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S.C. SUPREME COURT

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.

AMENDED PETITION FOR A WRIT OF CERTIORARI

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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?

INTRODUCTION

Petitioner asserts that the Special Referee’s April 25, 2019, Order of Sale lacked findings of compliance with the Dodd-Frank Wall Street Reform and Consumer Protection Act (hereinafter “Dodd-Frank”) prior to issuing the Order of Foreclosure. Because of the lack of findings of fact on the part of the Special Referee, the South Carolina Court of Appeals erred in affirming the decision, and the Court should have instead remanded the issue for further findings.

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 subsequently 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, back to the lender for thirty-five thousand and 00/00 (\$35,000.00) dollars through the foreclosure process, 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 was whether or not this mortgage was conducted in compliance with the Dodd-Frank Act. Because of this, the Appellant requests that the case be remanded back to the Special Referee for the required findings under Dodd-Frank.

I. The order of sale did not ensure compliance with the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Here, Appellants assert that Dodd–Frank preempts the state law of foreclosure in South Carolina. *See* PUB. L. No. 111-203, 124 STAT. As such, the Dodd–Frank Act must be complied with in every foreclosure matter where the Act is applicable. Moreover 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). Furthermore, "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). Additionally, "[t]he acts of a court with respect to a matter as to which it has no jurisdiction are void." *Id.* Here, jurisdiction and compliance with the Dodd-Frank Act is being raised for the first time on appeal.

The Dodd–Frank 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. In September 2013, Congress passed additional rules that require the lender and servicer to contact primary residence borrowers to advise of loss mitigation options prior to completing the foreclosure process. The record reveals that there were no required findings of fact by the Special Referee that the Dodd-Frank Act was complied with. Further, while there were findings in paragraph 13 of the appealed Order that there were no Home Affordable Modification Program (hereinafter “HAMP”) issues, there were no such findings regarding compliance with the Dodd-Frank. R. at 4.

Moreover, the Belins, as tenants, are also entitled to protections under the Dodd-Frank Act. Dodd-Frank provides protection to tenants subject to foreclosure actions. *See* Public Law 111-203, section 1484. The Protecting Tenants at Foreclosure Act (PTFA) applies to all foreclosures on all residential properties and traditional one-unit single family homes.¹ The Law applies in cases of both judicial and nonjudicial foreclosures. Tenants with lease rights of any kind, including month-

¹ See: Dodd–Frank Wall Street Reform and Consumer Protection Act, section 1484, Pub. L. 111-203 (2010). Section 1484 is titled “Protecting Tenants at Foreclosure Extension and Clarification” and was codified at 12 USC 5220 note.

to-month leases or leases terminable at will, are protected if the tenancy was in effect as of the date of transfer of title at foreclosure. *Id.* Here, the Belins have a tenancy interest relating to the property which is the subject of the present action as established by the Dodd–Frank Act. *See* 12 USC 5202. “A party has standing if the party has a personal stake in the subject matter of a lawsuit and it 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. As such, they should have been provided notice under the Act. The record reveals that the Belins were never served, even though Wilmington Savings Fund Society, FSB knew or should have known of the Belins’ status as tenants on the property. Again, none of the above was done, nor findings made in the Order of Foreclosure to ensure compliance with the Dodd-Frank Act. R. at 3. The above is an error of federal law and this matter should 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,” this matter should be remanded. *Berkeley Elec. Coop., Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 394 S.E.2d at 714 (1990). Based upon the above, the Appellant requests that the Court allow for a rehearing of this matter to the Special Referee to receive testimony from Wilmington Savings Fund Society, FBB, as trustee of Stanwich Mortgage Loan Trust A regarding the Dodd-Frank Act in order to determine the Belins’ interest concerning the foreclosed 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 Belins’ status as tenants on the property, 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.

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