RECEIVED
Feb 12 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James F. Chellis, Master In Equity,
Court of Common Pleas

Appeal Case Number: 2024-000122
Lower Court Case No. 2011-CP-18-00871

US 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.

ANSWER BRIEF OF RESPONDENT JAMIE SINGLETON

Jeff Barnes, Esq.
PHV counsel for Respondent Jamie Singleton
Appellate Practice Law Group PLLC
1515 North Federal Highway, Suite 300
Boca Raton, Florida 33432
Tel: (561) 864-1067
Fax: (561) 338-4840
e-mail: jeff@wjbarneslaw.com

William H. Sloan, Jr., Esq.
Attorney for Respondent
Jamie Singleton
Sloan Law Firm, P.A.
P.O. Box 85
Summerville, South Carolina 29484
Tel: (843) 873-7531
e-mail: whs@sloanlawfirm.com

TABLE OF CONTENTS (per SCRAP 208(B)(2)

Table of Cases, Statutes, and Other Authorities

Statutes

Rules

STATEMENT OF ISSUES ON APPEAL

STATEMENT OF THE CASE

As a threshold matter, the case below sounded in equity and was presided over and tried by a Master-In-Equity who had jurisdiction over the matter for approximately ten (10) consecutive years; who heard argument on all motions filed during that time; and who entered rulings based on overwhelming evidence which accumulated and was made of record for almost a decade. There was no better person to judge the issues, credibility of the witnesses, and rule upon the various matters than the Master-In-Equity, whose task was rendered difficult over and over again with the constant change of plaintiff and attorneys for the various plaintiffs over a period of 10 years.

Respondent asserts that Appellant's Statement of the Case does not fully and accurately reflect all of the proceedings relevant to this appeal of a matter which was in equity and presided over by a Master-In-Equity. As set forth in the Trial Order (a/k/a the Judgment), the case was originally set for trial in 2016 after a multitude of claimed transfers of the mortgage loan from the original bankrupt lender to a succession of numerous entities, and with conflicting documentation as to who the real party in interest was. (R. p. 145). The then-Plaintiff (in 2016), like other Plaintiffs before and after it, made the decision on the eve of the scheduled trial date to sell the loan to yet another third party which was not a party to the litigation (R., p. 59), thereby continually delaying this matter being in a position to be tried and thus denying Respondent the right to have the Master-In-Equity determine who the

real party in interest was.

Respondent was not at fault for any of the subject delays, but was forced, after each sale of the loan (and thus substitution of the Plaintiff over and over and over *ad nauseum*) to seek and obtain discovery as to the alleged transfers and alleged rights of each of the "new" Plaintiffs in order to prepare his defense. Significantly, although Respondent testified in his deposition that he was ready and willing to pay whoever was the true owner of his loan (R. p. 1472, lines 12-14) (and in fact agreed to pay the amount of the Judgment prior to the filing of Appellant's SCRCP 59(e) motion), he was prevented from doing so for years on end due to the conduct of the various Plaintiffs in continuing to sell or transfer the loan and the conflicting evidence from the "Plaintiffs", the history of which is set forth in very specific detail in the 54-page Judgment (R. pages 144-197).

The Rule 59(e) Motion also alleged that Appellant did not engage in any bad faith throughout the almost 10-year litigation in this case (R., p. 1103, lines 5-11). The 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 Plaintiffs' delays in producing discovery which naturally and proximately caused Respondent to expend attorneys' fees and costs in his ongoing attempt to seek the truth.

The Rule 59(e) Motion claimed that "the preponderance of the evidence show [sic] that Plaintiff did not act in bad faith", and that "there are no specific findings concerning (1) the actual number of allonges, assignments, and counsel substitutions; (ii) how these events protracted the litigation and for how long, and (iii) how those events increased the Defendant's legal fees." (R., p. 1103, lines 13-15). These claims border on the specious as demonstrated by the record of proceedings set forth in the Judgment including:

(a) the record of allonges, assignments, counsel substitutions; and

(b) the numerous changes of plaintiff and consequent necessary discovery; and

(c) the Plaintiffs' consistent noncompliance with Court-ordered discovery. (R., p. 148, No. 19- p. 153, No. 18; p. 186, No. 15)

In fact, the Judgment specifically recites the record of allonges, assignments, counsel substitutions, and the like including in paragraphs 13, 14, 15, and 16 of the Judgment ***which finding are supported by reference to the very Exhibits to a Motion for Summary Judgment filed by the "Plaintiff" at the time***. (R., p. 147, lines 13-28. R., p. 148, lines 1-23).

The record also reveals numerous instances of inconsistent claims made by the various Plaintiffs. As an example, the "Plaintiff", through affidavit testimony of its designated representative James George, took the position that GMAC never owned the loan, which contradicts Appellant's "allonge chain" as to GMAC owing the loan at one time. (R., p. 391, line 20). The "Plaintiff" also failed to produce any evidence

that GMAC actually purchased the loan from the bankrupt original lender (People's Choice). (R. p. 149, lines 9-11).

There is also evidence of bad faith as to Appellant's unilateral application of insurance proceeds to the claimed debt instead of applying the proceeds to repairs as required by the Mortgage, which was done without notice to or consent of Respondent. (R., p. 186, Line No. 313, p. 188, Nos. 334-335).

Appellant cites no law which requires that a Judgment detail each and every instance in the record to justify its ultimate conclusions. That is because there is no such law.

Appellant essentially admits that the claimed "errors" are nothing more than mere disagreement with the findings of the Master-In-Equity: "Waterfall disagrees with almost all of the findings of fact and conclusions of law in the Trial Order, as almost everything is construed against Waterfall and in favor of Singleton, and a lot of the findings of fact are, *in Waterfall's opinion*, irrelevant." (Appellant brief, p. 28). Appellant cites no law which supports reversal of a detailed, 54-page Order prepared over the course of six (6) months (or any other Order, for that matter) based on the appealing party's "disagreement" or "opinion". Affirmance is thus proper on this threshold infirmity alone.

The Judgment requires each party to pay their own attorneys' fees and costs pending a hearing on Appellant's attorney's fees in the Order following the Rule 59 motion. (R. p. 202, No. 332) There is nothing unfair or inequitable as to requiring

Appellant, a very large international banking concern with billions of dollars in assets, to pay its own attorneys' fees in view of its 9+ year history of frustrating the ultimate disposition of this case on the merits, delaying and hindering discovery, hindering Respondent's almost ten (10) year attempt to ascertain the truth, and delaying the litigation by constantly changing Plaintiffs. Appellant's claim that Respondent "knew who to pay all along" is without merit and is belied by the record given (a) the bankruptcy of the original lender, and (b) the multiple, continuous, and repeated changes of what entity (allegedly) was entitled to payment which changes were solely the act of Appellant and its predecessors-in-interest.

The fair result reached by the Master-In-Equity is further demonstrated by the Judgment requiring Respondent, an individual homeowner, to pay his own attorneys' fees and costs notwithstanding the significant amount thereof which was necessitated solely due to the conduct of Appellant and its various predecessors-in-interest. (R. p. 193.) It is more than significant that Appellant refused Respondent's good-faith attempt to pay the amount of the Judgment the day after it was entered, and instead engaged in practically specious attempts to challenge the Judgment.

Appellant's Statement does not even acknowledge that the Judgment appealed from is 54 pages in length containing 336 separate paragraphs of findings of fact and conclusions of law, and was prepared by the Master-In-Equity over the course of many months. Appellant's Statement of the Case also does not provide the date of service of the notice of appeal as required by SCRAP 208(b)(1)(C).

Third, the Statement contains contested matters in violation of SCRAP 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)).

Appellant's Statement of the Case omits the following specific findings of fact and conclusions of law as determined by the Master-In-Equity in the 54-page, 336 paragraph Judgment dated December 12, 2023 which the Master-in-Equity prepared over the course of six (6) months following the three (3) day nonjury trial which took place on June 12-14, 2023:

(a) Paragraph 181, which discusses entries in the pay history, states, in paragraph 181(b), that the Plaintiff produced no evidence explaining the items under "Transaction Description" including "Corp Adv 3 D" and "Expense Adv". (R., p. 168, lines 17-18) Paragraph 181(c) states that Plaintiff did not produce sufficient evidence of the necessity of the items under "Transaction Descriptions" to provide evidence of the necessity of these items, and paragraph 181(d) states that Plaintiff did not produce sufficient evidence of the reasonableness of the items in the "Transaction Descriptions". (R., p. 168).

(b) Paragraph 185 of the Judgment states that the plaintiff did not explain the reasons for 9 transactions described as Expense Advances or to whom they were made. (R., p. 169).

(c) Paragraph 192 of the Judgment states that the Plaintiff fails to similarly explain numerous transactions under Transaction Description, including "Expense

Adva" (paragraph 192(h). (R. p. 170).

(d) Paragraph 193 of the Judgment states that the Plaintiff fails to explain the necessity of these entries. (R. p. 170, line 11).

(e) Paragraph 194 of the Judgment states that the Plaintiff fails to explain the reasonableness of charges related to these [sic] item. (R. p. 170, lines 12-13).

(f) Paragraph 221 of the Judgment states that 4.28 years of the recorded payment history is not produced in the trial before this Court. (R. p. 173, lines 1-2).

(g) Paragraph 223 of the Judgment states that the failure to produce all the recorded payment history raises the Court's suspicion as to the trustworthiness of the business records admitted under the exceptions to the rule against hearsay. (R. p. 173, lines 5-7).

(h) Paragraph 246 of the Judgment states that under the column "Transaction Description", the descriptives contain "Legal Fees Disb" (subparagraph b), and "Other Fees Disb." (subparagraph e). (R. p. 176, lines 1-6).

(i) Paragraph 247 of the Judgment states that the plaintiff fails to produce sufficient evidence explaining items a, b, d, e, and f. (R. p. 176, lines 8-9).

(j) Paragraph 248 of the Judgment states that plaintiff provides no evidence of necessity for these items, which include the entries for legal fees. (R. p. 176, line 10).

(k) Paragraph 249 of the Judgment states that plaintiff fails to provide any evidence of the reasonableness of these items, which include the items for legal fees. (R. p. 176, lines 11-12).

(l) Paragraph 250 of the Judgment states that the Column entitled "Fee Description" includes the following descriptives (among others): "FC Attorney Fee (subparagraph d); "Litigated" (subparagraph g); and "Mediation/Trial" (subparagraph n). (R., p. 176, lines 13-27).

(m) The very next paragraph, that being paragraph 251 of the Judgment, states that on direct examination Mr. Amaya (Plaintiff's trial witness) gave no explanation of these various transactions or their corresponding fee descriptions. (R. p. 176, lines 28-29) (R.p.177, lines 1-16)

(n) Paragraph 252 of the Judgment states that Plaintiff offers no evidence of the necessity or the reasonableness of these [sic] transaction, and "Hence, Plaintiff fails to provide sufficient evidence that any of these expenses are recoverable from the Defendant under any provision of the Note or the Mortgage." (R. p. 177, lines 17-19).

(o) Paragraph 271 of the Judgement states that Exhibit 20 shows what Plaintiff claims as the amounts due on the Note secured by the Mortgage through June 12, 2023, which includes "Other Fees and Cost" of $17,112.27 (subparagraph (f), and "Attorney Fees & Cost" of $32,403.50 (subparagraph g). (R., p. 179, lines 17-26).

(p) Paragraph 274 of the Judgment states that Plaintiff fails to establish the necessity for items d, e, f, g, and h, which include the items for attorneys' fees. (R. p. 180, line 3).

(q) Paragraph 285, which is prefaced by the heading "No Acceleration Letter", states that Plaintiff did not produce sufficient evidence when the loan went into default for non-payment. (R., p. 181, lines 1-2).

(r) Paragraph 304 of the Judgment states that the Plaintiff only explanation for the difference in Legal Attorney Fees and FC Attorney Cost is "It's" the coding. (R., P. 183, lines 1-2).

(s) Paragraph 305 of the Judgment states that these explanations do not meet the Plaintiff's burden of production much less its burden of persuasion. (R. p. 183, lines 3-4).

(t) Paragraph 311 of the Judgment states that the Plaintiff did not produce sufficient evidence establishing the necessity and reasonableness of expenditures, except tax payments, and that "This too demonstrates Plaintiff's lack of credibility". (R. p. 186, lines 7-9).

(u) Paragraph 329 of the Judgment states that the Plaintiff's lack of credibility justifies a finding that the Plaintiff comes into this Court with unclean hands. (R. p. 187, line 28).

(v) Paragraph 331 of the Judgment states that Plaintiff is not entitled to recover attorneys' fees on the foreclosure action. (R. p. 187).

As Appellant admits, "an unchallenged ruling, right or wrong, is the law of the case and requires affirmance." (Appellant's Brief, page 29, citing *Lindsay v. Lindsay*, 328 S.C. 329, 339, 491 S.E.2d 583, 588 (S.C. App. 1997)). Appellant

claims that "…it would have been impracticable, if not impossible, to address in a ten-day period everything in the Trial Order with which Waterfall believed were [sic] incorrect…". (Appellant's Brief, page 28). Did Appellant request more time to address the issues? No. Does the law excuse Appellant's failure to address the issues due to alleged "impracticability" or claimed "impossibility"? No. Appellant "foisted the matter upon its own petard" just as it did in failing to properly prepare to prove up its expenses and corporate advances as set forth in the Judgment and *infra*.

On December 22, 2023, Appellant filed a Rule 59(e) Motion to Alter or Amend the Court's Order Denying Foreclosure and Granting Judgment on the Note (hereafter the "Motion to Alter"). (R. p. 1237). The Motion to Alter did not challenge or request that the Court alter or amend the Judgment as to matters (a) through (u) above. Appellant admitted in the Motion to Alter that "Failure to challenge the ruling is an abandonment of the issue and precludes consideration on appeal." Appellant has failed to preserve any issue as to these specific findings for appeal, and thus those findings are the law of the case and demonstrate that Appellant has failed to satisfy its burden to demonstrate any reversible error. The Order appealed from should thus be affirmed.

STANDARD OF REVIEW

Respondent provides the standard of review for decisions entered by a master-in-equity, as Appellant's Standard of Review does not contain all of the relevant standards.

An action to foreclose on a real estate mortgage is in equity. *Hayne Fed. Credit Union v. Bailey,* 327 S.C. 242, 489 S.E.2d 472 (1997). The appellate court is not required to disregard the findings of the master on an appeal from an action in equity. *BB&T v. Kidwell*, 350 S.C. 382, 565 S.E.2d 316 (Ct.App. 2000). The master, who saw the heard the witnesses, is in a better position to assess their credibility and the weight that should be given to their testimony. *Jocoy v. Jocoy*, 349 S.C. 441, 562 S.E.2d 674 (Ct.App. 2002).

As set forth above, Appellant failed to challenge the specific matters in the December 12, 2023 Order appealed from listed as items (a) through (u) above. Appellant's failure to do so failed to preserve any challenge thereto in this appeal, as "the unchallenged ruling, right or wrong, is the law of the case and requires affirmance", citing *In re Timmerman*, 331 S.C. 455, 460, 502 S.E.2d 920, 922 (S.C. App. 1998)("When a party receives an order that grants certain relief not previously contemplated or presented to the trial court, the aggrieved party must move, pursuant to Rule 59(e), SCRCP, to alter or amend the judgment in order to preserve the issue for appeal."). This Court may thus properly ignore any argument by Appellant in its Brief as to the specific findings set forth in the December 12, 2023 Order which were not challenged in Appellant's Rule 59(e) Motion. (R. p. 144) (R. p. 1237).

ARGUMENT

I. Whether Appellee has legally demonstrated error on the part of the Master-In-Equity Which Satisfies the Standard for Reversal?

The answer is no. The more current law than that cited by Appellant in its Brief is that the Court of Appeals may reverse a finding of fact when the appellant satisfies the appellate court that the preponderance of the evidence is against the finding of the lower court. *Lewis v. Lewis*, 392 S.C. 381, 709 S.E.2d 650 (S.C. 2011).

Appellant ignores the fact that this matter sounds in equity, and also ignores the law as to a Master-in-Equity's powers to do what it just under the totality of the circumstances, including imposing equitable setoffs and other relief. The Master-In-Equity committed no errors in view of his powers and the record circumstances, and Appellant has only expressed displeasure with the result and instead seeks to be rewarded for unnecessarily protracting the litigation and thus causing Respondent to incur otherwise unnecessary attorneys' fees and costs. This is demonstrated by the repeated references in Appellant's Brief as to what Appellant "argued" in its Rule 59(e) Motion (Appellant's Brief, pages 17-18). Simply because Appellant "argued" something which the Master-In-Equity did not agree with does not demonstrate error or warrant reversal.

Appellant argues that it was error for the Master-In-Equity to deny Appellant's expenses without requesting "additional information regarding the expenses" (Appellant's Brief, page 18). Appellant thus attempts to blame the Master-In-Equity for Appellant's failure of proof and its failure to properly prepare its request, while citing no legal authority which requires a Master-In-Equity to tell a party what is needed to prove up expenses. Appellant did not do its homework, and simply seeks

to lay blame on the Master-In-Equity.

Appellant notes that Respondent did not file his own Rule 59(e) motion. The reason for this is because Respondent offered to pay the amount of the Judgment in full immediately, which Appellant admits (Appellant's Brief, page 19) but which Appellant refused, choosing instead to delay the resolution of the matter.

It is the public policy of South Carolina to promote just outcomes for the parties in civil disputes. *Stone v. Thompson,* 428 S.C. 79, 833 S.E.2d 266, 270 (S.C. 2019). The Judgment as altered, based on the record, (R., p. 198) is more than fair under the totality of the circumstances and in view of the record of the actions of Appellant and its predecessors-in-interest delaying justice and delaying an ultimate decision on the merits of this case in addition to causing Respondent to expend significant amounts for attorneys' fees for what was unnecessary litigation, much of which had no basis in law.

II. Whether the November 21, 2022 Order is Appealable? (and)

III. Whether the March 28, 2023 Order is Appealable?

As these two issues are related (as both issues concern the appealability of Orders which were never timely appealed within thirty (30) days of their entry), Respondent addresses the central issue, which applies to both Orders, here. The answer to the issues is no.

Appellant argues that the November 21, 2022 and March 28, 2023 Orders are appealable as the Master-in-Equity (allegedly) lacked jurisdiction to enter the subject

Orders, citing two cases: *Ness v. Eckerd Corp*., 350 S.C. 399, 402, 566 S.E.2d 193, 195 (S.C. App. 2002), and *Heins v. Heins*, 344 S.C. 146, 543 S.E.2d 224 (S.C. App. 2001). Both cases are factually and legally distinguishable from the case here, and are thus not "remarkably similar" to the instant case as alleged by Appellant. (Appellant's Reply to Motion to Dismiss Appeal, Page 2, No. 3; Appellant's Brief Page 24).

Unlike here, *Ness* involved an appeal of two orders entered by different judges regarding setting aside a default. The judge vacated the default order on his own initiative in connection with a recusal arising out of matters which the judge admitted that he learned of on his own, and not as the result of any motion. The trial judge stated that he discovered that one of his brothers had a relationship to one of the parties which was unknown to him at the time that the judge heard motions which resulted in the entry of orders. No such conflict or issue is present here.

Appellant 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. (Appellant's Reply to Motion to Dismiss Appeal, Page 2, No. 4).

Appellant claims that "In the present case, the trial judge, *sua sponte*, vacated an earlier order more than 10 days after the order was issued", yet Appellant almost immediately thereafter admits that the master in equity issued the April 20, 2023 Order vacating the November 21, 2022 Order "*After U.S. Bank filed its Motion for Reconsideration of certain portions of this Order*." (Appellant's Reply to Motion to

Dismiss Appeal, Page 2, No. 6). It cannot be both: the 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.*" (R. p. 139). Appellant fails to cite a single case which provides that a trial judge cannot rule on a Motion directed to an Order where and after the Motion is fully briefed, and where the trial judge rules after briefing. This Court may thus properly disregard Appellant's reliance on *Ness.*

Heins also, unlike here, was another situation where there was a "sua sponte" ruling and in a divorce case, and concerned a grant of relief not requested in the pleadings. *Heins* provides no support for Appellant's position.

The thrust of the "loss of jurisdiction" holding in both *Ness* and *Heins* is predicated on the ability and timing of the trial judge to vacate an order "on his own initiative". *Ness* specifically points this out: "Although trial judges retain jurisdiction to alter judgments on their own initiative for ten days if a Rule 59(e), SCRCP, motion is filed, after ten days ***that*** jurisdiction is lost." 350 S.C. 402 (emphasis supplied). Thus, the specific type of jurisdiction which may be lost after 10 days is limited solely to a trial judge acting "on his own initiative".

There is nothing in either *Ness* or *Heins* which provides that a trial judge totally loses jurisdiction to rule on a motion for reconsideration or to alter or amend an order or judgment after full briefing by counsel and/or after a hearing. Neither *Ness* nor *Heins* provide any support for Appellant's position. Appellant failed to comply with the time limitations to appeal either the November 21, 2022 or March 28, 2023

Order, which are not appealable here. This Court may thus properly disregard Appellant's argument that this Court has jurisdiction to undertake any action as to the subject Orders.

Appellant also purports to rely upon S.C. Code Ann. §14-3-330(1) for the proposition that this Court may review the May 28, 2023 Order. (Appellant's Reply to Motion to Dismiss Appeal, pp. 3-4). By its very language, §14-3-330 provides that "The Supreme Court" shall have appellate jurisdiction for correction of law in law cases, etc. Appellant's appeal is here, in the Court of Appeals, and not in the Supreme Court.

There is no issue that §14-3-330(a) is a statute. What Appellant is attempting to do (and asking this Court to do) is to expand the language of a statute to fit Appellant's otherwise unsupported theory. South Carolina basic statutory construction law is clear that neither this Court nor Appellant may expand §14-3-330(1). *Worsley Companies, Inc. v. South Carolina Dept. of Health and Environmental Control*, 351 S.C. 97, 102-03, 567 S.E.2d 907 (S.C. App. 2002); *Sloan v. Sc Bd. of Physical Therapy,* 636 S.E.2d 598, 607, 370 S.C. 452 (S.C. 2006)(words in statute are to be given their plain meaning without subtle or forced construction to limit or expand the statute's operation); *State v. Appley*, 207 S.C. 284, 289, 35 S.E.2d 835 (S.C. 1945)(court is powerless to alter or add to a statute)

Appellant argues that "This jurisdiction [presumably provided in §14-3-330(1)] also extends to the Court of Appeals", citing S.C. Code 14-8-200(a) for the

proposition that this Court may review the challenged Orders. Appellant has ignored the jurisdictional limitation set forth in this Code provision as well. (Plaintiff's Reply to Motion to Dismiss Appeal, pages 3-4).

SC Code Ann. §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. The 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. *Worsley Companies, Inc. v. South Carolina Dept. of Health and Environmental Control, SUPRA; Sloan v. Sc Bd. of Physical Therapy, supra; State v. Appley, supra.*

S.C. Code Ann. §14-3-330(1) and §14-8-200(a) are thus inapplicable and provide no support for Appellant's position. This Court may thus properly ignore Appellant's arguments based on both 14-3-330(1) 14-8-200(a).

IV. Whether the Master-in-Equity erred by disallowing Appellee's Request for accrued interest, attorneys' fees, and costs in the November 21, 2022 Order and again disallowing Appellant's request For Accrued Interest in the December 12, 2023 Order?

The answer is no. There is no issue that this judicial foreclosure action was premised upon a contract. Appellant relies upon *U.S. Bank Trust, N.A. v. Bell*, 385 S.C. 364, 378-79, 684 S.E.2d 199 (S.C. App. 2009) for the proposition that interest

cannot be set off by a court (Appellant's Brief, p. 19). *Bell* did not concern the situation here, where "the Bank" claims interest over time as the result of its conduct which inordinately delayed the resolution of this action by almost seven (7) years (as the matter had been scheduled for trial in 2016 but was repeatedly delayed by "the Plaintiff" constantly changing, "the Plaintiff" avoiding discovery obligations, etc.).

In this respect, Respondent asserts that this is a matter of first impression on the issue of whether, under particular facts, interest may be equitably set off due to the conduct of a foreclosing party which inordinately delays the resolution of litigation thus causing an otherwise unnecessary accrual of interest.

Bell held that when there is a contract, the amount of attorneys' fees is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown, citing *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 383, 377 S.E.2d 296, 297 (S.C. 1989). Under the totality of the record circumstances, Appellant has failed to demonstrate any abuse of discretion whatsoever. Again, the attorneys' fees claimed by Appellant were incurred, in large part, by Appellant dragging out the litigation through constantly (allegedly) transferring the Note, constantly changing the named Plaintiff, failing to comply with discovery, providing inconsistent testimony from the various "designated representatives", and refusing Respondent's offer to pay the amount determined to be owed.

Appellant claims that the Master-In-Equity abused his discretion in denying Appellant its escrow and corporate advance claims (Appellant's Brief, Page 22). As

a threshold matter, the law in South Carolina is that a Plaintiff must prove its damages by competent evidence, *Witt v. Witt*, 248 S.E.2d 494, 495, 271 S.C. 541 (S.C. 1978).

As the Judgment expressly found that Appellant failed to provide sufficient information, including itemization and reasonableness of its claims for escrow and corporate advances (R., p. 166-171). Appellant "cannot now be heard to complain" as to the Master-In-Equity's decision not to award such damages, as the failure to supply the Master with sufficient evidence to permit the making of specific findings results in a failure to demonstrate that the result reached by the master, as to the setoff, was erroneous. *Diamond Swimming Pool Co. v. Broome,* 252 S.C. 379, 166 S.E. 2d 308, 312 (S.C. 1969)(affirming master's findings and overruling objections thereto).

The Master, sitting in equity, has broad equitable powers including the power to relieve a party from a penalty. *Lane v. N.Y. Life Ins. Co.*, 147 S.C. 333, 145 S.E. 196, 209 (S.C. 1928). In *Lane,* the Supreme Court of South Carolina held that a court of equity will not lend its aid to a plaintiff seeking to have a penalty enforced and in proper cases will grant relief from a penalty.

The assessment of post-default interest and Appellant's attorneys' fees against Respondent would operate as a penalty under the exceptional circumstances of this case. The record history reveals that Appellant's attorneys' fees incurred over a course of ten (10) years were solely due to the "Plaintiff":

(a) constantly changing its identity; and

(b) the repeated sale of the loan; and

(c) the repeated change of position as to who was allegedly owed monies on the loan; and

(d) delaying compliance with discovery including Court-ordered discovery; and

(e) changing positions in sworn testimony; and thus

(f) unnecessarily protracting this litigation which resulted in a waste of Court's judicial resources and Respondent having to wait over ten (10) years to ascertain who in fact owned his loan and who was owed money on the loan. (R. p. 187-8).

The Master-In-Equity, sitting in equity, properly refused to reward Appellant by awarding it interest (R., p. 154-5, No. 68) on the loan after default, especially given Respondent's deposition testimony that he was simply attempting, in this litigation, to ascertain to whom the claimed debt was owed (R. p. 1472, line 9) given (a) the bankruptcy of the original lender; (b) the constant selling and re-selling of his loan, and (c) the amount claimed owed. The "insult to injury" was Appellant's refusal of Respondent's agreement to pay the amount of the Judgment in full, and instead challenging the Judgment. Appellant has failed to demonstrate any error.

V. Whether the Master-In-Equity erred in entering the March 28, 2023 Order Which Was Entered on a Motion?

The answer is no. Respondent has addressed this issue in combined sections II and III above, and reincorporates the arguments made therein for purposes of this issue.

VI. Whether the Master-In-Equity Erred in Denying Appellant the Remedy of Foreclosure per the December 12, 2023 Order?

The answer is no. Although Appellant cites *Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 254-55, 715 S.E.2d 348, 356 (S.C. App. 2011) for the proposition that when providing an equity remedy that a court may not ignore statutes, rules, etc., Appellant 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 & Indem. Co*., 101 U.S. 622, 628, 25 L.Ed. 1030 (1979), which maxim has been adopted by the Supreme Court of South Carolina: "Equity does not favor forfeitures or penalties and will relieve against them whenever practicable in the interest of justice." *Lane v. N.Y. Life Ins. Co.,* 147 S.C. 333, 374, 145 S.E. 196, 209 (1928).

The Supreme Court of South Carolina has also held that the court has the power in equity to deny or delay forfeiture when fairness demands, *Lewis v. Premium Ins. Corp.*, 351 S.C. 167, 172, 568 S.E.2d 361, 364 (S.C. 2002). If there was ever a case where fairness demanded that foreclosure be denied, it is here, especially where Appellant refused Respondent's good-faith offer to pay the entire amount of the Judgment the day after it was entered which would have ended the 10-year litigation.

Appellant has no one to blame but itself for its woes, disappointments, and "disagreement".

VII. Whether the Master-In-Equity Erred in awarding Respondent a Setoff per the December 12, 2023 Order (which Appellant refers To in its Brief, Section VI, as the (December 12, 2023 Order)?

Appellant's argument here alleges that there was a "double recovery" by awarding a judgment to Respondent for insurance proceeds. The argument has no merit, and thus the answer to the issue is no.

Insurance proceeds are issued for purposes of repair or replacement caused by damage (here, a fire in the property the subject of the action). Appellant does not assert that the insurance claim was improper, or that there was some issue as to the amount of the insurance proceeds in view of the claim.

The fourth paragraph of paragraph 5 of the Mortgage provides as follows:

"*Unless Lender and Borrower otherwise agree* in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened." (original emphasis) (R., p. 1518, lines 18-29).

There was never any agreement, in writing or otherwise, that "the Plaintiff" could apply the insurance proceeds to any claimed debt. Appellant made no showing that the repairs were not economically feasible. Appellant's unilateral application of the insurance proceeds, without prior notice to or consent of Respondent, was thus

(a) without basis in the Mortgage; and (b) in violation of the Mortgage; and (c) used for the benefit of Appellant, not the homeowner.

Appellant claims that Respondent "provided insufficient evidence that he ever fulfilled his preconditions to obtaining the insurance said [sic] proceeds", yet fails to identify what these alleged "preconditions" were. (Appellant's Brief, p. 34, Third Paragraph). Appellant's "argument" is thus unsupported and without foundation, and thus this Court may properly ignore the "argument".

Appellant makes an "election of remedies" argument, which is absurd. (Appellant's Brief, p. 35, second paragraph.) Respondent did not "elect" to have the insurance proceeds applied to claimed past due mortgage loan payments; that was a unilateral act of Appellant and its predecessors-in-interest. The decision of the Master-In-Equity was thus proper.

CONCLUSION

Appellant has failed to demonstrate any error by the Master-In-Equity which would warrant reversal of the Order appealed from. Appellant ignores the threshold foundation that this matter is one in equity and that the Master-In-Equity possesses powers to arrive at a just result and the power to avoid extreme remedies such as foreclosure and the imposition of what were, in essence, penalties against Respondent for Appellant's 10-year history of protracting the underlying litigation and refusing to resolve this matter when Respondent offered to pay the full amount of the Judgment the day after it was issued.

Appellant claims nothing but disagreement with the Master-In-Equity's detailed findings of fact and conclusions of law which are more than supported by the record facts cited in the Judgment Order, and admitted that it chose not to address numerous facts which, as a matter of law, results in such facts being the law of the case. Appellant has no one to blame but itself for its complaints, and has failed to demonstrate any level of reversible error.

Appellant's citations for its proposition that the November 21, 2022, and March 28, 2023, Orders are appealable are readily distinguishable. The Orders were not timely appealed, and thus do not need to be considered by this Court.

Appellant's unilateral act of applying insurance proceeds to the claimed past due debt (Appellant's Brief, p. 35, first paragraph), (and instead of the needed repairs from the fire) was without legal basis, in violation of the Mortgage, and prejudicial to Respondent. Appellant's failure to demonstrate that the repairs were not economically feasible only exacerbates the situation, which the Master-In-Equity clearly saw.

The Order appealed from is thus properly affirmed.

Dated this _____ day of February, 2025.

Respectfully submitted,

/s/ Jeff Barnes, Esq.
Jeff Barnes, Esq.
PHV counsel for Respondent Jamie Singleton
Appellate Practice Law Group PLLC
1515 North Federal Highway, Suite 300
Boca Raton, Florida 33432
Tel: (561) 864-1067
Fax: (561) 338-4840
e-mail: jeff@wjbarneslaw.com

s/William H. Sloan
William H. Sloan, Jr., Esq.
Attorney for Respondent
Jamie Singleton
Sloan Law Firm, P.A.
P.O. Box 85
Summerville, South Carolina 29484
Tel: (843) 873-7531
e-mail: whs@sloanlawfirm.com

February 12, 2025

RECEIVED
Feb 12 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James F. Chellis, Master In Equity,
Court of Common Pleas

Appeal Case Number: 2024-000122
Lower Court Case No. 2011-CP-18-00871

US 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.

PROOF OF SERVICE OF MOTION FOR
EXTENSTION OF TIME TO SERVE FINAL BRIEF

I certify that I have served the Final Brief of Respondent by depositing a copy of same in the United States Mail, postage prepaid, on February 12, 2025, addressed to active counsel of record for Appellant.

Dean A. Hayes, Esq.,

McCabe, Trotter & Beverly, P.C.,

4500 Fort Jackson Boulevard, Suite 250,

Columbia, South Carolina 29209

January N. Taylor, Esq.,

McMichael Taylor Gray LLC,

3550 Engineering Drive, Suite 260,

Peachtree Corners, Georgia 30092,

and by e-mailing a copy of the Motion to Mr. Hayes and Ms. Taylor as well.

February 12, 2025

/s/ Jeff Barnes, Esq.
Jeff Barnes, Esq.
PHV counsel for Respondent Jamie Singleton
W.J. Barnes, P.A.
1515 North Federal Highway, Suite 300
Boca Raton, Florida 33432
Tel: (561) 864-1067
e-mail: jeff@wjbarneslaw.com

s/William H. Sloan
William H. Sloan, Jr., Esq.
Attorney for Respondent Jamie Singleton
Sloan Law Firm, P.A.
P.O. Box 85
Summerville, South Carolina 29484
Tel: (843) 873-7531
e-mail: whs@sloanlawfirm.com