

THE STATE OF SOUTH CAROLINA

In the Supreme Court

RECEIVED

Aug 07 2024

S.C. SUPREME COURT

APPEAL FROM DORCHESTER COUNTY

Honorable Diane S. Goodstein, Circuit Court Judge

Case No. 2016CP1801678

Appellate Case No. 2024-000801

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

v.

Nelson L. Bruce, Capital Return Investments, LLC, Charleston Area CDC, SC Housing Corp.,
South Carolina Housing Trust Fund, and Reminisce Homeowners Association, Inc., Defendants,

Of Whom Nelson L. Bruce is the.....Appellant

RETURN TO PETITION FOR A WRIT OF CERTIORARI

Albertelli Law

/s/ William S. Koehler
William S. Koehler
1201 Main St, Suite 1450
Columbia, SC 29201
(803) 828-0880
Attorneys for Respondent
SC Bar 9912
WKoehler@ALAW.net

August 6, 2024

Introduction

Respondent Wilmington Savings Fund Society FSB, as Trustee of Stanwich Mortgage Loan Trust C (“Respondent”) submits this Return in Opposition to the Petition for a Writ of Certiorari seeking review of the decision of the Court of Appeals pursuant to Rule 242(f) of the South Carolina Appellate Court Rules. The Court should deny the Petition and permit the well-reasoned decision of the Court of Appeals, *Wilmington Savings Fund v. Bruce*, Op. No. 2024-UP-023 (S.C. Ct. App. Filed January 17, 2024), to stand.

This Court has held that “it will grant certiorari to the court of appeals only where special reasons justify the exercise of that discretion.” *S.C. Dep’t of Soc. Servs. v. Benjamin*, 430 S.C. 235, 236 (2020) Rule 242(b), SCACR, specifies a writ of certiorari will be granted when there are “special and important reasons”. The rule lists situations the Court may consider:

1. Where there are novel questions of law.
2. Where there is a dissent in the decision of the Court of Appeals.
3. Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
4. Where substantial constitutional issues are directly involved.
5. Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

SCACR 242

None of the itemized reasons is present in this case, nor are there special or important reasons for the Court of Appeals’ decision to be revisited. Because the considerations of Rule 242(b) are not implicated here, the Petition for a Writ of Certiorari should be denied.

Counter-Statement of the Case

This case is a foreclosure of a Mortgage given by Appellant Nelson L. Bruce to Respondent's predecessor. The case was initiated by the filing of a Lis Pendens, Summons and Complaint on August 19, 2016. (R. pp. 24-34) Appellant filed a Motion to Dismiss on April 3, 2017. (R. pp. 69-149) A hearing was held on September 13, 2017. By Order dated September 15, 2017, the Court denied Appellant's motion.

Appellant filed an Answer and Counterclaims on September 13, 2017, which he amended and filed on September 25, 2017. (Hereinafter "Answer") (R. pp. 35-46) In response a Reply was timely¹ filed its March 1, 2018. (R. pp. 192-200) The Reply included a Motion to Dismiss Appellant's claims under SCRCP 12(b)(6) for failure to state a claim upon which relief can be granted.

On March 9, 2018, Bank of America, N.A., the Plaintiff at the time, filed a motion to substitute Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust C as Plaintiff on the basis that the mortgage had been assigned after the initiation of the case. By order entered March 23, 2018, the motion was granted. (R. pp. 1-5)

On July 20, 2018 Appellant filed a Motion for Pre-Trial Discovery and for Proof of Jurisdiction. Appellant amended the Motion on July 23, 2018. (R. pp. 253-262) On August 23, 2018 Appellant filed several motions with the Court, some of which were duplicative. (R. p. 263-385) They were captioned:

¹ Before Respondent's time to reply had run, Appellant removed the case to the United States District Court for the District of South Carolina. The District Court issued an Order to Remand the case to State Court. The Remand Order was appealed to the United States Court of Appeals for the Fourth Circuit. The Court of Appeals denied the appeal, remanding the case back to the Circuit Court.

Motion to Dismiss, Authorization Form to Collect Filing Fee and Instructions (445 Form) (“Appellant’s Motion to Dismiss”)

Motion to Vacate/Set Aside Judgment/Order Pursuant to SC.R.Civ.P. 60(b), Authorization Form to Collect Filing Fee and Instructions (445 Form) (“Appellant’s Motion to Set Aside Judgment”)

Motion for Temporary Restraining Order, Preliminary and Permanent Injunctions, and Damages, Court Filing Fee Objection/Challenge, Authorization Form to Collect Filing Fee and Instructions (SSA-445 Form) (“Appellant’s Motion for TRO, etc.”)

The Clerk of Court filed them as Motion/Dismiss (Filing Fee Contested), Motion/Vacate 3/23/18 Order (Filing Fee Contested), Motion/Dismiss 9/25/17² Order (Filing Fee Contested), Motion/Vacate 9/15/17 Order (Filing Fee Contested) and Motion/TRO (Filing Fee Contested). Appellant did not pay the motion fee for any of the motions. On October 16, 2018 Respondent filed responses to Appellant’s motions.

On October 16, 2018 Respondent also filed a Motion to Dismiss Appellant’s Counterclaims and to Refer the case to the Master in Equity. (R. pp. 386-392) On December 17, 2018 Appellant filed a response in opposition to Respondent’s Motion to Dismiss and Refer. (R. pp. 393-405)

The Court scheduled Appellant’s six motions and Respondent’s two motions for a hearing on March 12, 2020. Before the hearing, Appellant filed a Motion to Stay Pending Arbitration Award (Filing Fees Contested) on February 28, 2020. (R. pp. 520-523) The eight outstanding motions were heard on March 12, 2020. Appellant and Counsel for Respondent attended the hearing.

By Order entered April 22, 2020 the Court issued an order continuing Appellant’s Amended Motion for Pre-Trial Discovery; denying Appellant’s other outstanding motions; granting Respondent’s Motion to Dismiss Counterclaims; and granting Respondent’s Motion to

² No order was issued on September 25, 2017. This appears to be a typo since the Appellant’s motion references the Order signed September 15, 2017.

Refer the case to the Master in Equity. (R. pp. 8-16) This April 22, 2020 Order is the order being appealed by Appellant.

Appellant filed a Motion to Reconsider on May 20, 2020. (R. pp. 524-578) The Master in Equity remanded the matter back to the Circuit Court for consideration of the Motion to Reconsider. The Appellant's Motion was denied, and the case was referred back to the Master in Equity by Order entered July 8, 2020. (R. pp. 22-23) Appellant filed a Notice of Appeal on July 21, 2020 and an Amended Notice of Appeal on August 27, 2020. (R. pp. 47-54)

The Court of Appeals issued 2024-UP-023 affirming the Trial Court.

Questions Presented

Appellant presents eight questions for review.

1. Whether the Court of Appeals violated Petitioner's constitutional right to petition for redress of grievances by limiting his appeal to only the initial complaint, denying access to the full record from the original proceedings containing exhibits and evidence necessary to effectively appeal the judgment?

The Court of Appeals did not violate Appellant's right to petition for redress. Appellant was allowed to seek redress of his grievances through the filing of his counterclaim. The legal insufficiency of his pleading and claims was not a denial of access to the Courts.

Appellant misunderstands what was limited to the initial complaint. Respondent's Motion to Dismiss Appellant's Counterclaims was made pursuant to Rule 12(b)(6). When ruling on Respondent's Motion, the Circuit Court was required to limit its review to the allegations of the complaint, which it properly did. The Court of Appeals then properly applied the same standard.

"In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRPC, the appellate court applies the same standard of review as the trial court." *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct.App.2010) "... a ruling on a motion to dismiss

under Rule 12(b)(6), SCRPC, must be based solely on the allegations contained in the complaint.” *Chewning v. Ford Motor Co.*, 346 S.C. 28, 32, 550 S.E.2d 584, 586 (Ct. App. 2001) *citing Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). “Viewing the evidence in favor of the [non-moving party], the motion must be granted if facts alleged in the complaint and inferences reasonably deductible therefrom do not entitle the plaintiff to relief ...” *Chewning, Id. Citing Jarrell v. Petoseed Co.*, 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998).

It is unclear why Appellant states the Court of Appeals denied access to the full record. On April 2, 2021 Appellant filed a Designation of Matter to be included in the Record on Appeal. Later, on December 10, 2021, Appellant filed a 625-page Record on Appeal with his designated matters. He amended the Record on December 20, 2021 to include 631 pages of documents he wanted to be considered.

There is no reason to believe the Court of Appeals did not consider the Record before it. To the extent that Appellant is trying to allege the Court of Appeals ignored the Record, there is no basis for such an allegation, and the unsupported allegation should not provide a basis for this Court to issue a Writ of Certiorari.

2. Whether the Court of Appeals violated Petitioner's constitutional right to petition for redress of grievances by ignoring petitioners other remaining form of claims specified in Petitioner 's amended counterclaims under paragraphs 35, 41, 42, & 49(a) through 49G) of the Petitioner’s amended complaint?

The Court of Appeals did not ignore Appellant’s claims. There is no basis for such a claim. The Court found that the claims did not allege facts sufficient to constitute a cause of action. The claims are so vague that Appellant is forced to refer to them by paragraph number. They do not appear to be cognizable, even to him. The unspecified claims fail to provide a basis for a Writ of Certiorari.

3. Whether limiting an appeal solely to the complaint, without the comprehensive record containing transcripts, exhibits, evidence and legal reasoning, unconstitutionally obstructs the fundamental purpose of appeals as a mechanism for redress against incorrect decisions that violate rights?

Appellant misconstrues the Circuit Court's ruling and Court of Appeals opinion. In ruling upon Respondent's Motion to Dismiss, the Circuit Court confined its inquiry to the allegations of Appellant's Complaint, as it is required to do. Appellant appealed, briefed his appeal, and submitted a Record. There is no basis to assert that the Court of Appeals did not consider the Record and all of the filings before it.

The Appellant has been afforded a full appeal. No substantial constitutional issue exists meriting a Writ of Certiorari.

4. Whether the Court of Appeals erred in affirming the Circuit Court's dismissal of Petitioner's counterclaims under the Fair Debt Collection Practices Act by misapplying the definition of a "debt collector" contrary to binding U.S. Supreme Court precedent in *Henson v. Santander*?

The Court of Appeals properly held that Appellant's pleadings did not allege sufficient facts to conclude Respondent is a Debt Collector under the FDCPA.

Appellant cannot maintain a claim against Respondent under the FDCPA because the Act only applies to Debt Collectors. Respondent is not a Debt Collector under the statute, and Appellant did not allege facts to support a contention that Respondent is a Debt Collector. “[T]he FDCPA purports to regulate only the conduct of debt collectors, not creditors, generally distinguishing between the two based on whether the person acts in an agency relationship with the person to whom the borrower is indebted.’ The FDCPA defines ‘debt collector’ as ‘(1) a person whose *principal purpose* is to collect debts; (2) a person who *regularly* collects debts *owed to another*; or (3) a person who collects *its own debts*, using a *name other than its own* as if it were a

debt collector.’’ *Richardson v. Shapiro & Brown, LLP*, 751 F. App'x 346, 349 (4th Cir. 2018) (*Emphasis in original. Internal Cites omitted.*)

Appellant’s Answer did not assert any facts that Respondent’s principal purpose is the collection of debts. Accordingly, Respondent is not a Debt Collector under the first prong of the statute. Similarly, Appellant has not alleged Respondent is operating using a name other than its own as would be required to satisfy the third prong. Finally, Respondent is not a Debt Collector under the second prong of the statute. The U.S. Supreme Court has stated, “you have to attempt to collect debts owed *another* before you can ever qualify as a debt collector.” *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1724, 198 L. Ed. 2d 177 (2017) (*Emphasis in original.*) Appellant is the holder of the Note and the legal title owner of the Mortgage, so it is not collecting the debt of another. Assuming the facts of Appellant’s Answer to be true, there are still no facts alleged from which it could be inferred that Respondent is a Debt Collector under the statute. The Court of Appeals properly applied *Henson*, and no further review is necessary.

5. Whether the Court of Appeals improperly affirmed dismissal of Petitioner's counterclaims by failing to construe his pro se pleadings liberally and afford opportunity to amend any deficiencies, contrary to *Haines v. Kerner* and other binding precedents?

In this question, Appellant raises two complaints with the opinion of the Court of Appeals. First, he concludes that his pleadings were not liberally construed, and second, he complains that he was not afforded an opportunity to amend any deficiencies.

Appellant’s pleadings were liberally construed, and all factual allegations of his counterclaims were taken as true. The Circuit Court applied this 12(b)(6) standard, and the Court of Appeals did as well. There simply was not a valid counterclaim alleged. The Courts are unable to construe that which does not exist. The Court of Appeals addressed this directly and opined

that they do have “license to look beyond the claim presented”.

Second, Appellant wants this Court to review the inaction of the Circuit Court in failing to allow Appellant to amend his pleadings. The Court did not allow Appellant to amend his pleadings because the Appellant did not ask for permission to do so. Of the many motions Appellant has filed in this case, none of them has been a motion to amend his dismissed counterclaims; he only raised the issue to the Court of Appeals. The Court of Appeals was unable to review an issue that was never before the Circuit Court, and it should not be before this Court, either.

6. Whether the Court of Appeals erred in holding Petitioner failed to preserve his right to amend pleadings, when he explicitly reserved that right in his opposition brief ruled on by the Circuit Court?

Appellant argues he reserved his right to amend his pleadings. As the Court of Appeals ruled, Appellant was unable to “preserve his right to amend pleadings” because the time during which he had a right to amend his pleadings had passed. Appellant had no right to amend his pleadings; he could only amend by leave of the Circuit Court. Appellant never sought leave of the Court, so there was no ruling by the Circuit Court on this issue. The Court of Appeals properly determined there was no ruling from which to appeal.

7. Whether the Court of Appeals improperly deemed Petitioner's constructive fraud, conspiracy and Truth in Lending Act claims abandoned merely because he did not extensively cite legal authorities as a pro se litigant?

Appellant objects that this portion of his appeal was abandoned because he did not cite *extensive* legal authorities. The Court held Appellant abandoned this issue because he did not cite *any* authorities. The Court cited *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) (“[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.” The Court also cited *State v Howard*, 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009) (holding the

Appellant abandoned an issue on appeal and declining to consider the Appellant's argument where the Appellant failed to cite any authority in support of the argument). The Court of Appeals then properly followed those precedents.

8. Whether the Court of Appeals' opinion conflicts with precedent recognizing a right to jury trial on legal counterclaims like violations of the FDCPA, FCRA, TILA, Fraud, Breach of Contract, etc., raised alongside an equitable foreclosure action?

Appellant misunderstands or misconstrues the opinion of the Court of Appeals. The Court's ruling was not that Appellant did have a right to trial by jury on his counterclaims; the Court said he didn't plead facts sufficient to constitute a cause of action. Appellant cites no precedent in conflict with the Court's ruling, nor any other reason to justify a Writ of Certiorari.

Conclusion

Appellant clearly disagrees with the conclusions of the Circuit Court and the Court of Appeals. None of the questions nor the argument of Appellant asserts that the Court should grant a Writ of Certiorari because of a novel question of law, and there was no dissent in the Court of Appeals opinion. No decision of this Court nor any decisions of the United States Supreme Court are in conflict with the Court of Appeals opinion. There are no substantial constitutional issues in this case. Appellant has failed to enumerate any valid reason the Court of Appeals opinion is in error. Therefore, this Court should deny the Petition for a Writ of Certiorari.

Respectfully submitted,

Albertelli Law

/s/ William S. Koehler
William S. Koehler, SC Bar #9912
1201 Main St, Suite 1450
Columbia, SC 29201
(803) 828-0880
Attorneys for Respondent
WKoehler@ALAW.net

August 6, 2024