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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James F. Chellis, Master In Equity,
Court of Common Pleas

Appeal Case Number: 2024-000122
Lower Court Case No. 2011-CP-18-00871

US BANK TRUST, NA as Trustee for
Waterfall Victoria Grantor Trust II Series G,

Appellant,

v.

JAMIE SINGLETON and INDIGO POINTE
HOMEOWNERS' ASSOCIATION,

Defendants,

Of Which JAMIE SINGLETON is the Respondent.

MOTION FOR REHEARING AND
INCORPORATED MEMORANDUM OF LAW

JAMIE SINGLETON, Respondent, through his undersigned attorney, moves per Rule 221(a), SCACR for a rehearing on the factual and legal issues that Singleton respectfully contends were overlooked or misapprehended by the Honorable Court in Opinion No. 6160 filed on August 12, 2026.

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INTRODUCTION AND CASE HISTORY

This case is a foreclosure action, with jurisdiction being in Equity and the matter was referred to the Hon. James Chellis as Master-in-Equity. Judge Chellis became the Master in Equity in 2013. The previous Master, the Honorable Matie Murphy, made a ruling on Singleton's Motion to Disburse Insurance Proceeds in 2012. On November 21, 2022, Judge Chellis entered the Summary Judgment Order which is one of the subjects of this appeal which granted the remedy of foreclosure, but denied any award of interest via an equitable setoff. (R. Vol. 1 p. 121.) Appellant filed a timely Motion to Alter or Amend on December 1, 2022 (R. at 1098). Memoranda of law were filed and presented by both sides. In a separate Order filed on March 28, 2023, Judge Chellis completely vacated the November 21, 2022 Order. The three-day non-jury trial took place three months thereafter in June, 2023.

Judge Chellis ultimately entered his 53-page Order granting judgment on the principal amount of the Note and Mortgage and denying interest and foreclosure to Respondent. (R. Vol. 1, p. 144-197). Respondent timely filed a Motion to Alter or Amend on December 22, 2023. Judge Chellis denied the Motion on December 29, 2023, except to hold a hearing on Attorney's Fees of the Respondent. (R. Vol. 1, p. 198). Appellant appealed this decision before the hearing on attorney's fees could be held by Judge Chellis. This Court issued its Opinion which reversed Judge Chellis' decision and remanded the matter. Respondent asserts that this Court overlooked or misapprehended certain factual and legal issues in rendering its decision, and thus requests that this Court grant rehearing.

A. APPELLANT FAILED TO PRESERVE APPEALING THE *SUA SPONTE* FORM 4 ORDER

This Court found that the March 28, 2023 Order which reversed the November 21, 2022 Summary Judgment (R. Vol. 1, p. 121) was in error (Op, p. 5-7). Appellant relies on *Ness v.*

Eckerd Corp. 350 SC 399, 566 S.E. 2d. 193 (Ct. App. 2002) to reverse this decision. However, Respondent respectfully argues that the Appellant did not timely preserve appealing this Order for appeal.

> If a trial judge grants "relief not previously contemplated or presented to the trial court, the aggrieved party must move, pursuant to Rule 59(e), SCRCP to alter or amend the judgment in order to preserve the issue for appeal." *In re Estate of Timmerman,* 331, S.C. 455, 460, 502 S.E.2d 920, 923 (Ct. App. 1998). In *Timmerman,* the Court of Appeals reversed the Probate's Court finding to grant Ingrid an elective share. While Lafaye appealed the decision, she did not file a Motion under Rule 59-e, SCRCP to alter or amend. "When a party receives an order that grants certain relief not previously contemplated or presented to the trial court, the aggrieved party must move, pursuant to Rule 59(e), SCRCP, to alter or amend the judgment in order to preserve the issue for appeal. Id.; *Godfrey v. Heller,* 311 S.C. 516, 429 S.E.2d 859 (Ct.App.1993) (where theory of relief was first raised in lower court's order, appellant must challenge this theory with a Rule 59, SCRCP motion)".

Respondent previously filed a Motion to Dismiss the appeal of this Order on February 8, 2024, which was denied on April 24, 2024. Respondent respectfully argues that the Appellant failed to preserve the issue of this Order by not timely filing a Rule 59-e (SCRCP) Motion with the trial court within 10 days of March 28, 2023, and thus forfeited any right to appeal the March 28, 2023 Order, a point of both fact and law which Respondent asserts was overlooked by this Court.

B. DECISION IN CONFLICT WITH EVIDENCE

During the course of the litigation and in alleged support of its position, Appellant presented and filed the Affidavit of James George with the trial record on July 31, 2014, inconsistent with previous filings and positions by the Plaintiffs in this case, who was designated by Plaintiff as an authorized representative of the then-Plaintiff and claimed to be employed by the servicer. Mr. George testified that at no time did GMAC own the loan (and thus could not transfer it, as one cannot transfer something which it does not own pursuant to the doctrine of *nemo dat quod non* *habet*), yet this Court's Opinion held that the loan was validly transferred, multiple times, ultimately to the Plaintiff Waterfall which is a legal impossibility if one or more of the downline transferors had nothing to transfer. This Court's Opinion overlooked this threshold factual and legal matter which legally affects standing. Respondent thus requests rehearing on this issue.

C. APPEALING THE SUMMARY JUDGMENT ORDER IS MOOT

This Court held in its Opinion that the initial Summary Judgment of November 21, 2022, was entered in error (Op. p. 7-9). Respondent argues that this issue is moot. In fact, Judge Chellis, in the March 28, 2023, Order, completely vacated this Order. Respondent argues that this issue is thus completely moot on all issues.

D. TRIAL ORDER

1. INTEREST

The Court found that the interest rate of the Note during all relevant times was 10.45%. (Op. p. 10.) Respondent does not disagree. However, Respondent respectfully asserts that the key issue as to the issue of interest was overlooked by Appellant and therefore, by the Court. Judge Chellis, the initial finder of fact, summarized the facts beginning on Page 43 of the Order of December 12, 2023 beginning at paragraph 308 (R. Vol. 1 at 186):

"308. Plaintiff did not produce sufficient evidence of the loan servicing history because it did not produce the entire servicing history of the Note and Mortgage. (R. Vol. 1 at 186, lines 1-2)

309. The failure to produce sufficient evidence of the full servicing history demonstrates Plaintiff's lack of credibility. (R. Vol. 1 at 186, lines 3-4.)

310. The confusing documentary presentation of the payment histories demonstrates Plaintiff's lack of credibility." (R. Vol. 1 at 186, lines 5-6.)

Respondent contends that the Plaintiff failed to meet its initial burden of proof to show that it was entitled to the amount of interest being sought. Respondent craves reference to the record of the trial court showing that there was a lack of credibility and incompleteness of the Plaintiff's evidence which justified the ruling of the trial court which denied any award of certain claims as to interest. Respondent argues that the issue of credibility of the Plaintiff, its witness, and evidence was overlooked by this Court and thus rehearing should be granted on this issue. The interest rate is not an issue, but how much, if any interest, the Appellant is entitled to under law and equity.

2. APPELLANT MAY BE THE MORTGAGE HOLDER, BUT IS STILL NOT ENTITLED TO FORECLOSE UNDER EQUITABLE PRINCIPLES

The Court, in the Opinion, found that Waterfall is the holder of the Note and, therefore, the Mortgage (Op., p. 10). Respondent does not oppose the finding that the Plaintiff was the mortgage holder at the time of trial. However, the opinion of this Court is that the trial judge erred that Plaintiff is not entitled to foreclose because of a bankruptcy filing by a previous holder (Op. p. 10). However, Respondent respectfully contends that this was not the basis for Judge Chellis to deny the foreclosure remedy. Respondent craves reference to paragraph numbers 329 and 330 on Page 44 of the December 12, 2023, Order:

"329. The Plaintiff's lack of credibility justifies a finding that the Plaintiff comes into this Court with unclean hands. R. Vol. 1 at 194, lines 23-24.

330. Moreover, the Plaintiff's lack of credibility on many issues evolves into a finding that the Plaintiff comes into this Court without sufficient evidence for this Court to do equity on its equitable claim for foreclosure of a mortgage." R. Vol. 1 at 194, lines 25-27.

Whether or not the Plaintiff is the mortgage holder, it came to Court with a lack of credibility and unclean hands. Plaintiff Waterfall was properly denied foreclosure, and Respondent requests a rehearing on the issue. Plaintiff/Appellant did not appeal the finding of the Court on unclean hands, and therefore, it has waived any challenge thereto and should thus be barred from seeking any relief for the remedy of foreclosure.

E. EQUITABLE POWERS OF THE MASTER-IN-EQUITY

"A court of equity abhors foreclosures, and will not lend its aid to enforce them". *Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 254-55, 715 S.E.2d 348, 356 (S.C. App. 2011) citing *Jones v. N.Y. Guar & Indem. Co*., 101 U.S. 622, 628, 25 L.Ed. 1030 (1979), which maxim has been adopted by the Supreme Court of South Carolina: "Equity does not favor forfeitures or penalties and will relieve against them whenever practicable in the interest of justice." *Lane v. N.Y. Life Ins. Co.,* 147 S.C. 333, 374, 145 S.E. 196, 209 (1928). The Supreme Court of South Carolina has also held that the court has the power in equity to deny or delay forfeiture when fairness demands, *Lewis v. Premium Ins. Corp.*, 351 S.C. 167, 172, 568 S.E.2d 361, 364 (S.C. 2002).

Respondent asserts that this Court overlooked these foundational equitable principles in its Opinion which upheld the foreclosure (especially given the presence of the evidence of unclean hands and the legal effect thereof), and thus requests rehearing on this issue. Again, Appellant did not appeal the trial court's findings of unclean hands.

WHEREFORE, RESPONDENT JAMIE SINGLETON moves for a rehearing of the appeal in this case, per Rule 221(a), SCACR, and/or dismissal of the Appeal and/or affirmation of the decisions of the trial judge as to interest and setoff, and for any other and further relief which is just, proper and equitable.

s/William H. Sloan
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PROOF OF SERVICE OF MOTION FOR
REHEARING

I certify that I have served the Motion for Rehearing oral argument by depositing a copy of same in the United States Mail, postage prepaid, on August 21, 2026, addressed to active counsel of record for Appellant.

Dean A. Hayes, Esq.,

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January N. Taylor, Esq.,

McMichael Taylor Gray LLC,

3550 Engineering Drive, Suite 260,

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and by e-mailing a copy of the Motion to Mr. Hayes and Ms. Taylor as well.

August 21, 2026

s/William H. Sloan
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