

IN THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

FROM RICHLAND COUNTY MASTER IN EQUITY

Honorable Joseph Strickland, Judge

Case No.: 2012-213210

Rlee Johnson-Homeowner..... APPELLANT

v.

Chase Home Finance LLC, Fannie Mae, APPELLEES

BRIEF OF APPELLANT

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SC Court of Appeals

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1. Chapman v. Upstate RV & Marine, 364 S.C. 389, 405, 477 S.E.2d 715,723 (Ct. App. 1996)7
2. Green v Fritz, 356 S.C. 566, 570, 590 S.E.2d 39,41 (Ct. App. 2003)7

STATUTES

1. None

REGULATIONS

1. None

OTHER REFERENCES

1. Constitution of the United States5
2. Constitution of South Carolina5

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

This case involves a real estate foreclosure. This case was first heard by the Richland County Master in Equity, to wit, Judge Joseph Strickland, by Order of Reference from the South Carolina Court of Common Pleas dated _____ under docket# 2006-CO-40-2436. REC _____. After the Hearing of the Merits in the case on _____ Judge Strickland issued an order which was filed with the Richland County Clerk of Court on 6/11/2008 and a supplemental judgment order was filed on 7/23/2012 under case# 2007-CP-40-7888 granting the Appellee's second foreclosure request. The foreclosure sale was held on 8/6/2012, with the Plaintiff as the successful bidder. Defendant's motion to overturn the judgment was heard and an Order denying the defendant's motion was filed on 10/29/2012.

The Richland County Master in Equity heard the second case pursuant to another Order of Reference (Rec _____) from the Richland County Court of Common Pleas in accordance with Title 14 of the South Carolina Code of Laws Annot. (1976) and Rule 53(a) of the South Carolina Rules of Civil Procedure.

This appeal was timely filed on _____. REC _____.

ISSUES PRESENTED FOR REVIEW

- I. Whether the Appellant was properly notified of the Hearing on the Merits on ;
- II. Whether the Trial Judge erred in failing grant Appellant's Motion to Re-consider;
and
- III. Whether the Appellant was likely to prevail at the Hearing on the Merits.

STATEMENT OF THE CASE

This matter is before the South Carolina Court of Appeals pursuant to an appeal of the Master in Equity granting the Appellee's request for foreclosure on the Appellant's home and denying the Appellant's Motion to Re-open the case. The Appellant

believes that he was not given proper notice of the hearing on the merits in the case, that he had justifiable grounds for not attending the hearing on the merits and that the Master in Equity erred in failing to reopen the case in light of the fact that he was likely to prevail on the merit of his case and had good cause for not attending the supplemental hearing on the merits which he explained to the Court. Rec ____.

FACTUAL AND PROCEDURAL BACKGROUND

The following is a chronology of facts/events that occurred during the prosecution of this case:

1. This matter was first initiated 2006 under case number 2006-CP-40-2436. REC ____.
2. On June 14, 2006, the Court issued an order granting the Appellee's foreclosure request. Rec ____.
3. That case was later dismissed when the Appellant paid the arrearage of approximately \$12,000.00 on or about _____. REC ____.
4. Thereafter on or about April 6, 2007 the Appellant entered a loan modification agreement with the Appellee. REC 113.
5. Prior to the parties entering the April 6, 2007 loan modification agreement the Appellee filed the Summons and Complaint initiating this matter (case# 2007-CP-40-7888) was filed on April 2, 2007 without notice to the Appellant. REC 108. The Appellant therefore thought the foreclosure issues had been resolved and returned to the State of Indiana after giving the Appellee both his street address and post office box address in Indiana.
6. The Summons and Complaint in this case was served on the Appellant by delivery to his mother at his address in Columbia, South Carolina on April 5, 2007. REC _____. The Appellant was not a resident of South Carolina at the time of service of the summons and

complaint. At that time he was a resident of the State of Indiana. Before his return to Indiana the Appellant gave the Appellee all of his addresses in Indiana where he resided.

7. Upon receipt of the summons and complaint in this case from his mother while he was still living in Indiana, the Appellant filed the answer on a timely basis on May 7, 2007. REC ____.
8. The certificate of exemption from Alternative Dispute Resolution and Lis Pendens were filed on November 26, 2007. REC 17.
9. Another Summons – Foreclosure of Real Estate was filed on November 26, 2007 using the same case#, to wit: 2007-CP-40-7888. REC 21. The Appellant was never served with the new filing.
10. Between November 26, 2007 and April 9, 2008 the Appellant paid his mortgage payments or was excused from paying due to the loan modification agreement.
11. Thereafter all went well until the Notice of Final Hearing with a copy of the Master Sale announcement with the property to be sold on June 2, 2008 was filed with the Court but not stamped on April 9, 2008 and not sent to the Appellant in Indiana, REC 29.
12. The Appellant filed his response to the Notice of Sale on a timely basis on April 11, 2008 prior to the June 2008 sale. REC 53.
13. The Notice of Final Hearing, which the Appellant never received, was filed with the Court on April 3, 2008. REC 29.
14. The Appellee filed an Affidavit of Indebtedness on April 22, 2008 which the Appellant never received. REC 60.
15. The Appellant completed the 1st Forbearance on January 27, 2009 with payments to Chase of \$2,000 Down, and \$1,314.43 per month. REC 118.
16. The Appellant entered a 2nd Forbearance to Chase on April 24, 2009 with payments scheduled of \$1,035.00 per Month. REC ____.

17. The Appellant completed the 2nd Forbearance on May 26, 2009 to Chase. REC. _____.
18. Appellant received another Forbearance Plan Agreement from Chase dated December 23, 2009 stating Loan is PAID through November 01, 2008 which listed a Pass Due amount of \$18,516.29 in spite of the fact that the parties had entered and completed two forbearance agreements. REC ____.
19. The Appellee filed The Affidavit of Eligibility for Home Affordable Modification Program (HMP) on June 15, 2009. REC 120.
20. The Appellant received notification of his possible Affidavit of Eligibility for Home Affordable Modification Program (HMP) on June 18, 2009. REC _____.
21. The Appellant never received the actual Eligibility for Home Affordable Modification Program (HMP) documents from said Law Firm or Chase Home Financial, LLC nor any other organization with this mailing. June 17, 2009. REC _____.

SUMMARY OF ARGUMENTS

This matter is before the South Carolina Court of Appeals pursuant to Appellant's appeal of the Master in Equity's order granting the Appellee's request for foreclosure and denying the Appellant's Motion to Re-open the case. The Appellant believes that he was not given proper notice of the hearing on the merits in the case, that he had justifiable grounds for not attending the supplemental hearing and that the Master in Equity erred in failing to reopen the case in light of the fact that he was likely to prevail on the merits of his case.

ARGUMENTS

- I. The Appellant was not properly notified of the Hearing on the Merits.
 - A. Standard of Review.

It is fundamental to the American scheme of justice that before any adverse action is taken against a person that said person must be given

proper notice and an opportunity to be heard. That concept is embedded in the fourth amendment to the Constitution of the United States as well as that of the Constitution of the State of South Carolina. The Appellant requests that this Court take judicial notice of this fundamental aspect of American Jurisprudence.

B. Discussion of the Issue.

In this case the Appellant was not properly notified of the date of the hearing on the merits. The summons and complaint in this case was mailed to the Appellant's mother, who lived in the home of the Appellant which is the property at issue here while the Appellant lived in Indiana, by ordinary mail delivery addressed to the Appellant. His mother forwarded the hearing notice to the Appellant but he did not receive it in time to attend the hearing.

After belatedly receiving the hear notice The Appellant filed a timely Motion to Reconsider, Rec ____.

At the hearing to reconsider the judge's decision Judge Strickland advised the parties to go into the hall and see if they could reach an agreement on the Appellant's motion. However, the attorney for the Appellee told the judge that his client wanted to go forward with the sale. Judge Strickland denied the Appellant's motion to reconsider and the sale of the property on August ___, 2012 went forward with the Appellee as the successful bidder. Rec ____.

The Appellant was therefore denied his right to due process when he was not properly notified of the hearing on the merits at the Indiana

address where he lived that he had given to the Appellee early on in the proceedings.

II. The Trial Judge did err in failing grant Appellant's Motion to Re-consider.

A. Standard of Review.

Under Rule 59 of the South Carolina Rules of Civil Procedure a new trial may be granted ... for any reason for which new trials have heretofore been granted in actions at law in the Courts of this state. ... In non-jury actions the motion shall be made no later than 10 days after the receipt of written notice of the entry of judgment or the filing of an order disposing of the action, if no judgment has been entered.

B. Discussion of the Issue.

The Appellant timely filed his Notice of Motion and Motion to Reconsider. Rec _____. The Court did not have jurisdiction to hear the case on the merits because the Appellant was not properly notified of the hearing on the merits as outlined above. The trial judge did not allow the Appellant to make a proffer as to the evidence which would have been presented at a rehearing of the case when he summarily dismissed the Appellants request to re-open the case.

III. The Appellant was likely to prevail at the Hearing on the Merit.

A. Standard of Review.

The grant or denial of new trial motions rests within the sound discretion of the trial judge and the decision will not be disturbed on appeal unless the findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. Chapman v. Upstate RV & Marine, 364 S.C. 389, 405, 477 S.E.2d 715,723 (Ct. App. 1996);

An appellate Court may only reverse a trial court's decision regarding a new trial nisi if the trial court abused its discretion in deciding a motion for a new trial nisi additur to the extent an error of law results. Green v Fritz, 356 S.C. 566, 570, 590 S.E.2d 39,41 (Ct. App. 2003).

B. Discussion of the Issue.

The Appellant qualified for a home loan modification and was told such by the Appellant. Rec _____. In fact, the Appellant had successfully completed each of the loan modifications that he entered with the Appellee. The Appellant was bewildered by the fact that he was being foreclosed on at the same time that he was under a home loan modification agreement.

There was mass confusion throughout the foreclosure proceedings. The Appellee continually sent documents to the Appellant at the property address when they were notified early on that the Appellant lived in Indiana not at the property address during the course of the proceedings. The Appellant at one point paid over \$10,000.00 to the Respondent to get the prior case dismissed. Thereafter, he complied with every requirement of his loan modification agreement while he was unknowingly being foreclosed on.

The property in question is still in the hands of the Appellee. The Appellant is a Viet Nam veteran who spent two consecutive years in the war. He has fought for this country and deserves better. He has the funds and can afford the mortgage if he is put in another home modification program. He has proven that he is capable of complying with such agreements.

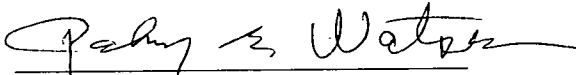
The record as a whole shows that the Appellant constantly sought an explanation as to why he was in foreclosure when he was operating under a loan modification agreement but no reason was ever given to him.

The failure of the trial court to grant the Appellant a new trial by denying his motion to reconsider amounted to an error of law since the court lacked jurisdiction to conduct the hearing on the merits when the Appellant was not properly notified of the hearing on the merits and the Appellant had been complying with his loan modification agreements.

CONCLUSION

The Appellant respectfully request that this Court remand the case to the Master in Equity for a hearing on the merits in which the Appellant is allowed to present his case against the foreclosure of his home.

Respectfully submitted,



Johnny E. Watson,
Attorney for Rlee Johnson
Viet-Nam Veteran Homeowner

Dated: May 23, 2013
Columbia, South Carolina