

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

Appeal from Richland County  
The Honorable Joseph M. Strickland, Master in Equity  
Court of Common Pleas  
Case No.2018CP4000382

Appellate Case No. 2022-001106

Deutsche Bank National Trust Company, as Trustee for Ameriquest Mortgage Securities Inc., Asset-Backed Pass-Through Certificates, Series 2004-R4, Respondent..... Respondent

v.

Butch Johnson a/k/a Butch Johnson Richard; Wildewood V Homeowners Association, Inc.; Fleetcor Technologies Operating Company, LLC; South Carolina Community Bank; Palmetto Citizens Federal Credit Union; East Richland County Public Service District; Alcon Action Agency II, LLC; TD Bank, N.A.; Defendants, of whom Butch Johnson a/k/a Butch Johnson Richard is the Appellant.....Appellant

INITAIL BRIEF OF APPELLANT

John Sanford Kay, Esquire  
John Brian Kelchner, Esquire  
Sarah Oliver Leonard, Esquire  
Ashley Zarrett Stanley, Esquire  
Alan Martin Stewart, Esquire  
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Columbia SC 29202

Butch Johnson  
312 Oak Brook Drive  
Columbia, SC 29223

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## STATEMENT OF THE CASE

Respondent filed several foreclosure actions against the, appellant, Butch Johnson. The actions were dismissed. The current action that was appealed was not dismissed, contrary to established law. The appellant challenged the standing to the Respondent to bring a foreclosure action. In the case on appeal, the Respondent moved for summary judgment despite there being genuine issues of material fact. The Master in Equity granted the summary judgment even there were obvious issues of material fact. The Appellant appeals.

## FACTS

The Appellant, Butch Johnson is the owner of the property located at 312 Oak Brook Drive, Columbia, SC 29223. The property was subject a mortgage held by the Respondent. The Respondent an action to foreclose the mortgage. Due to defenses raised by the Appellant, the actions were dismissed. Subsequently, the action being appealed was commenced. The Respondent file a motion for summary judgment. The trial judge granted the summary judgment even though there were genuine issues of material fact. The Appellant appeal.

## ARGUMENT

Appellant appeals a decision the Master in Equity granting a summary judgment against the Appellant even though there were genuine issues of material fact and the Appellant was not the moving party, therefore deserving deference.

Summary judgment is properly granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRPC. “The plain language of Rule 56(c), SCRPC, mandates the entry of summary judgment, after adequate time for discovery [,] against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case and on which the party will bear the burden of proof at trial.” *Carolina Alliance for Fair Employment v. South Carolina Dept. of Labor, Licensing, and Regulation*, 337 S.C. 476, 485, 523 S.E.2d 795, 800 (S.C. Ct. App. 1999) (affirming summary judgment against plaintiffs who lacked standing to pursue claims). “A complete failure of proof concerning an essential element of the non-moving party’s case necessarily renders all other fact immaterial.” *Id.*

The supreme court ruled in *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d, 74 (1999), that “summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” However, “[a] party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 30 days from the commencement of the action ... move ... for a summary judgment in his favor upon all or any part thereof.” Rule 56(a), SCRPC.

Once a party has properly moved for summary judgment and has filed a supporting affidavit, the opposing party, if it wishes to have more time for discovery, is required under Rule 56(f),

SCRCF, to file an opposing affidavit to explain why more time is necessary. Doe v. Batson, 345 SC 316, 321, 548 S.E.2d 854, 857 (2001).

Alternatively, a party opposing a summary judgment motion must demonstrate that further discovery would likely adduce facts relevant to the resolution of the case. See Robertson v. First Union Natl. Bank, 350 S.C. 339, 347-47, 565 S.E.2d 309, 313 (Ct. App. 2002); Dawkins v. Fields, 354 S.C. 58, 70, 580 S.E.2d 433, 439 (2003) (finding that summary judgment was proper where the non-moving party had "failed to present any 'specific acts' establishing a genuine issue for trial.").

Here, the Taylors argue they did not have enough time to conduct discovery because they had not had a chance to depose Brown. Under normal circumstances, three months would be insufficient time for discovery if the non-moving party did not have access to the relevant information. But here the Taylors knew about Brown's summary judgment motion in which Brown denied provoking Charlie. The Taylors' attorney had received the insurance carrier's file and had in his possession the statements of the relevant witnesses. (R.156). There were no surprises at the hearing. And yet, the Taylors produced no document in opposition to the motion and made no attempt at discovery. The Taylors certainly had sufficient time to do that. See Middleborough Horiz. Property Regime Council v. Montedison, S.p.A., 320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct. App. 1996) (sustaining a summary judgment in part because the defendants "advance[d] no good reason why four months was insufficient time ... to develop documentation in opposition to the motion for summary judgment.").

"An appellate court reviews the granting of summary judgment under the same standard applied by the trial court . . ." Quail Hill, L.L.C. v. Cnty. of Richland, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (citing Brockbank v. Best Capital Corp., 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000)). "[A] trial court may grant a motion for summary judgment 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" Id. at 234, 692 S.E.2d at 505 (quoting Rule 56(c), SCRCF)

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Summary judgment is a drastic remedy and should be granted only upon clear and convincing evidence. Additionally, even where there is no dispute as to the evidentiary facts, but only as to the conclusions are inferences to be drawn from them, summary judgment should not be granted. Hamilton v. Miller, 301 S.C. 45, 389 S.E.2d 652 (1990). If, after a hearing, the court

determines that summary judgment is appropriate, an order to that effect ending the case should be issued. If the court determines summary judgment is not appropriate, the case should proceed to trial.

George v. Fabri, 345 S.C. 440, 548 S.E.2d 868 (2001). Summary judgment is proper when, after reviewing the motion, supporting affidavits, and the pleadings, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party. Baughman v. American Telephone and Telegraph Company, 306 S.C. 101, 410 S.E.2d 537 (1991). The Appellant, the non-moving party was not looked upon favorably. There were several issues that in dispute.

#### STANDING

The Respondent never had proper standing to bring the foreclosure action against the Appellant. The Respondent never produced the original note or evidence of assignment.


In a foreclosure case in late 2017, the Florida District Court of Appeal, Fifth District, found that the foreclosing party did not demonstrate proper standing at the time it started the foreclosure and reversed a final foreclosure judgment, and remanded the case for entry of an involuntary dismissal.

#### CONCLUSION

The Court erred in granting the Respondent motion for summary judgment because the Respondent did not comply with Rule 56 of the South Carolina Rules of Civil Procedure.

#### CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the initial briefing complies with Rule 211(b), SCACP

  
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September 15, 2023

**FORM 7  
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PROOF OF SERVICE

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I certify that I have served the initial brief by depositing a copy of it in the United States Mail, postage prepaid, on September 15, 2023, addressed to Respondent' attorney of record, John Sanford Kay, Esquire, John Brian Kelchner, Esquire, Sarah Oliver Leonard, Esquire Ashley Zarrett Stanley, Esquire, Alan Martin Stewart, Esquire, James Donald Floyd, Esquire Stephanie M Huggins, Esquire. PO Box 8237, Columbia South Carolina 29202

  
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