

STATE OF SOUTH CAROLINA

In The Court of Appeals

MOTION FOR LEAVE TO PROCEED UNDER SCRPC RULE 60 (b)

Case No.: 2012-CP-04-01526

Court of Common Pleas

Anderson County

CORRIE MARTIN PLAINTIFF-PETITIONER

vs

GREEN TREE SERVICING, LLC, etc..... DEFENDANT-RESPONDENT

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864-250-2511
Attorney for Plaintiff-Petitioner
The Moving Party

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Attorneys for Defendant-Respondent

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SC Court of Appeals

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MOTION

PLAINTIFF-PETITIONER CORRIE A. MARTIN HEREBY MOVES FOR LEAVE TO PROCEED WITH THE INSTANT CASE PURSUANT TO SCRCP RULE 60(b).

BACKGROUND

Green Tree Servicing, LLC ("Green Tree") filed a complaint on October 4, 2010 in the Court of Common Pleas, Anderson County, styled Green Tree Servicing, LLC , etc vs Corrie A. Martin, et al, (C.A. 2010-CP-04-03548), seeking the foreclosure of a note and mortgage given by Martin to Green Tree. The case was referred to Ellis B. Drew, Jr., Master in Equity for Anderson County. These foreclosure proceedings resulted in the property of Martin being sold at public auction on January 24, 2011 to Green Tree.

Martin denies being served with a Summons and a copy of the Complaint and having any knowledge of the foreclosure until served with a Writ of Ejectment by the Sheriff of Anderson County during June 2011. She retained an attorney who filed a Motion for Relief from Judgment Pursuant to SCRCP Rule 60 (b). The motion came on for hearing before Master in Equity Ellis B. Drew, Jr. who issued his Order, dated March 8, 2012 denying relief on the ground that Martin failed to file the motion within a reasonable time.

Martin, acting pro se, appealed the Order of Master in Equity Ellis B. Drew, Jr, dated March 8, 2012. Her appeal is now pending in the Court of Appeals.

On April 23, 2012 Martin commenced the instant case in the Court of Common Pleas, Anderson County, with a Complaint styled Corrie Martin vs Green Tree Servicing, LLC, etc (C.A. # 2012-CP-04-015). The Complaint alleges in its first cause of action that the mortgage foreclosure in the first case Green Tree Servicing, etc. vs Corrie Martin, C. A., # 2010-CP-04-03548 is void and a nullity on the ground that Martin was never served with a copy of a Summons and Complaint and did not know of the foreclosure until after her house was sold

A second cause of action of the Complaint alleges that the Defendant

committed a fraud upon the Court in the first case in that (a) Green Tree represented to the Court that the Defendant was in arrears in her mortgage payments when she was not in arrears and (b) that the Defendant's attorney misrepresented the contents of a Court order to the Master in Equity during the foreclosure case and again in the Rule 60(b) hearing in the foreclosure case.

Plaintiff Green Tree filed a Motion for Summary Judgment in the second case.

After a consideration of the motion and hearing arguments of counsel, Circuit Judge R. Lawton McIntosh issued his Order, dated June 6, 2013 which stated that the "Plaintiff shall apply to the South Carolina Court of Appeals for leave to pursue this action within thirty (30) days of the date of this Order."

ARGUMENT

The Court of Appeals should grant Martin's Motion for Leave to Proceed with the instant case because SCRPC Rule 60 (b) does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. (Emphasis added)

The Order of Circuit Judge M. Lawrence McIntosh, dated June 6, 2013 is succinct and gives no rationale explaining the applicability of SCRPC Rule 60 (b). The Order says what it says. Martin now comes to the Court of Appeals for leave to pursue her action (Corrie Ann Martin, vs Green Tree Servicing, LLC, etc (C. A. # 2012-CP-04-01576) now pending on the Calendar of the Clerk of Court for Anderson County.

The operative words of SCRPC Rule 60(b) are:

****This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.

Why should the Court of Appeals allow the instant case (Corie Ann Martin vs Green Tree Servicing, LLC, etc (C.A. # 2012-04-01576) to go forward?

The case should go forward in order that the judicial system will afford justice and fairness to people who are the victims of a mortgage company's greed. Here is what Corrie Martin has alleged and will prove in her case now pending in Anderson County.

First, that the Affidavit of Personal Service of the Complaint in the first case is false. She was never served with a copy of the Summons and Complaint.

Second, that she was current in her mortgage payments and not in arrears when Green Tree commenced its foreclosure action (the first case).

Third, that the attorneys for Green Tree mailed to Corrie Martin numerous notices of hearings and the sale of her house by the Court, but she never received a single notice because attorneys for Green Tree mailed the papers to the wrong address.

Fourth, during the twelve months that the foreclosure case was in progress through the legal system, Martin made her mortgage payments to Green Tree--who gave her no credit for them.

Fifth, Corrie Martin knew nothing about the foreclosure from October 2010, when the Complaint was filed, until June 2011 when the Sheriff of Anderson County tacked a Writ of Ejectment on her front screen door. She continued to make her mortgage payments each month to Green Tree - who gave her no credit for them--until the hearing on her Motion for Relief in January, 2012.

Green Tree may contend that the instant case is barred by the case on appeal which involves a motion for relief from judgment under Rule 60(b). But the Order of Master in Equity Ellis B. Drew, Jr., declined to set aside the judgment because he found the motion was not timely filed. The Order did not address the grounds presented by Martin for setting aside the judgment. An appeal of Judge Drew's Order is pending in the Court of Appeals. Therefore, the order cannot be used as res judicata because (a) no final judgment or decision exists and (b) order makes no findings concerning the grounds for setting the judgment aside.

Any judgment awarded by a court where the defendant was not served is void because the court will lack jurisdiction.

The instant case is an independent action having a complaint alleging that the judgment in the first case is void because the court lacked personal jurisdiction over the defendant. Universal Benefits, Inc. v McKinney, 349 S.C. 179, 183, 561 S.E. 2d 659, 661 (Ct. Appeals 2002) Referring to Rule 60 (b)(4) the Court of Appeals stated: " The definition of "void" under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or **personal jurisdiction**.(emphasis added) McKinney, supra.

"Rule 60 (b) allows relief from judgment if the judgment is void." The Smith Companies of Greenville, Inc. v Hayes, 311 S.C. 358, 428 S. E. 2d 900, 902 (Ct. Appeals 1993).

It is well established that a court obtains personal jurisdiction by the service of a summons. BB &T v Taylor, 369 S.C. 548, 554-55, 663 S.E. 2d 501, 504-05 (2006) The failure of Green Tree to serve the summons and a copy of the complaint causes the judgment of the court to be void.

Therefore, the instant case is not limited by SCRPC Rule 60 (b) from proceeding.

Martin should be given the opportunity to have her foreclosure determined on its merits. She should be given the opportunity to present her evidence that she faithfully made her mortgage payments on time and was not in arrears. She should be given the opportunity to prove that she was never served with the Summons and Complaint and knew nothing about the foreclosure of her mortgage.

For the reasons expressed above Martin should be given leave to proceed with her suit now pending in the Court of Common Pleas in Anderson County.

July 5, 2013



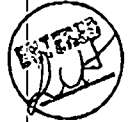
Clifford F. Gaddy, Jr.

408 North Church Street, Suite B
Greenville, South Carolina 29601
864-250-2511

Attorney for the Plaintiff-Petitioner
The Moving Party

5

EXHIBITS



STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Corrie Ann Martin,)
)
Plaintiff,)

C/A NO.: 2012-CP-04-01576

vs.

ORDER

Green Tree Servicing, LLC, as)
)
Successor in Interest to Green Tree)
)
Financial Servicing Corporation, and)
)
John Skipper, as Sheriff of Anderson)
)
County,)
)
Defendants.)

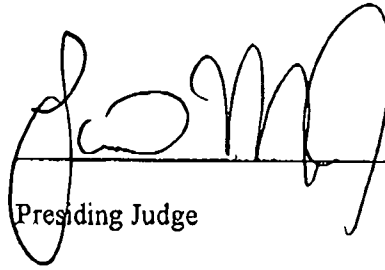
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COMMON PLEAS AND
GENERAL SESSIONS

This matter came before the Court on Thursday, May 9, 2013 pursuant to Defendant's Motion for Summary Judgment. Present were Theodore von Keller, Esquire, attorney for the Defendant, and Clifford F. Gaddy, Jr., Esquire, attorney for the Plaintiff.

After consideration of the motions filed by both parties and argument of counsel, the Court orders that the within matter shall be stayed until a decision is made on Plaintiff's Application to the South Carolina Court of Appeals for leave to pursue this action while Civil Action No. 2010-CP-04-03458 is under appeal to the South Carolina Court of Appeals or until the Appellate Court rules on the appeal in Civil Action No. 2010-CP-04-03458. Plaintiff shall apply to the South Carolina Court of Appeals for leave to pursue this action within thirty (30) days of the date of this Order.

AND IT IS SO ORDERED.





Presiding Judge

Anderson, South Carolina

6-6, 2013.

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ANDERSON, SC

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COMMON PLEAS AND
GENERAL SESSIONS

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STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Green Tree Servicing, LLC, formerly)
known as Green Tree Financial)
Servicing Corporation, a Limited)
Liability Company under the laws of)
the State of Delaware,)

C/A NO.: 2010-CP-04-03548

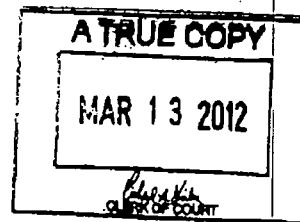
Plaintiff,)

SUPPLEMENTAL ORDER

vs.)

Corrie A. Martin, the South Carolina)
Department of Revenue, the United)
States of America by and through its)
agency the Internal Revenue Service)
and Anderson Area Medical Center, Inc.)
n/k/a Anmed Health,)

Defendant.)



This matter came before me on January 23, 2012, pursuant to Defendant Corrie A. Martin's Motion for Relief from Judgment Pursuant to Rule 60(b), SCRPC. Present were Theodore von Keller, Esquire, representing the Plaintiff, Shannon Tucker, the Regional Manager of the Plaintiff, D. Andrew Gaines, representing the Defendant Corrie A. Martin and the Defendant Corrie A. Martin.

This an action to foreclose a mortgage given to the Plaintiff by Corrie A. Martin. The Summons and Complaint for foreclosure was filed on October 4, 2010, and the Defendants were personally served thereafter. No answer or notice of appearance was filed by the Defendant Corrie A. Martin. On December 2, 2010, an Order of Reference and Affidavit of Default were filed with the Court. Subsequently, a hearing was scheduled and the Plaintiff forwarded a Notice of Hearing to the Defendants on December 17, 2010. The Notice of Hearing and Certificate of Service were filed with the Court. On January 24, 2011, the foreclosure hearing was held, the Defendant Corrie A. Martin was provided with notice same and this Court granted a judgment to the Plaintiff, ordered foreclosure and

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scheduled the foreclosure sale for March 1, 2011. Plaintiff demanded a deficiency with the final sale on March 31, 2011. The Plaintiff was the successful bidder at the sale and a Master in Equity's Deed by Foreclosure was recorded in the Office of the Anderson County Register of Deeds on April 20, 2011, in Book 10000 at Page 107. Subsequently, due to the subject property still being occupied, a Writ of Assistance was issued by this Court on June 2, 2011. The Anderson County Sheriff's Office served the Writ of Assistance on June 13, 2011. On or about June 27, 2011, the Plaintiff's attorney received a letter from Robert P. Lusk, Esquire, that there were outstanding issues that needed to be addressed and the Plaintiff cancelled the lock-out that had been scheduled with the Anderson County Sheriff's Office.

On or about January 6, 2012, the Defendant, by and through her present counsel, Andrew Gaines, filed a Motion for Relief from Judgment. After review of the file and arguments of counsel, Defendant's Motion is denied and the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court finds that, after foreclosure hearing and sale, title to the subject property was conveyed to the Plaintiff on April 20, 2011, thus terminating Defendant's interest in the subject property. Further, Rule 60(b), SCRCF, requires a movant to not only establish numerous elements to obtain relief from a judgment, but also to move within a reasonable time. This Court finds as a matter of fact that the Defendant has failed to make this motion within a reasonable time as the hearing in this matter, of which the Defendant was provided notice, was on January 24, 2011. The Defendant waited almost a year to file this motion. Defendant offered no explanation for this delay.

Accordingly,

IT IS ORDERED that based on the above Findings of Fact and Conclusions of Law, the Defendant Corrie A. Martin's Motion for Relief from Judgment Pursuant to Rule 60(b), SCRPC, is denied.

IT IS FURTHER ORDERED that the Defendant Corrie A. Martin has thirty (30) days from the date of this Order to vacate the property, after which time the Movant is entitled to possession of the subject property. If the subject property has not been vacated in the time allowed by this Order, this Court will issue the Plaintiff a Writ of Assistance without the necessity of another hearing.

IT IS FURTHER ORDERED that this Order shall supplement the Master in Equity's Order and Judgment of Foreclosure and Sale filed January 24, 2011.

AND IT IS SO ORDERED.



Ellis B. Drew, Jr.
Anderson County Master in Equity

Anderson, South Carolina

3-8-, 2012.

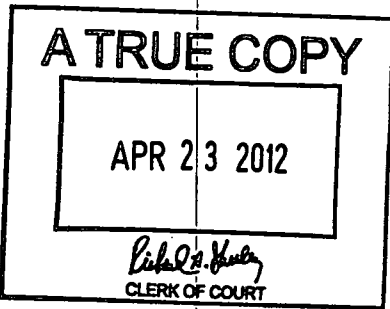


STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
 CORRIE ANN MARTIN,)
)
)
)
 Plaintiff)
)
 vs.)
)
 GREEN TREE SERVICING, LLC, as)
 Successor in Interest to Green Tree)
 Financial Servicing Corporation, and)
 JOHN SKIPPER, as Sheriff of)
 Anderson County)
)
 Defendants.)

COURT OF COMMON PLEAS
 10TH JUDICIAL CIRCUIT

C.A.#: 2012-CP-04-01576

COMPLAINT



Plaintiff Corrie Ann Martin ("Martin") by way of this Complaint against the Defendant Green Tree Servicing, LLC, as Successor in Interest to Green Tree Financial Servicing Corporation ("Green Tree"), and John Skipper, as Sheriff of Anderson County would respectfully show to the Court:

FIRST CAUSE OF ACTION-

Lack of Jurisdiction

1. Martin is a resident of Anderson County, State of South Carolina.

2. Green Tree is a limited liability corporation organized and existing under the laws of one of the States of the United States of America. Plaintiff is informed by Green Tree Servicing, LLC that it is Successor in Interest to Green Tree Financial Servicing Corporation.

(11)

3. John Skipper, as Sheriff of Anderson County, is named a party in his official capacity and role as Sheriff of Anderson County.

4. On or about March 18, 1997 Martin signed and delivered to Green Tree a note in the principal sum of \$58,678.52("note").

5. By way of securing such note Martin signed and delivered on March 18, 1997 to Green Tree a certain mortgage lien ("mortgage") covering certain real property described as

Lot #35, containing 0.75 acres more or less, shown on a plat prepared by Nu-South Surveying, Inc., Earl B. O'Brian, S. C. RLS dated September 16, 1995, recorded in the office of the Clerk of Court for Anderson County, State of South Carolina, in Plat Slide 746 at Page 5 and having such course and distances as well appear by reference to such plat.

Being the same property conveyed to Corrie A. Martin by Deed of Nu-Land, Inc., dated March 16, 1997, recorded in March 18, 1997 in Book 2574 at Page 187 in The Office of the Clerk of Court for Anderson County together with that 1997 Omni (56x24) Manufactured Home, VIN # 056276A&B.

6. Green Tree commenced a foreclosure of this note and mortgage by way of a Complaint resulting in a sale at public auction of the property on March 1, 2011.

7. Green Tree acquired the subject property at this public auction.

8. Subsequent to acquiring the subject property, Green Tree took action to require the Sheriff of Anderson County to serve a Writ of Assistance upon Corrie A. Martin; this Writ of Assistance was placed upon the screen door of Martin's residence during June 2011.

9. The Writ of Assistance delivered to the residence of Martin was the first notice that Martin had of the foreclosure action; the Writ of Assistance contained information

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stating that Green Tree owned the Martin property, etc. The Writ of Assistance directed Martin to vacate her property within 30 days.

10. The file of this case in the Office of the Clerk of Court contains various Affidavits of Service pertaining to the Summons and Complaint and Notices and Hearing, etc. However, the process servers employed by Green Tree and/or its attorney did not serve the Summons and Complaint upon Martin even though Affidavits of Service: were filed by process server; such Affidavits of Service concerning Service of the Summons and Complaint are false.

11. The attorney for Green Tree or employees of the attorney stated in certificates and/or affidavits that Notice of Hearing, etc. were mailed to

Corrie A. Martin
112 Canter Lane
Anderson, SC 29624.

This is the correct street with the correct house numbers of Corrie A. Martin. However, the Post Office has not delivered mail pertaining to this case to Martin at this address. The zip code is incorrect. The zip code should be 29626.

Corrie A. Martin
P.O. Box 14042
Anderson, SC 29624;

12. The attorneys for Green Tree or employees of the attorneys stated in certificates and/or affidavits that various Notices of Hearing, etc. were mailed to

Corrie A. Martin
112 Canter Lane
Anderson, SC 29626.

However, the Post Office did not deliver any mail addressed to Corrie Martin at this address during 2010 and 2011.

13. South Carolina Rules of Civil Procedure (SCRCP) Rule 4. **Process** (d)

Summons: Personal Service

(1) Individuals

Upon an individual other than a minor under the age of 14 years or an incompetent person, by delivering a copy of the Summons and Complaint to him personally or by leaving copies thereof at his dwelling place or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein XXX

14. Green Tree did not comply with SCRCP Rule 4. Compliance with SCRCP Rule 4 by serving a copy of Summons and Complaint upon Martin was required before the Court acquired jurisdiction over Martin.

15. By not having acquired jurisdiction over Corrie A. Martin, the foreclosure of the property of Corrie A. Martin, Civil Action C.A. # 2010-CP-04-03548 must be set aside; the entire proceeding should be declared void.

FOR A SECOND CAUSE OF ACTION-

Fraud Upon The Court

16. The allegations of the First Cause of Action are incorporated by reference

17. The Complaint in Civil Action C.A. # 2010-CP-04-03548 alleged in summary that Martin was in arrears in her mortgage in that she failed to make payments pursuant to the provisions of her note and mortgage.

18. Such allegations were false and incorrect.

19. In an action having the case style of Green Tree Servicing, LLC, as successor in interest to Green Tree Financing Servicing Corporation (the same Plaintiff

as the Plaintiff in the instant case) vs Corrie A. Martin, etc. assigned C/A 2008-CP-04-04162. The Honorable Ellis B. Drew, Jr., Master in Equity for Anderson County, which vacated a judgment of foreclosure and Order for sale entered in this matter on March 31, 2009 is vacated.

20. Martin faithfully made payments required by her note and mortgage to Green Tree until January 2012. Green Tree accepted the payments Martin made upon her note and mortgage.

21. During the foreclosure proceedings assigned C.A. 2010-CP-04-03548 Green Tree did not disclose to the Court that Martin faithfully made her monthly payments from May 2009 through January 2012.

22. The behavior of Green Tree and the erroneous information given to the Court by Green Tree during the foreclosure, assigned C.A. 2010-CP-04-03548 constitutes a fraud upon the court.

23. Such fraud upon the court entitles Martin to actual and punitive damages in such amount as may be determined by the Court.

FOR A THIRD CAUSE OF ACTION

Request that Writ of Assistance be withdrawn

24. John Skipper, as Sheriff of Anderson County, acting by and through a lawful Deputy has served a Writ of Assistance upon Martin during March 2012; Such Writ of Assistance direct Martin to vacate her property in thirty (30) days.

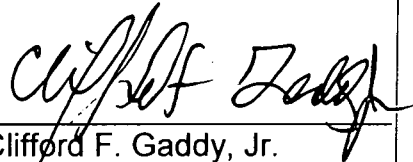
25. Martin requests that all action concerning the Writ to Assistance be held in abeyance and that she be allowed to remain in possession of her property until the issues presented by this Complaint are resolved.

WHEREFORE, Plaintiff Corrie A. Martin prays

(1) that the mortgage foreclosure be set aside and the judgment of the court be vacated; and

(2) for actual and punitive damages in such amount as may be determined by the Court; and

(3) that the Writ of Assistance be vacated and that she be allowed to remain in possession of her property until the further order of the court.



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Telephone # 864-250-5155
Fax # 864-233-3750

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

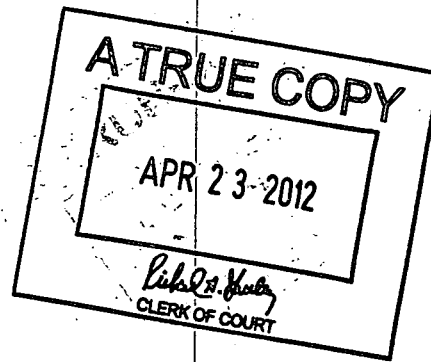
VERIFICATION

PERSONALLY APPEARED before me the undersigned, CORRIE A. MARTIN, who after being sworn, says that she is the Plaintiff in the above styled action; that she has read the Complaint and finds that the allegations are true and correct to the best of her knowledge, information, and belief.

Corrie A. Martin
Corrie A. Martin

SWORN to before me on
20th day of April, 2012

[Signature]
Notary Public for the State of
South Carolina
My commission expires 03/16/2019



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Cliff Gaddy Law Firm

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July 5, 2013

The Honorable Jenny Abbot Kitchings
Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Corrie Martin
vs
Green Tree
CtofApp # 2012-210846
C. A. 2012-CP-04-01526

Dear Ms. Kitchings:

Under separate cover we are sending to the

South Carolina Court of Appeals
1205 Pendleton Street
Columbia, SC 29201

the original (unbound) and six bound copies of a Motion for Leave to Proceed under SCRCP RULE 60 (b)

With this letter we are enclosing our check for \$25.00 to cover the filing costs and the Certificate of Service of the Motion upon opposing counsel.

CFG/iwh

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JUL 08 2013

SC Court of Appeals

Sincerely,

Clifford F. Gaddy, Jr.
Clifford F. Gaddy, Jr.

Copy to:

Theodore von Keller, Esquire
B. Lindsay Crawford, III, Esquire
Sara C. Hutchins, Esquire
Post Office Box 4216
Columbia, South Carolina 29240

STATE OF SOUTH CAROLINA

In The Court of Appeals

CERTIFICATE OF SERVICE

OF

MOTION FOR LEAVE TO PROCEED UNDER SCRPC RULE 60 (b)

Case No.: 2012-CP-04-01526

Court of Common Pleas

Anderson County

CORRIE MARTIN PLAINTIFF-PETITIONER

VS

GREEN TREE SERVICING, LLC, etc..... DEFENDANT-RESPONDENT

I, Clifford F. Gaddy, Jr., hereby certify that on July 7, 2013 I served a copy of the Plaintiff-Petitioner's Motion for Leave to Proceed under SCRPC Rule 60 (b) upon the Defendant-Respondent Green Tree Servicing, LLC, etc by placing a copy thereof in the United States Mail in an envelope addressed to

B. Lindsay Crawford, III, Esquire
Sara C. Hutchins, Esquire
Theodore von Keller, Esquire
Post Office Box 4216
Columbia, South Carolina 29240

Attorneys for Defendant-Respondent

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JUL 08 2013

SC Court of Appeals

Clifford F. Gaddy, Jr.
Clifford F. Gaddy, Jr.
408 North Church Street, Suite B
Greenville, South Carolina 29601

STATE OF SOUTH CAROLINA

In The Court of Appeals

CERTIFICATE OF SERVICE

OF

MOTION FOR LEAVE TO PROCEED UNDER SCRCP RULE 60 (b)

Case No.: 2012-CP-04-01526

Court of Common Pleas

Anderson County

CORRIE MARTIN PLAINTIFF-PETITIONER


vs

GREEN TREE SERVICING, LLC, etc..... DEFENDANT-RESPONDENT

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Sara C. Hutchins, Esquire
Theodore von Keller, Esquire
Post Office Box 4216
Columbia, South Carolina 29240

Attorneys for Defendant-Respondent


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SC Court of Appeals

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fax: (864) 233-3750

Cliff Gaddy Law Firm

408 N. Church Street, Suite B
Greenville, SC 29601-2149
email: cfg126@yahoo.com

July 5, 2013

69019

The Honorable Jenny Abbot Kitchings
Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Corrie Martin
vs
Green Tree
CtofApp # 2012-210846
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Sincerely,



Clifford F. Gaddy, Jr.

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