

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No. 2023-CP-32-02473

Rocket Mortgage, LLC.....Respondent,

v.

Thomas E. Dukes.....Appellant.

INITIAL BRIEF OF APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. Did the lower court err in finding Respondent negligent for paying Appellant's homeowners insurance policy three times in six days and failing to ask insurance agent for a refund before each policy was submitted and re-submitted for payment?
2. Did the lower court err in finding Respondent negligent for ignoring Appellant's multiple requests to correct his monthly payment in June 2023?
3. Did the lower court err in finding Respondent negligent for allowing the breach of the mortgage contract by Respondent, to continue until August 29, 2023 three months later?
4. Did Respondent attorney, Mr. Brent B. Young and Respondent Rocket Mortgage, LLC employee, Mr. Eric Gibson, conspire in an attempt to deceive and defraud the Court with a sworn statement that Appellant did not return escrow funds?
5. Did Respondent employee Cierra Riddle perjure herself to federal investigators with the Consumer Financial Protection Bureau?
6. Was the lower court prejudicial towards Appellate due to being a non-lawyer and this State's pro-business culture by not applying court rules fairly, ignoring Appellate's Motion for Reconsideration, failing to notify Appellate of court dates and altering the official hearing transcript?

STATEMENT OF THE CASE

Between May 25, and June 5, 2023, Respondent Rocket Mortgage, LLC, paid Appellant's, Thomas E. Dukes, homeowner's insurance policy through a required escrow account three (3) times without asking what happened to the money previously paid. Each time the policies were paid, Appellant was held responsible for the negligent actions of Co-Defendant Palmetto State Insurance Agency, LLC. Respondent failed to request refunds for policies re-written and/or cancelled.

On June 5, 2023, Appellant, called Respondent regarding the insurance debacle asking that any escrow analysis be put on hold until the matter was corrected. However, that request was ignored and Appellant's monthly payment increased for \$746.86 to \$969.59. A stop payment was made for one of the policies and a refund check was issued for the other and sent to the Appellant. Appellant was instructed to make an escrow only payment by Respondent which Appellant did on June 13, 2023. However, on the day prior, June 12, 2023, Appellant called Respondent and asked for an escrow analysis to reduce his monthly payment of \$969.59 back to its correct amount. Again, that request was ignored.

The failure of Respondent Rocket Mortgage to correct Appellant's monthly insurance escrowed amount in June of 2023 when all monies had been accounted for, resulted in a breach of the mortgage contract and also violated the Real Estate Settlement Procedures Act (RESPA). Respondent did not correct the insurance escrowed amount until August 29, 2023, three (3) months later while continuing to overcharge Appellant on his monthly insurance escrowed amount. The maximum amount allowed by the mortgage contract and RESPA for a \$1072 homeowners policy is \$104.22 with a one sixth- or 2-month cushion, monthly. Respondent Rocket Mortgage, LLC charged Appellant, \$312.66 monthly for insurance in his July and August

2023 monthly payment. This created a financial hardship on the Appellant causing the Appellant the inability to make his monthly mortgage payments. This resulted in a creditor closing one of his accounts and severely reducing the credit limit on another. These accounts had never been past due at any time when this creditor took action against the Appellant. This evidence was also included to the amended complaint. Eventually, under the threat of foreclosure, Appellant, paid the two months payments of \$969.59 but causing his other creditors to become delinquent with the inability to get them current with late charges and penalty interest rates being applied.

On September 9, 2023, Respondent employee, Mr. Eric Gibson made a sworn statement, stating "Thomas E. Dukes never submitted via payment any refund check for insurance policy premiums to Respondent ". This came almost two (2) months after Appellant made an escrow *only payment to Respondent on June 13, 2023 and included receipts in both the original* complaint and the amended complaint. Respondent attorney, Mr. Brent B. Young allowed the Affidavit of Eric Gibson filed on September 29, 2023. This amounts to perjury under South Carolina Code of Laws Section 16-9-10 and is grounds for default judgement, contempt and/or arrest. This issue was made known to the Honorable Debra McCaskin in October 16, 2023 during a virtual hearing but the testimony has since been deleted from the official court record. (Transcript under challenge)

On October 3, 2023, Appellant filed a complaint with the Consumer Financial Protection Bureau (CFPB) regarding this issue. Respondent Rocket Mortgage, LLC had 15 days to respond. They took until December 1, 2023 to reply, almost two months.

In their response, Respondent Rocket Mortgage, LLC employee, Cierra Riddle made false claims under oath, to federal investigators. In that complaint, Appellant requested recorded phone conversations between Appellant and various Rocket Mortgage employees. Respondent

Rocket Mortgage, LLC refused to provide those recordings. In Respondent Rocket Mortgage, LLC's response, Ms. Riddle stated Appellant did not request an escrow analysis until August 15, 2023 which is blatantly false. Appellant made a request on June 12, 2023 in his telephone conversation with Respondent Rocket Mortgage, LLC employee Mr. Rance. Appellant requested the escrow analysis at the end of May and first of June to be stopped until the overpayment issue had been resolved, in his telephone conversation with Respondent Rocket Mortgage, LLC employee, Ms. Islam, on June 6, 2023. In both cases, Appellant was ignored, proving negligence and possibly retaliation.

Respondent Rocket Mortgage, LLC and attorney Mr. Brent B. Young also violated SCRP 41.2(a)(3) by exposing Appellant's mortgage loan account number in the above mention *Affidavit (this may have been corrected by now)*.

Appellant also believes his complaint met or exceeded the requirements of SCRPC 8(a) in that he showed there was a RESPA violation and breach of contract caused by the negligent actions of Respondent for failing to request refunds for policies previously paid and ignoring Appellant's multiple requests to correct the issue. Appellant provided proof of damages to his credit that was available at the time. These were clearly pointed out (see Sections 19, 29, 30, 31, 36, 37 and 39 of the Amended Complaint) and damages to his credit with evidence available at the time of filing (see Exhibit 12 of the Amended Complaint) and which has become far worse since that time. Appellant was forced into a one-time only loan modification to bring his mortgage current, rather than a payment plan that would have resulted in Appellant bringing his mortgage current over a period of six months. Appellant has the audio of that March 1, 2024, phone conversation. Appellant's homeowners' insurance premium for 2024 has increased by 33.5% (thirty-three and one-half percent).

In a motion hearing dated March 14, 2024 in which Appellant was not sworn in prior to testimony, Respondent attorney lacked any specificity in his 12(b)(6) claim. Respondent attorney in his opening statement also failed to tell the complete truth by leaving out important aspects of this complaint.

On March 16, 2024, Appellant filed a Motion for Reconsideration which was ignored unlike Co-Defendant Palmetto State Insurance Agency, LLC's Motion for Reconsideration that was filed on March 15, 2024 and granted on March 21, 2024 before Appellant had any knowledge a motion had been made, thus forcing Appellant to file this Appeal.

STANDARD OF REVIEW

Respondent's complaint met or exceed the requirements of SCRCP 8(a) in that he showed there was a breach of contract, violations of the RESPA Act and damages to his credit with evidence available at the time of filing "Likewise, the Court must accept all factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff." *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008). "The pleadings of pro se litigants are "liberally construed" and held to a less exacting standard as those complaints drafted by attorneys. *Tannenbaum v United States*, 148 F. 3d 1262, 1263 (11th Cir. 1998).

Appellant also proved Respondent's negligence by showing the duty of care owed in managing his escrow account, breach of the mortgage contract, the cause of damage to his credit history and credit score as well as damages of two of his accounts being closed and/or credit limit being reduced. This has severely damaged Appellant's reputation and will affect Appellant's credit history for the next 7 (seven) years.

STATEMENT OF FACTS

On October 25, 2023, Thomas E. Dukes, Appellant, filed an amended complaint for a jury trial, going into greater detail (SCRCP 8(a)) regarding Respondent's, breach of contract and RESPA violation (see Sections 29, 36, 37 and 39 of the Amended Complaint, Section 3 of the mortgage contract and *G M A C Mortgage Corp. v. Stapleton 236 Ill. App. 3d 486 (Ill. App. Ct. 1992)*), as well as providing evidence, available at the time (see Exhibit 12 of the Amended Complaint), of damage caused to Appellant's credit history, which is now, far worse, than at the time of filing. Additional evidence of damage to Appellant's credit was received May 4, 2024, shows Appellant's homeowners insurance policy increased by 33.5% (thirty-three- and one-half percent) from the previous year, having filed no claims against his policy.

Appellant also provided evidence under SCRCP Rule 8(a) regarding the negligence (or possible retaliation) of two Respondent employees and that Respondent failed to remedy the breach of contract in June 2023. No reasonable person would pay their homeowner's insurance policy three (3) times in the span of six (6) days and not ask what happened to the money previously paid, yet Respondent did so, playing fast and loose with Appellant's escrow with no safeguards or best management practices in place to prevent this from happening. Respondent also failed to secure a refund(s) from the insurance company each time a policy was re-written and presented for payment.

Respondent, under SCRCP 8(b), failed to deny or prove otherwise, the breach of the mortgage contract or RESPA violations. Instead, respondent's defense was based on SCRCP Rule 12(b)(6).

Appellant also requested through discovery, evidence that would have either proven Respondent's negligence or retaliation. A Motion to Stay was filed by Respondent, and granted, subverting the judicial process and the due process of the Appellant.

On September 9, 2023, Respondent employee, Mr. Eric Gibson made a sworn statement, stating "Thomas E. Dukes never submitted via payment any refund check for insurance policy premiums to Rocket Mortgage". This came after Appellant made an escrow only payment to Respondent on June 13, 2023 and included receipts in both the original complaint and the amended complaint. Respondent attorney, Mr. Brent B. Young allowed this statement in his Affidavit in Opposition to Motion for Summary Judgement filed on September 29, 2023. The Affidavit was separate from Respondent's Motion to Dismiss that the Honorable Debra McCaslin allowed Respondent/Defendant to refile. This is perjury under South Carolina Code of Laws Section 16-9-10. Only Respondent's Motion to Dismiss and Appellant's Motion for Summary Judgement were dismissed by the Honorable Debra McCaslin in her order. Respondent and attorney Mr. Brent B. Young attempted to conspire to deceive and defraud the Court by engaging in dishonest conduct, obstructing the process, abused the judicial process, or otherwise sought to perpetrate a fraud on the court. *See, e.g., Link v. Wabash Railroad Co.*, 370 U.S. 626, 630-632 (1962). *See also Aoude*, 892 F.2d at 1118; *McDowell v. Seaboard Farms of Athens, Inc.*, 1996 WL 684140, 2-3 (M.D. Fla. 1996) (cases cited therein); *Sun World, Inc. v. Lizarazu Olivarria*, 144 F.R.D. 384, 389 (E.D. Cal. 1992) (holding that, when a litigant commits a fraud upon the court, "the inherent powers of the court support the sanction of dismissal and entry of default judgment"); *Pope*, 138 F.R.D. at 682 (dishonest conduct by a party or conduct that "threatens the integrity of the judicial process" is grounds for dismissal with prejudice under Rule 41(b)); *Anway Corp. v. Shapiro Express Co.*, 102 F.R.D. 564, 569-70 (S.D.N.Y. 1984);

Cox v. Burke, 706 So. 2d 43 (Fla. 5th DCA 1998); *Kornblum v. Schneider*, 609 So. 2d 138 (Fla. 4th DCA 1992).

In the same Affidavit in Opposition to Motion for Summary Judgement filed on September 29, 2023, Respondent attorney also violated SCR 41.2(a)(3) by violating Appellant's privacy by exposing his mortgage loan account number (this has since been corrected).

After a 12(b)(6) hearing for motion to dismiss on March 14, 2024, the Honorable Brian Gibbons ruled in favor of the Respondent. In Respondent's Motion, *Flateau v. Harrelson* 355 S.C. 197 (S.C. Ct. App. 2003), was cited. Again, Respondent's attorney again tried to deceive the Court by stating, "A Rule 12(b)(6) motion must be granted if facts alleged and the inferences reasonably deducible from show that the plaintiff could not prevail on any theory of the case". This is incorrect. The case states, "A motion to dismiss under Rule 12(b)(6) should **not** be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case".

ARGUMENTS

General pleading requirements and Rule 12(b) (6) requires an Appellant only to state a claim that is plausible on its face. The South Carolina Rules of Civil Procedure, require parties simply to provide each other with fair notice of their claims. Under SCRCP Rule 8(a), the plaintiff is required only to set forth its claims with a “short and plain statement.” In 2007, the United States Supreme Court further interpreted Rule 8 to require a plaintiff to set forth “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

A defendant may seek to test the sufficiency of this statement under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Under Rule 12(b)(6), a court may not dismiss a *complaint when a plaintiff has plead “enough facts to state a claim to relief that is plausible on its face.”* *Twombly*, 550 U.S. at 570. Importantly, a Rule 12(b)(6) motion does not test the merits of the claim, rather, it simply tests whether a plaintiff has adequately stated a claim.

South Carolina Rules of Civil Procedure, Rule 8(c) requires a party responding to a pleading to “affirmatively state any avoidance or affirmative defense.” *South Carolina Rules of Civil Procedure Rule 8(b)*, requires that party to “state in short and plain terms its defenses to each claim.” These defenses must be set forth in the defendant’s answer. The United States Supreme Court recognized that a plaintiff did not have to anticipate defenses to their claim in their complaint. *Taylor v. Anderson*, 234 U.S. 74, 75 (1914).

“It is hornbook law that state and federal courts have “the inherent power to regulate litigation and to sanction litigants for abusive practices.” *Vargas v. Peltz*, 901 F. Supp. 1572, 1579 (S.D. Fla. 1995). *See also Malautea v. Suzuki Motor Co.*, 987 F.2d 1536, 1545 (11th Cir.), *cert. denied*, 510 U.S. 863 (1993) (recognizing that federal courts have the inherent power to

impose reasonable and appropriate sanctions on those appearing before them); *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989) (“[A] federal district court possesses the inherent power to deny the court’s processes to one who defiles the judicial system by committing a fraud on the court”); *Pope v. Federal Express Corp.*, 138 F.R.D. 675, 683 (W.D. Mo. 1990), *aff’d in part, vacated in part on other grounds*, 974 F.2d 982, 984 (8th Cir. 1992) (court has inherent power to sanction litigants for improper conduct); *Telectron, Inc. v. Overhead Door Corp.*, 116 F.R.D. 107, 126 (S.D. Fla. 1987) (stating the general rule).

It is equally well-established that those inherent powers include the authority to dismiss the claims or defenses of or enter a default judgment against a litigant who engages in dishonest conduct, obstructs the discovery process, abuses the judicial process, or otherwise seeks to perpetrate a fraud on the court. *See, e.g., Link v. Wabash Railroad Co.*, 370 U.S. 626, 630–632 (1962). *See also Aoude*, 892 F.2d at 1118; *McDowell v. Seaboard Farms of Athens, Inc.*, 1996 WL 684140, 2-3 (M.D. Fla. 1996) (cases cited therein); *Sun World, Inc. v. Lizarazu Olivarría*, 144 F.R.D. 384, 389 (E.D. Cal. 1992) (holding that, when a litigant commits a fraud upon the court, “the inherent powers of the court support the sanction of dismissal and entry of default judgment”); *Pope*, 138 F.R.D. at 682 (dishonest conduct by a party or conduct that “threatens the integrity of the judicial process” is grounds for dismissal with prejudice under Rule 41(b)); *Amway Corp. v. Shapiro Express Co.*, 102 F.R.D. 564, 569–70 (S.D.N.Y. 1984); *Cox v. Burke*, 706 So. 2d 43 (Fla. 5th DCA 1998); *Kornblum v. Schneider*, 609 So. 2d 138 (Fla. 4th DCA 1992).”¹

¹ The Florida Bar, *The Big Lie–False and Misleading Testimony by a Civil Litigant Does Have Serious Consequences*

CONCLUSION

Millions of Americans have mortgages and are required in their mortgage contract to have their insurance and taxes escrowed, to be paid on a timely basis, not only for the protection of the mortgagor but for the mortgagee as well. With this comes the obligation for the mortgagor to exercise care in how the escrow funds are handled. Respondent, Rocket Mortgage, LLC failed in this endeavor by paying multiple premiums for the same policy and failing to request refunds for cancelled policies before submitting payment a second and third time. Furthermore, Respondent increased Appellant's monthly escrow amount for insurance three-fold and failed to correct the issue as quickly as they increased the amount, resulting in a breach of the mortgage contract. This also caused a financial hardship on Appellant resulting in payments of other obligations to go unpaid, causing damage to Appellant's credit history for seven years.

Due to Respondent's propensity to attempt to deceive and defraud the Court and federal investigators, this Court should reverse the Circuit Court's decision and award default judgement for the Appellant. Minimally, the Circuit Court erred in holding Respondent negligent and responsible for damages to Appellant, failed to consider all evidence submitted by Appellant, failed to apply court rules fairly and ignored Appellant's Motion for Reconsideration. Personnel of the Circuit Court also deleted most of Appellant's testimony from the October 16, 2023 Webex hearing, thereby altering evidence of the official court record, therefore, Appellant requests a change of venue to the US District Court, Columbia, South Carolina.

Appellant respectfully urges the Court to grant the appeal.

Respectfully submitted,

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Brian M. Gibbons, Circuit Court Judge

Case No. 2023-CP-32-02473

Rocket Mortgage, LLC..... Respondent,

v.

Thomas E. Dukes.....Appellant.

CERTIFICATE

I, Thomas E. Dukes, Appellant, certify that the Appellant's Initial Brief complies with the South Carolina Court Rule 209.

s/ Thomas E. Dukes
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The undersigned hereby certifies that on July3, 2024, Appellant’s Initial Brief, Designation of Matter, and Certificate of Compliance were served on all counsel of record in this action by mailing a copy of it by United States Mail, postage prepaid to the following address:

Respondent Counsel:
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