

IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA
FOR THE COUNTY OF LANCASTER

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SC Court of Appeals

H & R BLOCK BANK, FSB,

Plaintiff,

v.

Ziraili M Elbey© aka Ziraili Mohassan El Bey
aka Ziraili Mohassan El Bey©, WKFC Living
Trust Under Trust Agreement Dated June 4,
2010, by and through its Trustee, Wellesley K.
Clayton and American Home Mortgage
Servicing, Inc. s/b/m to Option One Mortgage
Corporation

- Respondents.

NOTICE OF OBJECTION TO SPECIAL
REFEREE'S REPORT, JUDGMENT OF
FORECLOSURE, NOTICE OF SALE AND
RESPONDENT'S REFUSAL TO ACCEPT
PLAINTIFF'S OFFER TO CONTRACT

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(on and for the record a written Transcript of Testimony)

**NOTICE OF OBJECTION TO SPECIAL REFEREE'S REPORT, JUDGMENT OF
FORECLOSURE, NOTICE OF SALE AND RESPONDENT'S REFUSAL TO ACCEPT
PLAINTIFF'S OFFER TO CONTRACT**

Come now Respondent, Ziraili M Elbey indigenous, natural woman as a property owner has a perfected security interest and pursuant to S.C. Code Ann. §36-9-333(a) 'possessory lien' which has priority over a security interest of the Plaintiff and pursuant to S.C. Code Ann. § 36-0-333(b), debt paid in full multiple times as mortgage satisfied, repairs, maintenance, taxes paid created by § 29-15-10 and complies, evidenced in Lancaster Land Records, and Lancaster Clerk of Court. Therefore, this statutory lien § 36-9-333(b) takes priority as a perfected security interest. Further,

Respondent's Objections

The words **PONZI SCHEME** and **FRAUD** violation fall under of US Title 18 and definitely applied to the mortgage meltdown that has been largely dismissed by policy makers, judges,

special referee's, law enforcement and regulators. Respondent, instead is fighting to save map# 0006M-0A.261.00 property heard the terms RISKY BEHAVIOR and RECKLESSNESS. Now a few courts in South Carolina, and law enforcement has finally completed its investigation and determined that those who set the tone and culture of Wall Street were deeply involved in the mortgage PONZI scheme in our state of SC, and were regularly committing FRAUD in the creation of false, fraudulent mortgage document, Robo-signing of fraudulent ASSIGNMENTS affecting the chain of title, Securitization Trust and not informing the homeowner at settlement/closing and the underlying engineering of homeowners signatures on mortgage and loan documents in order to foreclose on homeowner. This has happened to the Respondent and "I OBJECT." Respondent cites these few cases to make the point as evidence specifically in South Carolina courts e.g. US and Szymoniak v. MERS et al. under seal pursuant to 31 U.S.C. § 3730(b)(2) filed in the US District Court in the District of South amended Complaint C.A. No. 10-CV-01465-JFA; Deutsche Bank v. Heinrich case no. 2011-CP-10-1060 filed in the South Carolina Court of Common Pleas of the Ninth Judicial Circuit which in the Judges decision the U.S. Supreme Court case Carpenter v. Logan – 83 US 271 (1872) trumps everything: further stating that the foreclosing party must own both the note and the mortgage to foreclose; Ziraili M Elbey v. H & R Block Bank, FSB in the US Bankruptcy Court of the District of South Carolina case no. 12-80227:jw(2012), the judge remanded the Adversary case to go back to the county for the proper venue; Cosajay v. MERS et al. (2013) case where the judge's decision that the homeowner has a right to challenge fraudulent ASSIGNMENT appearing in their chain of title.

Plaintiff and assigns, Plaintiff's lawyers, and Special Referee of Lancaster Court of Common Pleas were fully aware that the documents Respondent signed at the settlement table at closing to purchase property known as map # 0006M-0A-261.00, a home was an instrument

described as a “Note” but defined a draft/check under the (SCCC) Uniform Commercial Code (U.C.C.) governing definitions for negotiable instruments. The bank accepted the instrument offered as consideration for an equal exchange for the property/home, but did not disclose to Respondent it was a draft/check and mislead Respondent to believe a false presumption in that it is a promise to pay. As Respondent, stated in many of her pleadings before this court, her signature securitized the mortgage and mortgage note, meaning this was the first payment-in-full that Respondent made to satisfy any indebtedness to any entity be it original lender or any of the so-called servicers for a claim on map # 0006M-0A-261.00. It is an injustice to the Plaintiff and its assigns to call the instrument Respondent signed described on its face “note” a promise to pay or even “note”. It is neither, but rather a draft/check, even an order. The instrument was full payment tendered as the consideration for the equal exchange for the property known as map # 0006M-0A-261.00. Respondent was not given valuable consideration nor a receipt for full payment of both instruments. The instrument is not evidence of a debt, thus the mortgage is null and void ab initio ultra vires.

Respondent’s mortgage lien and mortgage note was securitized meaning placement in a securitization trusts, packaging pools of loans and **sold** to multiple investors and the alleged H & R Block Bank, FSB, plaintiff acted as a servicer to this TRUST, account # 072979775, was not the “holder”, nor owner, filed 1) the mortgage assignment with Lancaster Land Records four (4) years after alleged transfer which means the transfer was not made before the closing date of the trust, invalidating ownership, also after the REMIC 60 day closing, and 2) transferred a fraudulent, **BOGUS**, Robo-signed ASSIGNMENT on record later (4 years later) without legal authority nor corporate/business, legal standing to conduct business in the state of South Carolina. The **BOGUS**, fraudulent, ineffective Assignment was used to begin foreclosure action

against Respondent, January 14, 2011 and on November 11, 2011 Plaintiff, with full INTENT transferred an illegal unregistered, unrecorded Assignment to Nationstar Mortgage LLC resorting to an illegal scheme or ponzi scheme alone which their lawyers Brock and Scott in agreement, signed order by Special Referee to initiating under “unclean hands” by more than one entity, creating a conspiracy leading to wrongful foreclosure action October 24, 2013. Whereas not allowing Respondent due process with constant rushing, and more rushing, finally told “I have made an administration decision to Foreclosure.” Which meant to Respondent that no matter what she said, the Special Referee had made up his mind prior to the schedule hearing with lawyers for the Plaintiff several day before the October 24th, 2013 hearing because Brock and Scott had already prepared the order and sale documents. Respondent objects to ‘unclean hands’ in this court.

Respondent, objects pursuant to SCRPC Rule 17(a), Rule 12(b)(6), Rule 12(b)c, and Rule 11(c) to the Foreclosure action which creates gaps in the chain of title as to ownership; Plaintiff never proved that they were the Real Party of Interest nor the The True Owner and Holder of The Note - a potential injured party were they not paid multiple times; further Respondent’s object to Special Referee’s Report and foreclosure order and sale; Lawyers for Plaintiff never provided Original Mortgage Note, only provided altered copies with a different signature on both the mortgage and mortgage note or than the Respondent’s; plus, Plaintiff never provided, a Certified Copy of the Chain of Custody of the Note showing that H & R Block Bank, FSB honestly acquired The Note and lastly, a Certified Copy of the days Call Report from the Original Lender establishing that The Original Lender truly lent Respondent their assets and not their Credit, a thing illegal under Title 12 and previously stated Title 18 of the United States Code.

Respondent's Objections to the Notice of Sale

LET IT BE KNOWN that Respondent, AS GRANTOR is not, and has NOT agreed to this Sale. Respondent is not in Default. Respondent, further objects to this SALE as there is no verification of a debt owed. Respondent remains the GRANTOR, SETTLOR, AND TRUSTOR of map# 0006M-0A-261.00. as described in Instrument #2006004368, BK: DEED 329, PG: 170-174. The Plaintiff's lawyers in the Notice of Sale fail to indicate the 1) Trustee, who? to secure an obligation in favor 2) who is the acts as Beneficiary,[the person's name] the beneficial interest in which was assigned by , again, who? under an legal Assignment recorded where?.

SUMMARY

Brock & Scott, PLLC lawyers for the Plaintiff used four fraudulent documents to initiate a wrongful foreclosure 1) defective, fraudulent copies mortgage and mortgage note, 2) the incomplete ALLONGE which would assist in chain of title, but unknown to Respondent, and 3) fraudulent, Robo-signed ASSIGNMENT filed in county four (4) years after transfer to Plaintiff. Respondent objects to the intent, fraudulent documents and total acceptance by the Special Referee in this case and without looking at case merits; where is the Oath of Office taken by Special Referee to be impartial and uphold the judicial code of law in this state. [see exhibit A]

Wherefore, Respondent request this to court reverse the Foreclosure Sale and grant her Notice of Motion to Motion Verified Motion to Vacate Foreclosure Sale and ExParte Temporary Restraining Order and a Permanent Injunction Under Title 18 Section 1345(1)(B), (2)(a), (3)(b), and Title 18 Section 1348(2) order. Plaintiff first foreclosure order dated: originally August 22, 2012, and after Plaintiff motion to restore under SC Supreme Courts

Administrative Order of June 5, 1992 before this court has questions as a matter of law leading to foreclosure hearing on October 24, 2013. Respondent prays, this court and grants Order to vacate foreclosure action and release any mortgage liens held by this county which have already been satisfied as a matter of law. So moved!

Dated: _____ November 20____
"without recourse"

By: _____
Ziraili M Elbey, *In Propria Persona*
"All Rights Reserved"

CERTIFICATION OF MAILING

The undersigned hereby certifies that she is Ziraili-Mohassan: Elbey, Secured Party/Principal is of such age and discretion as to be competent to serve papers. That on the _____ November 2013 she served a copy NOTICE OF OBJECTION TO SPECIAL REFEREE'S REPORT, JUDGMENT OF FORECLOSURE, NOTICE OF SALE AND RESPONDENT'S REFUSAL TO ACCEPT PLAINTIFF'S OFFER TO CONTRACT by placing said copy in a postage paid envelope addressed to the following person(s) at the address stated below, which is the last known address, and by depositing said envelope and contents in the U.S. Mail.

Party(ies) Served:

Chad W. Burgess
Brock & Scott, PLLC
3800 Fernandina Rd, Suite 110
Columbia, South Carolina 29210

The Honorable Jeff Hammond
Post Office Box 1809
Lancaster, South Carolina 29721-1809

The Honorable Phillip E. Wright
408 North Main Street
Lancaster, South Carolina 29721

Dated: _____, November 20 _____
9789 Charlotte Highway, Suite 400-191
Ft. Mill, South Carolina

By: _____

Ziraili M Elbey, Secured Party/Principal
"All Rights Reserved"

NOTICE OF SALE

NOTICE OF SALE CIVIL ACTION NO. 2011-CP-29-00035 BY VIRTUE of the decree heretofore granted in the case of: H&R Block Bank vs. Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey, WKFC Living Trust Under Trust Agreement Dated June 4, 2010 by and through its Trustee Wellesley K. Clayton and American Home Mortgage Servicing, Inc. s/b/m to Option One Mortgage Corporation, et al., the undersigned Special Referee for Lancaster County, South Carolina, will sell on December 2, 2013 at 11:00AM, at the Lancaster County Courthouse, Courtroom B, City of Lancaster, State of South Carolina, to the highest bidder:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND LOCATED IN LANCASTER COUNTY, SOUTH CAROLINA, AND BEING DESIGNATED AS LOT 261 ON THAT CERTAIN PLAT OF CLAIREMONT, PHASE 2, MAP 5, PREPARED BY YARBROUGH, WILLIAMS & HOULE, INC. DATED JANUARY 18, 2005, AND RECORDED JANUARY 28, 2005, AS PLAT DOC #2005 AT PAGE 20047 IN THE OFFICE OF THE CLERK OF COURT FOR LANCASTER COUNTY, SOUTH CAROLINA.

ALSO BEING SHOWN AS LOT 261 OF CLAIREMONT ON A PLAT OF ZIRAILI ELBEY PREPARED BY HUCKS AND ASSOCIATES, PC, DATED MARCH 3, 2006, AND RECORDED IN PLAT DOC 2006 AT PAGE 198.

THIS BEING THE IDENTICAL PROPERTY CONVEYED TO ZIRAILI M. ELBEY BY DEED FROM THE RYLAND GROUP, INC. DATED MARCH 29, 2006 AND RECORDED APRIL 17, 2006 IN BOOK 329 AT PAGE 170. SUBSEQUENTLY, SAID PROPERTY WAS CONVEYED TO KMJ TRUST, DATED DECEMBER 15, 2006 (TRUSTEES: ZIRAILI MOHASSAN EL BEY AND MARK ANTONIO FINDLETTER CLAYTON) BY DEED OF ZIRAILI M. ELBEY DATED JANUARY 19, 2007 AND RECORDED JANUARY 29, 2007 IN BOOK 378 AT PAGE 7. THEREAFTER, THE PROPERTY WAS CONVEYED TO WELLESLEY K. CLAYTON LIVING TRUST UNDER THE PROVISIONS OF A TRUST AGREEMENT DATED JUNE 4, 2010 (TRUSTEE: WELLESLEY K. CLAYTON) BY DEED OF ZIRAILI MOHASSAN EL BEY AND MARK ANTONIO FINDLETTER CLAYTON AS TRUSTEES OF THE KMJ TRUST, DATED DECEMBER 15, 2006 DATED JUNE 11, 2010 AND RECORDED JUNE 22, 2010 IN BOOK 569 AT PAGE 85.

CURRENT ADDRESS OF PROPERTY: 13132 Wilburn Park Lane, Fort Mill, SC 29715
TMS: 0006M-0A-261.00

TERMS OF SALE: The successful bidder, other than the Plaintiff, will deposit with the Special Referee, at conclusion of the bidding, five percent (5%) of his bid, in cash or equivalent, as evidence of good faith, same to be applied to the purchase price in case of compliance, but to be forfeited and applied first to costs and then to the Plaintiff's debt in the case of non-compliance. Should the last and highest bidder fail to comply with the other terms of the bid within thirty (30) days, then the Special Referee may re-sell the property on the same terms and conditions on some subsequent Sales Day (at the risk of the said highest bidder). No personal or deficiency judgment being demanded, the bidding shall not remain open after the date of sale and shall be final on that date, and compliance with the bid may be made immediately. Purchaser to pay for documentary stamps on the Deed. The successful bidder will be required to pay interest on the amount of the balance of the bid from date of sale to date of compliance with the bid at the rate of 7.999% per annum. The sale shall be subject to taxes and assessments, existing easements and restrictions of record and any other senior encumbrances.

In the event an agent of Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

The Honorable Phillip E. Wright
Special Referee for Lancaster County

Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Attorneys for Plaintiff

