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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Appellate Case No. 2024-000122

U.S. Bank Trust NA, as Trustee for Waterfall Victoria Grantor Trust II, Series G, Appellant,

v.

Jamie Singleton and Indigo Pointe Homeowners' Association, Defendants,

of which Jamie Singleton is the Respondent.

REPLY BRIEF OF APPELLANT U.S. BANK TRUST NA, AS TRUSTEE FOR WATERFALL VICTORIA GRANTOR TRUST II, SERIES G

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STATEMENT OF THE CASE

The appellant, U.S. Bank Trust NA, as Trustee of Waterfall Victoria Grantor Trust II, Series G ("Waterfall'), relies on the facts stated in its initial brief. However, the initial brief of the respondent, Jamie Singleton ("Singleton"), contains alleged facts in its "statement of the case" that are unsupported by the record. Waterfall believes these alleged facts require a response.

In Singleton's statement of the case, Singleton states that Waterfall's statement of the case "contains contested matters in violation of SCRAP [sic] 208(b)(1(C) (e.g. 'If the assignment in question was valid, Singleton's motion alleged the complaint failed to name a necessary party' (Appellant's Brief', page 6))." (Respondent's Brief, p. 6). Waterfall's statement regarding Singleton's motion was a statement of fact and was not regarding a contested matter, as Singleton's motion made such a request. (R. pp. 223-24).

The fact that Singleton attempted to cite Rule 208(b)(1)(C) of the SCACR for the proposition that the statement of the case should not contain contested matters shows that Singleton was clearly aware of the requirement that the statement of the case should contain only facts, not contested matters. This awareness did not prevent Singleton from setting forth his opinions instead of facts throughout his statement of the case. An example is "[t]he Motion ignores the record history of the various Plaintiffs' reluctance to comply with discovery, noncompliance with the Master-in-Equity's prior discovery Order entered years before the summary judgment hearing and consequent Motions to Compel due to the Plaintiff's repeated noncompliance with the subject Order, and the Plaintiff's delays in producing discovery which naturally and proximately caused Respondent to expend substantial attorney's fees and costs in his ongoing attempt to seek the truth." (Respondent's Brief, p. 3). Another example is "[t]hese claims border on the specious as demonstrated by the record of proceedings set forth in the Judgment including

. . . ." (Respondent's Brief, p.3). A final example is "Appellant 'foisted the matter upon its own petard' just as it did in failing to properly prove up its expenses and corporate advances as set forth in the Judgment and *infra."* (Respondent's Brief, p. 9).

Waterfall requests that the court of appeals disregard Singleton's statement of the case, as it contains Singleton's opinions regarding contested matters throughout it.

ARGUMENTS

I. The master-in-equity erred in the November 21, 2022 order by disallowing Waterfall's request for accrued interest, attorney's fees, and costs, which were items to which Waterfall was entitled under the terms of the note and mortgage.

Waterfall stands by the issues on appeal and the arguments it asserts in its initial brief. In Singleton's brief, Singelton cites only two cases under his first argument. These two cases are *Lewis v. Lewis,* 392 S.C. 381, 709 S.E.2d 650 (2011) and *Stone v. Thompson*, 428 S.C. 79, 833 S.E.2d 266 (2019). (Respondent's Brief, pp. 11-12). *Lewis v. Lewis* was the appeal of a divorce action. *Lewis* at 384, 709 S.E.2d at 651. *Stone v. Thompson* was the case in which the South Carolina Supreme Court abolished common-law marriage in South Carolina. *Stone* at 82, 833 S.E.2d at 268. Neither of these cases involved the issues that exist in the present case.

Singleton blames Waterfall or its predecessors-in-interest for "delaying justice and delaying an ultimate decision on the merits of this case in addition to causing [Singleton] to expend significant amounts for attorney's fees for what was unnecessary litigation, much of which had no basis in law." (Respondent's Brief p. 13). However, the record shows that Singleton filed at least the following motions during this case: a motion for a more definite statement; two motions to dismiss the case; two motions to disburse insurance proceeds; and four motions for summary judgment. (R. pp. 223-24, 228, 247, 266-365, 530-39, 601-739, 810-20, 857-59, 900-976). None of these motions were granted. (R. pp. 9-19, 26-32, 107-09, 114-17, 118-20, 139-40, 204-

05). Singleton also filed three motions to compel regarding discovery, and two of these motions were granted. (R. pp. 66-70, 107-09, 118-20, 389-90, 524-25, 810-20). The transfer of the Note, and with it, the Mortgage, may have caused some delay in this foreclosure action, but Singleton himself was responsible for much of the "unnecessary litigation" by filing most of these motions.

Also, as stated in Waterfall's brief, there was no finding by the master-in-equity that any of the transfers of the Note were done in bad faith or for the purposes of hindering or delaying the foreclosure action. (Appellant's Brief, pp. 13, 17). As also stated in Waterfall's brief, the master-in-equity also made no findings as to the alleged damages suffered by Singleton. (Appellant's Brief, pp. 13, 17). The damages must be calculated in order to determine the amount of a setoff. *See Diamond Swimming Pool Co. v. Broome,* 252 S.C. 379, 385-86, 166 S.E.2d 308, 312 (1969). (In order to obtain setoff, defendants had two burdens: the burden of proving the existence of the defects and the burden of proving with reasonable certainly the amount of damages occasioned by the defects). (Appellant's Brief , p. 17). There is nothing in the record to substantiate the master-in-equity's decision to, *sua sponte*, use equitable estoppel to deny Waterfall's request for accrued interest, attorney's fees and costs on the Note. Therefore, the master-in-equity erred in the November 21, 2022 order by denying Waterfall's request for accrued interest, attorney's fees and costs.

II. The master-in-equity erred in the November 21, 2022 order by denying Waterfall's request for the escrow charges and the corporate advances because of Waterfall's alleged failure to establish the reasonableness of these charges.

Waterfall stands by its analysis of this issue in its brief and respectfully requests that the court of appeals find that the master-in-equity erred in the November 21, 2022 order by denying Waterfall's request for escrow charges and corporate advances.

III. The master-in-equity erred by, *sua sponte*, issuing the March 28, 2023 order that vacated, in total, the November 21, 2022 order when more than ten days had passed since the issuance of the November 21, 2022 order.

In Singleton's brief, he attempts to distinguish from the present case the cases of *Ness v. Eckerd Corp.,* 350 S.C. 399, 566 S.E.2d 193 (Ct. App. 2002) and *Heins v. Heins,* 344 S.C. 146, 543 S.E.2d 224 (Ct. App. 2001). (Respondent's Brief, pp. 13-15). As stated in Waterfall's brief, in both *Ness* and *Heins*, the court of appeals held that the trial judge lacked subject matter jurisdiction to, on the trial judge's own initiative, alter a judgment more than ten days after the judgment had been issued. (Appellant's Brief, pp. 20-24). Singleton appears to be alleging that, since Waterfall filed a timely motion to alter or amend the November 21, 2022 order, the master-in-equity did not, on his own initiative, alter or amend his November 21, 2022 order. *See* Respondent's Brief, p. 14 ("[T]he Master-in-Equity below only entered the Order complained of after the filing of a motion and briefing thereon, and thus did not undertake any action '*sua sponte*.'"). (emphasis in original). However, Singleton also states that "[Waterfall] admits that in *Ness,* 'the trial judge modified an order not as requested in a Rule 59(e) motion, but rather on his own initiative,' which is not the situation here." (Respondent's Brief, p. 14).

As stated in Waterfall's brief, Waterfall did file a timely Rule 59(e) motion with regard to the November 21, 2022 order, but Waterfall's motion only requested that it be awarded interest, escrow advances, corporate advances, costs and attorney's fees. (Appellant's Brief, pp. 17; R. pp. 1098-1149). Waterfall's motion did not request that the November 21, 2022 order be vacated in its entirety, which is what the master-in-equity did in his March 28, 2023 order. (R. pp. 206-08). The March 28, 2023 order then dismissed Waterfall's motion as being "moot." (R. pp. 206-08). Since the master-in-equity did not modify the November 21, 2022 order as requested in a

motion, but instead, on his own initiative, vacated the entire November 21, 2022 order, the master-in-equity lacked subject matter jurisdiction to issue the March 28, 2023 order.

In Singleton's brief, he alleges that S.C. Code "§ 14-8-200(a) by its very terms limits appeals solely to orders, judgments, or decrees of the circuit court, family court, a final agency decision, a final decision of an administrative law judge, or a final decision of the Workers Compensation Commission." (Respondent's Brief, p. 16). Singleton alleges that "[t]he appeal here is from Orders issued by a Master-in-Equity in the Court of Common Pleas, which is not identified in § 14-8-200(a), and neither counsel nor the court may expand § 14-8-200(a) to include decisions of Masters in Equity issued in the Court of Common Pleas." (Respondent's Brief, p. 16). What Singleton overlooks in this argument is that the court of common pleas is part of the circuit court. *See* S.C. Code Ann. § 14-1-70(4) (1999, as amended) ("The following are the courts of this State: . . . (4) the circuit courts, to wit: (a) a court of common pleas and (b) a court of general sessions."). Therefore, Singleton's argument that S.C. Code § 14-8-200(a) does not provide the court of appeals with jurisdiction over the orders at issue in this case is without merit.

For the reasons set forth above and in Waterfall's initial brief, the court of appeals should hold that the master-in-equity lacked subject matter jurisdiction to issue the March 28, 2023 order.

IV. The master-in-equity erred in the December 12, 2023 order by disallowing Waterfall's request for accrued interest on the Note.

Waterfall stands by its analysis of this issue in its brief and respectfully requests that the court of appeals find that the master-in-equity erred in the December 12, 2023 order by denying Waterfall's request for accrued interest on the Note.

V. The master-in-equity erred in the December 12, 2023 order by holding that Waterfall, although being the holder of the Note, was not the holder of the

Mortgage that secured the Note, thereby preventing Waterfall from foreclosing on the Mortgage.

Waterfall stands by its analysis of this issue in its brief and respectfully requests that the court of appeals find that the master-in-equity erred in the December 12, 2023 order by holding Waterfall was not also the holder of the Mortgage, thereby preventing Waterfall from foreclosing.

Other than the case of *Bank v. Wingard Properties, Inc.,* 394 S.C. 241, 715 S.E.2d 348 (Ct. App. 2011), which Waterfall cited in its brief, the cases cited by Singleton in his brief for this issue do not involve foreclosures and have no application in the present case. (Respondent's Brief, pp 20-21). Waterfall notes that Singleton, in his brief, whether intentionally or mistakenly, appears to have misrepresented a quote. In his brief, Singelton notes that Waterfall cited the *Wingard Properties* case, but Singleton states that "[Waterfall] fails to cite the principle maxim in the case, enunciated by the United States Supreme Court, that 'A court of equity abhors foreclosures and will not lend its aid to enforce them,' citing *Jones v. N.Y. Guar. and Indem. Co.,* 101 622, 628, 25 L.Ed. 1030 (1979) [sic] . . . ." (Respondent's Brief, p. 20). The quote is actually "A court of equity abhors *forfeitures,* and will not lend its aid to enforce them." *Jones v. N.Y. Guar. & Indem. Co.,* 101 U.S. 622, 628, 25 L.Ed. 1030 (1879); *Wingard Properties* at 256, 715 S.E.2d at 356 (emphasis added). In the quote, Singleton substituted the word "foreclosures" for the word "forfeitures."

VI. The master-in-equity erred in the December 12, 2023 order by awarding judgment in favor of Singleton in the amount of $19,183.89.

Waterfall stands by its analysis of this issue in its brief and respectfully requests that the court of appeals find that the master-in-equity erred in the December 12, 2023 order by awarding judgment in favor of Singleton in the amount of $19,183.89.

CONCLUSION

The master-in-equity erred in the November 21, 2022 order by, *sua sponte*, deciding to waive interest on the Note from the date of Singleton's default and denying Waterfall any attorney's fees or costs. The master-in-equity also erred in the November 21, 2022 order by denying Waterfall's request for reimbursement for escrow advances and corporate advances on the Note and Mortgage. The master-in-equity further erred in, *sua sponte*, issuing the March 28, 2023 order that vacated the November 21, 2022 order in full, as the master-in-equity lacked subject matter jurisdiction to do so. The court of appeals should vacate the master-in-equity's March 28, 2023 order, leaving the November 21, 2022 order granting summary judgment to Waterfall as the standing order, but the court of appeals should then reverse those portions of the November 21, 2022 order that denied accrued interest, corporate advances, escrow advances, attorney's fees and costs to Waterfall.

If the court of appeals vacates the March 28, 2023 order, thereby reviving the November 21, 2022 order, the consideration of the issues with the December 12, 2023 trial order denying foreclosure and granting judgment become moot, and the December 12, 2023 trial order and the December 29, 2023 order regarding Waterfall's 59(e) motion should therefore be vacated. If the issues with the December 12, 2023 trial order are reached, the court of appeals should decide the master-in-equity erred in the December 12, 2023 trial order- and in the subsequent December 29, 2023 order in response to Waterfall's 59(e) motion- by concluding that Waterfall, although being the holder of the Note, did not also hold the Mortgage, by denying foreclosure to Waterfall, by denying accrued interest to Waterfall, by denying escrow advances and corporate advances to Waterfall and by granting a judgment to Singleton for the insurance proceeds.