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THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

PETITIONER’S REPLY TO THE RETURN TO PETITION FOR WRIT OF CERTIORARI
FILED BY RESPONDENT SUMMIT FUNDING, INC.

Court of Appeals No.: 2018-CP-46-01592

Karen K. Baber,Appellant/Petitioner,

vs.

Summit Funding, Inc; Appraisal Innovations, LLC; Brian L. Blue; The Gillen Law Firm, PA;
Michael F. Gillen; Allen Tate Co. Inc.; Colleen Coesens; Jonathan Garvey; Robert Ouzts;
Connie Delaney; and Gloria Long- Robinson..... Respondents.
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REPLY TO THE RETURN TO PETITION FOR WRIT OF CERTIORARI
FILED BY RESPONDENT SUMMIT FUNDING, INC.

Karen K. Baber
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INTRODUCTION

Pursuant to Rule 242(g) of the SCACR, Petitioner/Appellant, Karen K. Baber (“Baber”) acting pro se, hereby files her Reply to the Return to Petition for Writ of Certiorari (the “Return”) filed on behalf of Summit Funding, Inc. (“Summit”). Contrary to Summit’s bald statement, Baber’s Petition for Writ of Certiorari (“Petition”) is not an effort “to delay the dismissal of a case that was wholly and completely frivolous when filed.” The facts asserted by Baber in her Verified Complaint and in her affidavit in opposition to Summit’s motion for summary judgment set forth substantial and compelling evidence to show that the terms of her loan agreement were violated by Summit when it failed to obtain a CL-100 wood infestation report and a valid appraisal which would have revealed material defects in the subject property and would have saved Baber from purchasing an unfit home. It would have allowed Baber to purchase a home which met FHA underwriting guidelines and for which she had been qualified.

Facts also were asserted showing that Summit’s counsel grossly misled the Superior Court by failing to cite communications in emails both prior to and after the closing from ***Summit’s own local, regional and national offices stating that the CL-100 wood infestation report was a condition of her loan, that it had been provided, and the loan could not have closed without it.*** It is bewildering that the Superior Court so clearly dismissed the overwhelming evidence in Baber’s pro se affidavits in opposition to the Defendants’ motions for summary judgment and which, if not warranting summary judgment in Baber’s favor, at least created numerous disputes of material fact which should have precluded granting summary judgment to Summit.

For these and other reasons previously set forth herein and in Baber's Petition, a writ of certiorari should be issued in this case to the South Carolina Court of Appeals so that this Court can rule on several novel issues identified in the Petition.

ARGUMENT

In its Return, Summit fails to address the overarching issue raised on appeal regarding the Superior Court's failure to allow Baber to complete her discovery from Summit which had been issued prior to the time Summit filed its motion for summary judgment and which sought discovery on all relevant issues raised in that motion.¹ The failure to allow Baber to obtain discovery is an issue that tainted the entire proceedings below and would have obviated every argument raised by Summit in the Superior Court and on the appeal. This overarching and foundational issue was never even addressed by the Court of Appeals, even when given the opportunity to do so in response to Baber's request for rehearing. What is to be done when an appellate court fails to even consider a dispositive issue which impacts every other summary judgment and appellate issue? This is a novel question of law for the Supreme Court and which, in and of itself, warrants issuance of the Petition, and ultimately for the remand of Baber's case to the Superior Court so that Baber's case may be considered on its merits having been improperly dismissed on summary judgment.

As to the matters that Summit did address, it argues that the issue regarding Baber's lack of standing to bring a cause of action regarding violation of a federal regulation was raised in Baber's appellate brief (although not as artfully or as clearly as it could have been) and in the

¹ Baber issued her discovery to the Defendants on February 13, 2019. On March 15, 2019 Summit filed a motion for summary judgment, completely ignoring its obligations under the rules respond to the discovery requests within 30 days.

motion for reconsideration. *See e.g.*, Baber’s Petition at pp. 21 - 22 and Motion for Rehearing at pp. 2 – 3. It was clear that the subject loan was an FHA-guaranteed loan that was required to meet FHA-underwriting guidelines. Various loan documents referred to the FHA requirements, and Summit’s loan officers repeatedly (and correctly) admitted that the CL-100 was a **condition** of the loan and that it could not have closed without it. They then wrongly represented to Baber that the CL-100 had been obtained showing the subject property clear of termite damage.

Similarly, the issue concerning the Superior Court’s failure to consider evidence creating clear disputes of material fact as to when the statute of limitation began to run on Baber’s claim also was raised in Baber’s appellate brief (although not as artfully or as clearly as it could have been) and in the motion for reconsideration. *See, e.g.* Petition at p. 22 and Motion for Reconsideration at p. 3.

Rule 242(d)(2), SCACR provides in relevant part that: “[o]nly those questions raised in the Court of Appeals and in the petition for rehearing shall be include in the petition for writ of certiorari as a question presented to the Supreme Court. A question presented will be deemed to include every subsidiary question fairly comprised therein.” As shown in Baber’s Petition, both the issue of standing to assert breach of contract of underwriting guidelines which were clearly incorporated into her agreements with Summit (and admitted to have been by Summit’s employees) and the statute of limitations were preserved. They were certainly “reasonably clear from the appellant’s arguments.” *Greenville Bistro, LLC v. Greenville County*, 435 S.C. 146, 170 – 171, 866 S.E.2d 562, 575 (2021) (quoting *Herran v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011)), *Eubank v. Eubank*, 347 S.C. 367, 555 S.E.2d 413, note 2 (Ct.App. 2001).

CONCLUSION

Based upon the record below, the Court of Appeal's opinion and its refusal to reconsider its decisions were in error. Accordingly, this Court should issue a writ of certiorari to address the novel issues of:

1. Whether a case should be remanded when an appellate court fails to address a fundamental issue presented on appeal which impacts every other issue raised.
2. Whether a borrower may assert a breach of contract claim when a lender fails to comply with FHA underwriting guidelines on an FHA-guaranteed mortgage loan. *See Kolbe v. BAC Home Loans Servicing, LP*, 738 F.3d 432, 436 (1st Cir. 2013); *Assured Guar. Mun. Corp. v. Flagstar Bank, FSB*, 920 F.Supp.2d 475, 509 (S.D.N.Y. 2013); *Overholt v. Wells Fargo Bank, N.A.*, 2011 WL 4862525, *5 (E.D.Tex. Sept. 2, 2011); *Mullins v. GMAC Mortgage, LLC*, 2011 WL 1298777, at *2 (S.D.W.Va. March 31, 2011); *In re Shelton*, 481 B.R. 22, *30 (Bankr. W.D.Mo. 2012); *Winnebago Homes, Inc. v. Sheldon*, 139 N.W.2d 606, 610 (Wis. 1966).
3. How detailed must the description of the "Issues on Appeal" when included argument clearly includes or whether the court should be more lenient in how the issues on appeal are presented in referenced matter in the body of the brief where there are clear questions as to the competency of counsel.

DATED this 16th day of June, 2023.

/s/ Karen K. Baber
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