

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Ellis B. Drew, Jr., Master in Equity

Court of Appeals Opinion No. 2012-210846

Appellate Case No. 2013-002714

Green Tree Servicing, LLC, formerly known as Green Tree Financial Servicing Corporation, a Limited Liability Company under the laws of the State of Delaware,

Respondent,

vs.

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,

Petitioner.

PETITION FOR WRIT OF CERTIORARI

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SC Court of Appeals

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PETITION FOR A WRIT OF CERTIORARI

Petitioner 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.

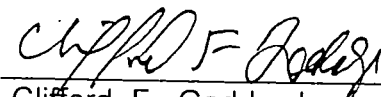
Petitioner filed a Petition for Rehearing with the Court of Appeals. However, the Clerk for the Court of Appeals refused to file the Petition for Rehearing on the ground that the Petition for Rehearing was received pm the 19th day following the date of the filing of the Opinion issued by the Court of 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.

Appellant Corrie Martin filed a Motion to Allow the Petition for Rehearing in the Court of Appeals. By its Order dated January 15, 2014 the Court of Appeals denied without comment Appellant Martin's Motion to Allow Martin's Petition for Rehearing.

The Order of the Court of Appeals denying Martin's Motion to Allow her Petition for Rehearing means that the Court of Appeals declines to grant an extension of time of four days to allow Martin's Petition for Rehearing to be heard.

I do hereby certify that the above information is true and correct.

January 20, 2014


Clifford F. Gaddy, Jr
Attorney for Petitioner

QUESTION PRESENTED

DID THE COURT OF APPEALS ERR IN FAILING TO HOLD THAT MARTIN HAS THE RIGHT TO COMMENCE A SECOND ACTION TO ATTACK A PRIOR 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 SCRCF 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 p.8) 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 p.6) 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.*****

Petitioner 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 p.9) 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 p.7).

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 A PRIOR 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 (6) 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 SCRCF 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 before Master-In-Equity Ellis B. Drew, Jr. 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 through a foreclosure sale. She deserves her day in court to contest the improper actions of Green Tree Lending in foreclosing upon her house.

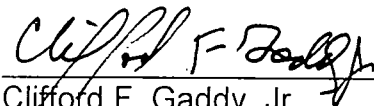
CONCLUSION

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 Petitioner 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 Petitioner 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).

Respectfully submitted,

January 17, 2014



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January 20, 2014

Ms. Linda Allen
Supreme Court of South Carolina
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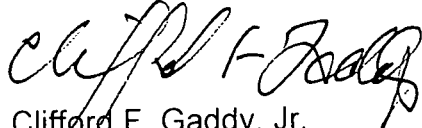
Re: Corrie A. Martin v. Green Tree Servicing, LLC.
C.A.# 2012-CP-04-01576

Dear Ms. Allen:

We enclose the following for filing with the Supreme Court:

- (1) Writ of Certiorari (1 original & 6 copies)
- (2) Appendix (1 unbound original & 1 bound copy)
- (4) Certificate of Service upon Counsel for Respondent

Sincerely,


Clifford F. Gaddy, Jr.

CFG/svr
Enc.

cc: Theodore von Keller, Esquire, Attorney for Respondent (w/encl)
The Honorable Jenny A. Kitchings, South Carolina Court of Appeals (w/encl)
Ms. Corrie A. Martin, Appellant (w/encl)

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Petitioner.

PROOF OF SERVICE

I, hereby certify that I served Respondent a copy of the Writ of Certiorari and Appendix on January 20, 2013, by placing the same in an envelope deposited in the United States Postal Service, with proper postage addressed to:

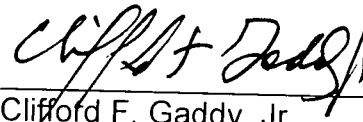
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SC Court of Appeals

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Cliff F. Gaddy, Jr.", written over a horizontal line.

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January 20, 2014

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