a Motion to Set Aside Judgment.

ARGUMENT

What the special referee failed to consider here was whether or not this mortgage was done in compliance with the Dodd-Frank Act, and whether this mortgage was properly executed with a supervising attorney. Because of this, the Appellant requests that the Court allow for a rehearing of this matter and seek an Order remanding this case back to the Special Referee

I. Compliance with the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Here, Appellants assert that the Dodd–Frank Wall Street Reform and Consumer Protection Act 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 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.

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. Moreover, the Belins as tenants are also entitled to protections under the Act. As such, the Dodd-Frank require the Belins to be notified of the foreclosure proceeding.

The Belins have an interest relating to the Property which is the subject of the present action as established by the Dodd–Frank Wall Street Reform and Consumer Protection Act. See 12 USC 5202 "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 record is void of any finding of fact that Dodd-Frank Act

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. 12 USC § 5202 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 a known tenant in possession. None of the above was done nor findings made in the Order of foreclosure. R. at 3.

This foreclosure action must have findings to ensure that Wilmington Savings Fund fully complied with Dodd-Frank. 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 HARP or Dodd-Frank Consumer Protection Act were complied with. *See* R. at 4. The above is an error of federal law and this matter should be remanded for further findings of fact that 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 and seek an Order remanding this case back to the Special Referee to receive testimony from the Belins concerning their interest in the property.

CONCLUSION

In conclusion, as the Dodd-Frank Act was not complied with coupled with the fact that more findings of fact are necessary to determine the potential unauthorized practice of law the Appellant requests that the Court allow for a rehearing of this matter and seek an Order remanding this case back to the Special Referee.

October 5, 2022

/s/ Paul B. Ferrara, III
Paul B. Ferrara, III
SC Bar No. 70511
8887 Old University Blvd.
North Charleston, SC 29406
T: (843) 569-5511/ F: (843) 569-5411
paul@ferraralawfirm.net
Attorney for Petitioner

THE STATE OF SOUTH CAROLINA
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Honorable W. Haigh Porter, Special Referee

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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.

CERTIFICATE OF SERVICE

I, the undersigned counsel, hereby certify that I have served the Petition for Writ of Certiorari and Appendix to respondent’s attorney of record, Peter Balthazor, Esq., by email to peteb@rplfirm.com on October 14, 2022, and by electronic filing to the Clerk of Court of the South Carolina Court of Appeals via one drive.

Respectfully submitted this 14th day of October, 2022.

/s/ Paul B. Ferrara, III
Paul B. Ferrara, III
SC Bar No. 70511
8887 Old University Blvd.
North Charleston, SC 29406
T: (843) 569-5511/ F: (843) 569-5411
paul@ferraralawfirm.net
Attorney for Appellant

FERRARA LAW FIRM, PLLC

8887 Old University Blvd., Ste. 200
NORTH CHARLESTON, SC 29406
T: (843) 569-5511 / F: (843) 569-5411

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Oct 14 2022

SC Court of Appeals

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

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

October 14, 2022

SENT VIA supctfilings@sccourts.org:

Supreme Court of South Carolina
Attn: Patricia A. Howard, Clerk of Court
1231 Gervais Street
Columbia, SC 29201

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

Dear Ms. Howard:

Please find the enclosed Petition for Writ of Certiorari and Appendix, along with proof of service regarding the same. Please file the original and return a clocked copy to our office in the self-addressed, stamped envelope which is enclosed. A two hundred fifty and 00/100 (\$250.00) dollar filing fee has been mailed out. A copy has also been served upon the South Carolina Court of Appeals and to respondent's attorney of record, Peter M. Balthazor, Esq.

Thank you,

FERRARA LAW FIRM, PLLC



Paul B. Ferrara, III

Enclosures: as stated.

Cc: Peter M. Balthazor, Esq.
Clerk of Court of the South Carolina Court of Appeals