

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

James E. Reeves, Special Referee

Appellant Case No. 2013-000965

SCBT, NA,..... Respondent

v.

Shelton Hoffman a/k/a Shelton L. Hoffman; South Carolina Department of  
Revenue; Baird Transport, Inc,.....Defendants

Of whom Shelton Hoffman a/k/a Shelton L. Hoffman is the .....Appellant

**APPELLANT'S INITIAL REPLY BRIEF**

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**TABLE OF CONTENTS**

Table of Authorities.....ii

Statement of Issues on Appeal.....1

Argument.....2

Conclusion.....4

**TABLE OF AUTHORITIES**

**CASES**

LeConte v. Irwin 19.S.C.554 (1883).....2,3

Eason v. Witcofskey 29 S.C. 239,244 (1888) .....2

City Bank v. Saje Ventures II 7 Haw. App. 130, 133 (Haw. ct. app. (1988)  
.....2

Leisure Campground and County Club Limited Partnership v. Leisure  
Estates 280 MD. 220, 223, 372(a) 595, 598 (1977).....2

City Bank NA v. Data Lease Fin. Corp. 645, F 2d 333, 336 (5<sup>th</sup> Circuit  
1981).....2

**UNITED STATES OF AMERICA CONSTITUTION**

S.C. Const. Art. 1, § 3(2012).....3

**STATEMENT OF ISSUES ON APPEAL**

**I. THE ISSUE OF THE APPELLANT'S WRONGFUL FORECLOSURE IS NOT MOOT.**

**II. THE APPELLANT WAS DENIED DUE PROCESS**

**III. THE RESPONDENTS ALLEGATION AS TO WHICH NOTE IS THE ISSUE OF THE FORECLOSURE IS A MOVING TARGET.**

## ARGUMENT

### **I. THE ISSUE OF THE APPELLANT'S WRONGFUL FORECLOSURE IS NOT MOOT.**

The Appellant has asked this court to overturn the Order of Foreclosure, and to remand the case for further proceedings. By overturning the Order foreclosure, this Court would not be finding that the sale of subject property was void, but rather that it was voidable. Should further proceedings in the Court below find that the foreclosure sale did not result in the property being transferred to a legitimate third party, the lower Court could in fact void sale the property at that time. *LeConte v. Irwin* 19 S.C. 554(1883) *Eason v. Witcofskey* 29 S.C. 239,244(1888). Various courts have addressed when judgment is to be deemed voidable, as opposed to void. See *E.G., City Bank v. Saje Ventures II* 7 Haw. App. 130, 133(Haw. ct. app.1988); *Leisure Campground and County Club Limited Partnership v. Leisure Estates* 280 MD. 220, 223, 372(a) 2d 595, 598 (1977); *City Bank NA. v. Data Lease Fin. Corp.* 645, F 2d 333,336 (5<sup>th</sup> Circuit 1981)

Should the Order of Foreclosure be overturned, the Court could then hold further proceedings to determine whether or not the purchaser of the foreclosure sale was the bonafide purchaser under the South Carolina law. If purchaser at the foreclosure sale was the mortgagee or other party to the action, the purchaser's title is at risk in the event of reversal on appeal. See *LeConte v. Irwin* 19. S.C. 554(1883). Therefore, reversal of the Order of Foreclosure in this case would allow the Court below to make further inquire into as to whether or not the purchaser at the foreclosure sale was in fact a bonafide purchaser. Should the Court determine that the foreclosure sale be upheld as to the bonafide purchase third party, the Court could address the issue of damages caused by the wrongful foreclosure.

## **II. THE APPELLANT WAS DENIED DUE PROCESS**

The Fourteen Amendment to the US Constitution as well as South Carolina Constitution, gave litigates the right to Due Process, and extends cases involving valuable property rights. *Constitution of the United States of America Amendment Fourteen; SC Const. article 1 sec 3 (2012)*. The Appellant retained counsel to represent him. He opposed that counsel being

relieved as counsel, and was unable to obtain substitute counsel until after that matter had been resolved. The Court ruling the Appellant's counsel was relieved, above the Appellants objections and proceeding with the hearing that same day, deprived the Appellant Due Process.

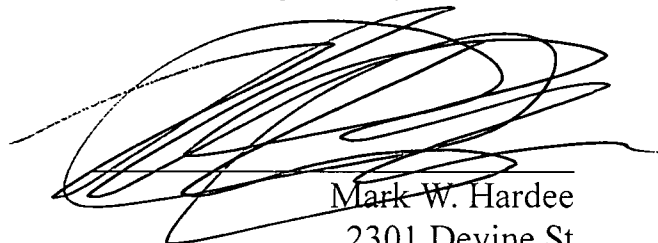
**III. THE RESPONDENT'S ALLEGATION AS TO WHICH  
NOTE IS THE SUBJECT OF THE FORECLOSURE IS A  
MOVING TARGET.**

The Appellant alleges in its Complaint that the Note dated October 21, 2003 is the note which evidences the debt which secured by the mortgage. The bank never made a Motion to amend the Complaint. The Bank concedes that the note has been paid in full. Therefore, the Order of the Special Referee should be reversed.

**CONCLUSION**

Based on the above, the Order of the Special Referee should be reversed, and the case remanded for further proceedings.

Respectfully submitted,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above the printed name.

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December 12<sup>th</sup>, 2013

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )  
Shelton Hoffman )  
a/k/a Shelton L. Hoffman )  
Appellant, )  
vs. )  
SCBT, NC )  
Respondent. )

IN THE COURT OF APPEALS

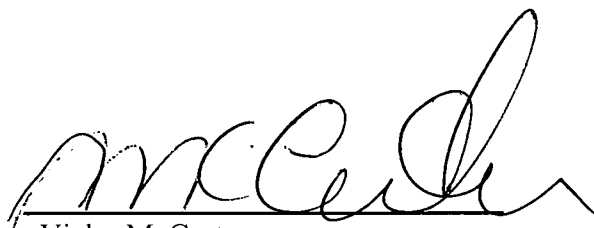
Case No. 2013-000965

DEC 12 2013

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of December, 2013, I served, via first class mail, at the address below, a copy of the Appellant's Initial Reply Brief pertaining to the above-referenced action.

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Date: 12-12-13