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

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SC Court of Appeals

Appellate Case No. 2024-000614

Rocket Mortgage, LLC……Respondent,
v.
Thomas E. Dukes……...Appellant.

APPELLANT'S REPLY BRIEF

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SUMMARY

Appellant restates each and every allegation previously stated to the Court in any filing or filed with the Court, as if stated in verbatim here.

Respondent's defense rests entirely only deceit, deception and denial. Respondent attacks Appellant with a 12(b) defense again trying to deceive the Court when all aspects of proving negligence have been fulfilled, as well as providing evidence at the time, of damages caused by Respondent's negligence and breach of mortgage contract. Acting innocent and playing dumb is a manipulation tactic to deflect from their wrong doing, not a legal defense, nor is lying and denying.

I. Respondent continues its attempts to deceive and defrauded the Court.

Respondent has continually denied negligence, breach of contract and RESPA violations by claiming it collected the correct amount of escrow for Appellant's homeowners' insurance. They did not. A yearly premium of $1072 would be $104.22 per month with a one-sixth cushion. Respondent collected $312.66 per month. This is far beyond the allowable under RESPA. If this is not cushion, what is it? Respondent has stated this was the correct amount due to the policy being paid three times. In Respondent's Motion to Dismiss, filed November 27, 2023, section "II. Plaintiff's Efforts to Allege a Violation by Rocket Mortgage of the Regulations Governing the Management of Escrow Accounts are Misguided". Respondent attempts to deceive the Court regarding "cushion". Any item collected for either homeowners' insurance or taxes, etc., that exceeds the amount for the particular escrowed item, divided by 12, plus one-sixth of that amount is cushion. Any amount over that, is excessive.

Respondent deceives the Court when it fails to acknowledge all over payments were returned to the escrow account by June 13, 2023 and the "pot" made right. Respondent then breached the mortgage contract by not correcting the escrowed amount until August 29, 2023, despite two phone calls in June 2023, by Appellant to Respondent, to correct the issue. If this was not true, Respondent should not have asked for a Stay on Discovery as this would have proven funds had not been returned. This begs the question, why didn't Respondent provide this information on their own volition so Appellant could have demanded Co-Defendant, Palmetto State Insurance Agency, LLC to return the funds ASAP. By doing so, this could have cleared Respondent from liability. It appears retaliation against Appellant is also a possibility for filing this action.

Respondent then again attempts to deceive the Court with the false sworn statement by Senior Foreclosure Analyst, Eric Gibson on September 26, 2023, a month after Respondent corrected the amount escrowed for homeowners' insurance. Could this be another instance of negligence due to failure to check your facts before making a sworn statement?

II. Saying it's so doesn't mean it's so.

Respondent's 12(b) claim is also another attempt to deceive and defraud the Court as well as covering up their wrong doing through denial. All aspects of proving negligence and breach of the mortgage contract have been met. 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)(1), the plaintiff is required only to set forth its claims with a "short and plain statement." This has also been upheld by the US Supreme Court.

Respondent had a contractual duty to not breach the mortgage contract, they did. Respondent had a lawful duty to comply with RESPA, they did not. Respondent has failed to disprove any claim made by Appellant.

In the 12(b)(6) Motion hearing held March 14, 2024, Respondent admits, "So we stopped payment on one of them and credited the account. The other one Mr. Dukes made an escrow-only payment." (See March 14, 2024 transcript, page 7, lines 21-23). At this point, June 13, 2024, Respondent continued collecting excessive escrow amounts after all deficiencies had been corrected. Respondent did not correct this until August 29, 2023 even though Appellant requested Respondent to hold off any escrow analysis on May 30, 2023 with Respondent employee, Ms. Islam and again requested and escrow analysis with Respondent employee, Mr. Rance on June 12, 2023. Both times, Appellant was ignored when said employees failed to perform their duty. Respondent should have acted as quickly to reduce the escrowed amount as they were to increase it.

III. The pot should not call the kettle black.

Appellant has followed all rules of the SCRCP. All documents or statement of facts filed in this Appeal have been filed or made to the Court. Respondent has broken the rules, SCRCP 41.2(a)(3), regarding financial privacy by filing documents displaying Appellant's mortgage loan number. Respondent has likely exposed hundreds of thousands of customers loan numbers across the US in filing mortgage documents with the state's counties register of deeds office.

IV. Case example.

Annual homeowners'' premium	$1072.00
Monthly escrow amount	$89.33
Cushion allowed by law (RESPA)	$179.66
Cushion per month	$14.88
Monthly premium amount plus monthly cushion amount, maximum allowed by law (RESPA)	$104.21
Amount charged by Respondent after June 13, 2023 when all excess premiums had been returned	**$312.66**

Respondent was fully aware of the insurance debacle on May 30,2023. Yet they chose to perform an escrow analysis anyway, ignoring Appellant's request to hold off doing one until the insurance matter had been resolved. Respondent states they were justified in collecting a deficiency. This may have been so, but Respondent failed to correct the collection of excess escrow funds after June 13, 2023 when Respondent ignored Appellant's request for a new escrow analysis. After June 13, 2023, there was no deficiency to collect. Respondent was negligent when they failed to act, causing a breach of the mortgage contract and committed a violation of law under RESPA. The duty Respondent owed to Appellant was not to breach the mortgage contract or violate the law (RESPA).

In Respondent's 12(b)(6) Motion to Dismiss filed, November 27, 2023, Respondent states:

> In his Amended Complaint, Plaintiff mistakenly refers to 12 CFR § 1024.17(c)(1)(i). This subparagraph sets limits on the amount of cushion".

Respondent again deceives the Court and wishes you to believe, 12 CFR § 1024.17(c)(1)(i) is specifically about "cushion". It is **not**.

> **(i) Charges at settlement or upon creation of an escrow account.** At the time a servicer creates an escrow account for a borrower, the servicer may charge the borrower an amount sufficient to pay the charges respecting the mortgaged property, such as taxes and insurance, which are attributable to the period from the date such payment(s) were last paid until the initial payment date. The "amount sufficient to pay" is computed so that the lowest month end target balance projected for the escrow account computation year is zero (-0-) (see Step 2 in appendix E to this part). In addition, the servicer may charge the borrower a cushion that shall be no greater than one-sixth (1/6) of the estimated total annual payments from the escrow account.

CONCLUSION

Respondent has repeatedly engaged in deceptive and abusive practices in their attempt to play the victim. Respondent has a lawful duty under RESPA to collect funds and maintain proper levels of escrow. Respondent violated this duty after June 13, 2023 when excess funds were collected without cause, resulting in the breach of the mortgage contract and damages caused from the financial hardship placed on Appellant.

Appellant has fact checked Respondent on several previous occasions, filed as evidence with the Court, showing a pattern of deceit and attempt to defraud the Court.

This type of behavior cannot go unchecked. This Court has the duty and must put an end it. Therefore, default judgment should be granted.

Respectfully submitted,

s/ Thomas E. Dukes
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