

THE STATE OF SOUTH CAROLINA  
In the Spreme Court

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**Jan 04 2023**

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Perry H. Gravely, Circuit Court Judge  
Robin B. Stilwell, Circuit Court Judge

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Case No. 2022-001724

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

Michelle Hodges, Individually and as Personal Representative  
of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon;  
SC Housing Corp.; and Twin Creeks Homeowners Association,  
Inc. Defendants,

Of Whom Michelle Hodges, in her Individual capacity,  
is the Appellant.

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**PETITION FOR A WRIT OF CERTIORARI**

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Michelle Hodges, Pro Se Petitioner  
6 Young Harris DR  
Simpsonville, SC 29681  
864-692-3748

**COUNSEL OF RECORD:**

S. Sterling Laney, III, Esquire  
Womble Bond Dickinson  
For Wells Fargo Bank, N.A.  
550 South Main ST  
Suite 400  
Greenville, SC 29601

**INDEX**

MOTION TO REINSTATE AND FILE PETITION FOR CERTIORARI OUT OF TIME.....

TABLE OF AUTHORITIES.....

CERTIFICATE OF PETITIONER.....

QUESTIONS PRESENTED.....

CAN A VOID ORDER BE ATTACKED IN ANY PRECEEDING AT ANY TIME

ARE THE CIRCUIT COURT ORDERS VOID FOR LACK OF JURISDICTION

WAS THERE A CONSPIRACY TO DEPRIVE PETITIONER OF JUSTICE

STATEMENT OF THE CASE.....

AFFIDAVIT OF POINTS AND AUTHORITIES.....

A. Introduction.- Jurisdiction , Case of first Impression and exception for a void order to be  
attacked any time .....

B. lack of jurisdiction.....

C. Conspiracy.....

D. Violation of Due Process.....

CONCLUSION.....

requests cost and sanctions

**TABLE OF AUTHORITIES**

**CERTIFICATE OF PETITIONER**

Petitioner hereby certifies that the Petition for Rehearing was made an finally ruled on by the the Court of in an Order dated



## Statement of the Case

Mrs. Ruth Witherspoon (a/k/a my Mother) executed a Note and Mortgage on March 28, 2012 to purchase the subject property and on July 5, 2015 passed away. Wells Fargo instituted this action on December 22, 2017 after financial assistance from SC Help was completed and I could no longer make the payments. The Complaint shows that Wells Fargo stipulated to my ownership in the subject property, under 2 scenarios, 1) as one of the remaining heirs of Mrs. Ruth Witherspoon and 2) as one of the remaining joint tenants, as the Deed of NVR/"Special Warranty" Deed shows the property was granted to, Ruth Witherspoon, her heirs and assigns.....as joint tenants and not as tenants in common) (R. Complaint, p. lines ) (R. Special Warranty, p. lines ). And my Sixth Amended Answer shows that I admitted to Wells Fargo's stipulations concerning my ownership rights, which remove my ownership rights from the controversy. However, Wells Fargo filed a document with the Circuit Court on January 2, 2018, entitled "Certificate Of Non Owner Occupancy Due To Death Of Mortgagor"(a/k/a "Certificate). I objected to the conclusion of this document, because the term "non owner occupancy" is an old mortgage term for a property that is owned by the mortgagor, but the mortgagor does not occupy the property as his/her primary residence. And I also stated that I am the owner and I occupy the property.(R. Sixth AA, p. lines ) I wanted to make this clear, because I did not fully know my rights and if I wanted to seek financial assistance, mostly all of the organizations required that the owner occupy the property as their primary residence and I did not want this document to hurt my chances because the court over see the Foreclosure Interventio Program.. Not only that the document is false, because, while my Mother was previously the owner, my Mother was not the owner when Mr. Wyman fabricated the "Certificate" on January 2, 2018, because the property had already passed to me and my brother by law on the day my Moher passed away. However, I

3

did not understand the full ramifications of my ownership rights until this year, when I found case law that shows a remaining joint tenant owns the property free and clear of any claims by the Creditor and that the mortgage lien does not survive the death of the mortgagor. (R. Sixth AA, p. lines ) Wells Fargo moved for summary judgment and Mr. Gravely granted Summary Judgment in favor of Wells Fargo, holding that my Mother is the owner of the subject property. Mr. Gravely held "The loan in question was entered into on March 28, 2012 between Defendant's mother, Ruth Witherspoon, and NVR Mortgage....". In South Carolina the Mortgagor is associated with being the owner of the land. Just like Wells Fargo's "Certificate" implied. However, Mr. Gravely was aware that my Mother is deceased, because it states in the "Certificate" that mortgagor is deceased. And when Mr. Gravely was addressig my allegations that the document was fraudulent/fabricated (R. Memo in Opp of SJ, p lines). Mr. Gravely held "there is nothing fraudulent about the statements at issue.(R. Order, p. 13, line 23), which demonstrates that Mr. Gravely was participating in a Conspiracy with Mr. Jason D. Wyman (100271), who created/fabricated the "Certificate". Wells Fargo has a need for my Mother to still be the owner of the property because then Wells Fargo can still claim is has a valid lien. And Wells Fargo's prayed for the Court to "Declare Plaintiff's Mortgage a purchase first money lien. (R. Complaint, p. lines ) If my Mother is not the owner, then Wells Fargo does not have an inforceable lien. And it was pretty slick for Wells Fargo's attorney to file the "Certificate" and make an allegation that my Mother is the owner outside of the complaint, so that it could be ruled upon by way of summary judgement. However, when filing the motion and attaching exhibits Wells Fargo's attorney's did not attached the "Certification", so Mr. Gravely ruled on document that was not properly before the court. Wellls Fargo's Reply in support of the MSJ, shows Mr. Laney(6933), participated in the conspriacy, as he referenced the "Certificate" and stated "neither

4

of the pleadings which Defendant complains about were false." (R. Reply in support, p. 153, line 1). Mr. Gravely went on to rule that Wells Fargo has a right to enforce the Note under the South Carolina Uniform commercial code but the Note was only signed by my Mother and Under the South Carolina Uniform commercial code only the person who signed the Note is liable. Mr. Gravely's rulings show that he violated his oath of office of impartiality as he simply ruled in Wells Fargo favor and the procedures used to arrive at his decision were simply to rule in Wells Fargo's favor as he did not use the safeguard procedures under the South Carolina Rules of Civil Procedure, Rule 56 of basing his decision on the record, which lead the violation of my protected liberty interests under the law of intestate an joint tenancy and failed to follow safeguard procedures to prevent an unjust deprivation of my substantive due process rights, under the South Carolina Constitution and the United States Constitution XIVTH Amendment. . At all relevant times Mr. Gravely has been a judge in the Circuit court, while ruling under the South Carolina Rules of Civil Procedure, Rule 56 and above deprivations would not have occurred if Mr. Gravely had not been the judge in this case.

### **AFFIDAVID OF POINTS AND AUTHORIES**

#### **Lack of Jurisdiction (Power To Grant The Relief Reusted)**

Mr. Gravely ruled "a secured creditor does not have to file a claim in the probate estate when he is solely seeking to foreclose the mortgage... " (R.

Mr. Gravely went on to hold his court had jurisdiction due to proper venue and referred to the "S. C. Probate Code Ann. 62-3-103 ("This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency



judgment which might be sought therein.") The South Carolina Code provides in relevant part: "Mortgage" means a lien against real property that is granted to secure the payment of money ...". While this definition appears to help clarify that a "secured creditor" is a mortgagee with a valid lien and that Mr. Gravely granted the relief requested, because Wells Fargo prayed for the Circuit court to "Declare Plaintiff's Mortgage a purchase first money lien". The jurisdiction exercised, by Mr. Gravely, as shown above is that Mr. Gravely deemed Wells Fargo to be a secured creditor/mortgagee with a valid lien. However, Mr. Gravely's reliance on proper venue and the South Carolina Probate Code 62-3-104, as operable jurisdictional statements, do not support the jurisdiction exercised; because proper venue and waiver of a deficiency judgment are not elements considered in the determination of whether or not a Creditor has a valid lien. And the South Carolina Court of Appeals held, "Whenever, in law or equity, a lien is created or declared there are two things prominently concerned, namely an obligation and a res or rem to which or upon which that obligation fastens itself...". See, in Carolina Attractions, Inc., v. Courtney, 287 S.E. 140, 145, 337 S.E. 2d 244, 247 (Ct. App. 1985). And the only obligation and res/rem referred to by Wells Fargo is the Note and Mortgage executed by my Mother (Mrs. Ruth Witterspoon) (R. Complaint, p. lines). However, my Mother's ownership interest, which was attached to the Note and Mortgage ceased to exist on July 5, 2015, the day my Mother passed away and so did Wells Fargo's supposed security interest. Per the Illinois Supreme Court ruling in Harms v. Sprague. Per the South Carolina Court of Appeals " Since my Mother's property interest and Wells Fargo's supposed security interest ceased to exist on July 5, 2015 and Record does not reflect that Wells Fargo's security interest was not affected by did not The only Also per . Per the jurisdiction exercised must be supported by the jurisdictional facts in the record Additionally the South Carolina Supreme Court has held "Specifically, '[j]urisdiction is

composed of three elements: (1) personal jurisdiction; (2) subject matter jurisdiction; and (3) the court's power to render the particular judgment requested.' "" "Id. (quoting *Indep. Sch. Dist. No. 1 of Okla. County v. Scott*, 15 P.3d 1244, 1248 (Okla. Civ. App. 2000))." See also *Beach First Nat'l Bank v. Gurnham (In re Estate of Gurnham)*, 407 S.C. 194, 205, 754 S.E.2d 875, 881 (2014). The Supreme Court of Oklahoma held "In *LaBellman v. Gleason and Sandes, Inc.*, Okla., 418 P. 2d 949 (1966), this court set forth the standard for declaring a judgment void: The court rendering the judgment must lack either (1) jurisdiction of the parties; (2) jurisdiction of the general subject matter; or (3) jurisdiction of the particular matter which the judgment professes to decide."

violation of rule 8. The Record shows that the Circuit court lacked the power to render the particular judgment , because there is no grounds, including facts and a statute that give the Circuit court the power to rule that therefore the Circuit court's Orders are "Void Ab Nitio".

According to the Because this ruling is based on my Mother still being the owner of the subject property, or is based on a non existent property intest, it vThis ruling is based on a non existent property interest is

#### VIOLATION OF DUE PROCESS

I have a protected liberty interest as one of the remaining joint tenants, which provides me with immediate vesting of ownership rights in the subject proeprty free of any claimed liens by Wells Fargo. under the South Carolina Code Ann. 27-7-40(a)(ii) which provides in relevant part:

However I have suffered an unjust deprivation of my said liberty interest because Mr. Gravely exercised jurisdiction that did not match the jurisdictional facts in the record, which demonstrates that Mr. Gravely wanted to rule in favor Wells Fargo, rather than use the safeguard procedures of basing his rulig on the record that provides grounds, facts and a statute that matched the correct

jurisdiction, in accordance with the South Carolina Rules of Civil Procedure, Rule 8. Additionally the procedures used by Mr. Gravely was to conspire against my right to own the subject property demonstrated when he held that was noting fraudulent about the certificate, when he knew that my Mother previously had a property interest but not when Mr. Wyman fabricated the certificate on January 2, 2018. and this procedures violated my Substantive Due process rights under the South Carolina Constitution Article and the United States Constitution, Fourteenth Amendment.1 152 , line 20 (not a debtor)

"Elements of a civil conspiracy are 1)a combination or agreement of two or more persons 2) to committ an unlawful act or a lawful act by unlawful means, 3) together with an overt act in furtherance of the agreement an 4) damages. See Paadis v. Charleston Cty. Sch. Dist., No. 2018-002025, 2021 WL 1992245 at \*1(S.C. May 19, 2021)

8

QUESTIONS PRESENTED

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APPENDIX

1. Copy of the Reccord 1-165
2. Copy of Petition for Rehearing 166-179
3. Decision of Court of Appeals 180-193
4. Court of Appeals Dispositional Order 194-196  
Motion for reinstate
5. Request for Costs and Sanctions

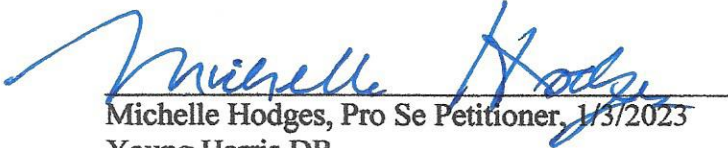
THE STATE OF SOUTH CAROLINA  
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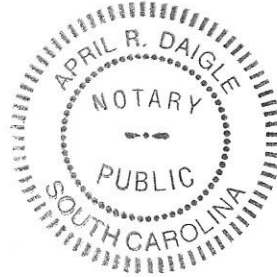
APPEAL FROM GREENVILLE COUNTY

9

Respectfully submitted,

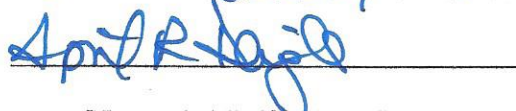


Michelle Hodges, Pro Se Petitioner, 1/3/2023  
Young Harris DR  
Simpsonville, SC 29681  
864-692-3748  
Certified mail to:  
PO Box 95  
Mauldin, SC 29662



Sworn/affirmed before me this

3 day of January, 2023.



(Notary Public/Clerk of Courts)

my commission expires: 8.25.2032