

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY
Court of Master In Equity

Marvin H. Dukes III, Master In Equity For Beaufort County

Appellate Case No. 2013-001412

HSBC Bank USA, National Association, As Trustee of MLCC 2007-2,
Respondent,

v.

S. Russell Fielden, Deborah M. Fielden, Coastal States Bank, Defendants
Coastal States Bank, Cross-Claim Plaintiff

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OCT 15 2013

SC Court of Appeals

vs.

S. Russell Fielden and Deborah M. Fielden, Cross Claim Defendants,
Of whom S. Russell Fielden and Deborah M. Fielden are the Appellants...

**APPELLANT'S MOTION IN OPPOSITION TO RESPONDENT'S MOTION TO
DISMISS APPEAL AND MEMORANDUM OF LAW**

Pro Se Appellants Russell Fielden and Deborah Fielden, pursuant to the rules of Appellate procedure, file this Motion in Opposition to the Respondent's Motion to Dismiss Appeal and Memorandum of Law. For reasons stated herein, the respondents Motion to Dismiss Appeal should be denied and the Respondent should be ordered to file their Reply Brief on an expedited basis.

The Issue of Mootness

The issue of mootness raised by the Respondent's motion to dismiss is without merit. This appeal is not moot and the issues raised and arguments made by the Appellant should be reviewed by this Court. There are also recognized exceptions applicable in this case which would allow this Appellate Court to take jurisdiction and retain this appeal even if the Court considered the appeal moot. Some of the exceptions can be found below in this motion.

Arguments in Opposition to the Respondent's Motion To Dismiss

- 1.) The Appellant has timely filed their notice of appeal and initial brief. Both were served on all parties.
- 2.) This appeal should be heard on the merits of the appeal and not be dismissed as requested by the Respondent. The Appellant has a right to have their appeal heard. This is not the time to determine whether the appeal is moot.
- 3.) The cost of posting a bond to stay the sale of the property was not a financial option for the Appellant. The Appellant's Motion To Reconsider was not ruled on by the lower court until after the sale date of the property. The Appellant did not file a motion to stay the sale of the property "pending appeal" because they did not make their final decision to file an appeal until after the allotted time allowed to file. A motion to stay the sale pending an appeal would have been impracticable and a waste of the lower court's time since the Appellant had not yet made a final decision to appeal.
- 4.) A motion to stay the sale by the Appellant is not a prerequisite to their filing an appeal, and failure to do so does not render the appeal moot.

- 5.) The Respondent is a party to the foreclosure action and was also the successful bidder at the sale. The Respondent currently holds the Master's Title and therefore is not subject to protection against a reversal of the lower Court's judgment. An appeal in a foreclosure case is generally only considered moot if the property is sold to a third party buyer without notice, who is not a party to the foreclosure action, and may be provided protection in the event of a reversal of the summary judgment. This is not the case at hand. The Respondent is the alleged mortgagee. The case law that the Respondent referred to in their motion pertains to a bona fide third party buyer for value without notice who is not a party to the action.
- 6.) The issues and arguments outlined in the Appellant's Initial Brief evidence possible serious problems with the foreclosure process in Beaufort County. The evidence and arguments of this appeal deserve to be reviewed by this Appeals Court in the best interest of the public since some of the issues presented in this case mirror a widespread problem associated with fraudulent documentation filed by various financial institutions seeking to foreclose on real property. These frauds are systemic and endemic, not isolated mistakes and errors. No one should be allowed to proffer, support, and condone fabricated, false, and perjurious evidence and testimony to obtain a foreclosure.
- 7.) The Appellant raises issues of a high degree of possible neglect in the foreclosure process in the lower court. The Appellant's arguments on appeal include issues of fraud upon the court, extrinsic fraud, lack of proper assignment, lack of standing as the true party in interest, conflicting claims of ownership of the Appellant's note and mortgage, and the lower court's lack of full consideration of the evidence and its abuse of discretion.

- 8.) The fact that the sale of the property has occurred does not moot the issues preserved.
- 9.) The Respondent has caused the Appellant over three years of hardship and costs, slandered the title to the property, barred the Appellant from selling the property at fair market value, and stripped the collateral needed to satisfy their debt exposure to the second mortgage held by Coastal States Bank who they kept current during the entire case.
- 10.) The Appellants ask that the Appellate Court consider any or all of the Appellant's arguments in their appeal to be legally valid and determine that the lower court's decision was in error, vacate the sale, dismiss the case, and apply damages at their discretion. This Appellate Court has the ability to grant relief.

Respectfully Submitted October 10, 2013

Appellants



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Deborah M. Fielden Pro-Se

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CERTIFICATE OF SERVICE

I, S. Russell Fielden and Deborah M. Fielden (Appellants), hereby certify that I placed a true copy of this:

APPELLANT'S MOTION IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS APPEAL AND MEMORANDUM OF LAW

in first class postage envelope addressed to:

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Within first class postage affixed thereto, and placed said envelop in US Post office mails on this 10th day of October 2013.
