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SC Court of Appeals

Record/FILE ON DEMAND

IN THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2020-001130
Common Pleas Case No.: 16-CP-18-1678

Wilmington Savings Fund
Society FSB as Trustee of
Stanwich Mortgage Loan Trust C.....Respondent,

v.

Nelson L. Bruce, et al.....Appellant.

APPELLANT’S PETITION FOR REHEARING

Nelson L. Bruce, Propria Persona, Sui Juris
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Leonbruce81@yahoo.com
Appellant

April 3, 2024

Comes now Appellant with his petition for rehearing. This Petition is filed pursuant to Rules 221 and 240 governs motions and petitions for rehearing generally. Appellant hereby respectfully petitions this court for rehearing of this courts January 17, 2024 opinions in this matter based on facts, exhibit evidence, arguments produced on the record on appeal which may have been overlooked or misapprehended by the court which are set forth herein. This court issued the decision in this matter on January 17, 2024, this petition was extended by this court to April 3, 2024 therefore this petition is timely. By this petition for rehearing, Appellant wishes to reiterate and incorporate by reference all the arguments and records made before the Court as the record on appeal and contained in his briefs. Appellant respectfully disagrees with the findings and decision to affirm the lower court's decision as presented in this petition. Appellant reiterates and incorporates all sections of this petition addressing the courts opinions to apply to all sections of appellant's objections where applicable.

APPELLANT'S OBJECTIONS TO THIS COURTS SECTION "1" OPINIONS

Plaintiff objects to the judge's findings that "Bruce did not allege that by initiating foreclosure proceedings, Bank of America was attempting to collect the debt of another. Rather, he alleged it was asked to cease any and all communication attempts via telephone, and ignored that request on more than 20 occasions" and that it failed to validate the debt. That, "We find these allegations were insufficient to support a conclusion that Bank of America was a "debt collector" within the meaning of the FDCPA." Referencing *Plyer v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188 (2007) Plaintiff objects because it appears that the judge only considered the pleading, not the entire record on appeal including the exhibits filed on the records in the light most favorable to the complainant. The Court of Appeals is required to consider the entire record on appeal, including exhibits filed on the record with the pleadings", not just the allegations set forth on the face of the pleadings as a party has a due process right to be heard otherwise what is the purpose for filing the entire record on appeal. The appellant's exhibits are

part of his complaint and are incorporated by reference as part of his complaint which this court refers to as the “pleadings” therefore are part of the record of on appeal, the face of the complaint/pleadings and should have been considered when making a decision. Appellants **Exhibit E** clearly evidences that Bank of America by their correspondence dated December 2, 2016 by Bank of America’s own words, they admit to being acting as a debt collector evident by their statement, “Bank of America, N.A. is required by law to inform you that this communication is from a debt collector” (**See...Record on Appeal Doc. No. 169-170 also see...record on appeal pg. 232**). Which was after filing the foreclosure action on 8-19-2016 but is clear evidence that they admit to being debt collectors at the time of and during the foreclosure. Bank of America’s 12-2-2016 notice is in compliance with **12 CFR Section 1006.18(e)(2)** which “requires a debt collector to disclose in each subsequent communication that the communication is from a debt collector” therefore this is clear undisputable, undeniable evidence of fact before the court that defendants were acting as debt collectors at the time of the foreclosure and therefore are debt collectors as a matter of law. **Exhibit F** filed as part of the record on appeal which is part of appellant’s complaint with documents dated August 27, 2015 clearly supports the fact that Bank of America, N.A. was acting as the servicer, they were collecting on a debt on behalf of someone else, in this case, it was “Government National Mortgage Association” the alleged note holder (**See...Record on appeal doc. 178-181**). Appellants **Exhibit H** filed as part of the record on appeal evidencing a document from Bank of America dated July 20, 2015 also evidences that Bank of America is operating on behalf of someone else well after the alleged mortgage assignment and or any alleged modifications which clearly supports that Bank of America is not the holder of the note collecting their own debts (**See...Record on Appeal Doc. No. 289-290**). Appellant’s complaint section “17” and “19”

even states that “The Plaintiff is not the true party of interest therefore did not have nor do they currently have standing to bring a foreclosure action”, that “The Plaintiff nor their Attorneys have subject matter jurisdiction neither are they the true parties of interest for which no affidavit has been filed validating and verifying under firsthand knowledge to any facts that they are the true holders in due course of the original note(s) or that this is a valid debt” (Record on Appeal Doc. No. 40). Further indicating that they are not collecting their own debts which could be liberally construed by the court as required to be done for a party who is not an attorney. The record on appeal clearly evidences and therefore can liberally be construed that Bank of America attempted to collect debts owed to another and therefore qualifies as a debt collector, even at the time of filing the foreclosure and during the foreclosure therefore appellant objects to this courts unpublished opinions related to the FDCPA claims and requests for a rehearing.

Further, appellant objects to this court’s opinion because this court has failed to address the other definition of debt collector which is the “principal purpose” which was before the lower court and ruled on as a result of the court ruling on the motion to dismiss as an opposition was filed and as a result of ruling on the motion to reconsider which addressed the opposition to plaintiff’s motion to dismiss and therefore is preserved for appeal and appellant requests for a rehearing. This court only is addressing the “regularly collects definition” only. Under the FDCPA, the term “debt collector” also means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts. The above Exhibits clearly demonstrate that Bank of America, amongst the others who appellant requested be included on the case that was not included, have used interstate commerce including the mails for the principle purpose of collecting a debt a payment from the appellant. The court is required to follow and apply the act,

that statute as it is written when considering and making a determination on whether a party is a debt collector as defined by law under one of the FDCPA total definition which in this case clearly provides that “any” person such as the parties to this case, previous parties to this case, and parties requested to be added to this case are included in the definition of debt collectors when their principle purpose was the collection of any debts if they used interstate commerce including the mails to try to collect on that debt at any point. The record on appeal supports that the parties referenced above have used one or more of the method provided under the FDCPA to be considered a debt collector even when allegedly collecting their own debts. Based on the facts presented above, Bank of America and the other referenced parties do not fall under the term Creditor. The term “creditor” means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another. The record evidences that neither parties extended appellant any credits creating a debt, the parties are not the parties in interest to whom a debt is owed or was owed as the record evidences they are collection on behalf of someone else such as the investor and the investors who make up the pool of pool of mortgages which are multiple investors. The record evidences that the debt was assigned and or transferred while in default solely for the purpose of facilitation collection of such debt for another person evidenced by their being a servicer who is put in place for the principle purpose of collecting a payment i.e. collecting a debt well before there was a foreclosure action. The law does not allow a debt collector to change its possession just because it wants to allegedly enforce a security interest. Once you are a debt collector, you will continue to be a debt collector. This court cannot just ignore that the FDCPA has two definitions of the term “debt collector” and therefore must

address both when considering the record on appeal and providing their opinion therefore appellant objects and reiterates and incorporates by reference his entire appeal brief and response brief for issue one and requests for a rehearing supported by the entire record produced on appeal.

APPELLANT’S OBJECTIONS TO THIS COURTS SECTION “2” OPINIONS

The issue that “Bruce failed to preserve his argument to the circuit court erred by failing to instruct him as to how to amend his pleadings or give him the opportunity do so”, is an inaccurate statement because this issue was brought up to the circuit court evidenced by the appellants motion for reconsideration and ruled on by the trial judge evidenced by the judges denial of appellant’s motion for reconsideration (**see...Record on Appeal Doc. No. 22-23, 530**) therefore, it was not raised for the first time on appeal and therefore appellant objects to this court’s inaccurate opinion that it is being raised for the first time on appeal and requests for a rehearing. The circuit judge did not make a decision to dismiss appellant’s counterclaims until later after the hearing, not during the hearing and therefore such claim could not and would not have been brought at the time of the hearing, it would have had to be brought after the hearing which is what appellant did. If this court believes that the court should have provided a specific response to each claim presented before the circuit court in appellants’ motion for reconsideration, which is ground to remand back to the circuit court to address with complete detail. It appears that based on the record on appeal that the above issue was not raised for the first time on appeal as the record clearly show that it was raised to the circuit court before the appeal and then appealed after the court denied the motion to reconsider. This court appears to base its decision on the fact that after appellant’s counter claims was dismissed, appellant did not have a right to a trial by jury. However, the issue on appeal is whether plaintiff exercised his right to a trial by jury on his counterclaims, whether the counterclaim was for a jury to decide not for the court to decide as a result of a hearing that was not requested by the party filing a motion to dismiss and whether or not the court had already docketed the counterclaim as to be before a jury. The record clearly shows that the counterclaims was docketed to be before a jury

but was not (**see...record on appeal no. 188**). Based on the record, there should not have been any hearings as the party filing the motion to dismiss did not request for a hearing. The court was only to review what was on the record which was the motion to dismiss and the appellant's opposition to the motion to dismiss. The judge cannot not consider the opposition to the motion to dismiss especially since it directly addresses the motion to dismiss by calling for a hearing that was not requested in the first instance (**see...record on appeal no. 7**) and use only the hearing to make a decision without considering the opposition as appellant has a right to be heard. The **Rule 12, SCRPC** even require that an opposition/response be filed therefore it cannot, not be considered otherwise it is clearly a denial of due process, the right to be heard. Filing an opposition is the standard way for a party to respond to a motion to dismiss and present their arguments. Not considering the opposition is a denial of due process which is before this court. This court has failed to address these issues and therefore appellant objects to this courts unpublished opinion and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue two and requests and requests for a rehearing.

This court alleges that, Although Bruce filed a 59(e), SCRPC, motion to reconsider, he did not request leave to amend his pleadings in that filing. On the contrary, Appellants motion to reconsider that was filed within 30 days from the court's decision to dismiss appellants counterclaims/countersuit clearly incorporate within it a request for leave as it states that, "This court should grant leave of court for defendant to cure any defects if any are present in defendant's amended counterclaim/countersuit," which can clearly be liberally construed as appellant requesting leave of court to amend his counterclaims/countersuit (**see...Record on Appeal no. 558**) which this court appears to claim is required. Therefore, appellant objects to this court's entire opinion under this section and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue two and requests and requests for a

rehearing supported by the entire record produced on appeal.

APPELLANT'S OBJECTIONS TO THIS COURTS SECTION "3" OPINIONS

Appellant objects to this opinion of the court because as presented in objection #2, the issue on appeal is whether there is a right to a trial by jury on appellant's counterclaims which is a legal action and is what appellant is referring to, not the claims after the counterclaims was dismissed and therefore appellant objects to this court's entire opinion under this section and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue three and requests for a rehearing supported by the entire record produced on appeal.

APPELLANT'S OBJECTIONS TO THIS COURTS SECTION "4" OPINIONS

During the hearing before the circuit court, the judge asked appellant did he file an affidavit (**see...record on appeal no. 57-58**). After going back and reviewing the amended complaint, which clearly on the face of the complaint evidences that it is an affidavit as it is attested to and declared by the appellant (**see...record on appeal pages 35 and 44 at par. 50**). It clearly provides that the appellant is indigent which was not addressed by the court as presented in appellant's motion to reconsider (**see...Record on Appeal no. 531**). The court never mentioned that leave of court was required at the hearing, the court only asked whether there was an affidavit filed and in this case, there clearly was if the judge of the circuit simply reviewed the entire record which was presented to the court again to address before the appeal and therefore is preserved for appellate review and appellant objects to this court's entire opinion under this section and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue four and requests and requests for a rehearing and appellant requests for a rehearing.

APPELLANT'S OBJECTIONS TO THIS COURTS SECTION "5" OPINIONS

Appellant objects to this entire section of this court's opinion because this court is also required to view the entire record on appeal including the exhibits which it appears that this court is ignoring the record when considering this appeal. Based on the record, appellants amended complaint incorporates within it an affidavit identifying him as being indigent plus the other affidavits filed on the record which was referenced in appellant's appeal brief which was brought to the courts attention with a motion for reconsideration as the judge of the court was required to have reviewed the record before the hearing to have knowledge of what was already filed. By not reviewing and considering the entire record which include the exhibits filed on the record by the appellant which are incorporated in the amended complaint and in the opposition to the motion to dismiss and therefore, this court could not be the complaint in the light most favorable to the complainant and with every doubt resolved on his behalf on whether the counterclaim states any valid claim for relief and therefore appellant objects to this court's entire opinion under this section and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue five and requests and requests for a rehearing.

APPELLANT'S OBJECTIONS TO THIS COURTS SECTION "6" OPINIONS

As presented in appellants' final appeal brief and final response brief, appellant addressed these issues before the court in his opposition to the motion to dismiss and his motion for reconsideration. The opposition to the motion to dismiss is a required filing in response to a motion to dismiss and therefore must be considered otherwise it is a denial of appellant's due process rights to be heard. By the circuit court placing an order and or judgment, they have ruled on the issue whether specifically addressed or not. Because the issues were raised and there was an order specifically denying the claims, it must be construed as being raised before the circuit court and ruled upon otherwise there would be no ruling at all which the record evidences that it

is. Therefore, these issues are preserved for appellate review and appellant objects to this court's entire opinion under this section and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue six and seven and requests and requests for a rehearing.

APPELLANT'S OBJECTIONS TO THIS COURTS SECTION "7" OPINIONS

Appellant has challenged the circuit court's jurisdiction which includes jurisdiction of the judges. This issues cannot be abandoned because it falls within the jurisdictional challenges which was brought before the court before appeal. It cannot be abandoned because all issues presented in this section were raised before the court before filing an appeal. Further, the rules of the court is the supporting authority as these are the required procedures for substitution and are not abandoned because they were raised before the circuit court. Therefore, these issues are preserved for appellate review and appellant objects to this court's entire opinion under this section and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue Eight and requests and requests for a rehearing.

APPELLANT'S OBJECTIONS TO THIS COURTS SECTION "8" OPINIONS

As presented in appellant's brief, the issue related to substitution was addressed in appellant's opposition to plaintiff motion to dismiss and therefore preserved for appeal. The certification does indicate that appellant was served with a motion to substitute only that it may have been mailed out. It does not evidence that appellant actually received the motion for substitution nor does it provide a date appellant received it and therefore, no evidence of appellant actually being served with the notice. Which is another reason why appellant file a motion to vacate this order to address this. Because appellant has produced sufficient evidence on the record that affidavits of indigency has been filed, this is preserved for appellate review to

consider because this was before the court before appeal and the circuit ruled upon it by denying the appellants motion for reconsideration which references that this was presented in the opposition to the plaintiff's motion to dismiss. Therefore, these issues are preserved for appellate review and appellant objects to this court's entire opinion under this section and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue Nine and requests and requests for a rehearing.

APPELLANT'S OBJECTIONS TO THIS COURTS SECTION "9" OPINIONS

Appellants objects to this court's entire opinion under this section and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue ten and requests and requests for a rehearing. Appellant has shown that all elements of constructive fraud exists. As presented in appellant's opposition to plaintiff's motion to dismiss, there should have been multiple parties enjoined into the case which the court failed to do or even notify the appellant of any defects preventing the parties from being enjoined. Based on the record on appeal, because there should have been multiple parties as defendants to appellant's counterclaims, his civil conspiracy claims do apply.

Further plaintiff's motion to reconsider clearly evidences supporting authority for his claims under TILA according to law and the sections of his amended complaint which address these issues. The law is the supporting authority evidenced by the action of the opposing party or parties which caused the violations. There is also a referenced case that supports the law and the actions presented which has caused a violation of TILA. Therefore, these issues are preserved for appellate review and appellant objects to this court's entire opinion under this

section and appellant reiterates and incorporates by reference his entire appeal brief and response brief for issue ten and requests and requests for a rehearing.

CONCLUSION

For these reasons, appellant respectfully objects to this courts opinions. Should this court after reconsidering the record on appeal still believes that certain matters were not specifically ruled upon by the circuit court that those matters be remanded back to the circuit court directing them to specifically be addressed point by point. For all other remaining issues, this court should grant the appellant the relief requested in his briefs. Dated this 3rd day of April, 2024.

RESPECTFULLY PRESENTED,

“Without Prejudice”

Nelson L. Bruce

THE BENEFICIAL OWNER OF THE CESTI QUI EQUITABLE TRUST

Nelson L. Bruce, Propria Persona, Sui Juris

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U.C.C. 1-207/1-308, 1.103.6

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PROOF OF SERVICE

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(843) 437-7901
Appellant

April 3, 2024

I Nelson L. Bruce, Appellant, hereby certify that I served a copy of the foregoing,
APPELLANT'S PETITION FOR REHEARING, by depositing a copy of it in an envelope
mailed via the UNITED STATES POST OFFICE via the UNITED STATES POSTAL
SERVICE via First Class Mail Addressed To:

ALBERTELLI LAW
Attention: William S. Koehler
1201 Main Street, Suite 1450
Columbia, South Carolina 29201
Attorney for Respondent

Dated this 3rd day of April, 2024.

RESPECTFULLY PRESENTED,

“Without Prejudice”

Nelson L. Bruce

THE BENEFICIAL OWNER OF THE CESTI QUI EQUITABLE TRUST

Nelson L. Bruce, Propria Persona, Sui Juris

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