

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

Ellis B. Drew, Jr., Master in Equity

C.A. # 2012-CP-04-01576

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Appellate No. 2012-210846

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Green Tree Servicing, LLC,  
etc.

Respondent,

v.

Corrie A. Martin,

Petitioner.

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PETITION FOR A WRIT OF CERTIORARI

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**SC Court of Appeals**

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## PETITION FOR A WRIT OF CERTIORARI

Appellate Corrie Martin does hereby Petition for a Writ of Certiorari.

### EXPLANATION CONCERNING THE CERTIFICATE OF COUNSEL

SCACR Rule 242 (d) provides that the petition for writ of certiorari contain a certificate by counsel for the petitioner that a petition for rehearing or reinstatement was made and finally ruled on by the Court of Appeals.

Appellant filed a Petition for Rehearing with the Court of Appeals. However, the Clerk for the Court of Appeals refused to file the Petition for Rehearing on the ground that the Petition for Rehearing was received pm the 19<sup>th</sup> day following the date of the filing of the Opinion issued by the Court of Appeals. Rule 221 SCACP requires that a Petition for Rehearing must be received by the Appellate Court no later than fifteen (15) days after the filing of the Opinion, Order, Judgment, or Decree of the Court.

Appellate Corrie Martin has filed a Motion to Allow the Petition for Rehearing in the Court of Appeals. The Court of Appeals has made no decision upon this Motion.

For the above reasons, counsel cannot make a Certificate that the Petition for Rehearing was finally ruled upon by the Court of Appeals.

## QUESTION PRESENTED

DID THE COURT OF APPEALS ERR IN FAILING TO HOLD THAT MARTIN HAS THE RIGHT TO COMMENCE A SECOND ACTION TO ATTACK THE EARLIER JUDGMENT AGAINST HER ON THE GROUND THAT SHE WAS NOT SERVED WITH A SUMMONS AND COMPLAINT IN THAT CASE STYLED GREEN TREE LENDING, LLC, ETC. V CORRIE MARTIN, ET AL (2010-CP-04-01576)?

## STATEMENT OF THE CASE

During 2010 Respondent Green Tree Lending, LLC ("Green Tree") commenced a mortgage foreclosure proceeding against Petitioner Martin in a case styled Green Tree Lending, LLC, etc. v Corrie Martin, et al (2010-CP-04-01576). Green Tree obtained judgment by default. Martin filed a Motion under SCRPC Rule 60(b) to set aside the default judgment. Anderson County Master in Equity Ellis B. Drew, Jr. issued a Supplemental Order, dated March 8, 2012. (Appendix p8) in which he refused to set aside the mortgage foreclosure judgment. Martin appealed this Supplemental Order to the Court of Appeals. The Court of Appeals issued its Opinion, dated November 20, 2013 which affirmed the Supplemental Order of Master-in-Equity Ellis B. Drew, Jr.

Martin commenced a suit during 2012 against Green Tree by means of a Complaint styled Corrie Martin vs Green Tree Lending, etc., (C. A. # 2012 -CP-04-01576) in the Court of Common Pleas, Anderson County. Green Tree filed a Motion for Summary Judgment which came on for hearing before Circuit Judge R. Lawton McIntosh. Judge McIntosh issued an Order, dated June 6, 2013 (Appendix p6) which directed Martin to apply to the South Carolina Court of Appeals for leave to pursue her action within thirty (30) days of the date of the Order.

The Order further provided:

After consideration of the motions filed by both parties and argument of counsel, the Court orders that the within matter shall be stayed until a decision is made on Plaintiff's Application to the South Carolina Court of Appeals for leave to pursue this action while Civil Action No. 2010-CP-04-03458 is under appeal to the South Carolina Court of Appeals or until the Appellate Court rules on the appeal in Civil Action No. 2010-CP-04-03458.\*\*\*\*\*

Appellant Martin applied to the Court of Appeals pursuant to Rule 60(b) of the SCRPC by way of a Motion for Leave to Proceed (Appendix p9) with her action styled Corrie Martin vs Green Tree Lending, etc (2012-CP-04-01576). The Court of Appeals denied the Motion by its order, filed September 16, 2013. (Appendix p7)

A copy of the Petition for Rehearing is attached.

A copy of the Opinion of the Court of Appeals filed on November 20, 2013 is attached.

The issue presented by this Writ of Certiorari is whether a party subject to a judgment by default is entitled to attack that judgment by a separate suit alleging that the court granting the default judgment did not have jurisdiction because of a lack of service of the summons and complaint.

#### ARGUMENT

DID THE COURT OF APPEALS ERR IN FAILING TO HOLD THAT MARTIN HAS THE RIGHT TO COMMENCE A SECOND ACTION TO ATTACK THE EARLIER JUDGMENT AGAINST HER ON THE GROUND THAT SHE WAS NOT SERVED WITH A SUMMONS AND COMPLAINT IN THAT CASE STYLED GREEN TREE LENDING, LLC, ETC. V CORRIE MARTIN, ET AL (2010-CP-04-01576)?

To challenge the jurisdiction of the Court in the earlier case, Martin served a Complaint in an action styled Corrie Martin v Green Tree Servicing, LLC, etc (2012-CP-04-01526) which contained three causes of action. The only cause of action that is relevant in this Petition for a Writ of Certiorari is the first cause of action alleging that Martin was not served with a copy of the Summons and Complaint in Green Tree Lending, LLC, etc vs Corrie Martin, et al (2010-CP-04-01576) Therefore, the judgment of the court was a nullity. She never knew that her house was sold at a foreclosure sale until the Sheriff of Anderson County served her with a Writ of Ejectment some six

months after a public auction of her house by the Court. Green Tree purchased Martin's house at the foreclosure sale and presumably continues to be the owner.

In her Complaint Martin denies having any knowledge of court hearings. She denies having any knowledge of the foreclosure sale. She denies that she received any communications from Green Tree's attorneys that her mortgage was in arrears or that her mortgage would be foreclosed. She would also deny, if given the opportunity, that her mortgage was in arrears. She can prove that she made her payments faithfully before the mortgage foreclosure commenced and for over 15 months after the public auction of her house.

She will further testify that after the Sheriff of Anderson County left a Writ of Ejectment upon her door that she hired an attorney within a few days afterward to furnish his services to set aside the foreclosure of her house by Green Tree.

Martin will further testify that while the order of foreclosure recites that she was in the courtroom during testimony concerning her mortgage, she was in fact not present during the hearing and had no notice of the hearing.

Yes, the file contains an Affidavit of Service of the Summons and Complaint upon Martin, but she alleges and denies that any Summons and Complaint were ever served upon her. The file contains affidavits from employees of attorneys for Green Tree that she was sent notices and correspondence. Examination of those affidavits and notices will establish that the addresses used had an incorrect ZIP code. The post office did not deliver this mail to Martin.

SCRCP Rule 4 (a) provides:

- (a) Summons: Issuance. The Summons shall be issued

by plaintiff or plaintiff's attorney. Copies of the original Summons shall be served upon each defendant.

The allegations of the Complaint in Corrie Martin v Green Tree Lending, LLC, etc are that a copy of the Summons and Complaint were not served upon Martin in the mortgage foreclosure case. This means that the Plaintiff did not comply with Rule 4 (a) and that all proceedings are a nullity.

It is well-established that a challenge to the jurisdiction of the court can be made at any time. McDaniel v United States Fidelity and United States Fidelity and Guaranty Company, 324 S.C. 639, 478 S.E. 2d 868 (S.C.App.1996); 47 Am. Jur. 2d Judgments, Secs 767-68.

A discussion of whether a defendant will be entitled to relief under SCRPC Rule 60 (b) occurs in the McDaniel case, supra, and finds support in Gatling v. Beach Palace, Inc., 294 S.C. 464, 365 S.E. 2d 736 (S.C. App. 1988).

Martin submits that the issue of a lack of jurisdiction was not an issue presented in the case on appeal (the mortgage foreclosure case) and that under the authority of McDaniel, supra, Martin is entitled to raise the issue in its Complaint that the Court lacked jurisdiction in the mortgage foreclosure case.

The Opinion of the Court of Appeals filed on November 20, 2013 ignores the allegations of the Complaint in which Corrie Martin alleges that the Court of Common Pleas lacked jurisdiction over her in the 2011 suit because of a failure to serve her with the Summons and Complaint of the mortgage foreclosure action.

Martin anticipates that Green Tree will contend that she should have raised lack of jurisdiction in her Motion to Set Aside the foreclosure which is the case now on

appeal. The issue of a failure of service should have been raised, but has Martin waived her right to raise the issue that jurisdiction in a suit alleging the foreclosure suit is a nullity because of a lack of service? Martin responds that the law allows a lack of jurisdiction to be raised at any time. McDaniel v United States Fidelity and United States Fidelity and Guaranty Company, 324 S.C. 639, 478 S.E. 2d 868 (S.C.App.1996).

This case presents a sad, sad miscarriage of justice. Corrie Martin's home was wrongfully taken from her. She deserves her day in court to contest the improper actions of Green Tree Lending in foreclosing upon her house.

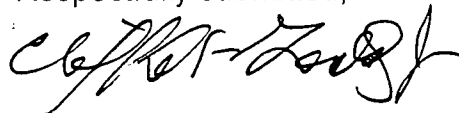
#### CONCLUSION

For the reasons stated, Petitioner asks the Court to grant the Petition for a Writ of Certiorari.

By and through this Writ of Certiorari the Appellant seeks a reversal of the decision of the Court of Appeals and a remand of the case to the Circuit Court with the direction that Appellant be allowed to proceed with her suit which challenges the jurisdiction of the Circuit Court in the case of Green Tree Lending, LLC., etc. v. Corrie Martin, et al (C.A.# 2010-CP-04-01576).

December 20, 2013

Respectfully submitted,



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Attorney for Petitioner

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY

Court of Common Pleas

Ellis B. Drew, Jr., Master in Equity

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Case No.: 2012-CP-04-01526

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Green Tree Servicing, LLC, etc .....Respondent,

Corrie A. Martin.....Appellant.

PETITION FOR REHEARING

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Attorneys for the Respondent

Appellant Corrie Martin hereby Petitions for a Rehearing of the subject case on the following grounds:

FIRST GROUND FOR REHEARING:

1. Appellant Corrie Martin filed a Motion pursuant to Rule 60(b) SCRPC to set aside a mortgage foreclosure (Green Tree Servicing, LLC etc. v Corrie Martin, et al; 2010-CP-04-03548) in which the home of Corrie Martin was sold at public auction. The Motion came on for hearing before Ellis B. Drew, Jr., Master-In-Equity for Anderson County.
2. Master-In-Equity Ellis B. Drew, Jr. denied the Motion under Rule 60(b) SCRPC on the grounds that the Motion was not filed with a reasonable time. The Order did not recite facts supporting this conclusion.
3. Corrie Martin appealed the denial of the Rule 60(b) Motion. While the appeal was pending in the South Carolina Court of Appeals, Appellant Corrie Martin filed a Complaint against Green Tree Servicing, LLC, etc. assigned C.A. #: 2012-CP-04-01576. The Complaint alleged in its first cause of action that the Court lacked jurisdiction in the mortgage foreclosure action (C.A. #: 2010-CP-04-03548) because Corrie Martin was not served with a copy of the Summons and Complaint.
4. In the Corrie Martin vs. Green Tree Servicing, LLC, (C.A. # 2012-CP- 04-01576) Defendant Green Tree Servicing, LLC filed a Motion for Summary Judgment pursuant to Rule 60(b) SCRPC based upon the last paragraph which required Corrie Martin to obtain the leave of the Court of Appeals to file her suit.

5. Circuit Court Judge Lawrence McIntosh issued an Order directing Corrie Martin to file her application with the Court of Appeals asking for leave to proceed with her suit.

6. Corrie Martin filed an Application to the Court of Appeals to allow her suit challenging the jurisdiction of the Court in the prior mortgage foreclosure. The Court of Appeals denied the Application for Leave to allow the suit of Corrie Martin against Green Tree.

7. The Court of Appeals did not comment upon or assign any reason in its decision filed on September 16, 2013, for its refusal to grant leave to Corrie Martin to proceed with her suit alleging that the Court of Commons Pleas lacked jurisdiction in the mortgage foreclosure case.

8. In its opinion filed November 20, 2013, the Court of Appeals did not address or comment upon its denial of the Application of Corrie Martin to proceed with her suit alleging that the Court of Commons Pleas did not have jurisdiction in the mortgage foreclosure suit against Corrie Martin.

9. Service of a Summons and Complaint is a critical requirement of litigation. Service of a Summons upon a Defendant is required by Rule 4 SCRPC. It is black letter elementary law and needs no citation of authority that a Summons and Complaint must be served upon a Defendant before a Court will have jurisdiction over the suit.

10. If a party to a lawsuit represents in a Complaint that the Court did not have jurisdiction to render a judgment because no Summons and Complaint were served,

that allegation deserves to be addressed by an Appellate Court, as opposed to treating the allegation with indifference and silence.

11. A party attacking a judgment on the grounds that the Court lacked jurisdiction in awarding the judgment deserves a hearing affording a review of the evidence supporting the allegations or disproving the allegations.

12. Corrie Martin is entitled to a judicial fact finding hearing regarding facts concerning whether she was served with a Summons and Complaint and what knowledge she had, if any, of the foreclosure proceedings, in which her home was sold at public auction.

SECOND GROUND FOR REHEARING:

13. The second ground upon which the Court of Appeals should grant a rehearing is whether the facts support a finding by the Master-In-Equity that Corrie Martin did not file a Motion pursuant to Rule 60(b) SCRPC in a reasonable time. The Master's opinion did not give facts to support his conclusion that Corrie Martin did not file the Motion under Rule 60(b) SCRPC in a reasonable time. The facts are that upon finding a Sheriff's eviction notice upon the door of her home in June 2011, Ms. Martin went immediately to the Sheriff's Office where she was directed to go to the Clerk of Court's office where a clerk helped her review the file. She learned for the first time that Green Tree Servicing, LLC had commenced a foreclosure proceeding. She retained an attorney promptly. He wrote a letter to attorneys for Green Tree Servicing, LLC. Upon no action occurring, beyond a letter being written, she asked for a release of her file and retained attorney Andrew Gaines, who after about three months of inactivity and in

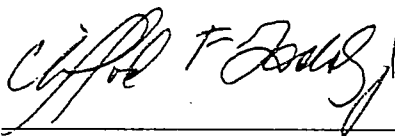
response to telephone calls to him from Corrie Martin, a Motion to Set Aside Judgment pursuant to Rule 60(b) SCRPC was filed.

14. Appellant Corrie Martin asserts that for a Trial Judge to conclude that under these circumstances Corrie Martin did not file a Motion to Set Aside Judgment within a reasonable time is an abuse of discretion.

15. If the Court of Appeals is going to conclude that a denial of a Motion to Set Aside a Judgment was not an abuse of discretion, Corrie Martin is entitled to know the facts used by the Court in reaching its conclusion.

For the reasons stated above, the Court of Appeals should grant the Petition for Rehearing.

Respectfully submitted,



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December 4, 2013

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Green Tree Servicing, LLC, f/k/a Green Tree Financial  
Servicing Corporation, a Limited Liability Company  
under the laws of the State of Delaware, Respondent,

v.

Corrie Ann Martin, the South Carolina Department of  
Revenue, the United States of America by and through its  
agency the Internal Revenue Service, and Anderson Area  
Medical Center, Inc., n/k/a Anmed Health, Plaintiffs,

Of whom Corrie Ann Martin is the Appellant.

Appellate Case No. 2012-210846

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Appeal From Anderson County  
Ellis B. Drew, Jr., Master-In-Equity

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Unpublished Opinion No. 2013-UP-425 ¶  
Submitted October 1, 2013 – Filed November 20, 2013

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**AFFIRMED**

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Clifford F. Gaddy, Jr., of Cliff Gaddy Law, of Greenville,  
for Appellant.

Theodore von Keller, B. Lindsay Crawford, III, and Sara Christine Hutchins, all of Crawford & von Keller, LLC, of Columbia, for Respondent.

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**PER CURIAM:** Corrie Ann Martin appeals the master-in-equity's denial of her Rule 60(b), SCRCP, motion, arguing the master erred in (1) relying upon an order that was later vacated, and (2) finding her motion was not filed within a reasonable time. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the master erred in relying upon an order that was later vacated: *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [master] to be preserved.").

2. As to whether the master erred in finding Martin's Rule 60(b) motion was not filed within a reasonable time: Rule 60(b)(1), SCRCP ("On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for . . . mistake, inadvertence, surprise, or excusable neglect . . ."); Rule 60(b), SCRCP ("[A Rule 60(b)(1)] motion shall be made within a *reasonable time* . . . not more than one year after the judgment, order or proceeding was entered or taken." (emphasis added)); *Se. Hous. Found. v. Smith*, 380 S.C. 621, 639, 670 S.E.2d 680, 690 (Ct. App. 2008) ("[T]he reasonable time limit is discretionary and should be determined under the facts and circumstance of each case." (internal quotation marks omitted)); *Perry v. Heirs at Law of Gadsden*, 357 S.C. 42, 46, 590 S.E.2d 502, 504 (Ct. App. 2003) ("A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief.").

**AFFIRMED.**<sup>1</sup>

**SHORT, WILLIAMS, and THOMAS, JJ., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.