

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Appellate Case No. 2013-001412

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OCT 21 2013

SC Court of Appeals

170158

HSBC Bank USA, National Association, as
Trustee for MLCC 2007-2Respondent,

vs.

S. Russell Fielden; Deborah M. Fielden; and Coastal States
Bank.....Defendants,

Of whom

S. Russell Fielden and Deborah M. Fielden, are..... Appellants.

**RESPONDENT'S REPLY TO APPELLANTS' RETURN TO RESPONDENT'S
MOTION TO DISMISS APPEAL AND
MEMORANDUM OF LAW**

Respondent HSBC Bank USA, National Association, as Trustee for MLCC 2007-2 ("Respondent") hereby responds to the arguments raised by S. Russell Fielden and Deborah M. Fielden ("Appellants") in their Motion in Opposition to Respondent's Motion to Dismiss Appeal ("Return") dated October 10, 2013.

The fact that the Appellants timely filed their Initial Brief and Designation of Matter and raised issues related to the lower court's ruling is irrelevant to the

Respondent's right to raise the issue of whether the appeal is moot due to the judicial sale of the property having already occurred.

The Appellants incorrectly state that their Motion to Reconsider was not ruled on by the lower court until after the sale of the property was final. This argument by the Appellants implies that Appellants were under the impression that they had no duty to file a motion to stay the sale or post a bond until after they received a ruling on their motion to reconsider. Pursuant to Rule 62(b) of the South Carolina Rules of Civil Procedure, the filing of a Rule 59(e) Motion to Reconsider does not automatically stay the enforcement of the judgment. Additionally, the lower court did rule on Appellants' Motion to Reconsider on May 15, 2013 and the sale of the property was not final until June 5, 2013 pursuant to statute.

The fact that the Appellants "had not yet made a final decision to [file an] appeal" is not an adequate ground to excuse the Appellants from following South Carolina Rules of Civil Procedure and statutory law regarding the requirement to seek a stay and post a bond in cases involving judgments directing the sale of real property.

The fact that the Plaintiff was the purchaser at the foreclosure sale does not invalidate the case law and reasoning cited in Respondent's Motion to Dismiss. "Upon the execution and delivery by the proper officer of the court of a deed for any property sold at a judicial sale under a decree of a court of competent jurisdiction the proceedings under which such sale is made shall be deemed res judicata as to any and all bona fide purchasers for value without notice..." S.C.Code Ann. §15-39-870 (1976). In the case of Wooten v. Seanch, the Supreme Court of South Carolina upheld a foreclosure sale in which the successful purchaser was the mortgagee and noted that to set aside a sale "there

must be such irregularity in the proceedings as to show that the sale was not fairly made, or that appellant was defrauded or misled to his injury and loss.” Wooten v. Seanch, 187 S.C. 219, 196 S.E. 877, 878 (1938).

The Appellants’ arguments that the facts of this case are part of a wider “systemic and endemic” fraud upon the public is not properly before this Court on this appeal.

Respectfully submitted,

October 18, 2013



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Appellate Case No. 2013-001412

SC Court of Appeals

HSBC Bank USA, National Association, as
Trustee for MLCC 2007-2 Respondent,

vs.

S. Russell Fielden; Deborah M. Fielden; and Coastal States
Bank..... Defendants,

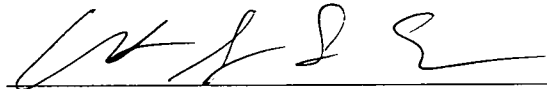
Of whom

S. Russell Fielden and Deborah M. Fielden, are..... Appellants.

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the **RESPONDENT'S REPLY TO APPELLANTS' RETURN TO RESPONDENT'S MOTION TO DISMISS APPEAL AND MEMORANDUM OF LAW** on Appellants Russell Fielden and Deborah M. Fielden and other Defendants by depositing copies of it in the United States Mail, postage prepaid, on October 18, 2013, at the addresses shown on the attachment listing Other Counsel of Record and Parties.

October 18, 2013



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October 18, 2013

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

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SC Court of Appeals

RE: HSBC Bank USA, National Association, as Trustee for MLCC 2007-2 v. S. Russell Fielden; Deborah M. Fielden; CoastalStates Bank AND Coastal State Bank v. S. Russell Fielden and Deborah M. Fielden
Appellate Case # 2013-001412
Civil Action# 2010-CP-07-2927
Our File # 511227.448

Dear Ms. Kitchings:

Enclosed are the original and seven (7) copies of the Respondent's Reply to Appellants' Return to Respondent's Motion to Dismiss Appeal and Memorandum of Law, along with a Proof of Service. Please return a filed copy of the document to me in the enclosed self-addressed, postage pre-paid envelope provided for your convenience. Also included is my firm's check for \$25 representing the filing fee.

By copy of this letter, I am serving a copy of the Respondent's Reply to Appellants' Return to Respondent's Motion to Dismiss Appeal and Memorandum of Law and Proof of Service on all parties to this appeal.

Thank you for your assistance in this matter.

With kind personal regards, I am

Sincerely yours,

A handwritten signature in black ink, appearing to be "C. Gwynne Jr.", written over a horizontal line.

Charles S. Gwynne Jr.

/mt
Enclosures as stated

cc:

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