

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity

Joseph E. Strickland, Master-in-Equity

Appellate Case No. 2012-213558

SCBT, N.A

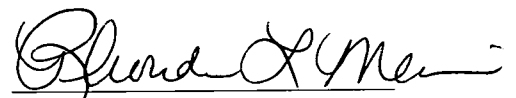
Respondents

v.

Sand Dollar 31, LLC; Rhonda
Meisner, of whom Rhonda
Meisner is

Appellant.

REPLY BRIEF OF APPELLANT



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Appellant, Rhonda Meisner (hereinafter "Meisner") respectfully submits this Reply Brief in response to Respondents , SCBT, NA (hereinafter, Bank) submission of their Initial brief on Appeal.

APELLANTS ANSWER TO RESPONDENTS QUESTION #1

1. WHETHER MEISNER MAY ARGUE THE EFFECT OF THE MOTION TO VACATE THE JUDICIAL SALE WHEN THE MASTER IN EQUITY HAS NOT HEARD OR RULED ON THE MOTION TO VACATE THE JUDICIAL SALE?

The Bank's argument that Meisner is premature in appealing "the effects" of the Motion to Vacate the Judicial Sale and that the appeal of the Motion to Vacate the Sale is interlocutory is misplaced. It is important to note that Meisner does **not** have standing to appeal the Motion to Vacate the Judicial Sale itself as she has no equitable or legal interest in the property and as a matter of law cannot appeal the Motion to Vacate the Sale. Additionally, while a record was not created on November 6, 2013 all parties briefed the Court on the issue of the Bank's Motion to Vacate the Judicial Sale at which time, the Court instructed Teri Stomski, attorney for the Bank to deposit the checks sent to her firm from the Masters office as proceeds from the sale of the foreclosed properties.

The Bank has erroneously named both Meisner and Sand Dollar 31, LLC (hereinafter "sanddollar") as Defendants in a case where neither entity has a legal or equitable interest.(R__) Meisner does however have a "privity of parties" with South Carolina Operating Room Equipment, LLC (hereinafter SCORE, LLC) via an interest in the valuation of the properties asserted by the Bank in the Motion to Vacate the Judicial Sale.(R__) Meisner has never filed "an appeal" of the Motion to Vacate the Sale.

Meisner's reference to the Bank's motion is not only timely; but necessary , given the Court's final ruling which was a denial of a Motion to Alter and Amend the judgment amounts entered into the public roles via submission of the Form 4 by the Bank.(R__)

Therefore, effectively ruling on the Guaranty agreement and the Declaratory Judgment as pled in the Plaintiff's Answer and Counterclaim and requested relief via Rule 59-e SCRCPC motion.(R__).

It would be naive for the Appellant to assume the Court would independently "correct" the figures submitted into the public roles by the Bank at some future date, since the Court had already declined to do so via the denial of the Motion to Alter and Amend the judgment.(R__) Prior to refusing to Alter and Amend the Judgment entered by the Bank, the Court had all of the necessary information regarding the full judgment amounts entered and still denied the Motion to Alter and Amend the judgment. To wit on November 6, 2012 when the Court signed the denial of the Motion to Alter and Amend the judgment, the sale of the properties had already occurred and the Bank had already submitted their valuation opinions of the properties to the Court via the Motion to Vacate the Sale; thereby, making it a final judgment and not interlocutory.(R__). Had Meisner not appealed , she would lose the right to challenge the personal judgments and the property valuations in the Appellate Courts.

Quite obviously, if the Court ruled to set aside the Sale of the properties as the Bank was requesting in their Motion to Vacate the sale, then that would be an issue for the purchaser of the properties SCORE, LLC; not for Meisner and not for the arguments regarding the Bank's valuation of the properties in this appeal. (R__)The salient point regarding the Motion to Vacate the Sale in this appeal is the Bank's valuation of the

properties in their Motion.(R__) The entire argument that the Bank has inadvertently created a "privity of parties" between Sand Dollar 31 LLC, (hereinafter " Sanddollar") Meisner and the purchaser of the properties SCORE, LLC with regard to accepting the Banks valuation opinion of the properties rests on the notion that "if" the Bank had filed a "separate and distinct lawsuit" not involving Meisner or Sand Dollar, 31, LLC, Meisner would have no legal reason to reference the Bank's valuation opinions. This opinion would be submitted outside the Court's eyes and unavailable as proof of the "correct" value of the properties with regard to the deficiency. The Bank should have bid the amount they subsequently valued the properties at in the Motion to Vacate the Sale instead of the low amounts the Banks submitted as bids at the foreclosure sale.

APPELLANT'S ANSWER TO RESPONDENTS QUESTION #2

2.) WHETHER THE MASTER-IN-EQUITY PROPERLY DENIED THE MOTION TO ALTER AND AMEND THE JUDGMENT?

The Order of Foreclosure **did not state** the amount of judgment should be entered **prior** to the Sale of the properties, therefore it was clearly erroneous for the Court to sanction the erroneous amounts entered in judgment against Meisner in contradiction of the Order of Foreclosure. Additionally the form 4 judgment instructions were not followed and the Court should have made the Bank correct the "figures" or remove the judgement amounts from the public roles as the entering of the judgments effected the legal status of other properties not involved in this foreclosure proceeding.

Here, the Bank, via the Bank's motion to vacate the Sale, issues an opinion that the properties should be valued at the amount of the mortgage; therefore due to the

doctrine of collateral estoppel the Bank should be prevented from changing their valuation opinions in the same cause of action when a "different" valuation of the properties is more beneficial to them later on e.g.: the enforcement of a personal guaranty agreement.(R__)

Meisner refers to the Bank's valuation opinion in the Bank's Motion to Vacate the Sale for the following reasons: 1) To support the value claims of both properties via the appraisal statute, 2) to agree with the Banks reported value in the Motion to Vacate the sale, 3) to suggest to the Court the Bank has cancelled its own claims as to deficiency by valuing the property at the amount of the Mortgage owed. The appeal of inaccurate judgment amounts entered into the public roles is appropriate and timely. It is well understood that any judgment entered in the public roles in excess of the amounts owed is prejudicial and ; therefore, immediately appealable. Once entered into the public roles the Plaintiff is already harmed as other properties and assets in her name are immediately "attached" to the judgment. It is important to note that the amounts entered against Meisner have never been owed. The amounts entered did not take into account the sale amount and at the time the Court signed the denial of the Motion to Alter and Amend the Bank had already said " a fair value for the properties were reflected in the Mortgage amount" as such, the Court should have at a minimum required the Bank to give the credit for the sale of the properties.

Additionally, the Bank did not allocate the funds owed between the Mortgagee Sanddollar and the Guarantor, Meisner which resulted in duplicate amounts being entered in the public roles. The Bank admits in its Initial brief that Sanddollar and Meisner first brought up the issue of the Guaranty agreement in the Answer and Counterclaim in the

form of a Declaratory Judgment request. After admitting the Declaratory judgment request, the Bank then suggests the issue of the Guaranty agreement was first brought up in a Rule 59-e SCRCPP motion to alter and amend. It was the Bank who narrowed the issues to be discussed at the April foreclosure hearing. (R__) Even if the Bank was accurate that the guaranty issue was first presented in the Rule 59-e SCRCPP, in a judge alone trial, the judge can re-open the case and find additional findings of fact and conclusions of law.(R__) At the July Motion hearing, the judge directed the parties to brief the guaranty agreement (R__). Thereby effectively re-opening the issue of the guaranty agreement via his request for briefing or conversely acknowledging Plaintiff's motion as correcting the error of not ruling on the declaratory judgment action in the initial hearing. The Bank also admits, in an action in equity the Appellate Court has broad discretion to find facts in accordance with the Court's own view. Here, the Bank has refused to follow the Supreme Court Rules for entering judgments in the public roles, admits the values of properties are in excess of the guaranty amounts and then ask the Court to deflect their eyes from the valuation made by Bank under the guise that the Trial Court has not ruled on the Motion to Vacate the Sale yet. It is important to note the Motion to Vacate the Sale does not affect Sanddollar 31, LLC or Meisner as neither have an equitable interest any longer. Because the Bank has named the wrong Defendants in its Motion to Vacate the Sale does not make it necessary to have a ruling on their Motion for the argument regarding valuation to be appropriate for Appellate review as the Banks arguments have already been presented to the Court and the Court has ruled via the denial of the Motion to Alter and Amend the judgment because the judgments have already been entered.

The Courts having not ruled on the Motion to Vacate the Sale does not defeat the collateral estoppel or privity of parties arguments. The Bank actually makes the case for collateral estoppel in its Motion to Vacate the Sale argument (R__). The equitable principle the Bank is attempting to undermine is changing the valuation opinions in the same or related litigation. The Bank erroneously entered identical amounts into the public judgment roles for both Sanddollar, 31, LLC (hereinafter " Sanddollar") (R__)and Meisner (R__) thereby doubly the amount owed in the eyes of third parties. As an example, if someone looked at Judgments owed by Meisner and Sanddollar independantly, they would assume each entity owes the same money thereby doubling the amounts. However, as a guarantor, Meisner only owes the amount of a deficiency, if any. (R__)Also during the hearing, Wendy Wolfson, the Banks representative did not testify as to whether Meisner signed the guaranty in her personal capacity or as a member of Sand Dollar 31, LLC. This is the very reason the Supreme Court of South Carolina has created rules for entering judgments and specifically instructs judgments in real estate foreclosures to be entered **after** the sale of the property, so as not to prejudice the parties.

At the time the Court signed the denial of the Motion to Alter and Amend judgement on November 6, 2012, the amounts entered in the judgement had been reduced by the sale and income from the sale of the properties but the amounts entered did not reflect the reductions. Also, the Bank had suggested values for the properties in the motion to vacate the sale which eliminated all deficiencies because the Bank argued the appropriate value for the properties was the amount of the mortgage owed. Since the loans were several years old, each loan had reduced the amount owed from the initial mortgage amount. in addition the Bank only loans 70 % of loan to value on investment

property; so in effect the values in the Motion to Vacate the Judicial Sale reflect the true value the Bank has assigned to each property.

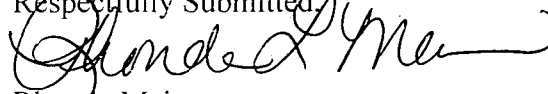
APPELLANTS ANSWER TO RESPONDENTS QUESTION # 3

3.) WHETHER THE MASTER IN EQUITY PROPERLY AWARDED ATTORNEYS FEES?

While respondents suggest the award of attorney's fees is appropriate, the affidavit of fees was not filed with the Court as of July 31, 2013 and as such there is no evidence from which the Master can properly award the fees other than the fees Ms. Wolfson testified were already paid by the Bank. Ms. Wolfson, the Bank's representative testified the Bank paid the fees to attorney Teri Stomski and therefore validated the debt owed the Bank. However, the affidavit of attorney's fees was never filed with the Court as of July 31, 2013 and should therefore be denied. Additionally, the Respondents named Sanddollar and Meisner as Defendants inappropriately and therefore caused Meisner to incur additional attorneys fees outside of the original contract that was contemplated by the parties. It is also important to note that Meisner testified and presented evidence that one of the properties was brought current and the Bank still continued with the foreclosure. The Bank should not be rewarded for their heavy handed actions. As for the argument the foreclosure was "highly contested" that is accurate but not for the reasons the Respondents suggest. The Respondents contested Meisner's right to invoke the appraisal rights statute with regard to valuation. Meisner testified she tried to comply and cure the deficiencies which were submitted into evidence at the foreclosure hearing. For the above reasons, Appellant Rhonda Meisner respectfully requests the valuation opinion

submitted by the Bank in their Motion to Vacate the Judicial Sale be accepted under the Appraisal Statutes and the deficiency, if any, assigned to Meisner reflect the appropriate amounts.

Respectfully Submitted,



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This 15th Day of August 2013 A.D.

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

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In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Master-in-Equity

Joseph M. Strickland, Master-in-Equity Court Judge

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**DESIGNATION OF MATTER TO BE
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Appellant proposes the following be included in the Record on Appeal:

1. Order of November 6, 2012; Denying Motion to Alter and Amend
2. Order of May 16, 2012; Judgment of Foreclosure
3. First Amended Complaint;
4. Answer and Counter Claim;
5. Transcript of Hearing April 25, 2012 pgs.1-25.
6. Hearing April 25, 2012-Defendants Exhibit #1 Marked 11.
7. Transcript of Hearing July 18, 2012
8. Transcript of Status Conference August 13, 2012.
9. Motion to Alter and Amend June 7, 2012 including Exhibits 1, 2, 3 and 4.
10. Motion to Vacate the Sale of August 30, 2012
11. SCORE, LLC Memorandum in opposition to Motion to Vacate the Sale.
12. Memorandum of Law Guaranty Agreement filed August 10, 2012
13. Exhibits #1, and #1, attached to Guaranty Agreement filed August 10, 2012
14. Meisner's Certified Petition for Appraisal August 31, 2012
15. Notice of Appearance of Rick Gleissner, Esquire on behalf of SCORE, LLC.

16. Memorandum Judicial Estoppel and Appraisal Statute filed November 2, 2012
17. Summons and order of Appointment Status Conference Nov. 6, 2012
18. Form 4 Filed by bank for 6317 and 6318.

I certify that this designation contains no matter which is irrelevant to this appeal.

August __, 2013



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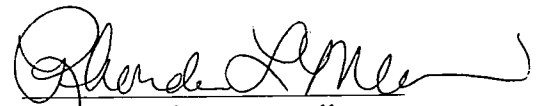
Sand Dollar 31, LLC; Rhonda
Meisner, of whom Rhonda
Meisner is

Appellant.

PROOF OF SERVICE

Appellant Rhonda Meisner certifies she has served a copy of Appellants Reply Brief and updated designation of matter via U.S. Mail postage pre-paid to the following parties:

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