

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

James E. Reeves, Special Referee

Appellant Case No. 2013-000965

SCBT, NA,..... Respondent

v.

Shelton Hoffman a/k/a Shelton L. Hoffman; South Carolina Department of
Revenue; Baird Transport, Inc,.....Defendants

Of whom Shelton Hoffman a/k/a Shelton L. Hoffman is theAppellant

APPELLANT'S INITIAL BRIEF

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SEP 11 2013

SC Court of Appeals

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TABLE OF CONTENTS

Table of Authorities.....ii

Statement of Issues on Appeal.....1

Statement of the Case.....2

Statement of the Facts.....4

Argument.....7

Conclusion.....12

TABLE OF AUTHORITIES

CASES

Collier v. Green 244 S.C. 267,137 S.E. 2d 277(1964).....7

Townes Assoc. Ltd. v. City of Greenville 266 S.C. 81,221 S.E.2d
733(1976).....8

Culbertson v. Clemons 322 S.C.20, 271 S.E. 2d 163(1996).....8

Ex Parte Strom 334 S.C. 605,514 S.E. 2d 599 (ct.App.1999).....9

STATEMENT OF ISSUES ON APPEAL

- I. WAS THE APPELLANT DENIED DUE PROCESS?

- II. DID THE RESPONDENT PROVE A VALID EXISTING DEBT OF THE APPELLANT?

STATEMENT OF THE CASE

A Complaint for foreclosure was filed by SCBT, NA (Bank) against the Appellant, Shelton Hoffman and various alleged interested parties on January 12, 2012. (Complaint) Mr. Hoffman answered *pro se* on February 10, 2012, demanding proof of the allegations in the Complaint, and asserting an affirmative defense that the debt had been settled. (Answer) A hearing was scheduled for May 8, 2012. On May 2, 2012 Mr. Hoffman filed a Motion to Transfer Hearing and Motion to Dismiss. (Motion to Dismiss) On May 8, 2012 the scheduled hearing was continued. (Order of Continuance) On May 30, 2013, attorney Margaret Collins filed a Notice of Appearance on behalf of Mr. Hoffman. (Notice) On June 4, 2013 Mr. Hoffman engaged in Discovery including Interrogatories, Request for Production of Documents and Notice of Depositions of Bank Employees. (Discovery) A hearing was scheduled for June 26, 2012, and Mr. Hoffman subpoenaed bank employees. Mr. Hoffman filed a First Supplemental Motion to Strike Plaintiff's Answer or in the Alternative Motion to Require Amendment of Complaint and Motion to Add Indispensable Party and Motion for Continuance on June 22. (Motion to Strike) The Motion for Continuance was granted, but the remaining

Motions were never ruled upon. An Order of Continuance and Stipulation of Counsel was issued on June 27, 2012. (Order of 06/27/12) Appellant's counsel filed a Motion to be Relieved as Counsel on July 17, 2012. (Motion to be Relieved) On October 5, 2012 the Bank filed a Motion for Order of Reference, and Special Referee James E. Reese was appointed. (Motion for Reference) Mr. Hoffman filed an Objection to the Motion to be Relieved of Counsel on December 27, 2012. (Objection to Motion to be Relieved) Mr. Hoffman filed a Memorandum in Support of Injunctive Relief and for a Declaratory Judgment on January 8, 2013. (Memo dated 01/08/13) A hearing was scheduled for January 8, 2013, which was continued. (Order for Continuance dated 01/11/13) A Motion to Compel was filed on February 5, 2013 and subpoenas were issued by Mr. Hoffman on February 11, 2013. On February 11, 2013 the Bank filed a Response to Motion to Compel and filed a Motion to Quash. (Response to Motion to Compel, Motion to Quash)

A Hearing was held on February 12, 2013. Ms. Collins was relieved as counsel, and Mr. Hoffman who is legally blind, hard of hearing and in poor health, was forced to proceed without an attorney. (TR p.25-30) The

Special Referee allowed the parties to make additional filings for 10 days. (TR p.63-64) Mr. Hoffman filed a Memorandum of Facts w/ attachments on February 21, 2013. (Memorandum of Facts w/ attachments) A Judgment of Foreclosure was issued on March 3, 2013. (Judgment) On April 10, 2013 the Bank filed a Waiver of Deficiency Judgment. (Waiver) A Notice of Appeal by Mr. Hoffman acting *pro se* was served on the Respondent, and filed with the Clerk of Court of Orangeburg County on April 12, 2013. On May 7, 2013 a Notice of Appeal, and Motion to file Notice of Appeal Out of Time was filed by Mr. Hoffman's current counsel, and the Motion was granted. This Appeal follows.

FACTS

The Appellant Shelton Hoffman borrowed \$100,660.00 from South Carolina Bank and Trust (SCBT, NA) [hereinafter referred to as Bank] on October 21, 2003. Mr. Hoffman signed a form Note prepared by the Bank, and also signed a Mortgage dated October 21, 2013. (Note; Mortgage) The Mortgage is purportedly witnessed by Bank employee Johanna Martin and Orangeburg attorney Ronald Hutto. Mr. Hoffman maintains that there were

no attorneys involved with the loan, and in fact, that the only person that was in the room when he signed the mortgage was Johanna Martin, and that Ronald Hutto was not involved in any way with the mortgage to his knowledge. (Memo of Facts p.3)

The Mortgage lists as "SECURED DEBT DEFINED" a promissory note as well as all extensions and renewals, and describes the note as "a Note dated 10-21-2003 in the amount of 100,660.00 in the name of Sheldon Hoffman". (Mortgage) This original Note signed by Mr. Hoffman was renewed in 2004, 2005, 2006, 2006 January 2007, March 2007, 2008 and 2009, the last renewal having a maturity date of May 5, 2014. (Note and Renewals) The last renewal was a form signed by Mr. Hoffman, prepared by the Bank, which clearly states that this was a renewal of the previous loan.

Mr. Hoffman has maintained throughout these proceeding that the Note in this case has been satisfied. (Answer, Motion to Strike dated 06/22/12) The foreclosure Complaint filed by the Bank, clearly lists the debt as being the October 2003 original Note, as the basis of the foreclosure action. (Complaint) Mr. Hoffman maintains that the original Note, provided to him for inspection by the Bank, is not the original document, and in fact he secured expert testimony who found that the note was in fact not the original

document. (Expert Report) At the foreclosure hearing on February 12, 2013, during argument on Mr. Hoffman's Motion to Compel, for the first time, the Bank stated it did not have the original 2003 note, and that no one ever thought that the document provided to Mr. Hoffman was the 2003 Note, and stipulated that the document presented was not the original. (TR. p.4-20) Then shockingly, Counsel for the Bank stated that "that note [referring to the October 21, 2003 note] has been paid out I think, well I know the Plaintiff has stipulated to that". (TR. p12)

Mr. Hoffman is legally blind and in poor health. (Doctors Letter) He Answered the Bank's Complaint *pro se*, and was subsequently able to obtain an attorney. That attorney raised several issues by way of Motion, which were never ruled upon. (Motion to Strike dated 06/22/12) The attorney subsequently moved to be relieved as counsel. (Motion to be Relieved) Mr. Hoffman objected to her being relieved as counsel, and was unable to obtain substitute counsel since he was still being represented. (Objection to Motion to be Relieved; memo of facts p. 7; TR. 27-29) At the hearing on the foreclosure, the Motion to be Relieved was heard by the Special Referee. Mr. Hoffman's counsel was relieved of counsel and Mr. Hoffman was forced

to proceed *pro se*. (TR.1-30) Motions raised by Mr. Hoffman's attorney on June 22, 2012, were never ruled upon by Special Referee. (TR.1-30)The Special Referee denied Mr. Hoffman's Motion to Compel. (TR.p.9-25) As to the witnesses subpoenaed to the hearing by Mr. Hoffman, the Judge quashed the subpoena of Mr. Bruce Rheney, a Bank employee (TR.p.20-23), and even though the other subpoenaed witness, Ms. Dukes, attended the hearing, she was never called as a witness by the Bank, and with Mr. Hoffman being *pro se*, he was not prepared to examine her as a witness. Mr. Rheney and Ms. Dukes could have testified that attorney Hutto was not present when Mr. Hoffman signed the original Mortgage, and therefore could not have witnessed his signature, and as to any changes to the original Note. (Memo of Facts p.4)

ARGUMENT

I. WAS THE APPELLANT DENIED DUE PROCESS?

A mortgage foreclosure action is equitable in nature. Rule 71(a) SCRCP; *Collier v. Green* 244 SC 267, 137 S.E.2d 277(1964). In an action in equity, the Appellate court has jurisdiction to find facts

in accordance with its own view of the preponderance of the evidence

Townes Assoc. Ltd. v. City of Greenville 266 SC 81, 221 S.E.2d 773 (1976)

S.C. Constitutional Art. 1 Declaration of Rights sec. 3 guarantees citizens of S.C. due process.

The Appellant is a 78 year old man, legally blind, hard of hearing, and in extremely poor health. (Doctor Letter, Memorandum of Facts) Through *pro se* pleadings, and through a retained attorney, Appellant was able to raise important issues regarding the foreclosure action on his family farm in Orangeburg County. Mr. Hoffman challenged the Bank as to who was the holder in due course of the original Note. There is also an issue as to the execution of the Mortgage, since it purports to be witnessed by an attorney, who the Appellant maintains was not present at any time during this transaction. (Mortgage; Memo of Facts p. 4)

Further, the Appellant claims that the original Note, which was renewed several times, has been satisfied, and therefore does not support the foreclosure proceeding. These issues were never fully explored due to tactics of the Bank during the discovery process, and by the denial of counsel by the Special Referees, due to his abuse of discretion in relieving Appellants attorney, and forcing him to proceed *pro se*. See *Culbertson v. Clemons* 322

S.C.20,471 S.E.2d 163(1996); Ex Parte Strom 334 S.C. 605,514 S.E.2d 599(ct.App.1999)

The Bank was never required to produce the original loan document. The person from the Bank most knowledgeable about the original Note was not required to attend the hearing even though subpoenaed. The Bank was never required to explain its revelation that the October 21, 2003 Note was not the basis of the foreclosure, even though it was the basis of the foreclosure in the Complaint, and never required to explain when and how it was satisfied. (Memo of Facts) Mr. Hoffman objected to his counsel Motion to be Relieved. Until the Motion was ruled upon, Mr. Hoffman's lawyer was the counsel of record. See *Ex Parte Strom 334 S.C. 605,514 S.E.2d 599(ct.App.1999)*

Mr. Hoffman says he was unable to obtain new counsel prior to the foreclosure hearing, because attorneys he contacted correctly pointed out that they were unable to represent him as he had an attorney of record. (Memo of Facts p.7)

The important issues raised by Mr. Hoffman were never addressed because he was denied due process, as guaranteed by S.C. Constitution. There was no urgency to this matter, and yet the hearing proceeded leaving

an elderly blind, unhealthy, litigant helpless to defend himself against a Bank trying to take his family farm.

II. DID THE RESPONDENT PROVE A VALID EXISTING DEBT OF THE APPELLANT?

An examination of the Complaint clearly shows the basis for this foreclosure action, was the claim that the Appellant had not paid a loan given by the Bank, evidenced by a Note dated October 21, 2003, with multiple renewals, which was accompanied by a Mortgage, also dated 10/21/03. (Note, renewals, mortgage, Complaint) From the very beginning of this action, the Appellant demanded to see the original Note, and claimed that the Note had been paid off. Throughout the months of Discovery in this case, the Bank repeatedly delayed producing the original Note, using various tactics. (Memo of Facts p.1-12) Finally on January 9, 2013, the Bank allowed the Appellant's expert to examine what they had claimed was the original October 21, 2003 Note. At that time, the Appellant's expert found that the Note was in fact not the original. (Expert's report) Nothing was ever said by the Bank about it not being in possession of the original Note, until the hearing on February 11, 2013, which, for the first time, and in a total

surprise, the Bank announced that it in fact knew that the October 21, 2003 Note, which was produced for inspection to the Appellant, was not the original. (TR. 4-24) Further, and more shockingly, for the first time, the Bank announced that the 2003 Note had been paid off. (TR. 4-24) Even though, the October 21, 2003 Note with subsequent renewals was listed in the Complaint as the Note that was being foreclosed on, the Bank stipulated to what Mr. Hoffman had been saying for months, that Note had in fact been paid off. The Bank then announced for the first time that it was foreclosing on the 2009 renewal, which the Bank was now claiming to be a new Note. (TR. 4-24) An examination of the 2009 Note clearly shows that it is marked as a Renewal, and a consolidation of previous loans. (2009 renewal) There is no evidence of any new money, or any other consideration given at the time of signing that Renewal. The only possible consideration would be the renewal of the original October 21, 2003 Note, which the bank claims was paid off. A satisfied Note cannot support the foreclosure of a Mortgage. This is clearly the type of issue that could have, and should have been explored during the hearing in this matter, had the Appellant been provided with due process.

CONCLUSION

Based on the above, the Appellant prays the Order for Foreclosure of the Special Referee be Reversed and Vacated, and that this case be Remanded for further proceedings.

Respectfully submitted,



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September 11th, 2013

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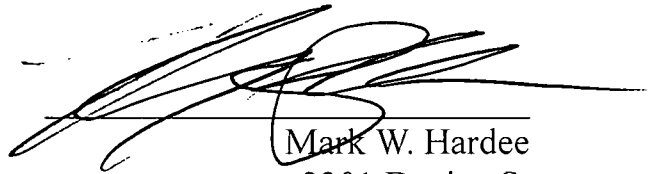
**APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN
RECORD ON APPEAL**

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Appellant Shelton Hoffman A/k/a Shelton L. Hoffman proposes the following to be included in the Record on Appeal.

1. Complaint
2. Answer
3. Motion to Dismiss
4. Order of Continuance
5. Notice
6. Plaintiff's Discovery request
7. Motion to Strike
8. Continuance and Stipulation of Counsel dated 06/27/12
9. Motion to be Relieved
10. Motion for Reference
11. Objection to Motion to be Relieved
12. Memo dated 01/18/13
13. Order for Continuance dated 01/10/13
14. Response to Motion to Compel
15. Motion to Quash
16. TR p. 4-30; 63-64
18. Memorandum of Facts w/ attachments
19. Judgment of foreclosure
20. Waiver
21. Note of October 21, 2003
22. Renewals
23. Mortgage
25. Answer Motion to Strike dated 06/22/12
26. Expert Report
29. Doctors letter
30. Certificate by Appellant

Respectfully submitted,



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September 11th, 2013

STATE OF SOUTH CAROLINA)

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COUNTY OF ORANGEBURG)

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Shelton Hoffman)

a/k/a Shelton L. Hoffman)

Appellant,)

vs.)

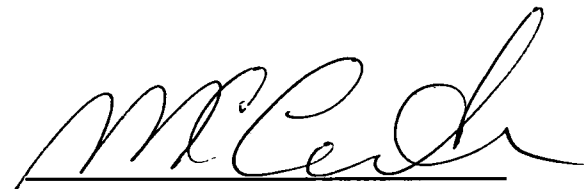
SCBT, NC)

Respondent.)

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of September, 2013, I served, via first class mail, at the address below, a copy of the Appellant's Designation of Matter to be Included in Record on Appeal and Appellant's Initial Brief pertaining to the above-referenced action.

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Attorney for the Respondent



Vicky McCarter
Legal Assistant

Columbia, South Carolina

Date: 9-11-13

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