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SC Court of Appeals

STATE OF SOUTH CAROLINA
SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
MASTER IN EQUITY
James F. Chellis, Master In Equity,

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

Jamie Singleton……..Petitioner

VS.

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

v.

JAMIE SINGLETON and INDIGO POINTE
HOMEOWNERS' ASSOCIATION,

Defendants below,

Of Which JAMIE SINGLETON is the ……Petitioner/Appellant

PETITION FOR CERTIORARI

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QUESTIONS FOR REVIEW

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2. Did the Court of Appeals err in the review of the evidence of the case in neglecting that Plaintiff failed to produce a complete payment history on the issue of interest on the loan and lacked the credibility sufficient to prove their case for foreclosure?

3. Did the Court of Appeals fail to properly find that Waterfall failed to preserve the appeal of the *Sua Sponte* Form 4 Order and Master's Lack of Jurisdiction?

TABLE OF AUTHORITIES

Austin v. Specialty Transp. Servs, Inc, 358 S.C. 298, 310-11, 594 S.E. 2d 867, 873 (C. App. 2004). ……*6*

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that this Petition for Writ of Certiorari was made in good faith in view of the matters presented, and that it conforms with the appellate court rules. Petitioner asserts that certiorari is properly granted pursuant to SCRAP 242(b)(1) as this matter presents novel questions of law in a case of first impression in South Carolina. Counsel for the Petitioner filed the Petition for Rehearing with the Court of Appeals on August 21, 2026, and same was denied by said Court on September 2, 2026.

STATEMENT OF THE CASE

This case is a foreclosure action, with a proper referral of this case to the Dorchester County Master in Equity. Initially, this case was before the Honorable Maite Murphy, then in 2013 to the Hon. James Chellis as Master-in-Equity. On November 21, 2022, after a Summary Judgment hearing of the Plaintiff, Judge Chellis entered an Order on Respondent's Motion for Summary Judgment which granted the remedy of foreclosure, but denied any award of interest, costs, or attorneys' fees via an equitable setoff. (R. Vol. 1 at 114-7). Petitioner filed a timely Motion to Alter or Amend the subject Order on December 1, 2022, (R. at 1098-1108). In a separate Order filed on March 28, 2023, Judge Chellis completely vacated the November 21, 2022. The matter proceeded to a three-day non-jury trial which took place three months thereafter in June 2023.

Approximately six months after the trial, Judge Chellis entered his written 52-page decision. (R. Vol. 1, p. 144-197). The Plaintiff Waterfall filed a Motion to Alter or Amend per SCRCP 59 Motion. (R. 1237-77). Judge Chellis denied the Motion (R. 198-203), except to hold a hearing on the issue of Plaintiff's attorney's fees. Waterfall timely appealed. The Court of Appeals issued its Opinion on August 12, 2026 which reversed Judge Chellis' decision and remanded the

matter. Petitioner timely filed a Motion for Rehearing, asserting that the Court of Appeals overlooked or misapprehended certain factual and legal issues in rendering its decision, and thus requested rehearing. On August 26, 2026, Respondent filed an improper response to Petitioner's Motion for Rehearing. It was improper for Waterfall to do so since they were not requested to by the Court of Appeals per Rule 221, SCACR. Nonetheless, on September 2, 2026, the Court of Appeals issued its Order denying Petitioner's Motion for Rehearing. This Petition for Writ of Certiorari is being timely filed pursuant to SCACR 242.

ARGUMENT-QUESTIONS FOR REVIEW

1. **Did the Court of Appeals err in reversing the Trial Court's Denial of Foreclosure in view of facts supporting Petitioner's Unclean Hands defense?**

During the course of the litigation below and in alleged support of its position, Respondent presented and filed the Affidavit of James George on July 31, 2014, who was designated by Respondent as an authorized representative of the Respondent (then-Plaintiff), and claimed to be employed by the servicer. Mr. George testified that at no time did GMAC (one of the numerous entities involved with the series of claimed transfers of the loan) own the [Singleton] loan.

There is no dispute that the underlying case was in Equity. Multiple Plaintiffs and servicers have appeared over the 12+ years that this action has been pending have sought to foreclose on Petitioner's home. Unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation with prejudice to the defendant. *Ingraham v. Kasey's Assoc., (*340 S.C. 98, 107 n.2, 531 S.E.2d 287, 292 S.C. 2000). Judge Chellis, the initial finder of fact, summarized the facts supporting the unclean hands defense beginning on Page 43 of the Order of December 12, 2023 beginning at paragraph 308 (R. 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. at 186, lines 1-2)

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

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

329. The Plaintiff's lack of credibility justifies a finding that the Plaintiff comes into this Court with unclean hands. (R. 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. at 194, lines 25-27.

The Opinion of the Court of Appeals totally ignores and disregards the totality of Respondent's unclean hands conduct (which Judge Chellis' 52-page decision meticulously details in writing) resulting in a novel question of law: can a party who engages in conduct demonstrating unclean hands seek recovery in equity? Put another way, does a foreclosure claim made in equity trump any defense of unclean hands as a matter of law?

Petitioner asserts that the Opinion of the Court of Appeals should be reviewed and that this Court grant certiorari to do so. Absent such clarification, there will be a lack of clarity and direction on this point of law which is a disservice to the legal community, the judiciary, and the system of justice in South Carolina courts of equity in addition to sending an unclear message to litigants and attorneys.

2. Did the Court of Appeals err in the review of the evidence of the case in neglecting that Plaintiff failed to produce a complete payment history on the issue of interest on the loan and lacked the credibility sufficient to prove their case for foreclosure?

In the opinion of the Court of Appeals, (Op. p. 9-10), the judges found that the interest rate on the subject loan was 10.45%. While this issue may not be in dispute, the judges of the Court of

Appeals failed to factor in that the **evidence of the payment history lacked credibility.** In addition to multiple Plaintiffs, there have been several servicers of the subject loan. Reference is craved to Part 1 of this argument, specifically items 308-310 and 329-330 of the 52 page Order from the trial court (R. p. 186). This is just a small snapshot of the multiple occasions in the Court's Findings of Fact and Conclusions of Law that:

a. The payment history of the subject loan was incomplete and
b. It lacks credibility

> "Once the debt and default have been established, the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment, or accord and satisfaction." *U.S. Bank Trust National Association v. Bell*, 385 S.C. 364, 684 S.E.2d 199, 205 (S.C. Ct. App. 2009).

By the Respondent failing to establish the debt and the default, the burden of establishing a defense to the foreclosure never shifted to Singleton. Further, if there was insufficient and incomplete credible evidence to show the payment history of the subject loan, it was proper for the trial court to find that Respondent was not entitled to interest. Had Respondent provided the trial court a complete and credible payment history, they may have been entitled to 10.45% interest. But it did not. "The trial court is vested with considerable discretion over the amount of a damages award, and our review of the amount of damages is limited to the correction of errors of law." *Austin v. Specialty Transp. Services, Inc.,* 358 S.C. 298, 310-11, 594 S.E.2d 867, 873 (Ct. App. 2004). In reviewing a damages award, we do not weigh the evidence but determine if any evidence supports the award. *Id.* at 311, 594 S.E2d. at 873. "Of course, the veracity and credibility of a witness can best be judged by the trial judge who heard the witness testify, and who was able to observe his demeanor. He is given broad discretion in this area. *Klutts Resort Realty v. Down 'Round Development Corp.,* 268 S.C. 80, 232 S.E. 2d 20, 26 (1977)."

Therefore, it was proper for the Master to find that the lack of credibility of the witness and the incomplete payment history were valid reasons for the Master to deny interest. This holding of the credibility of the witness should be upheld by this Court.

3. **Did the Court of Appeals fail to properly find that Waterfall failed to preserve the appeal of the Sua Sponte Form 4 Order and Master's Lack of Jurisdiction?**

The Court of Appeals 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). Respondent relied on *Ness v. Eckerd Corp.* 350 SC 399, 566 S.E. 2d. 193 (Ct. App. 2002) to reverse this decision. However, Petitioner 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.)"

Petitioner previously filed a Motion to Dismiss the appeal of this Order on February 8, 2024, which was denied on April 24, 2024. Petitioner Singleton argues that Respondent Waterfall 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 Petitioner asserts was overlooked by the Court of Appeals.

CONCLUSION AND PRAYER FOR RELIEF

The decision of the Court of Appeals is based on facts which support the decision of the Master-in-Equity in part yet also results in an improper reversal of the ultimate findings of the trial court via the principles of equity via a foreclosure accomplished through actions constituting unclean hands and lack of credibility of the evidence. Petitioner respectfully requests the Court to grant this Petition for a Writ of Certiorari pursuant to SCRAP 242(a) and direct that full appeal on the merits proceed.

Respectfully submitted,

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Certificate of Mailing

I certify that I have served the Petition for Certiorari by depositing a copy of same in the United States Mail, postage prepaid, on September 30, 2026 addressed to active counsel of record for Respondent.

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

September 30, 2026

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