THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Civil Case No. 2010-CP-10-5199
Appellate Case No. 2013-000563

Family Services, a South Carolina eleemosynary organization, in its capacity as Conservator for Albert Jordan, Respondent,

v.

Quicken Loans, Inc., a Michigan Corporation; Chase Home Finance, LLC, a Delaware Limited Liability Company; and Gwyndolyn M. Jordan, Defendants,

Of whom Quicken Loans, Inc., and Chase Home Finance" LLC, are the Appellants.

And

Chase Home Finance, LLC, is Counterclaimant, Cross-Claimant and Third-party Plaintiff,
v.

Gwyndolyn M. Jordan, Cross-claim Defendant,

and Albert Jordan, individually, Antonio Jordan, John Doe, and Household Finance Corporation II, Third-party Defendants

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STATEMENT OF THE CASE

This lawsuit arises following the execution of a mortgage and promissory note in favor of Appellant on September 25, 2008. Respondent Family Services, Inc.[1], a South Carolina eleemosynary organization ("Conservator") initiated the underlying lawsuit by filing the Complaint on June 25, 2010. Appellant Chase filed an Answer and Counterclaim dated August 31, 2010, denying the unenforceability of the note and mortgage in question, and instead seeking to foreclose upon the same, as well as alleging the Conservator had negligently failed to act on behalf of Mr. Jordan in its capacity as conservator, and damaged Chase as a result. Respondent Conservator filed a reply denying the asserted counterclaims.

After discovery, Conservator sought summary judgment against Appellants Quicken and Chase as to all causes of action alleged in its Amended Complaint, as well as to Chase's Counterclaims[2]. A hearing was held on May 17, 2012 on the Motion for Summary Judgment, and an order granting summary judgment in favor of the Conservator was filed on September 5, 2012.

Chase thereafter moved for reconsideration of that order pursuant to Rule 59(e), SCRCP. By Form 4 order filed February 1, 2013, the Court granted the motion in small part, but affirmed summary judgment for Conservator in most respects. This appeal arises

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[1] Family Services, Inc. was substituted as a party to this matter after assuming the role of conservator appointed in favor of Albert Jordan, which had previously been the responsibility of First Citizens Bank & Trust at the commencement of the underlying action.

[2] Conservator also sought summary judgment against Respondent Gwendolyn Jordan ("Gwendolyn Jordan") as to all causes of action alleged in the Amended Complaint and as to her Counterclaims.

from the initial grant of summary judgment in any respect, and the subsequent denial of the motion to reconsider as to any claim in favor of Conservator[3].

[3] Conservator's motion for summary judgment on its third cause of action for attorneys' fees and sanctions was reversed and denied. Appellants do not appeal that aspect of the ruling.

FACTS

Conservator[1] ("Conservator") filed this lawsuit to nullify and demand satisfaction of a Promissory Note for $178,000.00 ("Note") signed by Albert Jordan in favor of Quicken Loans on September 25, 2008. Executed as the same time was a related Mortgage ("Mortgage") pledging as collateral property known as 5 Charlyn Drive, in Charleston, South Carolina 29407. Albert Jordan and his wife, Gwendolyn Jordan, both signed the Mortgage as mortgagors, as Gwendolyn Jordan is the co-owner of the property, and pledged the property as collateral, though only Albert Jordan signed the Note. The funds from the loan were disbursed as follows: $15,117.45 to Bank of America to pay off a credit line, $105,137.98 to Household Finance, Corporation II (herein Household Finance) to pay off a mortgage, and $48,337.21 to the Jordans.

Prior to issuing the loan, a title search revealed that Conservator recorded a letter of conservatorship[2] with the Charleston County Register's Office on January 21, 1998, apparently six months after being appointed as successor conservator for Mr. Jordan on June 24, 1997. But, subsequent to that January 1998 filing, there was recorded a probate court order entitled "*Certificate of Discharge*," which indicates that the conservatorship estate had been fully administered and "all Orders Closing the Estate have been complied with." (Order __). That notice went on to reference the original letter of conservatorship filed of record; there were no intervening public notices.

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[1] Conservator was originally Conservator Bank and Trust, but then Conservator took over as conservator for Albert Jordan in 2012. For simplicity, all parties to have ever held the position of Conservator of Albert Jordan will be referred to as Conservator.

[2] Conservator, as conservator for Albert Jordan, is required by S.C. Code Ann. § 62-5-421 to file notice of the conservatorship in the office where conveyances of real estate are recorded for the county in which the protected person resides and in the other counties where the protected person owns real estate.

The Chase mortgage was recorded in the Charleston County public records on November 4, 2008 at Book 0018, Page 737. On or around October 15, 2008, as part of a larger transaction, the referenced mortgage and note were sold by Quicken to Chase and, the Jordan's received notice that Chase would thereafter be servicing their home loan on October 31, 2008. In or around January 2010, when they began to have difficulty making the payments on the loan, Mrs. Jordan contacted Conservator and requested an increase in Mr. Jordan's monthly allowance. Instead of assisting with payment of the mortgage, Conservator began its efforts to void the loan. Conservator asserts that the mortgage and promissory note are invalid as to Mr. Jordan's ½ interest in the property because Mr. Jordan was legally incompetent to execute them.

Conservator admitted they did not have knowledge of the prior mortgage to Household Finance and did not have knowledge of the Chase loan, until Mrs. Jordan called to request payment assistance. Chase[3] filed a counterclaim against Conservator alleging that it was negligent in the management of conservatorship and that their negligence proximately resulted in harm to Chase, and that Conservator is barred from asserting this action against Chase under the doctrine of laches.

After a hearing on several motions, the Circuit Court held that it "finds no evidence showing that Conservator intended to relinquish or abandon any known rights as Mr. Jordan's conservator, that it did not seasonably assert Mr. Jordan's rights, that it unreasonably delayed in pursuing Mr. Jordan's rights, or that it committed any act or omission which caused Defendants Quicken or Chase to detrimentally change their position." (Order, Sept. 5. 2012). Defendant Chase claims that Conservator could have made periodic searches of the records on file with the

[3] There were additional claims by Chase against the Jordans, including for foreclosure, against Household Finance II and, against Antonio Jordan, the borrower's son, for unjust enrichment. Chase seeks a constructive trust against Household Finance II.

RMC to check for any transactions involving Mr. Jordan and, if it had done so, it could have discovered the prior mortgages and corrected the title before the Mortgage to Defendant Quicken was recorded on November 4, 2008. The court determined that the conservator "owed no duty to search the public records", and therefore had not received constructive notice of the mortgage and had not been negligent.

ARGUMENT

I. THE ORDER GRANTING SUMMARY JUDGMENT MAKES FINDINGS OF FACT THAT ARE DISPUTED, NOT SUPPORTED BY EVIDENCE AND WHICH SHOULD BE LEFT TO THE FACT FINDER AT TRIAL.

In this matter, the burden of proof upon Plaintiff (e.g. Family Services/Conservator) is based upon the preponderance of the evidence standard, (see generally, Lowcountry Open Land Trust v. Charleston S. Univ., 376 S.C. 399, 407, 656 S.E.2d 775, 779 (Ct.App.2008)) (regarding a mortgage foreclosure action). Therefore Chase, as the nonmoving party, "'is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.' This standard requires merely 'the slightest amount of relevant evidence' on an issue to warrant denial of summary judgment.' Black's Law Dictionary 635 (3d pocket ed. 2006)." Harris Teeter v. Moore & Van Allen, PLLC, 390 SC 275, 294-295, 701 SE2d 742, 752 (2010) concurring in part, dissenting in part, Hearn, J.

Furthermore, "[t]he party opposing summary judgment need not come forward in any way. Where, however, the record is devoid of any allegation or evidence tending to show there is a material fact in issue, the moving party is entitled to summary judgment as a matter of law." Milligan v. Liberty Life Ins., Co., 313 SC 478, 443 SE2d 381, 382 (1994). There is more, even, than a mere scintilla of evidence in the "pleadings, depositions, affidavits, and discovery on file" in this matter (Rule 56, SCRCP) showing there is a genuine issue of material fact. Summary judgment should not have been granted as there continue to be basic, fundamental and material facts in dispute.

Whether an agreement is void or valid turns on the existence of particular facts. "At common law, where a person is mentally incompetent at the time he executes a legal

instrument, and the person taking the instrument has knowledge of that fact, the transaction is void and third parties claiming under it have no enforceable rights against the incompetent by reason of the instrument." Elias v. Enterprise Building & Loan Association, 46 S.C. 188, 24 S.E. 102 (1896) (power of attorney). The Conservator has produced evidence that Albert Jordan was subject to a conservatorship at the time of the execution of the subject note and mortgage. However, whether "the person taking the instrument" had "knowledge of that fact" remains a contested, material, factual matter.

The trial court found that Chase "offered no evidence showing they were actually mislead or confused by the public record. There is no evidence showing that anyone on Defendants' behalf actually checked, reviewed, or read the notices recorded with the RMC involving Mr. Jordan's conservatorship when the Note, Mortgage, and related loan documents were signed in September of 2008." However, the notice of the public record is imputed to Chase for purposes of establishing notice of the conservatorship pursuant to S.C. Code Ann. § 62-5-421. Conversely, any confusing on contradictory notice in the public record should also be imputed to Chase, such that no additional affirmative showing of "confusion" or "lack of notice" must be averred to survive summary judgment. See Franklin Sav. & Loan Co. v. Riddle, 216 S.C. 367, 57 S.E.2d 910,913 (1950) ("While it is frequently stated that the record of an instrument operates as constructive notice, a more accurate statement is that the record of any instrument entitled to be recorded will give constructive notice to the persons bound to search for it.")

The Conservator cites public notice of its assumption of role as conservator in the public record. (R. ___) But also as part of the public record exists a contrary public notice, indicating the party acting as conservator on behalf of Albert Jordan has fully

discharged its duties. (R. ___). The existence of this public notice, filed later in time that the one relied upon by Conservator, is, itself, sufficient to raise a question of material fact as to whether public notice was sufficient to be imputed to Chase, as required to void the note and mortgage.

Another basis for the factual dispute regarding Chase's notice exists by virtue of the Conservator's own failure to act diligently, which forms the basis of Chase's counterclaims addressed *infra*. The deposition transcripts submitted to the trial court in opposition to the motion for summary judgment show provide testimony of Conservator's agent, Natasha Drews, and of Gwendolyn Jordan, and conclusions that can be derived therefrom in favor of Chase as non-movant, that create questions of fact as to Conservator's role in affirmatively perpetuating public, Chase included, ignorance of the conservatorship. The existence of prior loans even before Chase's subject note and mortgage is affirmative evidence in favor of Chase that the public, including Chase, were acting without knowledge of any ongoing conservatorship when viewed with all available inferences in Chase's favor as non-movant.

II. THE COURT ERRED IN RULING AGAINST DEFENDANTS CHASE AND QUICKEN AS TO THE COUNTERCLAIM FOR NEGLIGENCE.

In summarily dismissing Chase's counterclaims of negligence, the judge apparently relied on First Presbyterian Church of York, 27 S.E.2d at 576 ("The record of an instrument is notice only to those who are bound to search for it. It is not a publication to the world at large.") and Franklin Sav. & Loan Co. v. Riddle, 216 S.C. 367, 57 S.E.2d 910,913 (1950) ("While it is frequently stated that the record of an instrument operates as constructive notice, a more accurate statement is that the record of any instrument entitled to be recorded will give constructive notice to the persons bound to search for it.")"

(Order). The court found as fact that the Conservator did not know about the loan in 2008, or loans prior, and that it had no duty to know about it.

As to the first error, e.g. finding that the Conservator did not know about the loan and therefore could not have been lax in preventing its protected person from hindering the conservatorship estate, there is ample evidence in the record to demonstrate that Conservator had constructive and actual knowledge of the presence of additional mortgage obligations that encumbered the jointly owned residential property of its protected person.

The first in the succession of mortgages executed after Mr. Jordan's conservatorship was judicially created in 1990, was filed of record in 1999. (Exhibit 5, Depo. of Gwen Jordan). The mortgage to Midland Mortgage had been approved by the Veteran's Administration, ostensibly, and the Conservatorship was sending payments to the lender. Subsequent to that mortgage, the Jordans took a credit line from Bank of America and then a second mortgage from Household Finance; in 2008, they refinanced the second mortgage through Quicken/Chase. According to the Conservator at the motion hearing, no one working for Conservator supposedly discovered the existence of this encumbrance until 2010.

But, Gwendolyn Jordan, the protected person's wife, testified that she told an employee of Conservator about the existence of a second mortgage (e.g. Household Finance) "years ago", and the employee responded by saying, in effect, the mortgage was not Conservator's problem. (Jordan Deposition Tr. p. 61, line 19 – p. 62, line 1). Mrs. Jordan also testified that she discussed the second mortgage with the Veterans Administration representative assigned to her husband's case, who claimed to have

passed along the information about the loan to Conservator. (Tr. p. 62, lines 1 – 25; Tr. p. 64, lines 7-19; p. 76, lines 11-25). Clearly, there is a question of fact as to whether Conservator knew loans were being taken against the protected property without their direct involvement; there is a question of fact as to whether Conservator's action or inaction based on that knowledge caused harm to Chase.

A. Conservator had a duty to, and failed to, exercise reasonable care and caution while performing its legal duties as Mr. Jordan's conservator.

When exercising its power as Mr. Jordan's conservator, Conservator "[was] to act as a fiduciary and [ ] observe the standards of care applicable to trustees as described by [South Carolina Code] Section 62-7-933." S.C. Code Ann. §62-5-417. Further, Section 62-7-933(C)(4) of the South Carolina Code assigned Conservator the duty to "make a reasonable effort to verify facts relevant to the . . . management of trust assets." Conservator understood what its obligation was to be, as evidenced by the testimony of Latosha Drews, Mr. Jordan's case manager. She testified that Conservator's obligation was that, "I am charged with, you know, preserving and taking care of the protected person." (Drews Deposition Tr. p. 19, lines 24 – 25).

The law required Conservator to make an effort to manage Mr. Jordan's trust assets, which, simply by definition, includes the title to the home at 5 Charlyn in Charleston. Conservator admits it would have assisted in determining Mr. Jordan's financial obligations. (Tr. p. 27, line 20 – p. 28, line 11; Tr. p. 36, lines 11 – 25). Yet, no credit report was ever requested, even though the justification for a conservatorship was Mr. Jordan's inability to handle his finances and his history of poor financial decision making. (Tr. p. 43, lines 18 – 24). No title search was performed or checked. No investigation was made into the subsequent loans reported by Mrs. Jordan.

Conservator just guessed about what obligations Mr. Jordan had by relying on the requests for payment submitted by family members, and did not take steps to verify the obligations. (Tr. 20, line 4 – p. 21, line 5; p. 41, lines 5-12; p. 43, lines 1 – 11). Conservator's employees also, evidently, did not confer with each other when the case file would be transferred from one to another, and thus it is conceivable the successor agent did receive knowledge from the prior manager and, evidently, did not take action to independently verify the protected person's assets. (Tr. p. 29, lines 4-10). The Conservator did not take action to ensure the asset would be protected against encumbrances, allowed the public record for the asset to become cloudy and thus susceptible to confusion (like Chase's), and did not take measures to prevent the protected property, which is jointly owned by the protected person's wife, from being encumbered by Mr. Jordan and/or Mrs. Jordan.

This slackness may explain why Conservator continued to pay Midland Mortgage payments that totaled amount of $9,156.06 during the year 2007 (Exhibit 3, Depo. of Natasha Drews) even though that mortgage was paid-off in October 2006, after the Jordans had undertaken the refinance transaction to secure a loan with Household Finance in October 2006. (See ROD Book 602, Page 690 (Household Finance mortgage) and Book 640, Page 453 (Household Finance mortgage satisfaction)).

Chase would show that Conservator knew that Mr. Jordan obtained mortgages for the property located at 5 Charlyn Drive, Charleston, South Carolina 29407, and still failed to keep up with the chain of title as subsequent loans were made and paid and failed to intervene. The loans filed against the property subsequent to the Wachovia-filed

order, which seemingly terminated the conservatorship,[1] supported the understanding that Mr. and Mrs. Jordan received the loans without participation by a conservator. Had Conservator not been so oblivious to the comings and goings of various loan companies, the chain of title would have been clear that a conservatorship was in place and Quicken would not have accepted a note and mortgage from Albert Jordan without the conservator's involvement, if at all.

The court held that conservator did not have constructive knowledge of the loan because, in part, the Conservator did not have an affirmative duty to search public records for a mortgage recording. Appellant Chase would show the Conservator did have a duty to exercise reasonable care in managing Mr. Jordan's trust assets. More importantly, *Conservator had a duty to verify facts relevant to the management of Mr. Jordan's assets.* See generally, S.C. Code Ann. §62-7-810(a), "A trustee shall keep adequate records of the administration of the trust"; and § 62-7-809 "A trustee shall take reasonable steps to take control of and protect the trust property." By failing to properly document or act on notice given by Mrs. Jordan of the mortgages to Bank of America and Household Finance, and the notice of such mortgages filed in the RMC, Conservator allowed the title to Mr. Jordan's asset to become cloudy and allowed the public to believe the property was unencumbered by a conservatorship. Conservator allowed its supposedly protected person to engage in fraud.

[1] An order terminating the conservatorship which, pursuant to §62-5-421, "transfer[s] all assets of the estate from the conservator to the protected person." First Citizen's Letter of Conservatorship was filed *before* Wachovia's order terminating it as conservator.

B. Conservator's negligence in managing Mr. Jordan's assets proximately caused Chase's damages.

"Negligence" is a failure by omission or commission to exercise due care as a person of ordinary reason and prudence would exercise in the same circumstances." Pope v. Heritage Communities, Inc., 395 S.C. 404, 413, 717 S.E.2d 765, 770 (S.C. App. (2011)). "[T]he elements of negligence are (1) duty, (2) breach, (3) proximate cause, and (4) injury." Cody P. v. Bank of America, N.A., 395 S.C. 611, 620, 720 S.E.2d 473, 478 (S.C. App. 2011) (citing Shipes v. Piggly Wiggly St. Andrews, Inc., 269 S.C. 479, 482–83, 238 S.E.2d 167, 168 (1977)). Conservator may argue it had no duty to Chase, but, assuming the conservatorship was at all times valid, Conservator did have a duty to exercise reasonable care and caution while performing its legal duties as Mr. Jordan's conservator and managing his assets. Its failure to exercise reasonable care and caution allowed Mr. Jordan to engage in inappropriate behavior, to the detriment of Chase, and allowed the public to be misled by the chain of title on file at the RMC. Conservator's negligent management of Mr. Jordan's estate was the proximate cause[2] of Chase's injury. Since the probate filings at the RMC were made out of order, and there were multiple mortgages issued against the property without reference to the conservatorship, which mortgages were filed in the RMC subsequent to the Order relieving Wachovia as the conservatorship, and since Mr. and Mrs. Jordan represented to Chase that they were the owners of the property, and those representations of ownership were supported by the record, Chase loaned $178,000.00 to apparently competent homeowners. Now, the court

[2] "The touchstone of proximate cause is foreseeability which is determined by looking to the natural and probable consequences of the defendant's conduct," yet it "need not [be] prove[n that] the defendant's negligence was the sole proximate cause of the injury." Gause v. Smithers, 403 S.C. 140, 150, 742 S.E.2d 644, 649 (2013) (citing, J.T. Baggerly v. CSX Transp., Inc., 370 S.C. 362, 369, 635 S.E.2d 97, 101 (2006)

allows the Conservator to retain the benefit of this bargain, without any recompense to Chase. This kind of damage was foreseeable and preventable.

III. THE COURT'S DETERMINATION THAT LACHES DOES NOT APPLY AGAINST CONSERVATOR WAS AN ERROR

The defense of laches is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence to do what in law should have been done." Jones v. Leagan, 384 S.C. 1, 19-20, 681 S.E.2d 6, 16 (Ct. App. 2009) (finding that the defense of laches precluded a title owner of a lot from prevailing in quiet title against residents claiming adverse possession under color of title where the title owner did not visit the lot for 17 years). The equitable maxim that equity aids the vigilant not those who slumber on their rights, is the basis for this equitable defense. Hemingway v. Mention, 228 S.C. 211, 89 S.E.2d 369 (1955).

A party "slumbers" on his or her rights by indicating acquiescence or by a long silence. Lehigh Portland Cement Co. v. United States, 30 F. Supp. 217 (Ct. Cl. 1939). The party raising the defense must show that the opposing party has unreasonably delayed its assertion of a right that resulted in prejudice to the party raising laches. Kelley v. Kelley, 368 S.C. 602, 620 S.E.2d 388 (Ct. App. 2006). A party seeking to establish the defense of laches must show delay in asserting a known right, that the delay was unreasonable under the circumstances, and prejudice. Chambers of S.C., Inc. v. County Council for Lee County, 315 S.C. 418, 421, 434 S.E.2d 279, 281 (1993).

More applicable to this case, is the application of laches where a party's delay is not a mere lapse of time, rather negligence and opportunity to have acted sooner. Id. (emphasis added). The inquiry into the applicability of laches is "highly fact-specific and

each case must be judged by its own merits." Muir v. C.R Bard Inc., 336 S.C. 266, 297, 519 S.E.2d 583, 599 (Ct. App. 1999).

In this case, Chase was allowed by Conservator's negligence to provide the Jordans with a loan and to disburse the proceeds from the loan to pay-off other, prior creditors of record. There is evidence that Conservator knew about both the prior, voidable loan to Household Finance and the Chase loan. In fact, Mrs. Jordan testified that she sought assistance from the conservatorship prior to executing a note and mortgage in favor of Chase. The Conservator did nothing.

A conservator in South Carolina is considered to have vested title over the assets of the conservatorship's incompetent person, thus the conservatorship over Albert Jordan vested in Conservator title, as trustee, to the 5 Charlyn Drive property. See S.C. Code Ann. § 62-5-420 ("[t]he appointment of a conservator vests in him title as trustee to all property of the protected person, presently held or thereafter acquired"). The Conservator negligently allowed the title to be encumbered and the public record, which is designed to give the Public notice of its rights relative to the property, was negligently ignored by Conservator. "An incompetent may not set aside a transaction from which he has benefitted unless he restores the other party to the status quo." *See Ballard v. McKenna,* 25 S.C.Eq. (4 Rich Eq.) 358 (1852). Conservator's failure to act sooner (i.e. laches) to prevent incidents such as this makes it inequitable for the mortgage to be declared absolutely void where Conservator, and its protected person, have benefited from the bargain.

Summary dismissal of this defense for the benefit of Conservator was an error, given the "highly fact-specific" inquiry that is more appropriate for full trial and

development before a fact-finder, not disposition on summary judgment when all inferences are properly slanted towards the non-movant.

IV. THE COURT ERRED BY AWARDING INCOMPLETE OR INEQUITABLE RELIEF.

Conservator requested a declaration that Chase's mortgage and note be deemed void, with satisfaction filed by Chase in the RMC. However, Chase's note and mortgage were merely refinance transactions, partially incorporating debt that Conservator had previously recognized as valid and enforceable against Mr. Jordan's property. Accordingly, assuming arguendo that Mr. Jordan was unable to enter into this loan validly, the court should have ordered an unwinding of that transaction, with the loan reduced to the obligation previously encumbering the property rather than just declaring the whole thing void. The court erred in ordering Chase to file a notice of mortgage satisfaction with the RMC without attempting to make Chase whole, for "he who seeks equity must do equity." Provident Life & Ace. Ins. Co. v. Driver, 317 S.C. 471, 479, 451 S.E.2d 924, 929 (1994). The maxim is explained by stating "the court will give the plaintiff the relief to which he is entitled, only upon condition that he has given, or consents to give, the defendant such corresponding rights as he also may be entitled to in respect of the subject-matter of the suit." John N. Pomeroy, *A Treatise on Equity Jurisprudence* § 386 (Spencer Symons, ed., 5th ed. 1941, reprinted 2002 The Lawbook Exchange, Ltd.).

Mrs. Jordan testified that the proceeds from the refinance transactions and second mortgages that were taken out on the subject property, including the one by Chase. The Chase loan resulted in direct payment of nearly $50,000 to the Jordans for their benefit and for improvements to the subject property in which Mr. Jordan has an interest. (Tr. p.

39, lines 9 – 21; Tr. p. 49, lines 11-20). In fact, the cash received from the latest closing went into an account held partially in the name of Mr. Jordan. (Tr. p. 68, lines 7 – 18). Acting in the fiduciary capacity for Mr. Jordan for which the Conservator is charged, pursuant to S.C. Code § 62-5-417, Conservator should have discovered those funds in its possession and inquired how an incompetent person could suddenly be flush with $50,000.

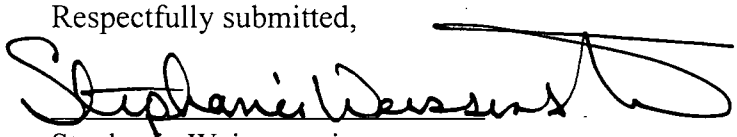
In any event, the funds were undisputedly used for the direct and substantial benefit of Mr. Jordan personally and to preserve and increase the value of property held in his name, thus increasing the value of the conservatorship estate. Accordingly, there are facts to substantiate Chase's counterclaims for constructive trust and unjust enrichment sufficient to defeat Conservator's requests for summary judgment that the note and mortgage be found void.

CONCLUSION

The pleadings and evidence in this case clearly set forth more than a scintilla of evidence that, when viewed in favor of Chase as the nonmoving party, indicate genuine questions of material fact that remain, and thus preclude summary judgment both against Chase directly as to its note and mortgage, defeat of Chase's "highly fact-specific" defense of laches, as well as Chase's counterclaims raised against the Conservator arising from the duty alleged pursuant to state law upon a conservator not only as it relates to the incompetent ward, but also as to third parties such as Chase.

For these reasons, and the other reasons set forth herein, summary judgment should have been denied. In the alternative, the court should have unwound the transactions subject to this litigation, rather than declare it void.

Respectfully submitted,



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August 12, 2013

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APPELLANTS' INITIAL DESIGNATIONS

Pursuant to Rule 209(a) and (b), SCACR, Appellants hereby designate the following matter, which was before the lower court (as defined in Rule 202(b)(1)) to be included in the Record on Appeal in this matter. Appellants reserve the right to supplement these designations in conjunction with the submission of their initial reply brief.

All designated matter does not include proof of service or exhibits unless otherwise specified:

1. Order dated February 2, 2013, executed by Judge R. Markley Dennis, Jr.
2. Order dated August 31, 2012, executed by Judge R. Markley Dennis, Jr.
3. Amended Complaint dated June 28, 2010
4. Answer to Amended Complaint and Motion to Dismiss by Quicken dated August 31, 2010, with attachments
5. Answer to Amended Complaint, Counterclaim, Cross-Claim, and Third-Party Claim Complaint by Chase dated August 31, 2010, with attachments
6. Reply to Counterclaims and Third Party Defendant Jordan's Answer to Third Party Complaint of Defendant Chase dated September 29, 2010
7. Motion for Summary Judgment dated January 24, 2012, with attachments
8. Response to Motion for Summary Judgment dated May 17, 2012
9. Transcript of Hearing dated May 17, 2012
10. Motion for Reconsideration dated September 19, 2012, with attachments
11. Memo is Support of Motion for Reconsideration dated January 25, 2013
12. Transcript pages of Depositions Designated dated May 17, 2012, are as follows:

A. Deposition of Natasha Drews, as Rule 30(b)(6) designee for Plaintiff:

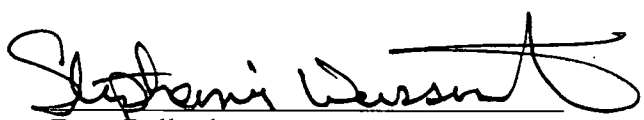
- Tr. p. 17, line 22 – p. 18, line 14
- Tr. p. 19, line 24 – p. 21, line 5
- Tr. p. 22, lines 6 – 23
- Tr. p. 27, line 20 – p. 28, line 11
- Tr. p. 29, lines 4-10
- Tr. p. 36, lines 11 – 25
- Tr. p. 41, lines 5 – 12
- Tr. p. 43, lines 1 – 11
- Tr. p. 43, lines 18 – 24

B. Deposition of Gwendolyn Jordan:

- Tr. p. 39, lines 9 – 21
- Tr. p. 49, lines 11 – 20
- Tr. p. 61, line 19 – p. 62, line 25
- Tr. p. 64, lines 7 – 19
- Tr. p. 68, lines 7 – 18
- Tr. p. 76, lines 11-25
- Exhibit 5

The undersigned is informed and believes, and therefore certifies, that the matter designated is relevant to the appeal in this matter.

Respectfully submitted,



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ATTORNEYS FOR APPELLANTS

August 12, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Civil Case No. 2010-CP-10-5199
Appellate Case No. 2013-000563

Family Services, a South Carolina eleemosynary organization,
in its capacity as Conservator for Albert Jordan, Respondent,

v.

Quicken Loans, Inc., a Michigan Corporation; Chase Home Finance, LLC, a Delaware Limited Liability Company; and Gwyndolyn M. Jordan, Defendants,

Of whom Quicken Loans, Inc., and Chase Home Finance" LLC, are the Appellants.

And

Chase Home Finance, LLC, is Counterclaimant, Cross-Claimant
and Third-party Plaintiff,
v.

Gwyndolyn M. Jordan, Cross-claim Defendant,

and Albert Jordan, individually, Antonio Jordan, John Doe, and Household Finance Corporation II, Third-party Defendants

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PROOF OF SERVICE

I certify that I have served the Appellants' initial brief and designation of matter on opposing parties by depositing a copy of each in the United States mail, postage paid, on August 12, 2013, addressed to the attorney of record as follows:

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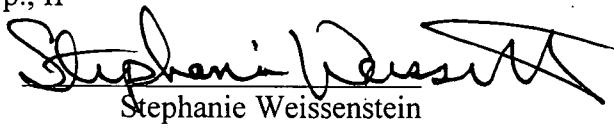

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