



STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

US BANK TRUST, NA AS Trustee for
Waterfall Victoria Grantor Trust II Series G,

RECEIVED

Feb 13 2024

Plaintiff,

SC Court of Appeals

v.

JAMIE SINGLETON and INDIGO POINTE
HOMEOWNERS ASSOCIATION,

JAMIE SINGLETON'S RESPONSE
AND OPPOSITION TO PLAINTIFF'S
MOTION TO ALTER OR AMEND
JUDGMENT (allegedly pursuant to
Rule 59(e) SCRPC

Defendants.

JAMIE SINGLETON (hereafter "Mr. Singleton"), through his undersigned counsel, files and serves his Response and Opposition to the Plaintiff's "Motion to Alter or Amend Judgment" which is claimed to be filed pursuant to SCRPC Rule 59(e) (hereafter "the Motion"), and states

I. Introduction and Procedural History

This Court, after full briefing and oral argument, granted Plaintiff's Motion for Summary Judgment (hereafter "MSJ") and entered a Judgment in favor of the Plaintiff for foreclosure, but which denied Plaintiff any post-default interest, denied Plaintiff's claimed "advances" due to lack of specific evidence, and denied Plaintiff's (alleged) request for attorneys' fees. Significantly, and prior to the entry of the Judgment, the Court e-mailed all counsel as to certain matters which it was considering to include in any decision (copy of e-mail attached hereto). Plaintiff failed to object to or even respond to the subject e-mail, and now only complains after the fact.

Plaintiff has moved to alter or amend the subject judgment allegedly on the basis of SCRPC Rule 59(e), which Motion accuses the Master-In-Equity (hereafter "the MIE") of alleged bias and prejudice against the Plaintiff. The Motion is unsworn, and as such is not evidence as the law in South Carolina for over ninety (90) years, as consistently reaffirmed, is that statements

of counsel are not evidence. *McManus v. City of Greenwood*, 171 S.C, 84, 89, 171 S.E.2d 473, 475 (1933)(statements of fact appearing in argument of counsel will not be considered as evidence); *South Carolina Dept. of Transportation v. Thompson*, 357 S.C. 101, 105, 500 S.E.2d 511 (S.C. 2008)(arguments of counsel are not evidence); *Trivelas v. South Carolina Dept. of Transportation*, 348 S.C. 125, 141, 558 S.E.2d 271 (S.C. App. 2001). Significantly, Plaintiff has failed to submit any affidavit attesting to any alleged bias or prejudice.

Mr. Singleton stands ready, willing, and able to pay the net amount of the Judgment and has repeatedly conveyed this to counsel for the Plaintiff, which counsel has not only ignored Mr. Singleton's good-faith request to finally end this litigation, but now seeks to penalize Mr. Singleton and take its wrath out on this Court as "sour grapes" because it did not obtain every form of relief to which it claims entitlement. Mr. Singleton asserts that the Motion has been filed in bad faith and to further protract this litigation, and for purposes of seeking retaliation against not only him, but the MIE as well simply because the MIE ruled against the Plaintiff on certain issues notwithstanding that the MIE's bases for the ruling are documented in the record and the Judgment as well..

The Motion should be denied as frivolous, and the Court should award Mr. Singleton all of his attorneys' fees and costs in connection with defending the subject Motion.

II. The Motion's Flawed Arguments

A. Rule 59(e)

Plaintiff's Motion seeks relief on the alleged bases of (a) ignoring evidence; (b) ignoring law; and (c) a claim of bias and prejudice. Plaintiff's Motion admits that a Rule 59(e) Motion is proper when a party "believes the court had misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on

it”, citing *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). However, *Elam* was not a case in equity, and concerned whether the complaining party had timely filed an appeal after the entry of an Order denying its Rule 59(e) motion.

In any event, none of the claimed grounds apply here. The Court not only fully considered all of the issues as reflected in the pre-hearing briefing of the parties and at oral argument, but also ruled on the arguments placed in issue according to the law. The Motion should be denied on this threshold ground alone.

B. False and Misleading Claims in the Motion

1. Record History of Events

As a threshold matter and as set forth in the Judgment, this cause was originally set for trial in 2016 after a series of claimed transfers of the mortgage loan the subject of this action from the original bankrupt lender to a succession of numerous entities. The then-Plaintiff, like other Plaintiffs before and after it, made the decision (here, in 2016) on the eve of the scheduled trial date to sell the loan to yet another third party which was not a party to the litigation (Judgment, paragraph 24), thereby continually delaying this matter from being in a position to be tried and thus denying Mr. Singleton the right to have the MIE determine who the real party in interest was, which he has been seeking for over nine (9) years in this litigation.

Mr. Singleton was not at fault for any of the subject delays, but was forced, after each sale of the loan, to seek and obtain discovery as to the alleged rights of the “new” plaintiffs in order to prepare his defense. Significantly, Mr. Singleton testified in his deposition that he was ready and willing to pay whoever was the true owner of his loan. However, he was prevented from doing so for years on end due to the conduct of the various Plaintiffs in continuing to sell or transfer the loan, the history of which is set forth in very specific detail in the Judgment which

historical record is incorporated herein by reference and need not be specifically reiterated here. In view thereof, the allegation in the Plaintiff's Motion that the Court's factual basis for its ruling consisted only of "generalizations" is a material misrepresentation to this Court.

The Motion also wrongfully alleges that the Plaintiff did not engage in any bad faith throughout the almost 10-year litigation in this case. The Motion ignores the record history of Plaintiff's reluctance to comply with discovery; Plaintiff's noncompliance with this Court's prior discovery Order entered years before the summary judgment hearing and consequent Motions to Compel due to Plaintiff's repeated noncompliance with the subject Order; and Plaintiff's delays in producing discovery which naturally and proximately caused Mr. Singleton to otherwise expend attorneys' fees and costs in his ongoing attempt to seek the truth.

The Motion claims that "the preponderance of the evidence show that Plaintiff did not act in bad faith", and that "there are no specific findings concerning (1) the actual number of allonges, assignments, and counsel substitutions; (ii) how these events protracted the litigation and for how long, and (iii) how those events increased the Defendant's legal fees." (Motion, page 6 including footnote 7). These claims border on the specious as demonstrated by the record including:

- (a) the record of the various allonges, assignments, counsel substitutions; and
- (b) the numerous changes of plaintiff and consequent necessary discovery; and
- (c) the Plaintiff's consistent noncompliance with Court-ordered discovery.

In fact, the Judgment specifically recites the record of allonges, assignments, counsel substitutions, and the like including in paragraphs 13, 14, 15, and 16 of the Judgment **which finding are supported by reference to the very Exhibits to Plaintiff's MSJ.** Plaintiff has thus

misrepresented material facts and intentionally omitted record facts in its Motion, which demonstrates the infirmity of the claims in the Motion and warrants the denial thereof *ab initio*.

Further and significantly, Plaintiff cites no law which requires that a Judgment detail each and every instance in the record to justify its ultimate conclusions. That is because there is no such law.

The Judgment requires each party to pay their own attorneys' fees and costs. There is nothing unfair or inequitable as to requiring the Plaintiff, a very large international banking concern with billions of dollars in assets, to pay its own attorneys' fees and costs in view of its 9+ year history of frustrating the ultimate disposition of this case on the merits, delaying and hindering discovery, hindering Mr. Singleton's attempt to ascertain the truth, and delaying this litigation. The fair result reached by the MIE is further demonstrated by the Judgment requiring Mr. Singleton, an individual homeowner, to pay his own attorneys' fees and costs notwithstanding the significant amount thereof which was necessitated solely due to the Plaintiff's record conduct as set forth in the Judgment.

2. UCC Argument

The Motion claims that the MIE improperly relied on the principles and intent of the UCC as the basis for its decision. There are at least two infirmities with this allegation.

First, it is more than apparent that the MIE relied upon the entire record in the case in addition to its equitable powers provided by law as bases for the decision. Plaintiff cites no law which precludes the inclusion of policy reasons for a decision in addition to other reasons set forth in the record. Second, it is the public policy of South Carolina to promote just outcomes for the parties in civil disputes. *Stone v. Thompson*, 428 S.C. 79, 833 S.E.2d 266, 270 (S.C. 2019). The Judgment, based on the record, is more than fair, as it grants the Plaintiff the foreclosure it

requested, but also provided an equitable setoff in view of the Plaintiff's record actions and inaction in delaying justice and delaying an ultimate decision on the merits of this case.

3. Denial of Attorneys' Fees is Within the Discretion of the Court in a Contract Case

There is no issue that this judicial foreclosure action was premised upon a contract. Significantly, Plaintiff cites to *U.S. Bank Trust, N.A. v. Bell*, 385 S.C. 364, 378-79, 684 S.E.2d 199 (S.C. App. 2009) for the proposition that interest cannot be set off by a court. Notwithstanding that *Bell* was decided on totally different facts than this case, *Bell* held that when there is a contract, the amount of attorneys' fees is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown, citing *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 383, 377 S.E.2d 296, 297 (S.C. 1989). Under the totality of the record circumstances, Plaintiff has failed to demonstrate any abuse of discretion whatsoever.

To be blunt and to the point, the various Plaintiffs and their counsel, by their actions over the course of more than nine (9) years of litigation, have "foisted the matter upon their own petard", and should not be rewarded for their conduct, nor should Mr. Singleton be penalized because of his exercise of his legal rights to defend the constantly-changing claims of the numerous Plaintiffs and having to force the various Plaintiffs to comply with this Court's discovery Order. Plaintiff has no one to blame for its alleged woes other than the numerous Plaintiffs in this 9+ year litigation.

III. The Court's Broad Equitable Powers

A. Broad Equitable Powers Generally

An action to foreclose a real estate mortgage is one in equity. *Ml Co. v. McLean*, 325 S.C. 616, 623, 482 S.E.2d. 597, 601 (S.C. App. 1997). It matters not if there are monetary claims asserted, as the character of an action depends upon the relief sought. *Crewe v. Blackmon*, 345

S.E.2d 754, 289 S.C. 229 (S.C. App. 1986)(action was one in equity where most of the relief sought was equitable in nature notwithstanding that the complaint contained damage claims sounding in fraud and misrepresentation).

South Carolina law is well-settled that the equitable powers of a chancery court are sufficiently broad and searching to reach all of the equities and liabilities of the parties, and will settle, dispose of, and enforce the whole in one action. *James v. Graham*, 114 S.C. 107, 78 S.E. 82 (S.C. 1913); *Ex parte Qualis*, 71 S.C. 87, 50 S.E. 646 (S.C. 1905). This by definition would include any claim by Plaintiff for post-default interest and attorneys' fees, which are monetary claims.

B. Equitable Powers to Relieve a Party From a Penalty

This Court, sitting in equity, has broad equitable powers including the power to relieve a party from a penalty. *Lane v. N.Y. Life Ins. Co.*, 147 S.C. 333, 145 S.E. 196, 209 (S.C. 1928). In *Lane*, the Supreme Court of South Carolina held that a court of equity will not lend its aid to a plaintiff seeking to have a penalty enforced and in proper cases will grant relief from a penalty.

The assessment of post-default interest and Plaintiff's attorneys' fees against Mr. Singleton would operate as a penalty under the exceptional circumstances of this case. The record history reveals that Plaintiff's attorneys' fees incurred over a course of over nine (9) years were solely due to the Plaintiff's:

- (a) constantly changing its identity; and
- (b) repeatedly selling the loan; and
- (c) repeatedly changing position as to who was allegedly owed monies on the loan; and
- (d) delaying compliance with discovery including Court-ordered discovery; and
- (e) changing its position in sworn testimony; and thus

(f) unnecessarily protracting this litigation which has resulted in a waste of this Court's judicial resources and Mr. Singleton having to wait over nine (9) years to ascertain who in fact owned his loan and who was owed money on the loan. This Court will not reward the Plaintiff by awarding it interest on the loan after default, especially given Mr. Singleton's deposition testimony that he was simply attempting, in this litigation, to ascertain (a) to whom the claimed debt was owed given the constant selling and re-selling of his loan, and (b) the amount owed.

Plaintiff's Motion should thus be denied.

IV. Plaintiff's Failure to Itemize and Demonstrate Reasonableness Escrow and Corporate Advance Claims

Plaintiff claims that the MIE abused his discretion in denying Plaintiff its escrow and corporate advance claims. As a threshold matter, the law in South Carolina is that a Plaintiff must prove its damages by competent evidence. *Witt v. Witt*, 248 S.E.2d 494, 495, 271 S.C. 541 (S.C. 1978).

As the Judgment expressly found that the Plaintiff failed to provide sufficient information, including itemization and reasonableness of its claims for escrow and corporate advances (Judgment, paragraphs 62-66), Plaintiff "cannot now be heard to complain" as to the MIE's decision not to award such damages, as the failure to supply the MIE with sufficient evidence to permit the making of specific findings results in a failure to demonstrate that the result reached by the master, as to the setoff, was erroneous. *Diamond Swimming Pool Co. v. Broome*, 252 S.C. 379, 166 S.E. 2d 308, 312 (S.C. 1969)(affirming master's findings and overruling objections thereto).

Plaintiff's Motion which claims an alleged "abuse of discretion" in denying claims for escrow and corporate advances is thus properly denied under South Carolina decisional law.

V. The “Biased and Prejudiced” Argument

The Motion ends with a spurious attack on the MIE, claiming that the denial of certain forms of relief was the result of “demonstrated” bias and prejudice. It is hornbook South Carolina law that a party alleging bias or prejudice must present evidence of judicial prejudice or bias. *Simpson v. Simpson*, 660 S.E.2d 274, 277, 377 S.C. 519 (S.C. App. 2008). The fact that a judge rules against a litigant is not proof of prejudice by the Judge even if it is later held that the judge committed error in his rulings. *Reading v. Bell*, 291 S.C. 492, 354 S.E.2d 397, 399 (S.C. App. 1987). Plaintiff’s Motion is just that: nothing more than a displeasure as to certain rulings mischaracterized as alleged “bias and prejudice”.

Significantly, Plaintiff has not moved to disqualify the MIE on the alleged basis of purported bias or prejudice. It is also significant that Plaintiff cites no law which provides that an unsworn Rule 59(e) motion which alleges bias or prejudice provides a legal basis for a judge to overrule his prior rulings, and Rule 59(e) contains no such language. The Plaintiff’s failure to file any Affidavit alleging bias or prejudice speaks volumes.

It is further established, by the law of the South Carolina Court of Appeals and the United States Supreme Court, that the alleged bias or prejudice “must stem from an extrajudicial source and result in a decision based on other than what the judge learned from his participation in the case.” *Payne v. Holiday Towers, Inc.*, 283 S.C. 210, 321 S.E.2d 179, 183 (S.C. App. 1984)(emphasis supplied), citing *United States v. Grinnel Corp.*, 384 U.S. 563, 86 S.Ct. 1698, 16 L.Ed.2d 778 (1966).

In alleged support of the claimed “bias and prejudice”, the only “evidence” that the Motion cites is a portion of the transcript of the hearing which itself demonstrates that the decision was in fact the result of matters learned by the Judge through his long and consistent

participation in the case, and there is no dispute that the MIE who presided over this case has been involved with it and handled every hearing in this case since “day one”. The claim of alleged “bias and prejudice” is thus unfounded by the very law which sets forth the legal requirement to demonstrate such claims. Plaintiff neither addresses this law nor provides any decisional law to support its otherwise meritless position. The Motion is thus properly denied.

VI. Conclusion

Plaintiff’s “Motion to Alter or Amend Judgment”:

- (a) is unsupported by law or evidence necessary to seek the drastic relief requested;
- (b) ignores the record facts and history of this case;
- (c) ignores established South Carolina law as to the broad equitable powers of the Court;
- (d) fails to satisfy the standard for the demonstration of “bias and prejudice”; and
- (e) fails to cite any case even remotely similar to the facts of this case.

The Motion also wrongfully accuses the MIE of alleged bias and prejudice, which is specious and totally without merit or legal support given the detailed findings in the Judgment and the lack of any evidentiary support for these otherwise spurious claims, and in view of South Carolina law. The Motion should thus be denied, and Plaintiff should be assessed with Mr. Singleton’s attorneys’ fees and costs in defending the meritless Rule 59(e) Motion.

WHEREFORE, Mr. Singleton respectfully requests that this Court deny Plaintiff’s “Motion to Alter or Amend Judgment” for the reasons set forth, and for any other and further relief which is just and proper including but not limited to the assessment of Mr. Singleton’s attorneys’ fees and costs in defending the subject Motion against Plaintiff.

Dated this 12th day of December, 2022.

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