THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2024-000917

U.S. Bank Trust National Association, as Trustee of the Tiki Series IV Trust, ……
……..…….....…..Respondent,

v.

Angela T. Franks, …….
……...……..……..……Appellant.

RESPONDENT'S BRIEF

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STATEMENT OF ISSUES

I. Should Franks's appeal be dismissed because the master-in-equity's order and judgment of foreclosure and sale did not address the issues raised by Franks in the appeal, and Franks failed to file a Rule 59(e), SCRCP, motion?

II. Should Franks be deemed to have abandoned her issues on appeal because her initial brief does not contain any arguments to support her issues?

III. Did the master-in-equity err by not holding the current foreclosure action is barred by res judicata?

IV. Did the master-in-equity err in failing to find U.S. Bank did not validate the debt?

V. Did the master-in-equity err by not holding U.S. Bank violated RESPA?

VI. Did U.S. Bank violate the bankruptcy's automatic stay?

STATEMENT OF THE CASE

This is an appeal of an order granting judgment in a mortgage foreclosure action. On June 6, 2022, U.S. Bank Trust National Association, as Trustee of the Tiki Series IV Trust ("U.S. Bank") filed a lis pendens, summons and complaint in this case against the defendants, Angela T. Franks a/k/a Angela Thomasina Franks ("Franks") and CMS Roofing, LLC. (Lis Pendens, Summons and Complaint). U.S. Bank also filed, on June 6, 2022, a certification of compliance with the Coronavirus Aid, Relief, and Economic Security (CARES) Act. U.S. Bank's complaint alleged, among other things, that, on or about August 16, 2010, Franks executed and delivered to SC Community Bank a promissory note ("Note") whereby Franks promised to pay to SC Community Bank, or its assigns, the principal amount of $56,600.00, plus interest at a variable rate and that the Note had subsequently been assigned to U.S. Bank. The complaint further alleged that the Note was secured by a mortgage ("Mortgage"), also executed by Franks on August 16, 2010, on property having the address of 1205 Columbia College Drive, Columbia, SC 29203 (Property"). (Complaint p. 2). The complaint also alleged that Franks had failed to make the monthly payments due on the Note, that the principal amount of $49,648.21 was due on the Note, plus interest at the rate of 6.5% per annum from the default date of April 1, 2020, and that U.S. wished to foreclose on the Mortgage. (Complaint p. 4-5). CMS Roofing, LLC was named as a defendant in the action because it held a judgment lien against the Property. (Complaint p. 6).

On June 9, 2022, Franks was personally served with the lis pendens, summons and complaint, and certificate of compliance with the CARES Act. (Affidavit of Service). U.S. Bank filed with the court, on June 13, 2022, a certificate that the Property was non-owner occupied, and this certificate was mailed to Franks that same day. (Certificate of Non-Owner Occupancy and Certificate of Mailing). On July 15, 2022, U.S. Bank filed with the court the following documents:

an affidavit of default; and affidavit of non-military service; and a motion for an order of reference to the master-in-equity. (Affidavit of Default, Affidavit of Non-Military Service and Motion for Order of Reference). The order of reference was issued on July 19, 2022, referring the case to Joseph M. Strickland, the master-in-equity for Richland County. (Order of Reference).

Franks filed Chapter 13 bankruptcy on September 6, 2022, so on September 8, 2022, U.S. Bank filed a motion to stay the foreclosure case because of the bankruptcy filing. (Motion to Stay Case, including Exhibit). The court issued an order staying the foreclosure case on September 9, 2022. (Order of Stay). U.S. Bank was granted relief from the bankruptcy stay by an order filed by the bankruptcy court on February 6, 2023, therefore, on May 5, 2023, U.S. Bank filed a motion to restore the foreclosure case to the active roster. (Motion to Restore, including Exhibit). The foreclosure cae was restored to the active roster by an order filed on May 18, 2023. (Order to Restore).

After Franks filed another Chapter 13 bankruptcy case on July 3, 2023, U.S. Bank, on July 12, 2023, filed another motion to stay the foreclosure case due to the bankruptcy. (Second Motion to Stay, including Exhibit). On July 13, 2023, the court issued an order staying the foreclosure case. (Order of Stay). The bankruptcy court issued an order on September 25, 2023, dismissing Franks's bankruptcy case with prejudice and prohibiting Franks from refiling for a year, and based on this order, U.S. Bank filed a motion to restore the foreclosure case on February 4, 2024. (Second Motion to Restore, including Exhibit). An order was issued on February 16, 2024, restoring the foreclosure case. (Second Order to Restore).

By a notice of hearing filed on March 25, 2024 and mailed to Franks that same day, U.S. Bank notified Franks of the foreclosure hearing scheduled for April 9, 2024. (Notice of Hearing, including Certificate of Mailing). On April 8, 2024, U.S. Bank filed the following documents with

the court: Note; Mortgage; assignment of commercial mortgage; assignment of leases and rents; affidavit of attorney's fees and costs; assignment of leases and rents; and loan modification agreement). (Note; Mortgage; Assignment of Commercial Mortgage; Assignment of Leases and Rents; Affidavit of Attorney's Fees and Costs; Assignment of Leases and Rents; and Loan Modification Agreement). Franks filed a request for continuance of the April 9, 2024 hearing, and the hearing was continued. (Request for Continuance).

The foreclosure hearing was rescheduled for 11:00 a.m. on May 14, 2024, and by a notice of hearing filed with the court on April 18, 2024 and mailed to Franks that same day, Franks was notified of the new hearing date. (Notice of Hearing and Certificate of Mailing). On May 10, 2024, U.S. Bank filed with the court another affidavit of attorney's fees and costs. (Affidavit of Attorney's Fees and Costs). At 10:41 a.m. on May 14, 2024, nineteen minutes before the foreclosure hearing, Franks filed the following documents with the court: an answer to summons and complaint; motion to dismiss; and "request for certified payoff." (Answer to Summons and Complaint; Motion to Dismiss; and Request for Certified Payoff). The foreclosure hearing on May 14, 2024, went forward, without a court reporter, and on May 15, 2024, the master-in-equity issued an order and judgment of foreclosure and sale ("Judgment") granting U.S. Bank's request for foreclosure. (Master's Order and Judgment of Foreclosure and Sale). Franks did not file a Rule 59(e), SCRCP, motion with regard to the Judgment, but on May 31, 2024, Franks did file a notice of intent to appeal with the court of appeals. (Notice of Intent to Appeal).

STANDARD OF REVIEW

"A mortgage foreclosure is an action in equity." *Hayne Fed. Credit Union v. Bailey,* 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). In an appeal from an action in equity, tried by a judge alone, the appellate court may find facts in accordance with its own view of the preponderance of the evidence. *Lowcountry Open Land Trust v. Charleston S. Univ.*, 376 S.C. 399, 407, 656 S.E.2d

775, 779 (Ct. App. 2008). However, this broad scope of review does not require an appellate court to disregard the findings of the trial court or to ignore that the trial court is in a better position to assess the credibility of the witnesses. *Pinckney v. Warren,* 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001). Moreover, the appellant is not relieved of the burden of convincing the appellate court that the trial court committed error in its findings. *Id.* at 387-88, 544 S.E.2d at 623. The appellate court may decide questions of law in an equity case without any particular deference to the trial court. *I'On, LLC v. Town of Mount Pleasant*, 338 S.C. 406, 411, 526 S.E.2d 716, 719 (2000) (citing S.C. Code Ann. § 14-8-200 (Supp. 1998)).

ARGUMENTS

I. Franks's appeal should be dismissed because the master-in-equity's order and judgment of foreclosure and sale did not address the issues raised by Franks in her appeal, and Franks failed to file a Rule 59(e), SCRCP, motion.

In Franks's brief, she sets forth twenty issues on appeal. (Appellant's Amended Brief). A review of the Judgment issued by the master-in-equity reveals that none of these issues were addressed in the Judgment. (Master's Order and Judgment of Foreclosure and Sale). The Judgment found U.S. Bank to be holder of the Note and therefore entitled to foreclose on the Mortgage. (Master's Order Judgment of Foreclosure and Sale). The Judgment also determines the amount of the debt. (Master's Order Judgment of Foreclosure and Sale). However, the Judgment does not address the twenty issues set forth in Franks's brief. (Master's Order and Judgment of Foreclosure and Sale). Since the issues raised in Franks's appeal were not ruled on by the master-in-equity, Franks was required to file a Rule 59(e), SCRCP, motion in order to preserve the issues for appeal. *See Summer v. Carpenter,* 328 S.C. 36, 43, 492 S.E.2d 55, 58 (1997) ("[W]here trial judge did not explicitly rule on issue at trial and party did not make Rule 59(e), SCRCP, motion to amend for a ruling, it is error for an appellate court to consider the issue.") (citing *Noisette v. Ismail*,

304 S.C. 56, 403 S.E.2d 122 (1991)); *Equivest Fin., LLC v. Ravenel,* 422 S.C. 499, 505, 812 S.E.2d 438, 441 (Ct. App. 2018) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court. Issues not raised and ruled upon in the trial court will not be considered on appeal.") (citing *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007); *Linda Mc Co. v. Shore,* 375 S.C. 432, 438, 653 S.E.2d 279, 282 (Ct. App. 2007)). Because the Judgment did not address the issues Franks raises on her appeal and Franks did not file the Rule 59(e) motion regarding those issues, the issues are not preserved for appellate review. Franks's appeal should therefore be dismissed.

II. Franks should be deemed to have abandoned the issues in her appeal because her brief does not contain any supporting authority to her arguments.

A review of Franks's brief reveals she cites no authority to support her arguments. Since Franks cites no authority to support her arguments, her issues are deemed to be abandoned.

"An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority." *Bryson v. Bryson,* 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008). "[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." *Glasscock, Inc. v. U.S. Fid. & Guar. Co.,* 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001). "When a party provides no legal authority regarding a particular argument, the argument is deemed abandoned and the court will not address the merits of the issue." *Equivest Fin., LLC v. Ravenel,* 422 S.C. 499, 506, 812 S.E.2d 438, 441 (Ct. App. 2018) (citing *State v. Lindsey,* 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)).

In her brief, Franks has failed to cite any supporting authority for her arguments, therefore, Franks has abandoned her arguments and the issues she raises in her brief.

III. The master-in-equity did not err by failing to hold the current action is barred by res judicata.

For the reasons set forth above in U.S. Bank's first two arguments, the court of appeals should not consider the arguments and issues Franks sets forth in her brief. If Franks's arguments are considered by the court of appeals, Franks's first argument, that the master-in-equity erred by allowing the current foreclosure action because the current action was barred by res judicata, is without merit. Franks argues that the current case is barred because a 2017 foreclosure case, case number 2017-CP-40-03489, was dismissed without prejudice, therefore, according to Franks, res judicata bars U.S. Bank from maintaining the current action. (Consent Dismissal of 2017 Case).

"In order to establish a plea of res judicata, three elements must be established: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit." *Sealy v. Dodge,* 289 S.C. 543, 545, 347 S.E.2d 504, 505 (1986) (citing *Lowe v. Clayton,* 264 S.C. 75, 212 S.E.2d 582 (1975)). The 2017 case was a foreclosure action between the Franks and U.S. Bank's predecessor in interest, thereby satisfying the first two elements of res judicata. However, the case was dismissed without prejudice (Consent Stipulation of Dismissal of 2017 Case). A dismissal without prejudice is not an adjudication on the merits, so the third element of res judicata is not satisfied in this case. *See McEachern v. Black*, 329 S.C. 642, 651, 496 S.E.2d 659, 663 (Ct. App. 1997) (because the dismissal was made without prejudice, res judicata does not apply). Therefore, Franks's argument that the current action is barred by res judicata is without merit.

IV. The master-inequity did not err by failing to find U.S. Bank did not validate the debt.

Franks's second and third arguments are that U.S. Bank failed to validate the debt because U.S. Bank failed to produce the original Note, "or any proof of debt validation," and failed to produce a witness at the hearing. (Appellant's Brief). Again, the court of appeals should not

consider this argument for the reasons set forth in U.S. Bank's first two arguments above. If the court of appeals does consider Franks's arguments, the court of appeals should reject Franks's second and third arguments.

First, by failing to respond to the complaint in this case, Franks was held in default, therefore, Franks admitted the allegations that U.S. Bank was the holder of the Note, the terms of the Note and Mortgage, the date Franks defaulted on the payments required by the Note, the interest rate and the other allegations regarding the debt. (Affidavit of Default, Complaint and Judgment). Rule 8(d), SCRCP. The complaint set forth allegations regarding Franks's execution of the Note and Mortgage and the terms of the Note and Mortgage. (Complaint). The complaint also set forth the following paragraph:

> There is now due and owing and unpaid upon the Note and Mortgage the full and just principal sum of $49,648.21 "unpaid principal balance", together with interest thereon at the rate of 6.5% per annum due from and after "default date" of 04/01/2020, together with the sum of any advances made, or to be made, by the Plaintiff for taxes, insurance premiums or any other purpose chargeable pursuant to the Mortgage, including, but not limited to, late charges, collection costs, and reasonable attorney's fees and the costs of this action.

(Complaint para. 27). Since the principal amount and the interest rate are set forth, along with the date from which the interest is calculated, the principal and interest is a liquidated amount. *See Beckman Concrete Contractors., Inc. v. United Fire and Cas. Co.,* 360 S.C. 127, 131-32, 600 S.E.2d 76, ___ (Ct. App. 2004) ("Liquidated damages 'are damages the amount of which had been made certain and fixed either by the act and agreement of the parties or by operation of law to a sum which cannot be changed by the proof.'") (quoting 22 Am. Jur. 2d *Damages* § 489 (2003)). "'They are also defined as damages the amount of which has been ascertained by judgment *or by the specific agreement of the parties or which are susceptible of being made certain by mathematical calculation from known factors*.'" *Id.* (quoting 22 Am. Jur. 2d *Damages* § 489 (2003)) (emphasis added).

In the Judgment, the principal amount set forth is $49,648.21, and the amount of interest through the date of the hearing is $13,561.44, which is obtained by multiplying the principal times the interest rate of 6.5% per annum times the days since the default date. (Master's Order and Judgment of Foreclosure and Sale).

Second, the original note is not generally required. "'A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.'" *Bank of Am. v. Draper,* 405 S.C. 214, 223, 746 S.E.2d 478, 482-83 (Ct. App. 2013) (quoting Rule 1003, SCRE). In this case, there was no genuine question as to the authenticity of the original, and it was not unfair to admit the duplicate in lieu of the original. The record in this case indicates that Franks, by filing bankruptcy twice and by filing multiple motions after she was in default, was only trying to extend the foreclosure action. There was never any dispute that U.S. Bank was entitled to enforce the Note and Mortgage and the calculation of the debt.

V. The master-inequity did not err by not holding U.S. Bank violated RESPA.

Again, for the reasons set forth above in U.S. Bank's first two arguments., the court of appeals should not consider the argument that U.S. Bank violated RESPA. If the court of appeals does consider this argument, the court of appeals should deny it because Franks has offered no evidence to support this argument. The court of appeals should also deny this argument because RESPA is an affirmative defense that Franks was required to raise in a responsive pleading, but she failed to respond to the summons and complaint in this case. See Rule 8(c), SCRCP.

VI. U.S. Bank did not violate the bankruptcy's automatic stay.

For the reasons set forth above in U.S. Bank's first two arguments, the court of appeals should not consider the arguments and issues Franks sets forth in her brief. If the court of appeals considers Franks's argument that U.S. Bank's motion to lift the bankruptcy's automatic stay was

improper, the court should find this argument is without merit. The bankruptcy court and the federal district courts have original and exclusive jurisdiction over Title 11 of the United States Code. *See* 28 U.S.C. § 1334 (2022). Franks has offered no evidence that U.S. Bank violated the automatic stay in her bankruptcy cases. The bankruptcy court considered and granted U.S. Bank's motion to lift the automatic stay. (Order Lifting Stay and Order Denying Motion to Extend Stay and Dismissing Case with Prejudice for One (1) Year). Since the bankruptcy court has jurisdiction over Franks's bankruptcy case, if Franks disagreed with the bankruptcy court's orders, Franks was required to raise this issue in bankruptcy court or federal district court.

, and the amount of interest through the date of the hearing is $13,561.44, which is obtained by multiplying the principal times the interest rate of 6.5% per annum times the days since the default date. (Master's Order and Judgment of Foreclosure and Sale).

CONCLUSION

For the reasons set forth above, the court should deny the appeal filed by the appellant, Angela T. Franks.