

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Clyde N. Davis, Jr., Special Referee

Case No.: 2009-CP-46-03996

Appellate Case No. 2013-001930

JP Morgan Chase Bank, National Association,

Respondent,

v.

Leah B. Sample,

Appellant,

INITIAL BRIEF OF APPELLANT

David B. Sample
1506 Ebenezer Road
Rock Hill, South Carolina 29732
(803) 981-9900
ATTORNEY FOR APPELLANT

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SC Court of Appeals

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STATEMENT OF THE ISSUES ON APPEAL

1. The Circuit Court erred in denying Appellant's Motion to Set Aside Foreclosure Sale and Supplemental Order.

STATEMENT OF THE CASE

Respondent filed a foreclosure action against Appellant on September 16, 2009. Subsequently the parties entered into negotiations and the action was put on hold until June 8, 2011, when the Respondent filed a Notice of Mortgagors Right to Foreclosure Intervention as required by South Carolina Supreme Court Administrative Order 2011-05-02-01. It is undisputed that this document, as well as all subsequent filings and notices in the case were served upon the Appellant by sending them to her counsel at a former address that was no longer being forwarded by the U.S. Postal Service. Subsequently a foreclosure sale took place and the Appellant's property was purchased by the Respondent. Also, a deficiency judgment was entered against the Appellant.

On March 6, 2013, Appellant filed a Motion to Set Aside Foreclosure Sale and Supplemental Order seeking to set aside the foreclosure sale and the deficiency judgment on the grounds that service upon Appellant's counsel at an outdated address of the Notice of Mortgagors Right to Foreclosure Intervention and all subsequent notices and filings was a violation of the Appellant's due process rights. By order filed on July 25, 2013, the Court denied the Appellant's motion to set aside the sale and subsequent order.

The Appellant, Leah B. Sample, now respectfully appeals the Circuit Court order of the Honorable Clyde N. Davis denying her Motion to Set Aside Foreclosure Sale and Supplemental Order.

STANDARD OF REVIEW

The instant case involves a question of law and the application of the law to the particular facts of the case. Questions regarding the law or application of the law to a set of facts are reviewed de novo. J.K. Const., Inc. v. Western Carolina Regional Sewer Auth., 336 S.C. 162, 166-167, 519 S.E.2d 561, 563 (1999).

ARGUMENT

1. The Circuit Court erred in denying Appellant's Motion to Set Aside Foreclosure Sale and Supplemental Order.

The Circuit Court ruled that it was the duty of Appellant's attorney to notify opposing counsel and the clerk of court of a change of address, and therefore the Respondent had properly served all disputed documents by sending them to counsel's former address. (R.p. ____). However, it is undisputed that Appellant's counsel had properly updated his address with the South Carolina Bar Association and with the South Carolina Attorney Information System. (R.p. ____). Furthermore, Respondent did not dispute the assertion that the disputed documents would have been returned undeliverable and thus Respondent's counsel would have been on notice that the Appellant nor her counsel had received actual notice of the documents. (R.p. ____). Counsel for Appellant pointed out to the Court that even after filing the Appellant's Motion to Set Aside Foreclosure Sale and Supplemental Order, setting forth in the grounds that Appellant's counsel had a new address, Respondent served a notice of hearing for Appellant's motion upon the Appellant by sending it to the same invalid address that was used to serve the prior documents at issue. (R.p. ____).

“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652 (1950). “Such notice must give the parties a reasonable time to make their appearance and the means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.” *Id.*

Based on the above language “under the circumstances”, the Appellant asserts that the trial court failed to properly apply the law of due process. The case had been pending for several years, lending itself to an address change taking place. Counsel for Appellant had properly registered his address with the South Carolina Bar and the South Carolina Attorney Information System. Counsel for the Respondent did not dispute that his firm likely received the disputed documents back from the postal service marked undeliverable. It is also undisputed that neither the Appellant nor her counsel received actual notice. The Appellant asserts that under these circumstances, due process requires that the foreclosure sale and subsequent orders be vacated and the Appellant should be required to be properly served with a Notice of Mortgagors Right to Foreclosure Intervention.

The Circuit Court’s failure to consider this violates the due process clause of the United States and South Carolina Constitutions and is therefore in error.

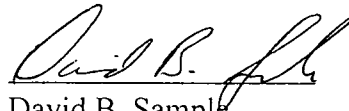
CONCLUSION

For the reasons set forth above, the July 25, 2013 order of the Circuit Court denying the Appellant’s Motion to Set Aside Foreclosure Sale and Supplemental Order should be reversed,

and the foreclosure sale and all subsequent orders should be vacated.

Respectfully submitted,

January 22, 2014

A handwritten signature in black ink, appearing to read "David B. Sample". The signature is written in a cursive style with a horizontal line underneath it.

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Appellant.

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

1. Motion to Set Aside Foreclosure Sale and Supplemental Order;
2. Special Referee's Order Denying Defendant's Motion to Set Aside Foreclosure Sale and Supplemental Order;
3. Transcript of May 23, 2013.

I certify that this designation contains no matter which is irrelevant to this appeal.



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JP Morgan Chase Bank, National Association, Respondent,


v.

Leah B. Sample, Appellant,

**CERTIFICATE OF SERVICE
BY MAIL**

I certify that I have served the Initial Brief of Appellant and Designation of Matters on Appeal on Respondent JP Morgan Chase Bank National Association by placing a copy of same in the United States Mail to the attorney for the Respondent, Michael J. Anzelmo, Post Office Box 11070, Columbia, South Carolina 29211 on January 22, 2014.

January 22, 2014



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ATTORNEY FOR APPELLANT

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DAVID B. SAMPLE
Attorney at Law

January 22, 2014

South Carolina Court of Appeals
Attention: Clerk of Court
Post Office 11629
Columbia, South Carolina 29211

Re: JP Morgan Chase Bank, National Association v. Leah B. Sample
Case No.: 09-CP-46-3996

Dear Sir or Madam:

Enclosed herewith, please find an original and one (1) copy of the Initial Brief of Appellant, Designation of Matter to be Included in the Record on Appeal along with the Certificate of Service in the above-referenced matter. Please file in your office and return the filed copy to me the self-addressed stamped envelope provided for your convenience.

Should you have any questions or require further information, please do not hesitate to contact me.

With kind regards, I am,

Sincerely,

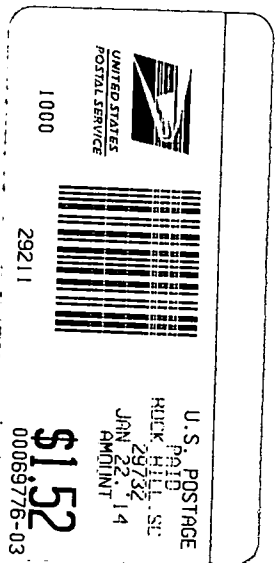

David B. Sample

DBS/tdb
Enclosures
cc: Michael J. Anzelmo, Esquire

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