THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Master-in-Equity

The Honorable Jeffery Marc Tzerman

Case No. 2011-CP-28-0981

Appellate Case No. 2012-212971

CitiMortgage, Inc., ... Respondent,

v.

Ellen R. Springer, Peggy S. Charles f/k/a Peggy S. Roberts, ... Defendants,

Of whom Ellen R. Springer is the Appellant. ..... Appellant.

Initial Brief of Respondent

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Statement of the Case

This action began as a foreclosure action brought by Respondent CitiMortgage, Inc. ("CitiMortgage") against Ellen R. Springer ("Springer"). {Complaint filed November 1, 2011; R. ___}. Springer defaulted, and the master-in-equity granted the foreclosure judgment and ordered sale of the property. {Judgment of Foreclosure and Sale filed February 1, 2012; R. ___}. Springer then sought Rule 60(b), SCRCP, from that judgment. {Springer's "Memorandum of law in support of emergency application for order to show cause (Fed. Civ. P. Rule [60] (sic)" . . . .; R. ___}.[1]

CitiMortgage sets forth the Statement of the Case predominantly in timeline form for ease of reference and to clarify the narrative provided by Springer. CitiMortgage will provide the factual narrative surrounding these events in the Statement of Facts, infra.

- November 1, 2011—Foreclosure Initiated. CitiMortgage initiated this foreclosure action by filing the Lis Pendens, Summons, and Complaint. {Lis Pendens, Summons, and Complaint filed November 1, 2011; R. ___; Judgment of Foreclosure and Sale filed February 1, 2012; R. ___}. CitiMortgage waived any deficiency judgment against Springer. {Id.}.
- November 3, 2011—Service on Springer. CitiMortgage properly served the Lis Pendens, Summons, and Complaint on Springer. {Affidavit of Service dated November 3, 2011; R. ___}. Springer does not challenge that CitiMortgage served her with the Lis Pendens, Summons, and Complaint. {Transcript dated July 9, 2012, p. 16, lines 7-10; R. ___}.

[1] As is the case with the filings in this Court, Springer filed several documents, affidavits, motions, etc. in the trial court. CitiMortgage sets forth those relevant to the issues presented in this appeal.

- February 1, 2012—Springer in default. Springer failed to answer or otherwise appear and was held in default. {Judgment of Foreclosure and Sale filed February 1, 2012, p. 1 ¶ 4; R. ___}.
- February 1, 2012—Foreclosure Judgment. The master entered the Judgment of Foreclosure and Sale against Springer. {Judgment of Foreclosure and Sale filed February 1, 2012; R. ___; Record of Foreclosure Hearing Pursuant to Rule 71, SCRCP; R. ___}.
- February 17, 24, and March 2, 2012—Foreclosure Sale Advertised. CitiMortgage properly advertised the foreclosure sale of the property at issue. {Affidavit of Publication dated March 7, 2012; R. ___}.
- March 5, 2012—Property Sold. The master conducted the foreclosure sale, and the property sold on March 5, 2012. {Report on Sale and Order Confirming Sale dated March 21, 2012; R. ___}.
- March 7, 2012—Property conveyed to the Secretary of Housing and Urban Development ("HUD"). CitiMortgage conveyed its successful bid on the property to the HUD. {Assignment of Bid filed March 27, 2012; R. ___}.
- June 4, 2012—Springer filed the Rule 60(b), SCRCP, motion. Springer filed a motion seeking relief from the foreclosure judgment based on a Rule 60(b), SCRCP, analysis. {Springer's "Memorandum of law in support of emergency application for order to show cause (Fed. Civ. P. Rule [60] (sic)" . . . .; R. ___}. Springer claimed "excusable neglect" to support her motion. {Id. at ¶ 31; R. ___}. Also, the master construed this motion as a Rule 60(b), SCRCP, motion for relief from judgment, and the hearing

proceeded as such without objection from Springer. {Transcript dated July 9, 2012, p. 3, lines 9-13, p. 16, line 24 through p. 17, line 2; R. ___}.

- July 17, 2012—Springer's Rule 60(b), SCRCP, motion denied. The master issued its order denying Springer's motion, finding no excusable neglect existed. {Order denying Springer's June 4, 2012 Rule 60(b), SCRCP, motion; R. ___}. The July 17th Order noted that CitiMortgage's foreclosure counsel and Springer were courtesy copied with the order that same day. {Id. at p. 1, right corner, noting cc of order to CitiMortgage and Springer; R. ___}.
- August 5, 2012—Expiration of deadline for Springer to file a Rule 59, SCRCP, motion to reconsider (after allowing one week from mailing of order on July 17, 2012, to Springer).
- August 18, 2012—Springer served a motion that she captioned as a "Motion for Reconsideration Rule 59(e) Rule 60(b)(1) (sic) . . ." with the master. {Springer Motion for Reconsideration filed August 20, 2013; R. ___}. In that motion, Springer challenged the July 17, 2012 Order and sought reconsideration by the master. {Id. at p. ¶ c, d; R. ___}. This Rule 59(e), SCRCP, motion was untimely.
- September 10, 2012—Master denied the Motion for Reconsideration. {Order dated September 10, 2012; R. ___}.
- September 17, 2012—Springer served her Notice of Appeal of the July 17th Order and September 10th Order. {Notice of Appeal; R. ___}.

Statement of the Facts

Springer executed a Note in the principal sum of $70,065.00 in January 1991 to finance the purchase of the property at issue in this matter. {Complaint filed November 1, 2011; R. ___}. In order to secure payment of the Note, Springer executed a Mortgage in favor of Citizens and Southern Mortgage Corporation. Complaint filed November 1, 2011; R. ___; Mortgage dated January 3, 1991; R. ___}. The Kershaw County Register of Deeds recorded the Mortgage on January 3, 1991, at Book 5, Page 145. {Complaint filed November 1, 2011; R. ___}. The Mortgage was assigned to CitiMortgage's predecessor, ABN AMRO Mortgage Group, Inc. {Assignment to ABN AMRO Mortgage; R. ___}. CitiMortgage merged with ABN AMRO Mortgage Group, Inc. {Complaint filed November 1, 2011; R. ___}.

CitiMortgage initiated this foreclosure action in November 2012 by filing the Lis Pendens, Summons, and Complaint. {Lis Pendens, Summons, and Complaint filed November 1, 2011; R. ___; Judgment of Foreclosure and Sale filed February 1, 2012; R. ___}. CitiMortgage waived any deficiency judgment against Springer. {Id.}. CitiMortgage served Springer on November 3, 2012. {Affidavit of Service dated November 3, 2011; R. ___}. Springer does not challenge that CitiMortgage served her with the Lis Pendens, Summons, and Complaint. {Transcript dated July 9, 2012, p. 16, lines 7-10; R. ___}.

Ultimately, Springer failed to answer or otherwise appear, and the master held her in default. {Judgment of Foreclosure and Sale filed February 1, 2012, p. 1 ¶ 4; R. ___}. The master then entered a foreclosure judgment against Springer and ordered the property sold. {Judgment of Foreclosure and Sale filed February 1, 2012; R. ___}.

After proper notice, the property sold on March 5, 2012. {Report on Sale and Order Confirming Sale dated March 21, 2012; R. ___}.

On June 4, 2012, Springer filed her Rule 60(b), SCRCP, motion[2] seeking relief from the foreclosure judgment based on a Rule 60(b), SCRCP, analysis. {Springer's "Memorandum of law in support of emergency application for order to show cause (Fed. Civ. P. Rule [60] (sic)" . . . .; R. ___}. Springer claimed "excusable neglect" due to the actions of her alleged New York attorney as the basis for her entitlement for relief from judgment. {Id. at ¶ 31; R. ___}. Springer did not argue that the sale should be set aside pursuant to the standard applicable to such a claim. Instead, she limited her claim to excusable neglect only. Moreover, Springer offered no evidence to prove the existence of a meritorious defense. The master held a hearing on July 9, 2012. In that hearing, Springer reaffirmed her basis for relief was excusable neglect based on the actions of the New York attorney. {Transcript dated July 9, 2012, p. 13-14, 15, 17-18, 21; R. ___}.

The master denied the Rule 60(b), SCRCP, motion on July 17, 2012, finding the neglect of the New York attorney was imputed to Springer. {Order denying Springer's June 4, 2012 Rule 60(b), SCRCP, motion; R. ___}. The July 17th Order noted that CitiMortgage's foreclosure counsel and Springer were courtesy copied with the order that same day. {Id. at p. 1, right corner, noting cc of order to CitiMortgage and Springer; R. ___}.

[2] The motion was captioned in a convoluted manner. However, the master construed this motion as a Rule 60(b), SCRCP, motion for relief from judgment, and the hearing proceeded as such without objection from Springer as to the master's treatment of the motion. {Transcript dated July 9, 2012, p. 3, lines 9-13, p. 16, line 24 through p. 17, line 2; R. ___}.

On August 18, 2012, Springer served a motion that she captioned as a "Motion for Reconsideration Rule 59(e) Rule 60(b)(1) (sic) . . ." with the master. {Springer Motion for Reconsideration filed August 20, 2013; R. ___}. In that motion, Springer challenged the July 17, 2012 Order and sought reconsideration by the master. {Id. at p. ¶ c, d; R. ___}. This Rule 59(e), SCRCP, motion was untimely. The master ultimately denied the Motion for Reconsideration. {Order dated September 10, 2012; R. ___}.

Springer served her Notice of Appeal on September 17, 2012. {Notice of Appeal; R. ___}. Springer sought review of the September 10th Order and the July 17th Order in her Notice of Appeal. {Notice of Appeal; R. ___}.

Scope of Review

In reviewing a decision with respect to Rule 60(b) of the South Carolina Rules of Civil Procedure, South Carolina appellate courts employ "a deferential standard of review." Auto-Owners, Inc. Co. v. Rhodes, No. 27316 (S.C. Sup. Ct. filed September 25, 2013) (Shearouse Adv. Sh. No. 41 at 18). The decision to grant or deny a motion made pursuant to Rule 60(b), SCRCP, is within the sound discretion of the trial judge. BB&T v. Taylor, 369 S.C. 548, 551, 633 S.E.2d 501, 502 (2006); Rouvet v. Rouvet, 388 S.C. 301, 308, 696 S.E.2d 204, 207 (Ct. App. 2010). Therefore, this Court "will not disturb the trial judge's decision absent an abuse of discretion." Taylor, 369 S.C. at 551, 633 S.E.2d at 502-03. An abuse of discretion arises if the decision was controlled by an error of law or where the decision is based on factual conclusions that lack evidentiary support. Tri-County Ice & Fuel Co. v. Palmetto Ice

Co., 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990); Gainey v. Gainey, 382 S.C. 414, 675 S.E.2d 792 (Ct. App. 2009).

Argument

Springer failed to timely perfect this appeal. The Rule 59(e), SCRCP, motion to reconsider was untimely and failed to toll the time for Springer to appeal. As a result, this Court lacks subject matter jurisdiction to entertain this appeal and must dismiss. Even if this appeal was timely brought, the master correctly denied Springer's Rule 60(b), SCRCP, motion because Springer failed to carry her burden of proof as to excusable neglect and failed to offer any evidence of a meritorious defense. This Court should affirm.

I. This Court lacks subject matter jurisdiction to entertain this appeal because Appellant failed to timely perfect her appeal.

This appeal is untimely. Springer failed to timely serve her Rule 59(e), SCRCP, motion for reconsideration within the time allowed by our rules.[3] Instead, Springer served the motion a minimum of thirteen days after the expiration of the deadline to file a Rule 59(e), SCRCP, motion. Thus, the Rule 59(e), SCRCP, motion to reconsider served on August 18, 2013, failed to toll the time for Springer to appeal from the July 17th Order. This Court lacks subject matter jurisdiction over this appeal.

The notice of appeal in a case appealed from the master-in-equity must be served on the respondent within thirty days after receipt of written notice of entry of the

[3] In addition to the fact that Springer's August 18th Motion sought relief under Rule 59(e), SCRCP, the motion is properly construed as a motion to reconsider under that rule because that is the relief sought by Springer. Richland Cnty. v. Kaiser, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002) ("It is the substance of the requested relief that matters regardless of the form in which the request for relief was framed"); Standard Fed. Sav. & Loan Ass'n v. Mungo, 306 S.C. 22, 26, 410 S.E.2d 18, 20 (Ct. App. 1991) (stating that a master properly categorized motion because "the substance of the relief sought was the same regardless of the form in which the request for relief was framed.").

order or judgment. Rule 203(b)(1), SCACR; Rule 203(b)(4), SCACR. "The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." Elam v. S.C. Dept. of Transp., 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004); Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985). A timely post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion. Rule 203(b)(1), SCACR; State v. Cooper, 342 S.C. 389, 536 S.E.2d 870 (2000) (reiterating that a timely Rule 59, SCRCP, motion tolls the time to serve the notice of appeal).

However, an untimely post-trial motion does **not** stay the time for appeal. See, e.g., Canal Ins. Co. v. Caldwell, 338 S.C. 1, 524 S.E.2d 416 (Ct. App. 1999) (holding that an appellate court lacks subject matter jurisdiction over an appeal when the post-trial motion was untimely); Toal, Vafai, & Mukenfuss, Appellate Practice in South Carolina 119 (2d. 2002). To be timely, a post-trial motion to alter or amend must be served within ten days of receipt of written notice of the entry of the original order or judgment. Rule 59(e), SCRCP.

Springer failed to timely serve her Rule 59(e), SCRCP, motion to reconsider in this matter. The master entered the order denying her Rule 60(b), SCRCP, motion on July 17, 2012. The order was mailed to Springer that same day. Even allowing a significant amount of time for mailing, Springer's Rule 59(e), SCRCP, motion to

reconsider served on August 18, 2012, was, at a minimum, thirteen days untimely. As a result, the motion to reconsider did not stay the time for appeal.

Therefore, Springer should have filed her notice of appeal of the July 17th Order no later than August 16, 2013. However, she failed to do so. Springer served the Notice of Appeal on September 17, 2013, which was thirty-two days out of time. Accordingly, this Court does not have subject matter jurisdiction and must dismiss this appeal.

II. The master properly denied the Rule 60(b), SCRCP, motion for relief from default judgment because Springer failed to present evidence of excusable neglect or a meritorious defense.

Even if this Court has jurisdiction to entertain this appeal, the master should be affirmed. Springer sought relief from judgment based on an excusable neglect theory. The master correctly rejected this position because South Carolina law is well-settled that the negligence of Springer's attorney was imputed to her. In addition, Springer failed to provide any evidence of the existence of a meritorious defense. As a result, Springer failed to carry her burden as the moving party. This Court should affirm.

It is well-settled that the moving party in a Rule 60(b) motion has the burden of presenting evidence entitling the party to relief. BB&T v. Taylor, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006). A default judgment may be set aside on the grounds of mistake, inadvertence, surprise, or excusable neglect. Rule 60(b)(1), SCRCP. However, relief may only be granted when the moving party presents evidence of one of the Rule 60(b), SCRCP, grounds plus a showing of a meritorious defense. Stearns Bank Nat. Ass'n v. Glenwood Falls, LP, 373 S.C. 331, 341, 644 S.E.2d 793, 798 (Ct. App. 2007) ("relief from judgment is available upon a showing of excusable neglect

and a meritorious defense); Mictronics, Inc. v. S.C. Dep't of Revenue, 345 S.C. 506, 548 S.E.2d 223 (Ct. App. 2001) ("In determining whether to grant a motion under Rule 60(b), the trial judge should consider: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party.").

a. Springer did not establish excusable neglect because well-settled law imputed the negligence of her purported attorney to her.

Before the master, Springer argued her entitlement to relief from the foreclosure judgment on an excusable neglect theory. Springer based her excusable neglect argument on her claim that her New York attorney failed to properly represent her in the foreclosure hearing in South Carolina. {Transcript dated July 9, 2012, p. 13-14, 15, 17-18, 21; R. ___}. Specifically, Springer alleged that she was held in default because the New York attorney advised her that she did not have to attend the foreclosure hearing. {Transcript dated July 9, 2012, p. 14-15; R. ___}. However, Springer offered no evidence to support that argument or to prove she even retained the New York attorney. She instead relied solely on her[4] argument to the master. Transcript dated July 9, 2012, p. 13-14, 15, 17-18, 21; R. ___}. The master rejected that argument by applying established South Carolina precedent. {Order dated July 17, 2012 p. 1-2; R. ___}.

It is well-settled under South Carolina law that the negligence of an attorney is imputed to the client in the context of analyzing a Rule 60(b), SCRCP, motion. See, e.g., Sundown Operating Co., Inc. v. Intedge Indus., Inc., 383 S.C. 601, 609, 681

[4] Mr. Walter Springer, Appellant's son, also appeared at the hearing and argued on behalf of Appellant Springer. CitiMortgage refers to the testimony and argued as if Appellant Springer advanced the argument regardless of the actual speaker at the hearing.

S.E.2d 885, 889 (2009) (holding that "the law is clear that an attorney or insurance company's misconduct is imputable to the client); McEachern v. Poston, 273 S.C. 122, 124, 254 S.E.2d 796, 797 (1979); Lee v. Peek, 240 S.C. 203, 213, 125 S.E.2d 353, 358 (1962); Simon v. Flowers, 231 S.C. 545, 551, 99 S.E.2d 391, 394 (1957); Limehouse v. Hulsey, 397 S.C. 49, 71, 723 S.E.2d 211, 223 (Ct. App. 2011), rev'd on other grounds, 404 S.C. 93, 744 S.E.2d 566 (2013) ("In South Carolina, negligence on the part of an attorney is imputable to the client" and cannot form the basis for relief even under the lesser standard applicable to good cause to set aside entry of default."); Stearns Bank, 373 S.C. at 342-43, 644 S.E.2d at 799 ("Where an attorney is merely neglectful, the general rule applies and relief from judgment is unavailable . . ."); Mitchell Supply Co. v. Gaffney, 297 S.C. 160, 163-64, 375 S.E.2d 321, 323 (Ct. App. 1998) (providing that "the neglect of the attorney is the neglect of the client . . ."); Williams v. Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994) ("[E]ven if the attorney were negligent in failing to answer the Complaint, his negligence would be imputed to the [client]."); Roberts v. Peterson, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct. App. 1987) ("The courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant."); Boland v. S. Carolina Pub. Serv. Auth., 281 S.C. 293, 315 S.E.2d 143 (Ct. App. 1984). The litigant "has a duty to monitor the progress of his case." Paul Davis Sys., Inc. v. Deepwater of Hilton Head, LLC, 362 S.C. 220, 227, 607 S.E.2d 358, 361 (Ct. App. 2004).

Based on the above, the master properly rejected Springer's claim of excusable neglect for two reasons. First, even if Springer's alleged New York attorney could

practice in South Carolina, the substandard advice provided to Springer cannot be used to establish her claim of excusable neglect under Rule 60(b), SCRCP. Therefore, Springer was not entitled to Rule 60(b), SCRCP, relief because she failed to establish the required Rule 60(b), SCRCP, ground. Second, Springer failed to provide any evidence that she had retained this New York attorney or provide any evidence that the attorney rendered the substandard advice. Thus, Springer failed to carry her burden even if such a claim could support relief as excusable neglect. This Court should affirm.

b. The willful abandonment exception to the well-settled attorney neglect rule does not apply in this matter.

Springer's purported New York attorney did not willfully abandon her in the foreclosure action. The attorney merely rendered substandard and negligent advice.[5] As a result, the general rule applied to this action. The master properly found Springer failed to establish excusable neglect and denied the Rule 60(b), SCRCP, motion. This Court should affirm.

"To overcome the general rule that the neglect of the attorney is attributable to the client, the client must establish that its former attorney willfully and unilaterally abandoned it." Stearns Bank, 373 S.C. at 342, 644 S.E.2d at 798-99. Without a showing of willful abandonment, a court will not reverse the general rule. Id. at 344, 644 S.E.2d at 799; see also Clark v. Clark, 271 S.C. 21, 23, 244 S.E.2d 743, 744 (1978) (holding that there was no excusable neglect in a case where an attorney and client had a misunderstanding about representation); Jolley v. Jolley, 265 S.C. 594,

[5] CitiMortgage does not admit that Springer retained New York counsel or that counsel provided Springer any advice related to this matter.

601, 220 S.E.2d 882, 886 (1975) (stating that mistake of council in failing to answer is not excusable neglect); Simon v. Flowers, 231 S.C. 545, 551, 99 S.E.2d 391, 394 (1957) (holding that mere negligence of an attorney is not enough to find excusable neglect); Paul Davis, 362 S.C. at 227, 607 S.E.2d at 361 (finding the negligence of an attorney for failing to advance needed defenses does not constitute willful abandonment). The party claiming willful abandonment must provide evidence of the abandonment. Stearns Bank, 373 S.C. at 345, 644 S.E.2d at 800 (finding no willful abandonment in a case where the party seeking set aside of a default judgment did not prove **facts** to support it).

This case does not present willful abandonment for several reasons. First, the alleged New York attorney could not have represented Springer's interests in the foreclosure because the attorney was not licensed in South Carolina and was not admitted *pro hace vice*. Because the attorney could not appear for Springer, the attorney could not represent her in South Carolina, and because the attorney could not represent Springer in South Carolina, the attorney could not abandon her in the foreclosure action.

Second, Springer's own assertions to the master prove that the alleged New York attorney did not abandon her. Springer informed the master that the New York attorney "told us that he can deal with the situation, he would seek modification, as well as seek the remedy as to what actually took place." {Transcript dated July 9, 2012, p. 13, lines 6-9; R. ___}. Springer also told the attorney of the upcoming foreclosure hearing. {Id. at p. 14, lines 10-11; R. ___}. The attorney purportedly rendered advice to Springer as to that hearing. {Id. at p. 14, lines 13-25; R. ___}.

Thus, the attorney[6] told Springer he would seek modification; the attorney reviewed hearing notices, and the attorney provided advice related to the same. While the advice proved to be incorrect, the fact of the matter is the attorney provided assistance to Springer. The attorney did not abandon Springer. Instead, the attorney just provided ineffective counsel. As a result, this matter presents a situation where the New York attorney was merely negligent in rendering advice to Springer as it related to attendance at the foreclosure. The attorney did not willfully abandon Springer. See Flowers, 231 S.C. at 551, 99 S.E.2d at 394.

Third, any abandonment by the New York attorney did not occur prior to the February 1, 2012 Judgment of Foreclosure and Sale. Springer admitted the claimed abandonment did not occur until February 5, 2012:

> [O]n **February 5th**, 2012, counsel . . . then releases spell of scam and **abandons the client** and flees the scene of the crime in New York straight to jail.

{Affidavit in Support of Emergency Order to Show Cause filed _____ ¶ 22; R. ___ (emphasis added)}. This admission proves no willful abandonment took place prior to the foreclosure judgment in this matter because Springer had counsel at the time of the hearing and judgment. Therefore, this Court should affirm the master's denial of the Rule 60(b), SCRCP, motion.

c. The Rule 60(b), SCRCP, motion was properly denied because Springer failed to present any evidence of the existence of a meritorious defense.

This Court can also affirm because Springer failed to produce any **evidence** of a meritorious defense. As a result, Springer failed to establish a required element for

[6] Again, CitiMortgage does not admit that Springer actually hired this attorney. No proof of such a hire was offered by Springer.

Rule 60(b), SCRCP, relief. To establish a meritorious defense, the party does not have to show he would prevail on the merits. Williams v. Watkins, 384 S.C. 319, 326, 681 S.E.2d 914, 917 (Ct. App. 2009). However, the meritorious defense must arise from evidence in the case and not merely argument of counsel. McClurg v. Deaton, 395 S.C. 85, 716 S.E.2d 887 (2011) (holding that an argument advanced in a memorandum cannot establish a meritorious defense because "[e]ven if we were to find that the issue of a meritorious defense were suggested by the memoranda, neither petitioner **presented evidence of such a defense**") (emphasis added); Watkins, 384 S.C. at 326, 681 S.E.2d at 918 ("Rather, a meritorious defense need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful **evidence**") (emphasis added).

In this matter, Springer merely presented argument on a possible meritorious defense. Springer argued, both in her motion and at the hearing, that foreclosure was improper because she provided payment under the Note and Mortgage sufficient to bring the loan current.[7] {Transcript dated July 9, 2012, p. 9-11, p. 22, lines 10-13; R. ___}. She, however, failed to provide any evidence to prove the existence of that defense. Rather, Springer only made unsubstantiated arguments on that issue. That was insufficient to carry her burden to establish the existence of a meritorious defense. Her failure to provide evidence to prove the existence that meritorious defense was fatal

[7] CitiMortgage does not concede that a meritorious defense exists and certainly disputes Springer's claim of payment. At the time of the foreclosure action, a balance of $44,904.96 remained outstanding on the Note and Mortgage, and Springer was in default under the Note and Mortgage. {Foreclosure Complaint; Judgment of Foreclosure and Sale; R. ___}.

to her Rule 60(b), SCRCP, motion. See McClurg, 395 S.C. at 86 n. 2, 716 S.E.2d at 888 (rejecting the contention that argument of counsel can provide the basis for the existence of a meritorious defense); Watkins, 384 S.C. at 326, 681 S.E.2d at 918. Therefore, Court should affirm on that basis alone.[8]

Conclusion

Based on the foregoing, the appeal should be dismissed because this Court lacks subject matter jurisdiction. In the alternative, this Court should affirm the order denying Springer's motion for relief from default judgment because Springer failed to prove excusable neglect or offer evidence of the existence of a meritorious defense.

{Signature Page Follows}

[8] In her brief to this Court, Springer asks for the foreclose judgment and sale of the property be set aside. She supports both requests with her claim of excusable neglect only. Notably, the sale of the property cannot be set aside even if this Court were to reverse the master. Springer failed to request the sale be set aside under the proper standard. It is well-settled that "[a] judicial sale will be set aside when either: (1) the sale price is so gross as to shock the conscience or (2) the sale is accompanied by other circumstances warranting the interference of the court." Wells Fargo Bank, NA v. Turner, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct. App. 2008) (internal quotations omitted). Generally, as long as the sale price does not shock the conscience and there is no mistake or fraud from an officer or another buyer, the court will not set aside the sale. E. Sav. Bank, FSB v. Sanders, 373 S.C. 349, 357, 644 S.E.2d 802, 807 (Ct. App. 2007). Springer failed to present argument or evidence under the controlling test. Thus, this Court can affirm the sale on that basis alone. See Rule 220(c), SCACR (allowing this Court to affirm an issue "upon any ground(s) appearing in the Record on Appeal"); I'On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, , 526 S.E.2d 716, (2000) (allowing Respondent, as prevailing party on appeal, to raise any additional reason that the appellate court should affirm the trial court if the additional sustaining ground appears in the record on appeal).

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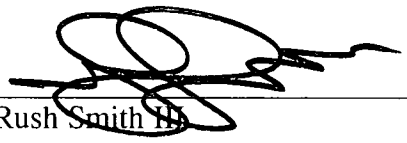
By: 

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