

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM SUMTER COUNTY
Court of Common Pleas
Thomas E. Player, Jr., Special Referee

MAY 03 2024
SC Court of Appeals

Case No. 2022-000601

John Weible, Respondent

v.

Russell Self and Brandy Brunson Appellant.

Memorandum of Respondent Pursuant to April 11, 2024 Order

Statement of Issue

DOES THE ORDER OF THE SUPREME COURT DATED MAY 17, 2023 RE:
RECISSION OF ADMINISTRATIVE ORDERS (2011-05-02-01 and 2009-05-22-01)
GOVERNING MORTGAGE FORECLOSURE ACTION RENDER THIS APPEAL
MOOT.

DISCUSSION

This appeal stems from a foreclosure action commenced October 29, 2018 by John Weible (Respondent) against Russell Self and Brandilyn Brunson (Petitioner). The main issue in the appeal is whether the foreclosure action prosecuted by the Respondent complied with

Administrative Orders 2011-05-02-01 and 2009-05-22-01. Those orders, prior to their rescission, clarified application of HAMP and foreclosure intervention in mortgage foreclosure actions in South Carolina. As HAMP ended December 31, 2016 and no mortgage loan modification was available to Petitioners, since Respondent did not voluntarily offer modification, the Order of the Supreme Court rescinding prior orders 2011-05-02-01 and 2009-05-22-01 should apply and the underlying appeal should be deemed moot. All of the administrative orders link mortgage intervention to compliance with HAMP and do not serve to create procedural rights or intervention options not otherwise available under HAMP, in terms of loan modification and loss mitigation.

The Supreme Court's Order of May 17, 2023 recites that HAMP is inapplicable in new foreclosure actions, unless the borrower sought modification prior to the expiration date of December 31, 2016. The May 17, 2023 Order provides that as HAMP has ended, the prior orders of 2011-05-02-01 (2011 Order) and 2009-05-22-01 (2009 Order) have to be rescinded. Accordingly, the 2023 Order should apply to this case which was filed in 2018 well after HAMP had expired and no loan modification was sought, or available to Petitioners at such time.

As set forth in Respondent's Brief, the Complaint was filed in 2018, and contained an allegation that the mortgages described in the suit were not subject to HAMP (Home Affordable Modification Program) and that Respondent did not participate in such program. Petitioners did not attempt to contest such allegation or make any defense or raise any question that the mortgages were subject to any type of mandatory review for modification via HAMP. Instead Petitioners filed an unsigned document captioned, Acceptance of Foreclosure Intervention. Thereafter Respondent served Petitioners with an Affidavit of Non-Eligibility under HAMP indicating the mortgage loan was not owned, securitized or guaranteed by Fannie Mae or Freddie

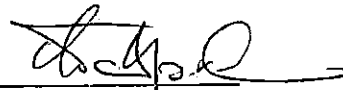
Mac and that the servicer (Respondent) had not executed any agreement under HAMP.

Petitioners made no counter affidavit contesting same or explaining how they were entitled to intervention in the form of mortgage modification or loss mitigation under HAMP.

The administrative orders provide that if allegations as to non-eligibility are contested by the answer, or if the judge allows the issue to become contested at some later stage in the proceeding, then any dispute regarding eligibility of the mortgage loan for modification under HAMP or satisfaction of such HAMP requirements if it applies, shall be resolved like any other contested issue in a mortgage foreclosure case. Petitioners never made any substantive argument that these loans were subject to HAMP and that they were entitled to foreclosure intervention on such basis. The administrative orders provides for filing of affidavits in the event a debtor party believes the loans are eligible for HAMP. This makes clear that the debtor party has an obligation to support his or her claim that he or she is entitled to mortgage modification. Petitioners at no time submitted such an affidavit, nor did they offer any argument that HAMP applied to them.

Conclusion.

For the foregoing reasons the Supreme Court Order dated MAY 17, 2023 RE:
RECISSION OF ADMINISTRATIVE ORDERS (2011-05-02-01 and 2009-05-22-01)
GOVERNING MORTGAGE FORECLOSURE ACTION should serve to render this appeal moot and the orders of the Special Referee should be affirmed.



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Case No. 2018-CP-43-2005

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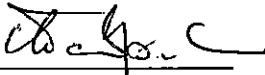
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v.

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Proof of Service

I certify that I have served a copy of Respondent's Memorandum on Appellants by depositing a copy of same in the United States Mail, postage prepaid, on May 1, 2024, addressed to their attorney of record, A. Paul Weissenstein, Jr., Post Office Box 2446, Sumter, SC 29151-2446.


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R. Kirk McLeod (1921-1987)

May 1, 2024

Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, South Carolina 29211

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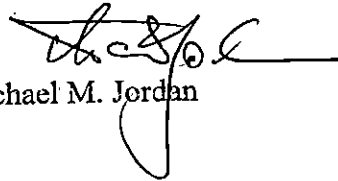
Dear Ms. Kitchings:

Enclosed please find Respondent's Memorandum and Certificate of Service in the above matter. Thank you and please let me know if there is anything additional required from Respondent at this time.

Also, please note that Mr. Weible has passed away during this appeal. If a party substitution needs to be made, please advise.

With kindest regards, I am

Schwartz, McLeod & Jordan



Michael M. Jordan

c: Paul Weissenstein, Esq. w/ attachments

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