

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Hon. Joseph M. Strickland, Master in Equity
Case No. 2007-CP-40-7888

RECEIVED
JUN 24 2013
SC Court of Appeals

South Carolina Court of Appeals Appellate Case No. 2012-213210

Federal National Mortgage Association,

RESPONDENT,

v.

Rlee Johnson; Ford Motor Credit Company; Epting Distributors, Inc.,
Defendants

Of whom Rlee Johnson,

APPELLANT.

INITIAL BRIEF OF RESPONDENT

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ISSUE PRESENTED

I. Whether the Trial Judge properly denied Appellant's Motion to Reconsider and therefore properly allowed the foreclosed property to proceed to sale.

STATEMENT OF THE CASE

Foreclosure proceedings were initiated against Rlee Johnson, Appellant, on November 26, 2007. (Civil Action Number 2007-40-7888). *Foreclosure Complaint*. As shown by the Affidavit of Service filed in the action, the Appellant was personally served on December 12, 2007. *Foreclosure Affidavit of Service*. No Answer or other responsive pleadings were filed by the Appellant, as shown by the Affidavit of Default filed on March 7, 2008. *Foreclosure Affidavit of Default*. The case was referred to the Honorable Joseph M. Strickland as Master in Equity for Richland County, and a hearing was scheduled for April 15, 2008. *Notice of Final Hearing 2008*. The Notice of Final hearing was served on the Appellant at both the property address and his address in Indiana. *Notice of Final Hearing 2008*. The Appellant notified the court that he would like a continuance, and the hearing was rescheduled for April 22, 2008. *Summons and Order of Appointment 2008*. The hearing went forward and judgment was entered on June 11, 2008. *Master's Order and Judgment of Foreclosure Sale*. Pursuant to South Carolina Supreme Court Order 2011-05-02-01, the foreclosure intervention process was completed and a Certification of Compliance with Administrative Order 2011-05-02-01 was filed on February 23, 2012. *Certification of Compliance with Administrative Order 2011-05-02-01*. Pursuant to South Carolina Supreme Court Order 2009-05-22-01, an Affidavit of Non-Eligibility for the Home Affordable Modification Program (HMP) was filed on April 9, 2012. *Affidavit of Non-Eligibility for the Home Affordable Modification Program*

(HMP). A supplemental hearing was scheduled for July 9, 2012 and the Appellant was sent notice on June 28, 2012, at the property address, a physical address in Indiana, and his Indiana PO Box. *Notice of Hearing 2012*. The Court also sent notice of the hearing scheduled for July 9, 2012. *Summons and Order of Appointment 2012*. The hearing went forward as scheduled, and judgment was entered on July 16, 2012. *Supplemental Master's Order*. Subsequently, the Appellant filed a Notice of Motion and Motion to Reconsider Supplemental Hearing and Court Order Sale and to Dismiss Sale of Property on July 17, 2012. *Defendant's Motion July 2012*. The Defendant's Motion was denied and the Order was entered on October 29, 2012. *Order*. The Appellant has appealed the denial of said motion. The property proceeded to sale as scheduled and a deed was issued to Federal National Mortgage Association on August 29, 2012, and recorded in Deed Book 1795 at Page 3215. *Master in Equity's Deed*.

The Appellant filed his Notice of Appeal on October 8, 2012 and served his Initial Brief on May 23, 2013.

ARGUMENTS

- I. THE APPEAL SHOULD BE DISMISSED BY THE COURT FOR THE DEFENDANT'S FAILURE TO CITE SUPPORTING AUTHORITY IN THE ARGUMENTS PRESENTED IN HIS BRIEF.

When a party fails to cite supporting authority for its position and makes merely conclusory statements, the issue is abandoned on appeal. *Mulherin-Howell v. Cobb*, 362 S.C. 588, 600, 608 S.E.2d 587, 593-94 (Ct. App.2005). In *Holly Woods Ass'n of Residence Owners v. Hiller*, the Appellants attempted to argue that "the trial court erred in failing to direct a verdict on the Association's equitable causes of action for specific performance and quiet title..." 392 S.C. 172, 190-91, 708 S.E.2d 787, 797 (Ct.

App. 2011). The Court of Appeals declined to address this argument on the merits, stating that “[i]n their brief, Appellants fail to cite any case law or authority in support of their argument. An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.” *Id.* (citing *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (finding appellant abandoned issue when he failed to provide argument or supporting authority)).

Appellant’s first argument captioned “The Appellant was not properly notified of the Hearing on the Merits”, which extends from page 4 through 6 of the Appellant’s Initial Brief, cites no supporting authority. *Appellant’s Initial Brief* p. 4-6. The Appellant fails to cite case law, any rules of court or procedure, or any other type of legal authority. *Appellant’s Initial Brief* p. 4-6. Therefore, the Court should decline to consider this argument and deem the issue abandoned on appeal.

In regards to the Appellants second argument titled “The Trial Judge did err in failing to grant Appellant’s Motion to Re-consider”, which can be found on page 6 of the Appellant’s Brief, is also lacking in supporting authority. *Appellant’s Initial Brief* p. 6. The Appellant does cite Rule 59 of the South Carolina Rules of Civil Procedure in his standard of review, but then fails to relate the rule to his discussion of the issue below. *Appellant’s Initial Brief* p. 6. In Appellant’s discussion of the issue, he failed to cite any supporting authority and instead tried to relate his position back to points brought up in his previous argument, which also completely failed to cite any supporting authority. *Appellant’s Initial Brief* p. 6. Accordingly, the Court should decline to consider this argument and deem the issue abandoned on appeal.

Appellant's final argument entitled "The Appellant was likely to prevail at the Hearing on the Merit" which extends from page 6 through 8 of Appellant's Brief, follows the same path as the second argument. *Appellant's Initial Brief* p. 6-8. The Appellant cites two cases in his standard of review and then proceeds with over a page of arguments containing no references to any supporting authority. *Appellant's Initial Brief* p. 6-8. The first sentence of the Appellant's arguments attempts to reference to the record on appeal; however, no document is actually named or identified and there is thus no way for the Respondent or the Court to ascertain to what document the Appellant is referring. *Appellant's Initial Brief* p. 6. No citations or legal references can be found at any point in the remainder of the argument. *Appellant's Initial Brief* p. 6-8. Therefore, all of the Appellant's arguments must be declined for consideration and deemed abandoned on appeal based upon the Appellant's abject and total failure to support said arguments.

It is extremely difficult to respond to argument after argument that fails to state any supporting authority and appears to be nothing more than the unsupported legal conclusions of opposing counsel. Especially when the Appellant is only making vague references to an as of yet un-established record on appeal and the Respondent can only hazard a guess at what is actually intended to be argued and referenced.

II. THE COURT OF APPEALS SHOULD DISMISS THE APPEAL ON THE GROUNDS THAT THE APPELLANT HAS FAILED TO PRESERVE FOR APPEAL THE MATTERS APPELLANT HAS DESIGNATED FOR ARGUMENT.

In addition to the Appellant's failure to cite supporting authority, the Appellant makes constant reference to issues that have not been properly preserved for appeal. "To preserve an issue for appellate review, the issue cannot be raised for the first time on

appeal, but must have been raised to and ruled upon by the trial court.” *Doe v. Doe* 370 S.C. 206, 212, 634 S.E.2d 51, 54 (Ct. App. 2006) (citing *Floyd v. Floyd*, 365 S.C. 56, 73, 615 S.E.2d 465, 474 (Ct. App. 2005)). All issues must be raised and ruled upon by the trial court to be preserved for appellant review. *In re McCracken* 346 S.C. 87, 92, 551 S.E.2d. 235, 238 (2001).

The Appellant states that he qualified for a home loan modification and successfully completed a modification. *Appellant’s Initial Brief* p. 7. Appellant further contends that at one point he paid over \$10,000.00 and is capable of complying with modification agreements. *Appellant’s Initial Brief* p. 7. These alleged propositions were never raised in the trial court, no documents supporting these conclusions were ever presented into evidence, and certainly no ruling in relation to these unsupported statements was ever made. *See generally Appellant’s Brief and Record on Appeal*. It appears that perhaps the Appellant may be attempting to support some of the above unsubstantiated conclusions with the inclusion of unwarranted documents in his prematurely prepared Record on Appeal.

“At the same time a party serves his initial brief(s) ...he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal.” Rule 210(a), SCACR. Instead, Appellant served a bounded Record on Appeal, which was not only untimely but contained numerous inappropriate documents. “The Record shall not, however, include matter which was not presented to the lower court or tribunal.” Rule 210(c), SCACR. Although the Appellant’s Brief fails to cite to any particular document in the proposed record, Respondent can only assume that the numerous inappropriately included letters, notices and accounts statements are intended to in some

way support the above claims. *See generally Appellant's Brief and Record on Appeal.* In the event that the above mentioned documents remain in the actual Record on Appeal, Respondent respectfully asks the court to take note of both their impropriety and the fact that they do not substantiate any of the above claims. *See generally Appellant's Brief Record on Appeal.*

III. IN THE EVENT THAT THE COURT DECIDES TO HEAR THE UNSUPPORTED ARGUMENTS OF THE APPELLANT, EACH ARGUMENT FAILS ON THE MERITS.

A. The Appellant was properly provided notice of the hearing.

According to the South Carolina Rules of Procedure, the Defendant need only be served with written notice 3 days prior to the hearing. Rule 55(b)(2), SCRPC. In this case, the supplemental hearing was scheduled for July 9, 2012, and the Appellant was sent notice on June 28, 2012. *Notice of Hearing 2012.* Therefore, the Appellant was given more than ten days notice of the hearing. The Notice of Hearing was served on all known addresses of the defendant, which included the property address, a physical address in Indiana, and his Indiana PO Box. *Notice of Hearing 2012.*

Appellant states that “[t]he 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.” *Appellant's Initial Brief* p. 5. Although it is unclear what the service of the Summons and Complaint, which occurred in 2007, has to do with the Appellant’s ability to attend a hearing in 2012, the Respondent would respectfully point out to the Appellant that this statement is incorrect. The Summons and

Complaint were personally served upon the Appellant at 7480 Merganser Drive Apt B, Indianapolis, IN 46260. *Affidavit of Service on Rlee Johnson*. In regards to the statement that Appellant's mother had to forward him the notice of hearing, Respondent would again point out that as stated above, the Notice was timely and properly served on all the Appellant's known addresses. *Notice of Hearing 2012*. Additionally, the correspondence received in the last several years from the Appellant has shown the property address as the current address of the Appellant as well as a South Carolina phone number. *Notice of Motion and Motion to Reconsider, Answer to Certification of Compliance with Administration Order*. In fact in his response to the Administrative Order, the Appellant states that he has been living on the property since June 2010. *Answer to Certification of Compliance with Administration Order*.

Therefore, the Court should find that the Appellant was properly served with The Notice of Hearing and that the Appellant's argument is without merit.

B. The Master in Equity was correct to deny the Appellant's Motion to Reconsider

The Appellant states that the "court did not have jurisdiction to hear the case on the merits because the Appellant was not properly notified of the hearing..." Jurisdiction is defined as "a court's power to decide a case or issue a decree." *Blacks Law Dictionary* 671 (3rd pocket ed. 1996). Whether or not a defendant was or was not properly served with a notice of hearing would have zero effect on the court's jurisdiction. The court therefore properly heard the defendant's motion and was proper in issuing its denial.

In his brief, the Appellant also states he is unsatisfied with what evidence he was allowed to produce at the hearing. *Appellant's Initial Brief* p. 6. However, the admission of evidence is within the sound discretion of the trial judge, whose ruling will not be

disturbed on appeal absent an abuse of discretion. *State v. Bannon* 347 S.C. 85, 89, 552 S.E. 2d 773, 776 (S.C. App. 2001). The Appellate Court reviews errors of law only, and is bound by the trial court's factual findings. *Id.*

Therefore, the Court should find that the Judge properly denied Appellant's Motion to Reconsider.

C. The Appellant would not have prevailed at a hearing on the Merits.

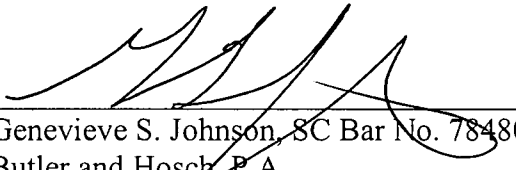
The Appellant is in default in the underlying foreclosure action. *Affidavit of Default*. Furthermore, the final hearing was held on April 22, 2008, and judgment was entered on June 11, 2008. *Master's Order and Judgment of Foreclosure Sale*. The hearing at issue on this appeal was merely a supplemental hearing of which the main purpose was to update the final amount of damages. *Supplemental Master's Order*. A defendant in default has conceded liability, and at a damages hearing would be only allowed limited participation in order to question the final amount of damages. *Howard v. Holiday Inns, Inc.* 271 S.C. 238, 241-42, 246 S.E.2d. 880, 882 (1978). Therefore, it would be impossible for the Appellant to have prevailed at the hearing in so much as the Appellant claims he might have been able to prevent a sale of the property. At that time, the Respondent had judgment and the right to sell the property since 2008. At most the presence of the Defendant at the hearing might have had a minor impact on the difference in the judgment/damages amount between 2008 and 2012; however, deficiency judgment already having been waived, this would to have been of little relevance to the overall outcome.

For the reasons outlined above, the Appellant would not have been successful at the hearing and the decision of the trial Judge should be affirmed.

CONCLUSION

Wherefore, based on the forgoing, the Respondent respectfully submits that this Court should affirm the decision of the Master in Equity to deny the Appellant's Motion to Reconsider and his decision to allow the property to proceed to sale.

June 24, 2013



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APPELLANT.

RESPONDENT'S DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

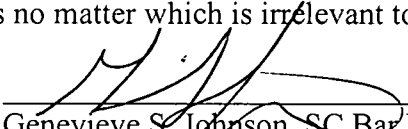
Respondent proposes the following be included in the Record on Appeal:

1. Lis Pendens, Summons and Complaint;
2. Affidavits of Service;
3. Affidavit of Default;
4. Order of Reference;
5. Notice of Final Hearing and Certificates of Mailing (filed on 04/09/2008 and 07/02/2012);
6. Summonses and Orders of Appointment (filed on 04/16/2008 and 06/27/2012);
7. Affidavits of Indebtedness;
8. Transcript of Testimony;
9. Master's Order and Judgment of Foreclosure and Sale;
10. Notice of Denial;
11. Certification of Compliance with Administrative Order 2011-05-02-01;
12. Affidavit of Non-Eligibility for the Home Affordable Modification Program (HMP);

13. Answer to Certification of Compliance with Administration Order 2011-05-02-01;
14. Supplemental Master's Order;
15. Supplemental Transcript of Testimony;
16. Notice of Motion and Motion to Reconsider Supplemental Hearing and Court Order Sale and to Dismiss Sale of Property Located at 524 Almeda Drive Columbia, South Carolina on 6 August 2012;
17. Master in Equity Foreclosure Deed;

I certify that this designation contains no matter which is irrelevant to this appeal.

June 21, 2013



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CERTIFICATE OF SERVICE

The undersigned counsel for the Respondent does hereby certify that she has served the Appellants counsel with a copy of the **Initial Brief of Respondent and Respondent's Designation of Matter to be Included in the Record on Appeal** by mailing a copy of the same on the date below via UPS Next Day Air to the following address:

Johnny E. Watson, Sr., Esq.
Post Office Box 2305
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June 24, 2013


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