

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Master in Equity

Case No. 2015-CP-46-03068

Appellate Case No. 2016-002161

The Bank of New York Mellon fka The Bank of New York as Trustee (CWALT
2004-2CB), Respondent,

v.

Tara B. Barfield a/k/a Tara Burdiss Barfield, Samuel C. Barfield, SouthTrust
Bank, N.A., Beneficial Finance I Inc., CACH, LLC, and The South Carolina
Department of Revenue,

Of Whom Tara B. Barfield is the Appellant,

AMENDED FINAL REPLY BRIEF OF APPELLANT

Tara B. Barfield
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Tega Cay, South Carolina 29708
(704) 293-0132
Appellant Pro Se

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CASES

Gilmer v. Martin S.C. 154, 156, 473, S.E.2d 812. 813 (ct. App.1996)

Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 673 S.E.2d 440, (Ct. App. 2004)

Supreme Court of the United States; *Jesinoski Et UX. V. COUNTRYWIDE HOME LOANS, INC. ET AL* (pages 1-5)

STATUTES

Regulation Z of the Federal Reserve Board - section 226.39

S.C. Code §16-13-240 – Obtaining Signature or Property by false pretense

S.C. Code §16-13-260 – Obtaining Property under false tokens and letters

S.C. Code §16-13-10 – Forgery

Truth in Lending Act (TILA) - 15 U.S. Code § 1635 (a-g) Rescission

Truth in Lending Act (TILA) - 15 U.S. Code § 1641 section 131 (g) Transfer of Mortgage

RESPONSE

In response to the Final Brief of Respondent; I would like reiterate and reaffirm the entire contents of my Initial Brief and Final Brief and to also offer these responses to the arguments contained in the Respondent's Initial Brief and Final Brief.

The evidence submitted by the Respondent concerning the existence of the debt and the Appellant's default on that debt have been disputed. I have never admitted default on the debt and I have presented evidence to the lower court that clearly shows that the facts of the case are disputed. Please note that the case file included the issues that I have raised.

The subject loan was rescinded under the Truth in Lending Act (herein after referred to as TILA) on October 13, 2015 and thus the subject Note & Mortgage were null & void before the hearing was held and before the (judgement) was entered. Therefore, the plaintiff should not have been granted relief on the basis of void instruments (Notice of Rescission, Proof of Mailing & Delivery, and Answer & Defenses p. 4). Please note that the recent Supreme Court of the United States; *Jesinoski Et UX. V. COUNTRYWIDE HOME LOANS, INC. ET AL* (page 5) decision makes it clear that the rescission under TILA is effective upon mailing the Notice of Rescission and requires no further action on the part of any party. Thus it is effective by operation of law such that it would take another operation of

law –such as a law suit – to und the rescission. The statute allows 20 days from receipt of notice to comply and the lender did not comply to the requirements of the statute as set forth in the Truth in Lending Act (TILA) – 15 U.S. Code § 1635 (a-g) Rescission within that time frame. Therefore the rescission is permanent. Specifically Section 1026.23(d) of Regulation Z which implements TILA, provides that upon Rescission:

(1) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void, and the consumer shall not be liable for any amount, including any finance charge.

(2) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

The Respondent did not comply with any of the requirements specified in paragraph (d)(2) above, and thus 20 days after the Respondent received the Notice of Rescission the Rescission became permanent.

The Supreme Court in *Jesinoski* found that Section 1635 “[e]ft no doubt that rescission is effected when the borrower notifies the lender of his intention to rescind,” and that “so long as [a] borrower notifies [the

lender] within three years after the transaction is consummated,” the rescission is timely. The Supreme Court noted that “[n]othing in [TILA] suggests that a borrower need also file a lawsuit within th[e] three year period” and rejected the argument that written notice of rescission does not suffice if the lender disputes the availability of the rescission remedy, finding Section 1635 of TILA draws no distinction “between disputed and undisputed rescissions.”

Thus, *Jesinoski Et UX. V. COUNTRYWIDE HOME LOANS, INC. ET AL* makes it clear that the Rescission is effective upon mailing whether or not the Rescission is disputed and in this case the Rescission was not disputed. It was ignored. The *Jesinoski* ruling also makes it clear that no judicial action is required for the rescission to be effective. Therefore, the effectiveness and validity of the Notice of Rescission were not subject to a ruling by the lower court in this case as it had already happened by operation of law pursuant to TILA.

Whether or not the Notice of Rescission was timely, whether or not the transaction had been consummated, the date of such consummation if did actually occur, and other similar issues, etc., are all issues of law and fact that should have been brought up in an action by the Respondent to overturn the rescission within twenty (20) days of receipt of the Notice of Rescission. No such action was initiated by the Respondent. The facts are that the Notice of Rescission was mailed by the Appellant, and then it was received and ignored by the Respondent. In addition, the Rescission was

also ignored by the lower court even though it was specified in my Answer and copies of the Notice of Rescission and Proof of Mailing and delivery to the Respondent (by Certified Mail via the United States Postal Service) were provided as exhibits to the lower court. Please note that this Rescission is not an attempt to get the proverbial "Free House" and that the Respondent should certainly be able to prove the existence of the alleged debt without the Note; provided the alleged debt is legitimate.

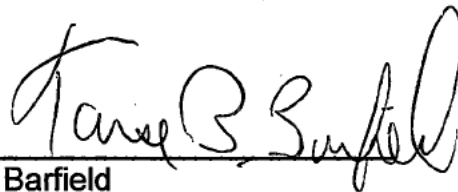
As for the Respondent's arguments concerning the issues of fraud and TILA Notice violations, I would like to reiterate and reaffirm the arguments brought forth in my Initial Brief. I would also like to point out the fact these issues were never addressed by the Respondent in this case despite numerous requests in the Qualified Written Responses QWR(s) that were also presented to the court in this case.

CONCLUSION

For the reasons stated in this Initial Reply Brief and the Initial Brief of the Appellant, this court should reverse the decision of the lower court.

Respectfully submitted,

October 4, 2018



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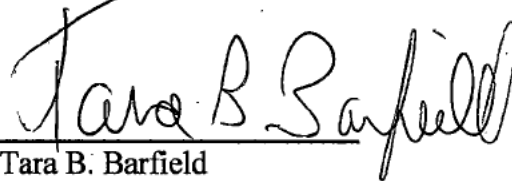
CERTIFICATE OF COMPLIANCE

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I do hereby certify that the Final Brief(s) comply with Rule 211(b), SCAR.



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