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**Jan 29 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM JASPER COUNTY  
Court of Common Pleas

James A. Grimsley, III, Special Referee

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Appellate Case No. 2024-000039

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Nationstar Mortgage, LLC d/b/a Mr. Cooper, Respondent,

v.

Carolyn Brantley; The United States of America acting by and through its agency, the Secretary of Housing and Urban Development; The United States of America acting by and through its agency, the Internal Revenue Service; South Carolina Department of Revenue; and T.N.S. LTD., LLC, Defendants,

Of which Carolyn Brantley is the Appellant.

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RETURN TO MOTION FOR STAY PENDING APPEAL

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### **MEMORANDUM**

Respondent Nationstar Mortgage, LLC d/b/a Mr. Cooper hereby submits the herein expedited return to appellant Carolyn Brantley's motion for stay pending appeal in accordance with Rule 240(e) of the South Carolina Appellate Court Rules.<sup>1</sup>

Appellant has filed a motion to stay the enforcement of a January 4, 2024, amended order and judgment of foreclosure and sale (deficiency waived) authorizing the foreclosure and sale of property located at 200 Oak Plantation Drive, Ridgeland, SC ("the Property"). The sale is currently scheduled for February 5, 2024. As grounds for her motion, she asserts, (1) she is likely to succeed on appeal because the grant of a foreclosure sale violated the protections she was afforded when she was discharged from bankruptcy; (2) she will suffer irreparable harm because the foreclosure sale will lead to both the loss of her home and suitable housing for a special needs child that lives in the home; (3) her harm outweighs that of respondent's; and (4) public interests supports a stay. All of appellant's arguments lack merit, and for the reasons explained below, appellant's motion should be denied.

### **Factual Background**

The following facts are undisputed.<sup>2</sup> This case arises out of a mortgage foreclosure action brought by respondent against appellant. On September 4, 2009, appellant purchased the Property by executing and delivering a note, in the sum of \$242,526.00, with interest. To further secure payment, she executed and delivered a mortgage the same day. The mortgage was filed in the Office of the Register of Deeds for Jasper County on September 10, 2009. Respondent is the

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<sup>1</sup> On January 23, 2023, this court directed respondent to file an expedited return no later than five days from the date of its letter. This return is due no later than Tuesday, January 30, 2023. *See* Rule 263(a) SCACR.

<sup>2</sup> These facts can be confirmed by the order on appeal.

current holder of the mortgage, and the mortgage is the first lien purchase money mortgage for the Property. Appellant stopped making payments in 2015.

On July 12, 2022, respondent filed a lis pendens and summons and complaint in the Jasper County Court of Common Pleas wherein it asked the court declare it the first mortgage lien holder and direct the Property to be sold. Subsequently, the case was referred to a special referee (Grimsley, III, J.). Throughout the proceedings, appellant filed numerous documents but none challenged that (1) she executed the note and mortgage, (2) respondent was the first lien holder of the mortgage, or (3) she stopped making monthly mortgage payments. Rather, she asserted “sovereign citizen” theories to excuse her failure to make monthly payments and filed various documents that did not challenge the merits of the underlying proceedings.

Following a hearing, the special referee entered an order and amended order and judgment of foreclosure and sale (deficiency waived).<sup>3</sup> Specifically, the special referee found (1) on September 4, 2009, appellant purchased the Property by executing and delivering a note, in the sum of \$242,526.00, with interest; (2) she executed and delivered a mortgage the same day; (3) respondent is the current holder of the mortgage; (4) the mortgage is the first lien purchase money mortgage for the Property; (5) appellant stopped making payments in 2015; and (6) the total debt secured by the note and mortgage, including interest, as of the date of the order was \$339,140.83. In reaching these conclusions, he rejected appellant’s “sovereign citizen” theories and found the documents that she submitted were “materially false or fraudulent or a sham legal process” and should be struck from the docket pursuant to S.C. Code Ann. § 30-9-30. **[Jan. 4, 2024, Order at**

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<sup>3</sup> The special referee found appellant in default.

**5; Attached to Notice of Appeal].** As a result, he granted respondent's request to sell the Property, recognizing the foreclosure sale would be cancelled if appellant paid the debt in full.<sup>4</sup>

Appellant filed this appeal and motion for stay pending appeal. Thereafter, this court directed respondent to file this expedited return to appellant's motion for stay.

### **Applicable Law**

As an initial matter, appellant is not entitled to an automatic stay of the foreclosure sale because "[j]udgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. § 18-9-170" are not subject to an automatic stay. Rule 241(b)(4) SCACR. Section 18-9-170 of the South Carolina Code provides if the judgment appealed from directs the sale or delivery of possession of real property, "the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties" guaranteeing the property will not be wasted during the pendency of the appeal. Here, appellant has not obtained a bond with two sureties.

To prevail on a motion for stay, the appellant "must carry the burden of making a "strong showing" that she is "likely to succeed on the merits," that she will be "irreparably injured absent a stay," and "that the balance of the equities favors it, and that a stay is consistent with the public interest." *Whole Woman's Health v. Jackson*, 141 S.Ct. 2994, 2995 (2021).

#### **A. Appellant does not have a likelihood of success on the merits.**

Appellant vaguely suggests her discharge from bankruptcy precluded her foreclosure. However, respondent, as the first mortgage lien holder, was entitled to enforce a claim against the Property because it was not avoided or eliminated in the bankruptcy proceedings. *See United*

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<sup>4</sup> Of note, the following were admitted into evidence at the hearing: (1) promissory note, (2) mortgage, and (3) assignments.

States Bankruptcy Court District of South Carolina Case No. 19-05734. Additionally, this is a straightforward residential foreclosure where it is undisputed that, *inter alia*, (1) on September 4, 2009, appellant purchased the Property; (2) she executed and delivered a mortgage the same day; (3) respondent is the current holder of the mortgage; (4) the mortgage is the first lien purchase money mortgage for the Property; and (5) appellant stopped making payments in 2015. Thus, respondent was entitled to enforce a claim against appellant's property and seek a foreclosure sale. Further, the only "defenses" raised by appellant before the special referee were based on "sovereign citizen" theories, which as respondent noted in its complaint and the special referee agreed has been rejected as frivolous by numerous courts.<sup>5</sup> For these reasons, appellant has not demonstrated a likelihood of success on the merits because a preponderance of the evidence supports the special referee's finding that respondent was entitled to a judgment of foreclosure and sale. *See generally U.S. Bank Tr. Nat'l Ass'n v. Bell*, 684 S.E.2d 199, 204 (Ct. App. 2009) ("A mortgage foreclosure is an action in equity."); *Horry County v. Ray*, 674 S.E.2d 519, 522 (Ct. App. 2009) ("The appellate court's standard of review in equitable matters is our own view of the

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<sup>5</sup> *See generally Gravatt v. United States*, 100 Fed. Cl. 279, 282 (2011) ("So-called sovereign citizens believe that they are not subject to government authority and employ various tactics in an attempt to, among other things, avoid paying taxes, extinguish debts, and derail criminal proceedings."); *Bey v. Stumpf*, 825 F.Supp.2d 537, 540-548 (D. N.J. 2011) (describing interplay of Moorish-American and Sovereign Citizen movements and holding plaintiff's reliance on Treaty with Morocco, or "Treaty of Peace and Friendship 1787" in civil suit raising claims against bank in order to assert interest in real property facially frivolous); *United States v. Mitchell*, 405 F. Supp. 2d 602, 604 (D. Md. 2005) (discussing "flesh and blood defense" and its anti-government roots); *Reeves v. United States*, 105 F.3d 621 (Fed.Cir.1997) (claiming he is not a citizen of the United States and the court finding that the appellant's "language used parrots the language of the beliefs and rhetoric espoused by the "flesh and blood, American Moorish, and Sovereign Citizen movements, all of which have been uniformly rejected as legally frivolous" by "courts across the country"); *id.* ("So-called sovereign citizens believe that they are not subject to government authority and employ various tactics in an attempt to, among other things, avoid paying taxes, extinguish debts, and derail criminal proceedings." (quoting *Gravatt v. United States*, 100 Fed.Cl. 279, 282 (2011))).

preponderance of the evidence.”); *Sloan v. Greenville County*, 590 S.E.2d 338, 346 (Ct. App. 2003) (“A legal question in an equity case receives review as in law.”).

**B. Appellant will not suffer irreparable harm.**

Although appellant suggests the loss of her home constitutes irreparable harm, she ignores the fact that she is (1) liable for the mortgage and debt accrued and (2) that she can prevent the sale of the Property by paying what she voluntarily contracted to pay. Additionally, the special referee’s factual findings were undisputed. Further, nothing precludes appellant from purchasing the Property at the upcoming foreclosure sale. Moreover, she has not executed a written undertaking with two sureties to seek to stay enforcement of the judgment. *See generally* S.C. Code Ann. § 18-9-170.

**C. Respondent will be harmed by a stay.**

Appellee continues to be harmed by appellant’s lack of mortgage payments and has not received any payments since 2015 — over eight years. At the time of judgment, appellee was due \$339,140.83 on the obligation of mortgage and this amount continues to increase.

**D. The public interest does not favor a stay.**

Public interest favors the enforcement of valid judgments, and for the reasons discussed above the judgment is supported by a preponderance of the evidence and the special referee did not err in granting a judgment of foreclosure and sale. Staying the sale pending appeal and allowing appellant to continue living for free in South Carolina after approximately eight years of doing so, serves no one’s interest but hers.

CONCLUSION

Based on the foregoing, respondent respectfully request the court deny appellant's motion for stay pending appeal. In addition, neither appellant has not obtained a stay upon appeal by giving a supersedeas bond pursuant to Rule 62, SCRPC nor has she sought a written undertaken with sureties guaranteeing the Property pursuant to S.C. Code Ann. § 18-9-170.

Respectfully submitted,



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January 29, 2024