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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 E. Chellis, Master in Equity

Appellate Case No. 2024-000122

U.S. 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.

RESPONSE OF U.S. BANK TRUST NA, AS TRUSTEE FOR WATERFALL VICTORIA GRANTOR TRUST II, SERIES G, TO JAMIE SINGLETON'S MOTION FOR REHEARING

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STATEMENT OF THE CASE ON APPEAL

This is an action for mortgage foreclosure in which the appellant, U.S. Bank NA, as Trustee for Waterfall Victoria Grantor Trust II, Series G ("Waterfall"), is the plaintiff in the trial court, and the respondent, Jamie Singleton ("Singleton"), is the defendant in the trial court. The Court of Appeals, on August 12, 2026, issued an opinion ("Opinion") that held (1) the master-in-equity lacked jurisdiction to, *sua sponte,* issue an order on March 28, 2023, that vacated, in its entirety, a November 21, 2022, order granting Waterfall summary judgment when such relief was not requested by any party; (2) the master erred in the November 21, 2022, order by denying Waterfall interest, escrow charges, corporate advances, attorney's fees and costs when the terms of the ("Note") and mortgage ("Mortgage") being foreclosed specifically provided the Note holder was entitled to these items; (3) the master erred in the trial order of December 12, 2023 ("Trial Order"), by denying interest to Waterfall; (4) the master erred in the Trial Order by holding that Waterfall, although being the holder of the Note, was not also the holder of the Mortgage securing the Note; and (5) by holding that the master erred in the Trial Order by ordering Waterfall to return $19,183.89 to Singleton.. On August 21, 2026, Singleton filed a motion for rehearing ("Motion") of the Opinion. Waterfall files this response in objecting to Singleton's Motion. Waterfall addresses Singleton's arguments in the order the arguments are set forth in Singleton's Motion.

SINGLETON'S ARGUMENTS

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

In Singleton's motion for rehearing, he alleges that Waterfall failed to preserve its right to appeal the March 28, 2023, order because Waterfall did not file a Rule 59(e) motion. (Singleston's Motion for Rehearing, pp. 3-4). In support of his argument, Singleton cites the case of *In re Estate of Timmerman,* 331, S.C. 455, 502 S.E.2d 920 (Ct. App. 1998). Singleton's argument lacks merit. In *Timmerman,* the Court of Appeals did hold that because the respondent failed to file a Rule 59(e) motion as to a probate court's order regarding the appellant's right to an elective share of the estate, the circuit court erred by addressing the argument on appeal; therefore, the Court of Appeals reversed the circuit court's order. *Timmerman,* 331 S.C. at 459-461, 502 S.E.2d at 922. However, *Timmerman* did not deal with the issue of a trial judge, *sua sponte*, vacating an order more than ten days after the order was issued and on grounds that were not raised in a Rule 59(e) motion.

In the present case, the master-in-equity, *sua sponte,* issued the March 28, 2023, order vacating, in total, the November 21, 2022, order even though Waterfall, the only party to file a Rule 59(e) motion as to the November 21, 2022, order, did not request such relief. In its Opinion in this case, the Court of Appeals properly relied on *Ness v. Eckerd Corp.,* 350 S.C. 399, 566 S.E.2d 193 (Ct. App. 2002) and *Heins v. Heins,* 344 S.C. 146, 543 S.E.2d 224 (Ct. App. 1996), in holding that the master lacked subject matter jurisdiction to issue the March 28, 2023, order. "Issues relating to subject matter jurisdiction may be raised at any time . . . and should be taken notice of by this court on our own motion." *Ness,* 350 S.C. at 402, 566 S.E.2d at 193 (quoting *Bunkum v. Manor Props.,* 321 S.C. 95, 99-100, 467 S.E.2d 758, 761 (Ct. App. 1996). Therefore, Singleton's argument that Waterfall failed to preserve its right to appeal the master's, *sua sponte*, March 28, 2023, order fails.

B. DECISION IN CONFLICT WITH EVIDENCE

In this argument, Singleton appears to be alleging that the Court of Appeals overlooked the fact that, according to an affidavit in the trial record on July 31, 2014, it was impossible for the Note to be assigned to Waterfall. (Singleton's Motion for Rehearing, pp. 4-5). This argument lacks merit as well. The master's November 21, 2022, order specifically held that Waterfall was the holder of the Note and Mortgage, and Singleton did not file a Rule 59(e) motion as to this order. After the master's, *sua sponte,* March 28, 2023, order is vacated pursuant to the Court of Appeal's Opinion, the November 21, 2022, order will stand, except for those changes ordered by the Opinion. It is therefore the law of this case that Waterfall is the holder of the Note and Mortgage. *See Lindsay v. Lindsay,* 328 S.C. 329, 339, 491 S.E.2d 583, 588 (Ct. App. 1997) ("It is a fundamental rule of law that an appellate court will affirm a ruling by a lower court if the offended party does not challenge that ruling.") (citing *Biales v. Young,* 315 S.C. 166,, 432 S.E.2d 482 (1993)). "The unchallenged ruling, 'right or wrong, is the law of the case and requires affirmance.'" *Id.* (quoting *Buckner v. Preferred Mut. Ins. Co.,* 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970)). It's worth noting that the master's December 12, 2023, order also held that Waterfall was the holder of the Note, and Singleton also did not challenge that ruling either. It's also worth noting that although Singleton appears to contest Waterfall being the holder of the Note and Mortgage in this argument, in his argument set forth in section D(2) of his motion for rehearing, Singleton states "[Singleton] does not oppose the finding that [Waterfall] was the mortgage holder at the time of trial." (Singleton's Motion for Rehearing, p. 6).

C. APPEALING THE SUMMARY JUDGMENT ORDER IS MOOT

It is unclear what Singleton is alleging in this argument. Singleton starts out by stating "[t]his Court held in its Opinion that the initial Summary Judgment of November 21, 2022, was entered in error (Op. p. 7-9)." (Singleton's Motion for Rehearing, p. 5). Singleton then "argues that this issue is moot." (Singleton's Motion for Rehearing, p. 5).

First, in its Opinion, the Court of Appeals did not hold that the entire November 21, 2022, order was entered in error. Instead, the Court of Appeals held that the master erred in the November 21, 2022, order by denying Waterfall interest, escrow charges, corporate advances, attorney's fees and costs. Second, since the master lacked jurisdiction to, *sua sponte*, issue the March 28, 2023, order that vacated the November 21, 2023, order, the November 21, 2022, order stands except as modified by the Court of Appeals in its Opinion; therefore, Waterfall's appeal of the November 21, 2022, order is not moot.

D. TRIAL ORDER

1. INTEREST

In this argument, Singleton agrees that the Court of Appeals' Opinion correctly found that the interest rate on the Note was at all relevant times 10.45%. (Singleton's Motion for Rehearing, p. 5). However, Singelton's Motion alleges that the Court of Appeals erred by overlooking the master's findings in the December 12, 2023, order regarding Waterfall's alleged failure to produce the loan servicing history. (Singleton's Motion for Rehearing, p. 5). Singelton is alleging that this alleged failure by Waterfall to produce the loan servicing history should be the basis for denying interest to Waterfall. (Singleton's Motion for Rehearing, pp. 5-6).

First, since the master lacked jurisdiction to issue his March 28, 2023, order vacating the November 21, 2022, order granting summary judgment, the November 21, 2022, order is effective, except as modified by the Court of Appeal's Opinion regarding the interest, escrow charges, corporate advances, attorney's fees and costs. This makes the December 12, 2023, trial order moot. The November 21, 2022, order found that "[Singleton] failed to make the January 1, 2020, payment and remained in default of payment thereafter." (Record on Appeal, p. 122). Calculating interest at the rate of 10.45% from the date of default, January 1, 2010, merely becomes a mathematical calculation. Since the calculation of interest is merely a mathematical calculation, Waterfall's alleged failure to produce the entire loan servicing history has no effect on the calculation of interest due on the Note and Mortgage.

Second, even if the December 12, 2023, trial order is still effective, paragraphs 66 through 68 of the order make it clear that the master incorrectly denied interest to Waterfall because Waterfall did not produce evidence of the changes in the LIBOR rates, not because of any alleged failure by Waterfall to produce the complete loan servicing history. (Record on Appeal, pp. 154-55).

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

In this argument, Singleton does not oppose the finding that Waterfall is the holder of the Note and Mortgage. (Singleton's Motion for Rehearing, p. 6). However, Singleton argues that since the December 12, 2023, trial order found that Waterfall lacked credibility and had unclean hands, Waterfall should be barred from foreclosing.

As with Singleton's prior argument regarding interest, since the master lacked jurisdiction to issue his March 28, 2023, order vacating the November 21, 2022, order granting summary judgment, the November 21, 2022, order is effective, except as modified by the Court of Appeal's Opinion regarding the interest, escrow charges, corporate advances, attorney's fees and costs. This makes the December 12, 2023, trial order moot. The November 21, 2022, order specifically found that Singleton had failed to prove any of his defenses, including unclean hands, and that Waterfall was entitled to foreclose on the Note and Mortgage. (Record on Appeal, pp. 126-31, 133). Since Singleton failed to challenge any of these findings, conclusions, or orders in the November 21, 2022, order, these findings, conclusions, and orders are the law of the case. *See Lindsay,* 328 S.C. at 339, 491 S.E.2d at 588 ("The unchallenged ruling, 'right or wrong, is the law of the case and requires affirmance.").

E. EQUITABLE POWERS OF THE MASTER-IN-EQUITY

In this argument, Singleton starts off with the following quote, allegedly from *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 715 S.E.2d 348 (Ct. App. 2011): "A court of equity abhors foreclosures, and will not lend its aid to enforce them." (Singleton's Motion for Rehearing., p. 7). The problem is that the correct quote from *Wingard Properties* is the following: "A court of equity abhors *forfeitures,* and will not lend its aid to enforce them." *Wingard Properties,* 394 S.C. at 256, 715 S.E.2d at 356 (quoting *Jones v. N.Y. Guar. & Indem. Co.,* 101 U.S. 622, 628, 25 L.Ed. 1030 (1879)) (emphasis added). In the quote, Singleton has substituted the word "foreclosures" for the word "forfeitures." Singleton also made this word substitution in his initial brief. (Singleton's Initial Brief, p. 20). In Waterfall's initial reply brief, Waterfall noted Singleton's substitution of the word "foreclosures" for "forfeitures." (Waterfall's Initial Reply Brief, p. 9). Despite the word substitution being pointed out by Waterfall, Singleton used this incorrect quote in his final brief as well. (Singleton's Final Brief, p. 21). The fact that Singleton has continued to misquote the phrase in his motion for rehearing is disturbing.

Again, since the master lacked jurisdiction to issue his March 28, 2023, order vacating the November 21, 2022, order granting summary judgment, the November 21, 2022, order is effective, except as modified by the Court of Appeal's Opinion regarding the interest, escrow charges, corporate advances, attorney's fees and costs. The November 21, 2022, order specifically found that Singleton had failed to prove any of his defenses, including unclean hands, and that Waterfall was entitled to foreclose on the Note and Mortgage. (Record on Appeal, pp. 126-31, 133). Since Singleton failed to challenge any of these findings, conclusions, or orders in the November 21, 2022, order, these findings, conclusions, and orders are the law of the case. *See Lindsay,* 328 S.C. at 339, 491 S.E.2d at 588 "The unchallenged ruling, 'right or wrong, is the law of the case and requires affirmance."

CONCLUSION

For all the above reasons, Singleton's motion for rehearing should be denied.

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PROOF OF SERVICE

I certify that I have served Appellant's Response to Respondent Jamie Singleton's Motion for Rehearing on the counselors of record listed below, by electronic mail of the same on August 28, 2026, addressed to:

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